The Ontario Securities Commission

OSC Bulletin

September 4, 2009

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

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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

SEPTEMBER 4, 2009

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
Suite 1700, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

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Margot C. Howard	—	MCH
Kevin J. Kelly	—	KJK
Paulette L. Kennedy	—	PLK
David L. Knight, FCA	—	DLK
Patrick J. LeSage	—	PJL
Carol S. Perry	—	CSP

SCHEDULED OSC HEARINGS

September 8, 2009 10:00 a.m.	**MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric** s. 127 and 127(1) D. Ferris in attendance for Staff Panel: PJL/CSP
September 8, 2009 10:30 a.m. September 9-10, 2009 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 J. Feasby in attendance for Staff Panel: MGC/MCH
September 9, 2009 09:00 a.m.	**MI Developments Inc.** s. 104(1) and 127 M. Vaillancourt in attendance for Staff Panel: JEAT/PLK
September 9, 2009 10:00 a.m.	**Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp. and Weizhen Tang** s. 127 and 127.1 M. Britton in attendance for Staff Panel: DLK
September 10, 2009 10:00 a.m.	**Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman** s. 127(7) and 127(8) M. Boswell in attendance for Staff Panel: DLK

September 10, 2009 10:30 a.m.	**Abel Da Silva** s. 127 M. Boswell in attendance for Staff Panel: DLK
September 11, 2009 10:00 a.m.	**M P Global Financial Ltd., and Joe Feng Deng** s. 127(1) M. Britton in attendance for Staff Panel: MGC
September 16, 2009 10:00 a.m.	**Sextant Capital Management Inc., Sextant Capital GP Inc., Sextant Strategic Opportunities Hedge Fund L.P., Otto Spork, Robert Levack and Natalie Spork** s. 127 S. Kushneryk in attendance for Staff Panel: MGC
September 21, 2009 9:00 a.m.	**Goldbridge Financial Inc., Wesley Wayne Weber and Shawn C. Lesperance** s. 127 J. Feasby in attendance for Staff Panel: CSP
September 21, 2009 10:00 a.m.	**Prosporex Investments Inc., Prosporex Forex SPV Trust, Anthony Diamond, Diamond+Diamond, and Diamond+Diamond Merchant Banking Bank** s. 127 H. Daley in attendance for Staff Panel: MGC/CSP
September 21, 2009 11:30 a.m. September 22-28, September 30 – October 2, 2009 10:00 a.m.	**Goldpoint Resources Corporation, Lino Novielli, Brian Moloney, Evanna Tomeli, Robert Black, Richard Wylie and Jack Anderson** s. 127(1) and 127(5) M. Boswell in attendance for Staff Panel: MGC/DLK
September 22, 2009 10:00 a.m.	**Berkshire Capital Limited, GP Berkshire Capital Limited, Panama Opportunity Fund and Ernest Anderson** s. 127 E. Cole in attendance for Staff Panel: TBA
September 24, 2009 9:30 a.m.	**Lyndz Pharmaceuticals Inc., Lyndz Pharma Ltd., James Marketing Ltd., Michael Eatch and Rickey McKenzie** s.127(1) and (5) J. Feasby in attendance for Staff Panel: MGC
September 29, 2009 2:30 p.m.	**Adrian Samuel Leemhuis, Future Growth Group Inc., Future Growth Fund Limited, Future Growth Global Fund limited, Future Growth Market Neutral Fund Limited, Future Growth World Fund and ASL Direct Inc.** s. 127(5) K. Daniels in attendance for Staff Panel: TBA
September 29, 2009 2:30 p.m.	**Paladin Capital Markets Inc., John David Culp and Claudio Fernando Maya** s. 127 C. Price in attendance for Staff Panel: TBA
September 30 – October 23, 2009 10:00a.m.	**Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited** s. 127 M. Britton in attendance for Staff Panel: TBA

October 6, 2009 2:30 p.m.	**Nest Acquisitions and Mergers and Caroline Frayssignes** s. 127(1) and 127(8) C. Price in attendance for Staff Panel: TBA
October 6, 2009 2:30 p.m.	**IMG International Inc., Investors Marketing Group International Inc., and Michael Smith** s. 127 C. Price in attendance for Staff Panel: TBA
October 7, 2009 10:00 a.m.	**Paul Iannicca** s. 127 H. Craig in attendance for Staff Panel: TBA
October 8, 2009 9:30 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: TBA
October 8, 2009 10:00 a.m.	**Global Energy Group, Ltd. And New Gold Limited Partnerships** s. 127 H. Craig in attendance for Staff Panel: DLK
October 9, 2009 10:00 a.m.	**Gold-Quest International, Health and Harmoney, Iain Buchanan and Lisa Buchanan** s. 127 H. Craig in attendance for Staff Panel: CSP
October 9, 2009 10:00 a.m.	**Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmoney, Harmoney Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale** s. 127 H. Craig in attendance for Staff Panel: CSP
October 14, 2009 10:00 a.m.	**Axcess Automation LLC, Axcess Fun Management, LLC, Axcess Fund, L.P., Gordon Alan Driver and David Rutledge** s. 127 M. Adams in attendance for Staff Panel: TBA
October 19 – November 10; November 12-13, 2009 10:00 a.m.	**Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiaints Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group** s. 127 and 127.1 H. Craig in attendance for Staff Panel: MGC/CSP

October 20, 2009 10:00 a.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: TBA
November 16, 2009 10:00 a.m.	**Maple Leaf Investment Fund Corp. and Joe Henry Chau** s. 127 A. Sonnen in attendance for Staff Panel: TBA
November 16 – December 11, 2009 10:00 a.m.	**Sulja Bros. Building Supplies, Ltd. (Nevada), Sulja Bros. Building Supplies Ltd., Kore International Management Inc., Petar Vucicevich and Andrew DeVries** s. 127 and 127.1 M. Britton in attendance for Staff Panel: TBA
November 24, 2009 2:30 p.m.	**W.J.N. Holdings Inc., MSI Canada Inc., 360 Degree Financial Services Inc., Dominion Investments Club Inc., Leveragepro Inc., Prosporex Investment Club Inc., Prosporex Investments Inc., Prosporex ltd., Prosporex Inc., Networth Financial Group Inc., Networth Marketing Solutions, Dominion Royal Credit Union, Dominion Royal Financial Inc., Wilton John Neale, Ezra Douse, Albert James, Elnonieth "Noni" James, David Whitely, Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Trudy Huynh, Dorlan Francis, Vincent Arthur, Christian Yeboah, Azucena Garcia and Angela Curry** s. 127 H. Daley in attendance for Staff Panel: TBA
November 30, 2009 2:00 p.m.	**Uranium308 Resources Inc., Uranium308 Resources PLC., Michael Friedman, George Schwartz, Peter Robinson, Alan Marsh Shuman and Innovative Gifting Inc.** s. 127 M. Boswell in attendance for Staff Panel: TBA
December 11, 2009 9:00 a.m.	**Tulsiani Investments Inc. and Sunil Tulsiani** s.127 A. Sonnen in attendance for Staff Panel: TBA
January 11, 2010 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

January 18, 2010 10:00 a.m. January 19, 2010 2:30 p.m. January 20-29, 2010 10:00 a.m.	**New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd., L. Jeffrey Pogachar, Paola Lombardi and Alan S. Price** s. 127 S. Kushneryk in attendance for Staff Panel: TBA
January 25-26, 2010 10:00 a.m.	**Lehman Cohort Global Group Inc., Anton Schnedl, Richard Unzer, Alexander Grundmann and Henry Hehlsinger** s. 127 H. Craig in attendance for Staff Panel: TBA
February 5, 2010 10:00 a.m.	**Hillcorp International Services, Hillcorp Wealth Management, Suncorp Holdings, 1621852 Ontario Limited, Steven John Hill, John C. McArthur, Daryl Renneberg and Danny De Melo** s. 127 A. Clark in attendance for Staff Panel: TBA
February 8-12, 2010 10:00 a.m.	**Goldbridge Financial Inc., Wesley Wayne Weber and Shawn C. Lesperance** s. 127 J. Feasby in attendance for Staff Panel: TBA
March 1-8, 2010 10:00 a.m.	**Teodosio Vincent Pangia** s. 127 J. Feasby 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	**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
TBA	**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
TBA	**Gregory Galanis** s. 127 P. Foy in attendance for Staff Panel: TBA

TBA

Franklin Danny White, Naveed Ahmad Qureshi, WNBC The World Network Business Club Ltd., MMCL Mind Management Consulting, Capital Reserve Financial Group, and Capital Investments of America

s. 127

C. Price in attendance for Staff

Panel: TBA

TBA

Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling

s. 127(1) and 127.1

J. Superina, A. Clark in attendance for Staff

Panel: TBA

TBA

Global Partners Capital, Asia Pacific Energy Inc., 1666475 Ontario Inc. operating as "Asian Pacific Energy", Alex Pidgeon, Kit Ching Pan also known as Christine Pan, Hau Wai Cheung, also known as Peter Cheung, Tony Cheung, Mike Davidson, or Peter McDonald, Gurdip Singh Gahunia also known as Michael Gahunia or Shawn Miller, Basis Marcellinius Toussaint also known as Peter Beckford, and Rafique Jiwani also known as Ralph Jay

s. 127

M. Boswell in attendance for Staff

Panel: TBA

TBA

FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun

s. 127

A. Sonnen in attendance for Staff

Panel: TBA

TBA

Shane Suman and Monie Rahman

s. 127 and 127(1)

C. Price in attendance for Staff

Panel: TBA

TBA

Global Petroleum Strategies, LLC, Petroleum Unlimited, LLC, Roger A. Kimmel, Jr.

s. 127

E. Cole in attendance for Staff

Panel: PJL

TBA

Brilliante Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York

s. 127

S. Horgan in attendance for Staff

Panel: MGC

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

S. B. McLaughlin

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

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

Global Petroleum Strategies, LLC, Petroleum Unlimited, LLC, Aurora Escrow Services, LLC, John Andrew, Vincent Cataldi, Charlotte Chambers, Carl Dylan, James Eulo, Richard Garcia, Troy Gray, Jim Kaufman, Timothy Kaufman, Chris Harris, Morgan Kimmel, Roger A. Kimmel, Jr., Erik Luna, Mitch Malizio, Adam Mills, Jenna Pelusio, Rosemary Salveggi, Stephen J. Shore and Chris Spinler

LandBankers International MX, S.A. De C.V.; Sierra Madre Holdings MX, S.A. De C.V.; L&B LandBanking Trust S.A. De C.V.; Brian J. Wolf Zacarias; Roger Fernando Ayuso Loyo, Alan Hemingway, Kelly Friesen, Sonja A. McAdam, Ed Moore, Kim Moore, Jason Rogers and Dave Urrutia

1.1.2 Notice of Second Publication for Comment of Proposed Amendments to Sections 1 (Definitions) and 3 (Directors) of MFDA By-law No. 1 – Correction

SECOND PUBLICATION FOR COMMENT OF PROPOSED AMENDMENTS TO SECTIONS 1 (DEFINITIONS) AND 3 (DIRECTORS) OF MFDA BY-LAW NO. 1 - CORRECTION

The Commission is re-publishing proposed amendments to MFDA By-law No. 1 related to Directors to reflect changes to the transitional requirements for the MFDA's Director selection process in 2009 as determined by the MFDA's Governance Committee on August 26, 2009.

We originally published the proposed amendments for comment on August 21, 2009. The corrected version was published on the OSC website on August 28, 2009, and is being published in Chapter 13 of this Bulletin.

The comment period expiry date continues to be September 21, 2009.

1.1.3 CSA Staff Notice 33-315 – Suitability Obligation and Know Your Product

CSA STAFF NOTICE 33-315 – SUITABILITY OBLIGATION AND KNOW YOUR PRODUCT

Purpose

This notice reminds registrants of their duty under securities law to satisfy their suitability obligations to clients, including the requirement to fully understand the products recommended to clients. It also provides guidance to registrants on how to meet their obligations.

Suitability obligation

Securities law requires registrants to determine whether a proposed purchase or sale of a security[1] for a client is suitable.[2]

There are two key requirements for determining suitability. Registrants must understand:

1. the general investment needs and objectives of their client and any other factors necessary for them to be able to determine whether a proposed purchase or sale is suitable (know your client or KYC), and

2. the attributes and associated risks of the products they are recommending to clients (commonly referred to as know your product or KYP)

Registrants must meet the KYC and KYP requirements in order to make the suitability determination required by law. This notice focuses on the KYP requirement.

Know your product

Registrants must understand the structure and features of each investment product they recommend. This includes costs, risks and eligibility requirements. The KYP requirement applies to both the firm and the individual.

We expect firms to have a process for reviewing and approving new products and existing products whose structure or features have significantly changed. However, if a product is on the firm's "approved list", it does not mean that it will be suitable for all clients. Individual registrants must still determine suitability of each proposed transaction for each client.

KYP applies to all investment products whether or not they are sold under a prospectus. The extent of the product review process will depend on the structure and features of the product.

For example, complex investment products (including those that are novel or not transparent in structure) may require a more extensive review than more straightforward products. Products that are sold under a prospectus exemption may require a more extensive review because of the limited disclosure available about them.

Individual registrants

The firm's approval of an investment product alone does not satisfy KYP. Individual registrants must thoroughly understand a product before they can determine whether it is suitable to recommend the product to a client. Firms may want to provide product training to ensure that their representatives can conduct their suitability review with an appropriate understanding of the products and their risks.

Although firms may set out general investor profiles describing the type of investor for whom a product may be suitable, individual registrants must still determine suitability on each transaction for a client. Individual registrants should also explain the risks of products they are recommending to their clients.

Unless a registrant can rely on a specific exemption from its suitability obligation, a registrant has a suitability obligation to all clients, including accredited investors and investors who buy a product under a prospectus exemption. Individual registrants may not delegate their suitability obligations to their client, another registrant or anyone else.

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[1] In Alberta, British Columbia, Saskatchewan and as of September 28, 2009, New Brunswick, a reference to "security" in this notice includes "exchange contract".

[2] The requirement to assess whether the purchase or sale of securities is suitable for a client is in section 13.3 of National Instrument 31-103 – *Registration Requirements and Exemptions* (NI 31-103). Before NI 31-103, provincial securities laws imposed similar suitability requirements.

Product review process

The firm's product review process should include procedures for identifying, reviewing and approving (or rejecting) new products and for monitoring existing products for significant changes to those products.

Registered firms must have the appropriate skills and experience to perform their own analysis of all products they recommend to clients. They cannot recommend a product based solely on:

- information from issuers or other third parties, including related parties, about the product's suitability or risk profile
- similarities with other products, or
- recommendations made by other market participants to their clients

Registrants should consider factors such as product features and structure, including risks, costs, management and financial strength of the issuer. They should also determine whether expected returns are realistic. Registrants will also need to re-evaluate an existing product if a change to a key feature causes significant changes to the risk and return profile of the product.

Listed below are some factors that registrants should consider when assessing investment products.

General features and structure

- basis of security's return (e.g. minimum return, dividends, interest rate)
- use of leverage
- conflicts of interest arising from the compensation structure or other factors
- overall complexity, transparency and uniqueness of features of the product's structure

Risks

- the possibility that a client may lose some or all of the principal amount invested
- risks relating to the product, such as liquidity risk (including redemption rights and any features that lock in the principal and/or returns for a specified period), price volatility, default risk, and exposure to counterparty risk
- risks related to assets underlying derivatives or structured products

Costs

- fees paid to registrants or other parties, such as commissions, sales charges, trailer fees, management fees, incentive fees, referral fees and early redemption fees
- embedded costs, such as bid-ask spreads or other expenses

Parties involved

- the issuer's financial position and history
- qualifications, reputation and track record of the parties involved in key aspects of the product, for example, the fund manager, portfolio manager, product manufacturer or sponsor, any guarantors and significant counterparties

Legal and regulatory framework

- any laws or rules of self-regulatory organizations that apply to the registrant
- if distributed under an exemption, whether the product meets the requirements of that exemption
- legal characteristics of derivatives and structured products (e.g. jurisdiction of special purpose vehicles, bankruptcy protection and RSP eligibility)
- frequency, completeness and quality of the issuer's disclosure

Policies and procedures

Registrants should establish and enforce written policies and procedures to ensure that they satisfy their KYC and suitability obligations, including KYP. These policies and procedures should include the steps the registered firm and registered individuals should follow to identify investment products requiring review, the process to review these products, and how to assess the suitability of a product for each client. All firms should have these written policies and procedures, regardless of the firm's size. Firms should monitor and assess compliance by the firm and its individual registrants.

Guidance from self-regulatory organizations

The Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA) have issued the following notices addressing their members' know your product and suitability obligations:

- IIROC Notice 09-0087 *Best practices for product due diligence* dated March 23, 2009
- MFDA Member Regulation Notice MR-0048 *Know-Your-Product* dated October 31, 2005, and
- MFDA Member Regulation Notice MR-0069 *Suitability Guidelines* dated April 14, 2008

For more information, please contact:

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September 2, 2009

1.1.4 Notice of Commission Approval – Material Amendments to CDS Procedures – FINet Function: Security Eligibility

CDS CLEARING AND DEPOSITORY SERVICES INC.

MATERIAL AMENDMENTS TO CDS PROCEDURES

FINET FUNCTION: ELIGIBILITY

NOTICE OF COMMISSION APPROVAL

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and CDS Clearing and Depository Services Inc. (CDS), the Commission approved on September 1, 2009, amendments filed by CDS to its procedures to introduce a new category of eligible securities for the FINet function. A copy and description of these amendments were published for comment on July 3, 2009 at (2009) 32 OSCB 5488. No comments were received.

1.2 Notices of Hearing

1.2.1 Goldbridge Financial Inc. et al. – s. 127

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

AND

IN THE MATTER OF
GOLDBRIDGE FINANCIAL INC.,
WESLEY WAYNE WEBER, AND
SHAWN LESPERANCE

NOTICE OF HEARING
(s. 127 of the Securities Act)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the *Securities Act* (the "Act") at the Commission's offices on the 17th floor, 20 Queen Street West, Toronto, Ontario, commencing on September 2, 2009, at 10:00 a.m. or as soon thereafter as the hearing can be held.

AND TAKE NOTICE THAT the purpose of the Hearing is for the Commission to consider whether it is in the public interest to approve the settlement of the proceeding entered into between Staff of the Commission ("Staff") and the Respondent, Shawn Lesperance;

BY REASON OF the allegations set out in the Statement of Allegations of Staff, dated August 31, 2009, and such additional allegations as counsel may advise and the Commission may permit.

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by counsel if that party attends or submits evidence at the hearing.

AND TAKE FURTHER NOTICE THAT, upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 31st day of August, 2009

"John Stevenson"
Secretary to the Commission

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

AND

**IN THE MATTER OF
GOLDBRIDGE FINANCIAL INC.,
WESLEY WAYNE WEBER, AND
SHAWN LESPERANCE**

**STATEMENT OF ALLEGATIONS OF STAFF
OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission ("Staff") make the following allegations:

I. THE RESPONDENTS

1. Goldbridge Financial Inc. ("Goldbridge") is a company incorporated pursuant to the laws of Ontario, with its head office in Toronto. Goldbridge has never been registered to trade in securities or act as an advisor under s. 25(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act").

2. Wesley Wayne Weber ("Weber") is a resident of Richmond Hill, Ontario, and at all material times was the President, Corporate Secretary, a Director and the directing mind of Goldbridge, who was directly responsible for Goldbridge's actions. Weber has never been registered to trade in securities or act as an advisor under s. 25(1) of the Act.

3. Shawn Lesperance ("Lesperance") is a resident of LaSalle, Ontario. He was at all material times the Treasurer and a Director of Goldbridge. Lesperance has never been registered to trade in securities or act as an advisor under s. 25(1) of the Act.

II. OVERVIEW

4. Weber and Goldbridge traded in securities in Ontario without having been registered in accordance with s. 25(1)(a) of the Act, by offering investment and trading services through online advertisements.

5. Without being registered under s. 25(1)(c) of the Act, Weber and Goldbridge offered "free" day trading lessons to aspiring investors, on the condition that they deposit $300,000 into "the corporate trading account".

6. Weber used false names and assumed the identities of real persons to open online trading accounts at an online financial institution for the purpose of trading on behalf of Goldbridge.

7. Weber made false statements to a panel of Commissioners of the Ontario Securities Commission (the "Commission") during a hearing to determine whether to impose a temporary cease trade order.

8. In the course of the investigation into this matter, Weber advised Staff that he did not trade or hold securities and that no investors had invested funds with him. Staff's investigation into these statements revealed that these statements were false.

9. On October 28, 2009, the Commission made a Temporary Cease Trade Order against Goldbridge, Weber and Lesperance (the "Temporary Order"). Goldbridge, Weber and Lesperance breached the Temporary Order by continuing to accept funds for trading from the public after being ordered to stop. Weber also breached the Temporary Order by opening a personal online trading account after being ordered to confine his future activities to a particular account in the name of Goldbridge.

III. PARTICULARS OF ALLEGATIONS

Unregistered Trading

10. In the months of May through July of 2008, Weber and Goldbridge posted advertisements on the website "gobignetwork" and the Toronto branch of the website known as "craigslist," offering unregistered trading services in "NASDAQ and NYSE Equities." The advertisements indicated that Weber and Goldbridge were "now accepting capital" and claimed that if investors provided their money, Weber could "put it to work for you safely" generating annual returns of 15% or 18%, depending on the amount invested.

Acting as an Unregistered Investment Advisor

11. A further "craigslist" advertisement, posted by Weber in July of 2008, offers "free day trading lessons". To qualify for the "lessons", the student must deposit $300,000 in "the corporate trading account." Weber's advertisement states that "a rate can be negotiated" for students with less than $300,000 to deposit, but that nobody with less than $150,000 will be accepted as "[b]elow this level of capitalization it is simply not enough to sustain a standard of living. Which it is assumed you are trying to accomplish through these lessons." As part of the "free" lessons, Weber offered to "trade in real time right beside you and will provide insight and information" into a particular market area.

Misrepresentations to Financial Institutions

12. In the period up to and including August, 2008, Weber attempted to open as many as 40 separate online trading accounts at TD Ameritrade Inc. using false names and the names of people other than himself (the "TD Ameritrade Applications"). When the names pertained to real people, with few exceptions, Weber used them without permission. The applications used different email addresses and contact information, as well as mailing addresses including the Ukraine, the Bahamas, Michigan, Hong Kong and the Barbados.

13. Weber provided the false names and addresses to TD Ameritrade Inc. for the purpose of gaining access to the trading information resources of TD Ameritrade Inc. without the permission of TD Ameritrade Inc.

False Statements to the Commission

14. In making submissions to a panel of Commissioners during a hearing to determine whether to continue the Temporary Cease Trade Order, Weber made the following materially misleading statements:

a. that the TD Ameritrade Applications Weber submitted were in the names of people he knew and that he had simply included false countries of residence in the applications, when in fact several of the names Weber used were his own fabrications and one was the name of his dog; and,

b. that the TD Ameritrade Inc. account Weber had used from 2003 to June 2008 was in the name of Ping Long, whom Weber stated lived in China and was the brother of his then girlfriend, when in fact the name "Ping Long" was Weber's fabrication and there was no such person.

15. In a May 2007 article in the Report on Business, Weber claimed to be trading "$1.4 million in my account, mainly from investors". In June 2007, Staff questioned Weber about his statements and Weber claimed that the statements were not true and that he had made the story up. A few days afterward, Weber wrote to Staff, stating, "I have no nature of activity with respect to trading", "there are no individuals who have invested money with me", and "I do not hold any interest in any products/securities".

16. On October 28, 2008, in making submissions during a hearing to determine whether to extend a Temporary Cease Trade Order, Weber admitted to the panel that he was in fact trading during the time of the publication of the Report on Business article and that he had been trading $1.4 million on behalf of his then girlfriend and others during 2006.

Breaches of the Temporary Cease Trade Order

17. The terms of the Temporary Order, issued October 28, 2008, included the following:

> **IT IS ORDERED** pursuant to clause 2 of subsection 127(1) of the Act that all trading in securities by Goldbridge, Weber and Lesperance shall cease, subject to the exception below;
>
> **IT IS FURTHER ORDERED** notwithstanding the foregoing order, Goldbridge may trade solely as principal in one account ("the account") in accordance with the following conditions:
>
> a. the account shall be at E*TRADE Canada ("E*Trade");
>
> b. the account shall be in the name of Goldbridge Financial Inc.;
>
> c. the account shall contain only funds belonging to Goldbridge contributed by Weber or Lesperance, and shall not be used directly or indirectly to trade on behalf of any other person or company; . . .

18. In December 2008, while the Temporary Order remained in effect, Goldbridge accepted a loan of $10,000 in cash from Dean Forgie, which was placed in Goldbridge's account to facilitate trading in securities, in breach of the Temporary Order.

Weber signed the loan agreement on behalf of Goldbridge. Lesperance, as Treasurer and a Director of Goldbridge, authorized, permitted or acquiesced in the loan agreement transaction and the acceptance and disposition of the funds provided pursuant to that transaction.

19. In December 2008, Weber opened an online trading account at E*Trade Canada in his own name, contrary to the terms of the October 28, 2008, Temporary Cease Trade Order.

IV. CONDUCT CONTRARY TO THE PUBLIC INTEREST

20. Weber and Goldbridge engaged in unregistered trading activity contrary to s. 25(1)(a) of the Act and contrary to the public interest.

21. Weber and Goldbridge engaged in unregistered investment advisory activity contrary to s. 25(1)(c) of the Act and contrary to the public interest.

22. Weber and Goldbridge intentionally communicated false information to financial institutions for the purpose of obtaining trading accounts in names other than that of the Respondents, contrary to the public interest.

23. Weber made false and misleading statements to the Commission, contrary to Ontario securities law and contrary to the public interest.

24. Weber, Lesperance and Goldbridge breached an order of the Commission, contrary to Ontario securities law and contrary to the public interest.

25. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

August 31, 2009

1.3 News Releases

1.3.1 Canadian Securities Regulators Stress the Importance of Suitability Requirements for Dealers and Advisers

FOR IMMEDIATE RELEASE
September 2, 2009

CANADIAN SECURITIES REGULATORS STRESS THE IMPORTANCE OF SUITABILITY REQUIREMENTS FOR DEALERS AND ADVISERS

Toronto – The Canadian Securities Administrators (CSA) today published CSA Staff Notice 33-315 *Suitability Obligation and Know Your Product* that reminds dealers and advisers of their duty to satisfy their suitability obligations to clients, which includes the requirement to fully understand the products they recommend to clients.

In order to meet their obligation to their clients, anyone selling or advising in securities must determine whether a purchase or sale of a security recommended to an investor is suitable for the investor. Dealers and advisers have an obligation to understand the general investment needs and objectives of their client ("know your client"), as well as the attributes and associated risks of the products they are recommending to clients (referred to as "know your product").

"Both individual representatives and firms owe a duty to their clients to ensure the suitability of investment products and we expect dealers and advisers to carefully consider product attributes and the investment objectives of their client before recommending any product," said Jean St-Gelais, CSA Chair and President & Chief Executive Officer of the Autorité des marchés financiers. "Any registrant that does not meet these obligations is in breach of securities law."

Canadian regulators require that dealing and advising representatives understand the structure and features of each investment product they recommend, including costs, risks and financial position and reputation of the issuer and other parties involved in key aspects of the product. They should explain the risks of products they are recommending to clients and must determine the suitability of each transaction for a client. Additionally, firms should have a product review process in place that includes procedures for identifying, reviewing and approving (or rejecting) new products and for monitoring existing products for significant changes to those products.

CSA Staff Notice 33-315 *Suitability Obligation and Know Your Product* is available on various CSA members' websites.

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:

Laurie Gillett
Ontario Securities Commission
416-595-8913

Sylvain Théberge
Autorité des marchés financiers
514-940-2176

Mark Dickey
Alberta Securities Commission
403-297-4481

Ken Gracey
British Columbia Securities Commission
604-899-6577

Ainsley Cunningham
Manitoba Securities Commission
204-945-4733

Wendy Connors-Beckett
New Brunswick Securities Commission
506-643-7745

Natalie MacLellan
Nova Scotia Securities Commission
902-424-8586

Barbara Shourounis
Saskatchewan Financial Services Commission
306-787-5842

Janice Callbeck
PEI Securities Office
Office of the Attorney General
902-368-6288

Doug Connolly
Financial Services Regulation Div.
Newfoundland and Labrador
709-729-2594

Fred Pretorius
Yukon Securities Registry
867-667-5225

Louis Arki
Nunavut Securities Office
867-975-6587

Donn MacDougall
Northwest Territories
Securities Office
867-920-8984

1.4 Notices from the Office of the Secretary

1.4.1 James Richard Elliott

FOR IMMEDIATE RELEASE
August 31, 2009

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

AND

IN THE MATTER OF
JAMES RICHARD ELLIOTT

TORONTO – The Commission issued its Reasons and Decision and an Order in the above named matter.

A copy of the Reasons and Decision and the Order dated August 28, 2009 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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416-593-2361

For investor inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.2 W.J.N. Holdings Inc. et al.

FOR IMMEDIATE RELEASE
September 1, 2009

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

AND

IN THE MATTER OF
W.J.N. HOLDINGS INC., MSI CANADA INC.,
360 DEGREE FINANCIAL SERVICES INC.,
DOMINION INVESTMENTS CLUB INC.,
LEVERAGEPRO INC.,
PROSPOREX INVESTMENT CLUB INC.,
PROSPOREX INVESTMENTS INC.,
PROSPOREX LTD., PROSPOREX INC.,
NETWORTH FINANCIAL GROUP INC.,
NETWORTH MARKETING SOLUTIONS,
DOMINION ROYAL CREDIT UNION,
DOMINION ROYAL FINANCIAL INC.,
WILTON JOHN NEALE, EZRA DOUSE,
ALBERT JAMES, ELNONIETH "NONI" JAMES,
DAVID WHITELY, CARLTON IVANHOE LEWIS,
MARK ANTHONY SCOTT, SEDWICK HILL,
TRUDY HUYNH, DORLAN FRANCIS,
VINCENT ARTHUR, CHRISTIAN YEBOAH,
AZUCENA GARCIA, AND ANGELA CURRY

TORONTO – Following the *in camera* motion hearing held on August 25, 2009, the Commission issued an Order in the above matter which provides that (a) the Temporary Order of March 24, 2009 is varied so as to delete the exemption permitting Hill to sell mutual funds in accordance with his licence for the purpose of working at Keybase Financial Group Inc.; and (b) the variation ordered herein shall be operative until November 24, 2009, and the March 24, 2009 Temporary Order as varied by this Order is extended to November 24, 2009 at 2:30 p.m. unless otherwise ordered by the Commission.

A copy of the Order dated August 25, 2009 is available at **www.osc.gov.on.ca**.

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1.4.3 Goldbridge Financial Inc. et al.

FOR IMMEDIATE RELEASE
September 1, 2009

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

AND

IN THE MATTER OF
GOLDBRIDGE FINANCIAL INC.,
WESLEY WAYNE WEBER, AND
SHAWN LESPERANCE

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Shawn Lesperance. The hearing will be held on September 2, 2009 at 10:00 a.m. in Hearing Room B on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated August 31, 2009 and Staff's Statement of Allegations dated August 31, 2009 are available at **www.osc.gov.on.ca**.

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1.4.4 Lyndz Pharmaceuticals Inc. et al.

FOR IMMEDIATE RELEASE
September 2, 2009

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

AND

IN THE MATTER OF
LYNDZ PHARMACEUTICALS INC.,
LYNDZ PHARMA LTD., JAMES MARKETING LTD.,
MICHAEL EATCH AND RICKEY MCKENZIE

TORONTO – The Commission issued an Order which provides that (1) pursuant to s. 127(8) of the Act, the Temporary Order is continued to September 25, 2009; and (2) this matter is adjourned to September 24, 2009 at 9:30 a.m.

A copy of the Order dated September 1, 2009 is available at **www.osc.gov.on.ca**.

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1.4.5 Teodosio Vincent Pangia

FOR IMMEDIATE RELEASE
September 2, 2009

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

AND

IN THE MATTER OF
TEODOSIO VINCENT PANGIA

TORONTO – The Commission issued an order which provides that this matter will be set down for a hearing on the merits to commence March 1, 2010, through March 8, 2010, inclusive and for a pre-hearing conference to proceed on January 19, 2010 at 2:30pm.

A copy of the Order dated September 1, 2009 is available at **www.osc.gov.on.ca**.

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1.4.6 Neo Material Technologies Inc. et al.

FOR IMMEDIATE RELEASE
September 2, 2009

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

AND

IN THE MATTER OF
NEO MATERIAL TECHNOLOGIES INC. AND
PALA INVESTMENTS HOLDINGS LIMITED AND
ITS WHOLLY-OWNED SUBSIDIARY 0833824 B.C. LTD.

TORONTO – Following a hearing held on May 7, 2009 in the above named matter, the Commission issued its Reasons For Decision.

A copy of the Reasons For Decision dated September 1, 2009 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Western Prospector Group Ltd. – s. 1(10)

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – 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).

August 31, 2009

Elise Lenser
Stikeman Elliott LLP
5300 Commerce Court
199 Bay Street
Toronto, ON M5L 1B9

Dear Sirs/Mesdames:

Re: Western Prospector Group Ltd. (the Applicant) – application for a decision under the securities legislation of Ontario and Alberta (the Jurisdictions) that the Applicant is not a reporting issuer

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 that the Applicant is not a reporting issuer.

As the Applicant has represented to the Decision Makers that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;

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

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

(d) 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.

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

2.1.2 Mackenzie Financial Corporation et al.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of Mutual Fund Mergers – approval required because the 2 proposed mergers do not meet the criteria for pre-approval – fee structures of terminating funds and corresponding continuing funds not substantially similar – one merger is not a "qualifying exchange" or a tax-deferred transaction under Income Tax Act – financial statements of continuing funds not required to be sent to unitholders of the terminating funds in connection with the mergers provided the information circular sent for unitholder meeting clearly discloses the various ways unitholders can access the financial statements – tailored prospectus of continuing funds sent to unitholders of terminating funds instead of a simplified prospectus.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(b), 5.6(1)(b), 5.6(1)(f)(ii).

August 31, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(THE "JURISDICTION")

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATION IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
MACKENZIE FINANCIAL CORPORATION
(THE "FILER")

AND

IN THE MATTER OF
MACKENZIE SAXON MONEY MARKET FUND AND
MACKENZIE SAXON BOND FUND
(collectively, the "TERMINATING FUNDS")

AND

IN THE MATTER OF
MACKENZIE SENTINEL MONEY MARKET FUND AND
MACKENZIE SENTINEL BOND FUND
(collectively, the "CONTINUING FUNDS")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Terminating Funds for a decision under the securities legislation of the Jurisdiction (the "**Legislation**")

(a) approving the proposed mergers of the Terminating Funds into the corresponding Continuing Funds (the "**Proposed Mergers**" and the Terminating Funds and the Continuing Funds are collectively referred to as the "**Funds**" and each referred to as a "**Fund**") pursuant to subsection 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**); and

(b) exempting the Filer from the requirement to deliver the simplified prospectus and the most recent annual and interim financial statements of a corresponding Continuing Fund to unitholders of a Terminating Fund in connection with a Proposed Merger if such documents have not previously been sent to unitholders of the Terminating Fund pursuant to s.5.6(1)(f)(ii) of NI 81-102 (the "**SP and FS Delivery Requirements**").

(collectively, the "**Exemption Sought**").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a Passport Application):

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

(b) The Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon (together with the Principal Regulator, the "**Decision Makers**").

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 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 governed by the laws of Ontario and is registered as an advisor in the categories of investment counsel and portfolio manager in Ontario, Manitoba and Alberta. The Filer is registered in Ontario as a dealer in the category of Limited Market Dealer and is also registered under the *Commodity Futures Act*

(Ontario) in the category of Commodity Trading Manager.

2. The Filer is the manager and trustee of the Funds, each of which is an open-ended mutual fund trust governed under the laws of Ontario.

3. Investor series and B- series units of the Mackenzie Saxon Money Market Fund and Investor series, B- series, F- series and Advisor series units of Mackenzie Saxon Bond Fund are available and are offered for sale in all provinces and territories of Canada under a simplified prospectus and annual information form dated May 25 2009, as amended.

4. Series A, Series B, Series F, Series G, Series I units of the Mackenzie Sentinel Money Market Fund and Series A, Series E, Series G, Series I, Series J, Series M and Series O units of Mackenzie Sentinel Bond Fund are available and are offered for sale in all provinces and territories of Canada under a simplified prospectus and annual information form dated November 19, 2008, as amended.

5. Investor Series and Series O units of the Mackenzie Sentinel Money Market Fund and Advisor Series, Investor Series, B- Series and F-Series units of the Mackenzie Sentinel Bond Fund will be newly created and offered for sale in all provinces and territories of Canada under a simplified prospectus and annual information form as of the Effective Date (as defined below).

6. The Funds are reporting issuers under the applicable securities legislation of each province and territory of Canada and are not on the list of defaulting reporting issuers maintained under the applicable securities legislation of the Decision Makers.

7. Each of the Funds follows the standard investment restrictions and practices in NI 81-102, except pursuant to the terms of any exemption that has been previously obtained in respect of that Fund.

8. The net asset value for each series of units of the Funds is calculated on a daily basis on each day the Toronto Stock Exchange is open for trading.

9. The Filer intends to merge the Terminating Funds into the Continuing Funds as follows:

Terminating Fund	Continuing Fund
Mackenzie Saxon Money Market Fund	Mackenzie Sentinel Money Market Fund
Mackenzie Saxon Bond Fund	Mackenzie Sentinel Bond Fund

10. Approval of the Proposed Mergers is required because the Proposed Mergers do not satisfy all of the criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102 in the following ways:

    (a) contrary to subsection 5.6(1)(a)(ii) of NI 81-102, a reasonable person may not consider the fee structures of the Terminating Funds and their corresponding Continuing Funds to be substantially similar;

    (b) contrary to subsection 5.6(1)(b) of NI 81-102, the merger of Mackenzie Saxon Money Market Fund into the Mackenzie Sentinel Money Market Fund will not be implemented on a tax deferred basis. The management information circular of the Funds discloses the tax implications of this Proposed Merger; and

    (c) contrary to subsection 5.6(1)(f)(ii) of NI 81-102, the Filer proposes sending to unitholders of the Terminating Funds a tailored simplified prospectus consisting of the current Part A and the Part B of the simplified prospectus of the corresponding Continuing Fund ("**Tailored Prospectus**") and a management information circular that describes how unitholders may access or obtain the most recent interim and annual financial statements of the corresponding Continuing Funds.

11. Except as noted above, the Proposed Mergers will otherwise comply with all other criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102.

12. The Filer proposes implementing the merger of Mackenzie Saxon Money Market Fund into the Mackenzie Sentinel Money Market Fund on a taxable basis as it will not result in the expiry of the corresponding Continuing Fund's capital loss carryforwards and accrued capital losses. It will also result in the realization of capital losses by a significant number of unitholders of Mackenzie Saxon Money Market Fund.

13. As required by National Instrument 81-107 *Independent Review Committee for Investment Funds*, an Independent Review Committee (the **IRC**) has been appointed for the Funds. The Filer presented the terms of the Proposed Mergers to the IRC for a recommendation. The IRC reviewed the Proposed Mergers and recommended that it be put to unitholders of the Terminating Funds for their consideration on the basis that the Proposed Mergers would achieve a fair and reasonable result for the Terminating Funds.

14. The fundamental investment objectives of the Terminating Funds are compatible with those of the corresponding Continuing Funds.

15. Unitholders of the Terminating Funds will be asked to approve the Proposed Mergers at a special meeting of unitholders scheduled to be held on or about September 21, 2009. Implicit in the approval of unitholders of the Proposed Mergers is the adoption by the Terminating Funds of the investment objectives and strategies, and fee structure of the Continuing Funds.

16. The Proposed Mergers do not require investor approval of the Continuing Funds as the Filer has determined that the Proposed Mergers do not constitute a material change to the Continuing Funds.

17. If the approval of unitholders of the Terminating Funds is not received in their respective special meeting, then that Proposed Merger will not proceed.

18. Subject to the required approvals of the Decision Makers and unitholders of the Funds, the Proposed Mergers will be implemented on or about September 25, 2009 (the "**Effective Date**").

19. Terminating Fund unitholders will continue to have the right to redeem their securities or exchange their securities for securities of any other Mackenzie-sponsored mutual fund at any time up to the close of business on the business day immediately preceding the Effective Date. Terminating Fund unitholders that switch their securities for securities of other Mackenzie-sponsored mutual funds will not incur any charges. Unitholders who redeem securities may be subject to redemption charges.

20. A Tailored Prospectus and management information circulars describing the Proposed Mergers and how a Terminating Fund investor can access or obtain the most recent interim and annual financial statements of a corresponding Continuing Fund will be filed on SEDAR and will be mailed to unitholders of record of the Terminating Funds, as at August 10, 2009, on or before August 28, 2009.

21. Relief from the SP and FS Delivery Requirements was granted to the Filer for all future pre-approved mergers of mutual funds managed by the Filer in a decision dated June 17, 2003. However, such relief cannot be relied upon for the Proposed Mergers as they are not pre-approved mergers pursuant to section 5.6 of NI 81-102, a condition of that relief.

22. Following the Proposed Mergers, the Continuing Funds will continue as publicly offered open-ended mutual funds.

23. Following the Proposed Mergers, material change reports and amendments to the simplified prospectuses and annual information forms of the Funds in respect of the Proposed Mergers will be filed.

24. The Filer submits that the Proposed Mergers will result in the following benefits:

    a. Greater certainty concerning operating expenses: The Filer bears the cost of most variable operating expenses for the Continuing Funds other than certain fund costs in exchange for a fixed rate administration fee that it charges to each series of each Continuing Fund. This ensures greater predictability and transparency of future expenses year to year.

    b. Similar or lower management expense ratio: The management expense ratio ("**MER**") of the Continuing Funds is expected to be less than the Terminating Funds' MER for the same series.

    c. Larger net assets: The Continuing Funds have significantly larger net assets than the Terminating Funds. Following the Proposed Mergers, unitholders of the Terminating Funds may enjoy enhanced liquidity of the portfolio and enhanced portfolio diversification due to the Continuing Funds' larger profiles in the marketplace.

25. The Filer will pay the costs of holding the special meetings and for soliciting proxies in connection with the Proposed Mergers.

Decision

The Principal Regulator is satisfied that the decision meets the test set out in the Legislation for the Principal Regulator to make the decision.

The decision of the Principal Regulator under the Legislation is that the Exemption Sought is granted provided that:

(a) in satisfaction of the SP and FS Delivery Requirements, the Filer sends to unitholders of a Terminating Fund a Tailored Prospectus;

(b) the management information circular sent to unitholders of a Terminating Fund in connection with a Proposed Merger:

    i) prominently discloses that unitholders can obtain the most recent interim and annual financial statements of the applicable Continuing Fund by contacting their dealer or by telephone toll free at 1-

888-421-5111 or via internet at www.mackenziefinancial.com or by accessing the SEDAR website at www.sedar.com; and

ii) provides sufficient information about the Proposed Mergers to permit unitholders to make an informed decision about the Proposed Mergers; and

(c) upon a request by a unitholder of a Terminating Fund for financial statements of a corresponding Continuing Fund, the Filer will make best efforts to provide the unitholder with the applicable financial statements in a timely manner so that the unitholder can make an informed decision regarding the Proposed Merger.

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

2.1.3 Clean Harbors Industrial Services Canada, Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for an order that the issuer is not a reporting issuer under applicable securities legislation – Relief granted.

Applicable Legislative Provisions

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

Citation: Clean Harbors Industrial Services Canada, Inc., Re, 2009 ABASC 413

August 25, 2009

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

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
CLEAN HARBORS INDUSTRIAL SERVICES
CANADA, INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulators in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer is not a reporting issuer in the Jurisdictions (the **Exemptive Relief Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

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

(b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer was incorporated under the *Business Corporations Act* (Alberta) (the **ABCA**) on July 24, 2009 and the Filer's head office is located in Edmonton, Alberta.

2. Effective July 31, 2009, the Filer acquired all of the issued and outstanding common shares of Eveready Inc., by way of a plan of arrangement under the ABCA and amalgamated with Eveready Inc. under the ABCA, thereby becoming a reporting issuer in each of the Jurisdictions.

3. The Filer is applying for a decision that it is not a reporting issuer in each of the Jurisdictions in which it is currently a reporting issuer.

4. On August 6, 2009 the Filer filed a notice of voluntary surrender of reporting issuer status pursuant to British Columbia Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status*. The Filer ceased to be a reporting issuer in British Columbia effective August 16, 2009.

5. The outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the Jurisdictions and fewer than 51 security holders in total in Canada.

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

7. The Filer is not in default of any of its obligations under the securities legislation in the Jurisdictions except for its obligation to file its interim financial statements, management discussion and analysis and certifications for the period ended June 30, 2009.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

"Blaine Young"
Associate Director, Corporate Finance

2.2 Orders

2.2.1 Rogers Communications Inc. – s. 104(2)(c)

Headnote

Clause 104(2)(c) – Issuer bid – relief from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act – Issuer proposes to purchase, at a discounted purchase price, approximately 1,800,000 of its Class B Non-Voting shares from one of its shareholders and/or such shareholder's affiliates – due to discounted purchase price, proposed purchases cannot be made through TSX trading system – but for the fact that the proposed purchases cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in reliance upon the issuer bid exemption available under section 101.2 of the Act and in accordance with the TSX rules governing normal course issuer bid purchases – no adverse economic impact on or prejudice to issuer or public shareholders – proposed purchases exempt from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 94 to 94.8, 97 to 98.7, 104(2)(c).

August 25, 2009

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

AND

IN THE MATTER OF
ROGERS COMMUNICATIONS INC.

ORDER
(Clause 104(2)(c))

UPON the application (the "**Application**") of Rogers Communications Inc. (the "**Issuer**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to clause 104(2)(c) of the Act exempting the Issuer from sections 94 to 94.8 and 97 to 98.7 of the Act (the "**Issuer Bid Requirements**") in connection with the proposed purchases ("**Proposed Purchases**") by the Issuer of up to 1,800,000 (the "**Subject Shares**") of the Issuer's Class B Non-Voting shares (the "**Shares**") from The Toronto-Dominion Bank and/or its affiliates (collectively, the "**Selling Shareholders**");

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

AND UPON the Issuer having represented to the Commission that:

1. The Issuer is a corporation governed by the *Business Corporations Act* (British Columbia).

2. The head office of the Issuer is located at 333 Bloor Street East, 10th Floor, Toronto, Ontario, M4W 1G9.

3. The Issuer is a reporting issuer in each of the provinces of Canada and the Shares are listed for trading on the Toronto Stock Exchange (the "**TSX**") and the New York Stock Exchange. The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

4. As of August 14, 2009, the authorized common share capital of the Issuer consists of 112,462,014 Class A Voting shares and 1,400,000,000 Shares, of which 503,927,763 Shares were issued and outstanding as at that date.

5. The Selling Shareholders have advised the Issuer that they do not directly or indirectly own more than 5% of the issued and outstanding Shares.

6. To the knowledge of the Issuer after reasonable inquiry, the Selling Shareholders own the Subject Shares and the Subject Shares were not acquired in anticipation of resale pursuant to the Proposed Purchases.

7. Pursuant to a "Notice of Intention to Make a Normal Course Issuer Bid" filed with the TSX, dated February 18, 2009 and amended as of May 19, 2009 (the "**Notice**"), the Issuer is permitted to make normal course issuer bid (the "**Bid**") purchases (each a "**Bid Purchase**") to a maximum of the lesser of 48,000,000 Shares and that number of Shares that can be purchased under the Bid for an aggregate purchase price of C$1,500,000,000 in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "**TSX Rules**"). As at August 14, 2009, 19,554,200 Shares have been purchased under the Bid.

8. In addition to making Bid Purchases by means of open market transactions, the Notice contemplates that the Issuer may purchase Shares by way of exempt offer.

9. The Issuer and the Selling Shareholders intend to enter into one or more agreements of purchase and sale (each, an "**Agreement**") pursuant to which the Issuer will agree to acquire, by trades occurring prior to November 30, 2009, the Subject Shares from the Selling Shareholders for purchase prices (the "**Purchase Price**") that will be negotiated at arm's length between the Issuer and the Selling Shareholders. The Purchase Price will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Shares.

10. The purchase of the Subject Shares by the Issuer pursuant to the Agreement will constitute an "issuer bid" for purposes of the Act to which the Issuer Bid Requirements would apply.

11. Because the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Shares at the time of each trade, the Proposed Purchases cannot be made through the TSX trading system and, therefore, will not occur "through the facilities" of the TSX. As a result, the Issuer will be unable to acquire the Subject Shares from the Selling Shareholders in reliance upon the exemption from the Issuer Bid Requirements that is available pursuant to Section 101.2(1) of the Act.

12. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Shares at the time of the trade, the Issuer could otherwise acquire the Subject Shares as a "block purchase" (a "**Block Purchase**") in accordance with Section 629(1)7 of the TSX Rules and Section 101.2(1) of the Act.

13. Each of the Selling Shareholders is at arm's length to the Issuer and is not an "insider" of the Issuer, an "associate" of an "insider" of the Issuer or an "associate" or "affiliate" of the Issuer, as such terms are defined in the Act. In addition, each Selling Shareholder is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**").

14. The Issuer will be able to acquire the Subject Shares from the Selling Shareholders in reliance upon the exemption from the dealer registration requirements of the Act that is available as a result of the combined effect of section 2.16 of NI 45-106 and Section 4.1(a) of Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*.

15. Management is of the view that the Issuer will be able to purchase the Subject Shares at a lower price than the price at which the Issuer will be able to purchase the Shares under the Bid and management is of the view that this is an appropriate use of the Issuer's funds.

16. The purchase of Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's security holders. As the Subject Shares are non-voting shares, the Proposed Purchases will not affect control of the Issuer. The Proposed Purchases will be carried out with a minimum of cost to the Issuer.

17. To the best of the Issuer's knowledge, as of August 14, 2009 the public float for the Shares consisted of approximately 91.44% for purposes of the TSX Rules.

18. The market for the Shares is a "liquid market" within the meaning of Section 1.2 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*.

19. Other than the Purchase Price, no additional fee or other consideration will be paid in connection with the Proposed Purchases.

20. At the time that an Agreement is entered into by the Issuer and the Selling Shareholders and at the time of each Proposed Purchase, neither the Issuer nor the Selling Shareholders will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

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

IT IS ORDERED pursuant to clause 104(2)(c) of the Act that the Issuer be exempt from the Issuer Bid Requirements in connection with the Proposed Purchases, provided that:

(a) the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit for the Bid Purchases in accordance with the TSX Rules;

(b) the Issuer will refrain from conducting a Block Purchase in accordance with the TSX Rules during the calendar week it completes each Proposed Purchase and may not make any further Bid Purchases for the remainder of that calendar day;

(c) the Purchase Price is not higher than the last "independent trade" (as that term is used in paragraph 629(1)1 of the TSX Rules) of a board lot of Shares immediately prior to the execution of each Proposed Purchase;

(d) the Issuer will otherwise acquire any additional Shares pursuant to the Bid and in accordance with the TSX Rules;

(e) immediately following its purchase of the Subject Shares from the Selling Shareholders, the Issuer will report the purchase of the Subject Shares to the TSX and issue and file a news release disclosing the purchase of the Subject Shares; and

(f) at the time that the Agreement is entered into by the Issuer and the Selling Shareholders and at the time of each Proposed Purchase, neither the Issuer nor the Selling Shareholders will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

"Paulette Kennedy"
Commissioner
Ontario Securities Commission

"Mary Condon"
Commissioner
Ontario Securities Commission

2.2.2 Cypress Development Corp. – s. 1(11)(b)

Headnote

Subsection 1(11)(b) – Order that the issuer is a reporting issuer for the purposes of Ontario securities law – Issuer already a reporting issuer in Alberta and British Columbia - Issuer's securities listed for trading on the TSX Venture Exchange – Continuous disclosure requirements in Alberta and British Columbia substantially the same as those in Ontario – Issuer has a significant connection to Ontario.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(11)(b).

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

AND

IN THE MATTER OF
CYPRESS DEVELOPMENT CORP.

ORDER
(clause 1(11)(b))

UPON the application of Cypress Development Corp. (the "**Applicant**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to clause 1(11)(b) of the Act that the Applicant is a reporting issuer for the purposes of Ontario securities law;

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

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

1. The Applicant was incorporated under the laws of the Province of Saskatchewan under the name "Cypress Minerals Corp." on August 23, 1991. The Applicant was continued into the Province of British Columbia pursuant to a Certificate of Continuation issued under the *Company Act* (British Columbia) under the name "Cypress Minerals Corp." on October 24, 1995. The Applicant changed its name from Cypress Minerals Corp. to Cypress Development Corp. effective September 16, 1999.

2. The Applicant's head office is located at Suite 2230 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3E8.

3. The Applicant's Registered Office is located at Suite 1710 – 1177 West Hastings Street, Vancouver, British Columbia, V6E 2L3.

4. As of the date hereof, the Applicant's authorized share capital consists of an unlimited number of common shares (the "**Common Shares**"), of which 111,975,893 Common Shares are issued and outstanding. The Applicant has outstanding obligations to issue: (i) 17,897,831 Common Shares upon the exercise of 17,897,831 outstanding common share purchase warrants; and (ii) 10,026,323 Common Shares upon the exercise of 10,026,323 outstanding common share purchase options.

5. The Applicant's Common Shares are listed and posted for trading on the TSX Venture Exchange (the "**TSXV**") under the trading symbol "**CYP**". The Common Shares are not traded on any other stock exchange or trading or quotation system.

6. The Applicant is currently a reporting issuer in Alberta and British Columbia and has been a reporting issuer under the *Securities Act* (Alberta) (the "**Alberta Act**") since November 26, 1999 and the *Securities Act* (British Columbia) (the "**BC Act**") since March 25, 1993.

7. The Applicant is not currently a reporting issuer or the equivalent in any jurisdiction in Canada other than Alberta and British Columbia.

8. As of the date hereof, the Applicant is not on the list of defaulting issuers maintained pursuant to the Alberta Act or the BC Act and to the best of its knowledge is not in default of any of its obligations under the Alberta Act or the BC Act or the rules and regulations made thereunder.

9. The continuous disclosure document requirements of the Alberta Act and the BC Act are substantially the same as the continuous disclosure requirements under the Act.

10. The materials filed by the Applicant under the Alberta Act and the BC Act are available on the System for Electronic Document Analysis and Retrieval (**SEDAR**), with July 28, 1997, being the date of the first electronic filing on SEDAR by the Applicant.

11. The Applicant is not in default of any of the rules, regulations or policies of the TSXV.

12. Pursuant to the policies of the TSXV, the Applicant is required to make an application to become a reporting issuer in Ontario upon determining that the Applicant has a significant connection to Ontario.

13. Pursuant to the policies of the TSXV, the Applicant has undertaken an assessment of its shareholder base to determine whether or not the Applicant has a "significant connection to Ontario" as defined in the policies of the TSXV. As a result of that assessment, the Applicant has determined that the Applicant has come to have a significant connection to Ontario in that 34,845,885 Common

Shares, representing 31% of the Applicant's issued and outstanding Common Shares, are held directly or indirectly by residents of Ontario.

14. Neither the Applicant, nor any of its officers, directors, nor, to the knowledge of the Applicant or its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, has:

    (a) been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority;

    (b) entered into a settlement agreement with a Canadian securities regulatory authority; or

    (c) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.

15. Neither the Applicant, nor any of its officers, directors, nor, to the knowledge of the Applicant and its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been subject to:

    (a) any known ongoing or concluded investigations by a Canadian securities regulatory authority, or a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or

    (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

16. Neither any of the officers or directors of the Applicant, nor, to the knowledge of the Applicant and its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been at the time of such event an officer or director of any other issuer which is or has been subject to:

    (a) any cease trade or similar order, or order that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or

    (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years;

    other than Donald Huston, the President and a director of the Applicant, and James G. Pettit, a director of the Applicant, who, in September 1999 became directors and/or officers of Mask Resources Inc. ("**Mask**"). At the time of their appointment, Mask was suspended from trading by the Canadian Venture Exchange for failing to meet minimum listing requirements. Each of Messrs. Huston and Pettit subsequently resigned as a director and/or officer of Mask prior to the resumption of trading.

17. The Applicant will remit all participation fees due and payable by it pursuant to Ontario Securities Commission Rule 13-502 Fees by no later than two business days from the date of this Order.

AND UPON the Commission being satisfied that granting this Order would not be prejudicial to the public interest;

IT IS ORDERED pursuant to clause 1(11)(b) of the Act that the Applicant is a reporting issuer for the purposes of Ontario securities law.

DATED this 27th day of August, 2009.

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

2.2.3 James Richard Elliott – s. 127(1), 127(10)

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

AND

**IN THE MATTER OF
JAMES RICHARD ELLIOTT**

**ORDER
(Pursuant to subsections 127(1) and 127(10)
of the Securities Act, R.S.O. 1990 c. S.5)**

WHEREAS on November 24, 2008, the Ontario Securities Commission (the "Commission") commenced this proceeding by issuing a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), accompanied by Staff of the Commission's ("Staff") Statement of Allegations in this matter;

AND WHEREAS on February 2, 2009, Staff issued an Amended Statement of Allegations;

AND WHEREAS on February 5, 2009, the Commission issued an Amended Notice of Hearing;

AND WHEREAS on February 25, 2009, a hearing was held to consider whether it is in the public interest to make an order against James Richard Elliott ("Elliott");

AND WHEREAS the Commission finds that Elliott entered into an agreement with the British Columbia Securities Commission (the "BCSC") to be made subject to sanctions, conditions, restrictions or requirements for acting contrary to the public interest and for violating the British Columbia Securities Act, R.S.B.C. 1996, c. 418;

AND WHEREAS the Commission finds that Elliott is subject to an order by the BCSC imposing sanctions, conditions, restrictions or requirements;

AND WHEREAS the Commission finds that it is in the public interest to exercise the Commission's inter-jurisdictional enforcement authority pursuant to subsections 127(10)4 and 127(10)5 to apply sanctions to Elliott;

IT IS ORDERED:

(a) that pursuant to subsections 127(1)2 and 127(1)2.1 of the Act, Elliott shall cease trading in and be prohibited from purchasing securities for a period commencing on the date of this Order and ending on May 27, 2013, except that he may trade in one account in his own name through a registered representative if he provides a copy of this Order to the registered representative beforehand; and,

(b) that pursuant to subsections 127(1)7 and 127(1)8 of the Act, Elliott shall resign any position he holds as a director or officer of an issuer, and be prohibited from becoming or acting as a director or officer of any issuer until the expiration of a period commencing on the date of this Order and ending on May 27, 2013.

DATED at Toronto this 28th day of August, 2009

"Wendell S. Wigle"

"David L. Knight"

2.2.4 W.J.N. Holdings Inc. et al. – ss. 127(1), 127 (8), 144

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

AND

IN THE MATTER OF
W.J.N. HOLDINGS INC., MSI CANADA INC.,
360 DEGREE FINANCIAL SERVICES INC.,
DOMINION INVESTMENTS CLUB INC.,
LEVERAGEPRO INC.,
PROSPOREX INVESTMENT CLUB INC.,
PROSPOREX INVESTMENTS INC.,
PROSPOREX LTD., PROSPOREX INC.,
NETWORTH FINANCIAL GROUP INC.,
NETWORTH MARKETING SOLUTIONS,
DOMINION ROYAL CREDIT UNION,
DOMINION ROYAL FINANCIAL INC.,
WILTON JOHN NEALE, EZRA DOUSE,
ALBERT JAMES, ELNONIETH "NONI" JAMES,
DAVID WHITELY, CARLTON IVANHOE LEWIS,
MARK ANTHONY SCOTT, SEDWICK HILL,
TRUDY HUYNH, DORLAN FRANCIS,
VINCENT ARTHUR, CHRISTIAN YEBOAH,
AZUCENA GARCIA, AND ANGELA CURRY

TEMPORARY ORDER
(Sections 127(1) and (8) and Section 144)

WHEREAS on March 24, 2009, the Commission ordered that the Temporary Order made herein on March 11, 2009 be extended, save and except that the Respondent Sedwick Hill ("Hill") was permitted to sell mutual funds in accordance with his licence solely for the purpose of working at Keybase Financial Group Inc.;

AND WHEREAS Staff brought a motion to vary the March 24, 2009 Temporary Order by deleting the exemption which permitted Hill to sell mutual funds while employed at Keybase Financial Group Inc., originally returnable on July 23, 2009;

AND WHEREAS on that date the March 11, 2009 Temporary Order was extended without variation to November 24, 2009 at 2:30 p.m. and the motion to vary was adjourned to be heard in camera on August 14, 2009;

AND WHEREAS the August 14, 2009 date was further adjourned to August 25, 2009 due to the unavailability of a Hearing Panel;

AND WHEREAS on August 25, 2009 in a hearing held in camera Staff filed materials in support of their motion;

AND WHEREAS the Respondent Sedwick Hill was present on the return of Staff's motion and made oral submissions before the Commission;

AND HAVING considered the materials filed by Staff and the submissions of Staff and Sedwick Hill;

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

IT IS ORDERED that:

(a) the Temporary Order of March 24, 2009 is varied so as to delete the exemption permitting Hill to sell mutual funds in accordance with his licence for the purpose of working at Keybase Financial Group Inc.;

(b) The variation ordered herein shall be operative until November 24, 2009, and the March 24, 2009 Temporary Order as varied by this Order is extended to November 24, 2009 at 2:30 p.m. unless otherwise ordered by the Commission.

DATED at Toronto this 25th day of August, 2009.

"Patrick LeSage"

2.2.5 Lyndz Pharmaceuticals Inc. et al. – ss. 127(1), 127(8)

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

AND

IN THE MATTER OF
LYNDZ PHARMACEUTICALS INC.,
LYNDZ PHARMA LTD., JAMES MARKETING LTD.,
MICHAEL EATCH AND RICKEY MCKENZIE

TEMPORARY ORDER
Subsections 127(1) & 127(8)

WHEREAS on December 4, 2008, the Ontario Securities Commission (the "Commission") ordered pursuant to sections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that immediately for a period of 15 days from the date thereof: (a) all trading in securities of Lyndz Pharmaceuticals Inc. shall cease; (b) all trading in securities by the Respondents shall cease; and (c) the exemptions contained in Ontario securities law do not apply to the Respondents (the "Temporary Order");

AND WHEREAS on December 8, 2008, the Commission issued a Notice of Hearing, accompanied by Staff's Statement of Allegations in support of the Temporary Order;

AND WHEREAS on December 17, 2008, the Temporary Order was continued to February 13, 2009;

AND WHEREAS on February 13, 2009, the Temporary Order was continued to April 22, 2009;

AND WHEREAS on April 21, 2009, the Temporary Order was continued to July 7, 2009;

AND WHEREAS on July 6, 2009, the Temporary Order was continued to July 30, 2009;

AND WHEREAS on July 29, 2009, the Temporary Order was continued to September 2, 2009;

AND WHEREAS on September 1, 2009, a hearing was held in this matter;

AND WHEREAS counsel for Rickey McKenzie and James Marketing Ltd. consented to the continuation of the Temporary Order;

AND WHEREAS Michael Eatch, Lyndz Pharmaceuticals Inc. and Lyndz Pharma Ltd. did not appear, though they had notice of the proceeding;

AND UPON RECEIVING submissions from counsel for Staff of the Commission ("Staff");

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

IT IS ORDERED THAT pursuant to s. 127(8) of the Act, the Temporary Order is continued to September 25, 2009; and,

IT IS FURTHER ORDERED THAT this matter is adjourned to September 24, 2009, at 9:30am.

DATED at Toronto this 1st day of September, 2009.

"Mary G. Condon"

2.2.6 Teodosio Vincent Pangia

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

AND

IN THE MATTER OF
TEODOSIO VINCENT PANGIA

ORDER

WHEREAS on May 29, 2009, the Commission issued a Notice of Hearing and Amended Statement of Allegations in this matter;

AND WHEREAS on June 1, 2009, this matter was adjourned to July 23, 2009;

AND WHEREAS on July 23, 2009, this matter was adjourned to September 1, 2009;

AND WHEREAS on September 1, 2009, a hearing was held in this matter;

AND UPON HEARING submissions from counsel for Staff of the Commission and from counsel for Teodosio Vincent Pangia;

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

IT IS ORDERED THAT this matter will be set down for a hearing on the merits to commence March 1, 2010, through March 8, 2010, inclusive;

IT IS FURTHER ORDERED THAT this matter will be set down for a pre-hearing conference to proceed on January 19, 2010 at 2:30pm.

DATED at Toronto this 1st day of September, 2009.

“Mary G. Condon”

2.2.7 UBS Global Asset Management (Americas) Inc. et al. – s. 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 granted to sub-advisers not ordinarily resident in Ontario in respect of advice regarding trades in commodity futures contracts and commodity futures options, subject to certain terms and conditions. Relief mirrors exemption available in section 7.3 of OSC Rule 35-502 – Non-Resident Advisers (Rule 35-502) made under the Securities Act (Ontario).

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 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
UBS GLOBAL ASSET MANAGEMENT (CANADA) INC.
UBS GLOBAL ASSET MANAGEMENT (AMERICAS) INC.,
UBS GLOBAL ASSET MANAGEMENT (UK) LTD.,
UBS O'CONNOR LLC,
UBS ALTERNATIVE AND QUANTITATIVE INVESTMENTS LLC,
UBS GLOBAL ASSET MANAGEMENT (JAPAN) LTD.,
UBS GLOBAL ASSET MANAGEMENT (SINGAPORE) LTD. AND
UBS AG

ORDER
(Section 80 of the CFA)

UPON the application (the **Application**) of UBS Global Asset Management (Americas) Inc., UBS Global Asset Management (UK) Ltd., UBS O'Connor LLC, UBS Alternative and Quantitative Investments LLC, UBS Global Asset Management (Japan) Ltd., UBS Global Asset Management (Singapore) Ltd. and UBS AG (collectively, the **Sub-Advisers**) and UBS Global Asset Management (Canada) Inc. (the **Principal Adviser**) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to section 80 of the CFA, that each of the Sub-Advisers (including their respective directors, officers, partners and employees) be exempt, for a period of five years, from the adviser registration requirements of paragraph 22(1)(b) of the CFA when acting as an adviser for the Principal Adviser in respect of the Funds (as defined below) regarding commodity futures contracts and commodity futures options traded on commodity futures exchanges (**Contracts**) and cleared through clearing corporations;

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

AND UPON the Sub-Advisers and the Principal Adviser having represented to the Commission that:

1. The Principal Adviser is a corporation existing under the laws of the Province of Nova Scotia with its head office located in Toronto, Ontario. The Principal Adviser is registered with the Commission under the *Securities Act* (Ontario) (the **OSA**) as a Limited Market Dealer, Investment Counsel & Portfolio Manager and under the CFA as a Commodity Trading Manager.

2. The Sub-Advisers are entities organized under the laws of a jurisdiction other than Canada or the provinces or territories thereof as follows:

   (a) UBS Global Asset Management (Americas) Inc. was incorporated under the laws of Delaware, United States of America;

   (b) UBS Global Asset Management (UK) Ltd. was incorporated under the laws of London, Great Britain;

   (c) UBS O'Connor LLC was incorporated under the laws of Delaware, United States of America;

(d) UBS Alternative and Quantitative Investments LLC was incorporated under the laws of Delaware, United States of America;

(e) UBS Global Asset Management (Japan) Ltd. was incorporated under the laws of Tokyo, Japan;

(f) UBS Global Asset Management (Singapore) Ltd. was incorporated under the laws of Singapore, Singapore; and

(g) UBS AG was incorporated under the laws of Switzerland.

3. The Sub-Advisers are currently registered and/or hold licenses as follows:

(a) UBS Global Asset Management (Americas) Inc. is registered as an Investment Adviser with the U.S. Securities and Exchange Commission;

(b) UBS Global Asset Management (UK) Ltd. holds a financial services license with the Financial Services Authority;

(c) UBS O'Connor LLC is registered as an Exempt Commodity Pool Operator and Exempt Commodity Trading Advisor with the U.S. Commodity Futures Commission under the Commodity Exchange Act and as an Investment Adviser with the U.S. Securities and Exchange Commission;

(d) UBS Alternative and Quantitative Investments LLC is registered as an Exempt Commodity Pool Operator with the U.S. Commodity Futures Commission under the Commodity Exchange Act and as an Investment Adviser with the U.S. Securities and Exchange Commission;

(e) UBS Global Asset Management (Japan) Ltd. holds a securities business license, investment adviser's license and investment management license with the Financial Services Agency;

(f) UBS Global Asset Management (Singapore) Ltd. holds an investment adviser's license with the Financial Supervisory Service and a capital market services license with the Monetary Authority of Singapore; and

(g) UBS AG holds a financial services license with the Swiss Financial Market Supervisory Authority.

4. The Sub-Advisers are not and have no current intention of becoming, registered under the CFA.

5. The Principal Adviser acts as an adviser to clients on a variety of investment strategies, which may include the use of Contracts traded on Canadian or other organized exchanges outside of Canada. The clients of the Principal Adviser to which advice is provided may include institutions and high-net worth individuals (including through managed accounts) (the **Managed Accounts**) as well as investment funds or pooled funds (the **Pooled Funds**) (each of such clients, including Managed Accounts and Pooled Funds, is referred to individually as a **Fund** and collectively as the **Funds**).

6. The Funds may, as part of their investment program, invest in Contracts.

7. In connection with the Principal Adviser acting as an adviser to the Funds in respect of the purchase or sale of securities and Contracts, the Principal Adviser may, pursuant to a written agreement made between the Principal Adviser and one or more Sub-Advisers, retain the Sub-Adviser to act as an adviser to it (the **Proposed Advisory Services**) by exercising discretionary authority on behalf of the Principal Adviser in respect of the investment portfolio of the Funds, including discretionary authority to buy or sell Contracts for the Funds, provided that:

(a) in each case, the Contract must be cleared through an acceptable clearing corporation; and

(b) such investments are consistent with the investment objectives and strategies of the Funds.

8. 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.

9. By providing the Proposed Advisory Services, the Sub-Advisers will be acting as advisers with respect to Contracts, and in the absence of being granted the requested relief, would be required to be registered as advisers under the CFA.

10. There is presently no rule or other regulation 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 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 7.3 of OSC Rule 35-502 – *Non Resident Advisers* (**Rule 35-502**).

11. The relationship among the Principal Adviser, a Sub-Adviser and the Funds satisfies the requirements of section 7.3 of Rule 35-502.

12. As would be required under section 7.3 of Rule 35-502:

    (a) the duties and obligations of the Sub-Adviser will be set out in a written agreement with the Principal Adviser;

    (b) the Principal Adviser will contractually agree with the Funds 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 Principal Adviser and the Funds; or

        (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances (together with (i), the **Assumed Obligations**); and

    (c) the Principal Adviser cannot be relieved by the Funds from its responsibility for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations.

13. The Sub-Advisers are not resident of any province or territory of Canada.

14. Each Sub-Adviser 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 for the Funds pursuant to the applicable legislation of its principal jurisdiction.

15. Each Sub-Adviser will only provide the Proposed Advisory Services so long as the Principal Adviser is, and remains, registered under the CFA as an adviser in the category of commodity trading manager.

16. Prior to purchasing any securities of a Fund (through a discretionary investment management agreement or directly), all investors who are Ontario residents will receive written disclosure that includes:

    (a) a statement that the Principal Adviser is responsible for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations; and

    (b) a statement that there may be difficulty in enforcing any legal rights against the Sub-Adviser (or the individual representatives of the Sub-Adviser) advising the relevant Fund, because such entity is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

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 that, pursuant to section 80 of the CFA, the Sub-Advisers (including their respective directors, officers, partners and employees) are exempt from the adviser registration requirement in paragraph 22(1)(b) of the CFA respect of the Proposed Advisory Services provided to the Principal Adviser, for a period of five years, provided that at the relevant time that such activities are engaged in:

    (a) the Principal Adviser is registered under the CFA as an adviser in the category of commodity trading manager;

    (b) the Sub-Adviser is appropriately registered or licensed, or is entitled to rely on appropriate exemptions from such registrations or licences, to provide advice to the Principal Adviser pursuant to the applicable legislation of its principal jurisdiction;

    (c) the obligations and duties of the Sub-Adviser are set out in a written agreement with the Principal Adviser;

    (d) the Principal Adviser has contractually agreed with the respective Fund to be responsible for any loss that arises out of any failure of the Sub-Adviser to meet the Assumed Obligations;

(e) the Principal Adviser cannot be relieved by the Fund from its responsibility for any loss that arises out of the failure of a Sub-Adviser to meet the Assumed Obligations; and

(f) prior to purchasing any securities of a Fund (through a discretionary investment management agreement or directly), all investors who are Ontario residents received written disclosure that included:

(a) a statement that the Principal Adviser is responsible for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations; and

(b) a statement that there may be difficulty in enforcing any legal rights against the Sub-Adviser (or the individual representatives of the Sub-Adviser) advising the relevant Fund, because such entity is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

September 2, 2009.

“Kevin J. Kelly”
Commissioner
Ontario Securities Commission

“Mary G. Condon”
Commissioner
Ontario Securities Commission

2.2.8 UBS Global Asset Management (Canada) Inc. et al. – ss. 3.1(1), 80 of the CFA

Headnote

Non-resident advisers exempted from adviser registration requirement in subsection 22(1)(b) of the Commodity Futures Act (CFA) where the non-resident acts as an adviser to mutual funds or non-redeemable investment funds in respect of trading in certain commodity futures contracts and commodity futures options – Contracts and options are primarily traded on commodity futures exchanges outside of Canada and primarily cleared outside of Canada – Funds are established outside of Canada, but may distribute their securities to certain Ontario residents.

Exemption subject to conditions corresponding to the requirements for the exemption from the adviser registration requirement in the Securities Act contained in section 7.10 of OSC Rule 35-502 Non-Resident Advisers – Exemption also subject to requirements relating to the registration or licensing status of the non-resident adviser in its principal jurisdiction and disclosure to Ontario resident securityholders of the corresponding fund – Exemption order has a five-year "sunset date".

Assignment by Commission to the Director of the powers and duties vested in the Commission under subsection 78(1) of the CFA to vary the exemption order by specifically naming affiliates of the initial applicants as named applicants for the purposes of the exemption, following an affiliate notice and Director consent procedure specified in the decision.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 1(1), 3.1(1), 22, 22(1)(b), 78(1), 80.
Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., s. 25.

National Instruments Cited

National Instrument 45-106 Prospectus and Registration Exemptions.

OSC Rules Cited

OSC Rule 35-502 Non Resident Advisers, s. 7.10.

OSC Notices Cited

Notice of Proposed Rule 35-502 International Advisers, (1998) 21 OSCB 2583.

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

AND

IN THE MATTER OF
UBS GLOBAL ASSET MANAGEMENT (CANADA) INC.
UBS GLOBAL ASSET MANAGEMENT (AMERICAS) INC.
UBS GLOBAL ASSET MANAGEMENT (UK) LTD.
UBS O'CONNOR LLC
UBS ALTERNATIVE AND QUANTITATIVE INVESTMENTS LLC
UBS GLOBAL ASSET MANAGEMENT (JAPAN) LTD.
UBS GLOBAL ASSET MANAGEMENT (SINGAPORE) LTD.
AND
UBS AG

AND

IN THE MATTER OF
THE ASSIGNMENT OF CERTAIN POWERS AND DUTIES
OF THE ONTARIO SECURITIES COMMISSION

ORDER AND ASSIGNMENT
(Section 80 and Subsection 3.1(1) of the CFA)

UPON the application (the **Application**) to the Ontario Securities Commission (the **Commission**) by UBS Global Asset Management (Canada) Inc. (**UBS Canada**), UBS Global Asset Management (Americas) Inc., UBS Global Asset Management (UK) Ltd., UBS O'Connor LLC, UBS Alternative and Quantitative Investments LLC, UBS Global Asset Management (Japan) Ltd., UBS Global Asset Management (Singapore) Ltd. and UBS AG (excluding UBS Canada, collectively, the **UBS Applicants**), on their own behalf and on behalf of UBS Affiliates (as defined below) that file an Identifying Notice (as defined below) to become a Named Applicant (as defined below) for:

(a) an order of the Commission, pursuant to section 80 of the CFA (the **Order**), that each of the UBS Applicants and each of the UBS Affiliates that file an Identifying Notice to become a Named Applicant for the purposes of this Order (including their respective directors, partners, officers, employees or other individual representatives, acting on their behalf) is exempt from the adviser registration requirement in the CFA (as defined below) in connection with the Named Applicant acting as an adviser to one or more Funds (as defined below), in respect of Contracts (as defined below); and

(b) an assignment by the Commission, pursuant to subsection 3.1(1) of the CFA (the Assignment), to each Director (acting individually) of the powers and duties vested in the Commission under subsection 78(1) of the CFA, to vary the above order, from time to time, by specifically naming one or more of the UBS Affiliates, that file an Identifying Notice, as a Named Applicant for the purposes of this Order;

AND WHEREAS for the purposes of this Order and Assignment (collectively, this Decision);

(i) the following terms shall have the following meanings:

"adviser registration requirement in the CFA" means the provisions of section 22 of the CFA that prohibit a person or company from acting as an adviser unless the person or company satisfies the applicable provisions of section 22 of the CFA;

"adviser registration requirement in the OSA" means the provisions of section 25 of the OSA that prohibit a person or company from acting as an adviser, as defined in the OSA, unless the person or company satisfies the applicable provisions of section 25 of the OSA;

"Contract" means a commodity futures contract or a commodity futures option that is, in each case, primarily traded on one or more organized exchanges that are located outside of Canada and primarily cleared through one or more clearing corporations that are located outside of Canada;

"Director's Consent" means, for a UBS Affiliate, the Director's Consent referred to in paragraph 4, below;

"Fund" means an investment fund or similar investment vehicle;

"Identifying Notice" means, for a UBS Affiliate, the Identifying Notice referred to in paragraph 3, below;

"Named Applicants" means:

(a) the UBS Applicants; and

(b) UBS Affiliates that have filed an Identifying Notice, to become a Named Applicant for the purposes of this Order, and for which the Director has issued a Director's Consent;

"Objection Notice" means, for a UBS Affiliate, an objection notice, as described in paragraph 5, below, that is issued by the Director, following the filing by the UBS Affiliate of an Identifying Notice, as described in paragraph 3, below;

"OSA" means the *Securities Act* (Ontario);

"OSC Rule 35-502" means Ontario Securities Commission Rule 35-502 – *Non Resident Advisers*, made under the OSA;

"prospectus requirement in the OSA" means the requirement in the OSA that prohibits a person or company from distributing a security unless a preliminary prospectus and a prospectus for the security have been filed and receipts obtained for them;

"UBS Affiliate" means an entity, other than the UBS Applicants, that is an affiliate of one of the UBS Applicants; and

(ii) terms used in this Decision that are defined in the OSA, and not otherwise defined in the Decision or in the CFA, shall have the same meaning as in the OSA, unless the context otherwise requires;

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

AND UPON the UBS Applicants having represented to the Commission that:

1. UBS Canada is a corporation existing under the laws of the Province of Nova Scotia with its head office located in Toronto, Ontario. UBS Canada is registered with the Commission as a Limited Market Dealer, Investment Counsel & Portfolio Manager and Commodity Trading Manager.

2. The UBS Applicants are, and any UBS Affiliate that files an Identifying Notice for the purpose of becoming a Named Applicant in accordance with this Decision will, at the relevant time, be an entity organized under the laws of a jurisdiction outside of Canada. In particular:

   (a) UBS Global Asset Management (Americas) Inc. was incorporated under the laws of Delaware, United States of America;

   (b) UBS Global Asset Management (UK) Ltd. was incorporated under the laws of London, Great Britain;

   (c) UBS O'Connor LLC was incorporated under the laws of Delaware, United States of America;

   (d) UBS Alternative and Quantitative Investments LLC was incorporated under the laws of Delaware, United States of America;

   (e) UBS Global Asset Management (Japan) Ltd. was incorporated under the laws of Tokyo, Japan;

   (f) UBS Global Asset Management (Singapore) Ltd. was incorporated under the laws of Singapore, Singapore; and

   (g) UBS AG was incorporated under the laws of Switzerland.

3. The Sub-Advisers are currently registered and/or hold licenses as follows:

   (a) UBS Global Asset Management (Americas) Inc. is registered as an Investment Adviser with the U.S. Securities and Exchange Commission;

   (b) UBS Global Asset Management (UK) Ltd. holds a financial services license with the Financial Services Authority;

   (c) UBS O'Connor LLC is registered as an Exempt Commodity Pool Operator and Exempt Commodity Trading Advisor with the U.S. Commodity Futures Commission under the Commodity Exchange Act and as an Investment Adviser with the U.S. Securities and Exchange Commission;

   (d) UBS Alternative and Quantitative Investments LLC is registered as an Exempt Commodity Pool Operator with the U.S. Commodity Futures Commission under the Commodity Exchange Act and as an Investment Adviser with the U.S. Securities and Exchange Commission;

   (e) UBS Global Asset Management (Japan) Ltd. holds a securities business license, investment adviser's license and investment management license with the Financial Services Agency;

   (f) UBS Global Asset Management (Singapore) Ltd. holds an investment adviser's license with the Financial Supervisory Service and a capital market services license with the Monetary Authority of Singapore; and

   (g) UBS AG holds a financial services license with the Swiss Financial Market Supervisory Authority.

4. A UBS Affiliate, that is not a Named Applicant, that proposes to rely on the exemption from the adviser registration requirement in the CFA provided in this Order will complete and file with the Commission (Attention: Manager, Registrant Regulation) two copies of a notice (the **Identifying Notice**, in the form of Part A of Schedule A to this Decision), applying to the Director, acting on behalf of the Commission under the below Assignment, to vary this Order to specifically name the UBS Affiliate as a Named Applicant for the purposes of this Order. The Identifying Notice will be filed not less than ten (10) days before the date the UBS Affiliate proposes to begin to rely on the exemption set out in this Order.

5. If, in the Director's opinion, it would not be prejudicial to the public interest to specifically name a UBS Affiliate as a Named Applicant for the purposes of this Order, the Director will, within ten (10) days after receiving an Identifying Notice from the UBS Affiliate, issue to the UBS Affiliate a written consent (the **Director's Consent**, in the form of Part B of the attached Schedule A). However, a UBS Affiliate will not be a Named Applicant for the purposes of this Order unless and until the corresponding Director's Consent is issued by the Director.

6. If, after reviewing an Identifying Notice for a UBS Affiliate, the Director is not of the opinion that it would not be prejudicial to the public interest to specifically name such UBS Affiliate as a Named Applicant for the purposes of this Order, the Director will issue to the UBS Affiliate a written notice of objection (the **Objection Notice**), in which case the UBS Affiliate will not be permitted to rely on the exemption from the adviser registration requirement in the CFA provided to the Named Applicants in this Order but 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 by the Commission of the Director's objection.

7. 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.

8. Any Funds in respect of which a Named Applicant may act as adviser (under the CFA) pursuant to this Order will be established outside of Canada. Securities of the Funds are and will be primarily offered outside of Canada to institutional investors and high net worth individuals. To the extent securities of the Funds will be offered to Ontario residents, such distributions will be made in reliance upon an exemption under National Instrument 45-106 – *Prospectus and Registration Exemptions*.

9. None of the Funds in respect of which a Named Applicant may act as an adviser (under the CFA) pursuant to this Order has any intention of becoming a reporting issuer under the OSA or under the securities legislation of any other jurisdiction in Canada.

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 representative or as a partner or an officer of a registered adviser and is acting on behalf of such registered adviser, and otherwise satisfies the applicable requirements specified in section 22 of the CFA. 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" is defined in subsection 1(1) of the CFA to mean "commodity futures contracts" and "commodity futures options" (with these latter terms also defined in subsection 1(1) of the CFA).

11. Where securities of a Fund are offered by the Fund to an Ontario resident, a Named Applicant that engages in the business of advising the Fund as to the investing in or the buying or selling of securities may, by so acting, be interpreted as acting as an adviser, as defined in the OSA, to the Ontario residents who acquire the securities offered by the Fund, as suggested in the Notice of the Commission dated October 2, 1998, requesting comments on the then proposed OSA Rule 35-502. Similarly, where securities of a Fund are offered to Ontario residents, a Named Applicant that engages in the business of advising the Fund as to trading in commodity futures contracts or commodity futures options may, by so acting, also be interpreted as acting as an adviser (as defined in the CFA) to the Ontario residents who acquire the securities offered by the Fund.

12. None of the UBS Applicants is registered in any capacity under the CFA and none of the Named Applicants will be registered under the CFA so long as the particular Named Applicant remains a Named Applicant for purposes of this Order. If a Named Applicant advises any Funds (that has distributed its securities to any Ontario residents) as to the investing in or the buying or selling of securities, it will comply with the adviser registration requirement in the OSA or will rely on an appropriate exemption from the adviser registration requirements under the OSA. Currently, the UBS Applicants are not registered in any capacity under the OSA except that UBS AG is registered as an International Adviser and International Dealer.

13. There is currently no rule or other regulation under the CFA that provides an exemption from the adviser registration requirement in the CFA for a person or company acting as an adviser, in respect of commodity futures contracts or commodity futures options, that corresponds to the exemption from the adviser registration requirement in the OSA for acting as an adviser, as defined in the OSA, in respect of securities, that is contained in section 7.10 of OSC Rule 35-502.

14. Section 7.10 of OSC Rule 35-502 provides that the adviser registration requirement in the OSA does not apply to a person or company acting as a portfolio adviser (as defined in the Rule) to a Fund (as defined in the Rule), if the securities of the Fund are:

    (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.

15. The UBS Applicants are or will be appropriately registered or licensed or are or will be entitled to rely on appropriate exemptions from such registrations or licences to provide advice to the Funds with respect to trading in Contracts pursuant to the applicable legislation of their principal jurisdiction.

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

IT IS ORDERED, pursuant to section 80 of the CFA, that each of the Named Applicants (including the respective directors, partners, officers, employees or other individual representatives of each of the Named Applicants, acting on behalf of the Named Applicant) is exempted from the adviser registration requirement in the CFA in connection with the Named Applicant acting as an adviser to one or more Funds, in respect of Contracts, provided that, at the time the Named Applicant so acts as an adviser to any such Fund:

(a) the Named Applicant is not ordinarily resident of Ontario;

(b) the Named Applicant is appropriately registered or licensed, or entitled to rely upon appropriate exemptions from registration or licensing requirements, in order to provide to the Fund advice as to trading in Contracts, pursuant to the applicable legislation of its principal jurisdiction;

(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 upon an exemption from the prospectus requirements of the OSA;

(d) prior to their purchasing any securities of the Funds, all investors in the Funds who are resident in Ontario shall have received disclosure that includes:

    (i) a statement to the effect that there may be difficulty in enforcing any legal rights against the Fund or the Named Applicant (including the individual representatives of the Named Applicant acting on behalf of the Named Applicant) because the Named Applicant is resident outside of Canada and, to the extent applicable, all or substantially all of its assets are situated outside of Canada; and

    (ii) a statement to the effect that the Named Applicant is not, or will not be, registered or licensed under the CFA and, as a result, investor protections that might otherwise be available to clients of a registered adviser under the CFA will not be available to purchasers of securities of the Fund; and

    (iii) this Order shall expire five years after the date hereof;

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

PURSUANT to subsection 3.1(1) of the CFA, the Commission hereby assigns to each Director, acting individually, the powers and duties vested in the Commission under subsection 78(1) of the CFA to:

(a) vary the above Order, from time to time, by specifically naming any one or more UBS Affiliate that has filed an Identifying Notice, as described in paragraph 3, above, as a Named Applicant for purposes of this Order, by issuing a Director's Consent, as described in paragraph 4, above, to the UBS Affiliate; and

(b) object, from time to time, to varying the above Order to specifically name any one or more UBS Affiliate that has filed an Identifying Notice, as described in paragraph 3, above, as a Named Applicant, by issuing to the UBS Affiliate an Objection Notice, as described in paragraph 5, above, provided, however, that, in the event of any such objection, the UBS 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 the objection by the Commission.

September 2, 2009.

"Kevin J. Kelly"
Commissioner
Ontario Securities Commission

"Mary G. Condon"
Commissioner
Ontario Securities Commission

Schedule A

FORM OF IDENTIFYING NOTICE AND DIRECTOR'S CONSENT

Part A: Identifying Notice to the Commission

To: Ontario Securities Commission (the **Commission**)
Attention: Manager, Registrant Regulation

From: [*Insert Name and Address*] (the **UBS Affiliate**)

Re: In the Matter of UBS Global Asset Management (Canada) Inc., UBS Global Asset Management (Americas) Inc., UBS Global Asset Management (UK) Ltd., UBS O'Connor LLC, UBS Alternative and Quantitative Investments LLC, UBS Global Asset Management (Japan) Ltd., UBS Global Asset Management (Singapore) Ltd. and UBS AG (except UBS Canada, collectively, the **UBS Applicants**)

OSC File No.: 2009/077

The undersigned, being an authorized representative of the above UBS Affiliate, hereby represents to the Commission that:

1. On August ___, 2009, the Commission issued an order (the **Order**), pursuant to section 80 of the *Commodity Futures Act* (Ontario) (the **CFA**), that each of the Named Applicants (as defined in the Decision containing the Order) is exempt from the adviser registration requirement in paragraph 22(1)(b) of the CFA in respect of the Named Applicant acting as an adviser to one or more of the Funds (as defined in the Decision), in respect of Contracts (as defined in the Decision), subject to certain terms and conditions specified in the Order.

2. The UBS Affiliate has attached a copy of the Decision to this Identifying Notice.

3. The Named Affiliate is an affiliate of a UBS Applicant.

4. The UBS Affiliate (whose name does not specifically appear in the Order) hereby applies to the Director, acting on behalf of the Commission under the Assignment in the Decision, to vary the Order to specifically name the UBS Affiliate as a Named Applicant for the purposes of the Order, pursuant to section 78 of the CFA.

5. The UBS Affiliate confirms the truth and accuracy of all the information set out in the Decision.

6. This Identifying Notice has been filed with the Commission not less than ten (10) days prior to the date on which the UBS Affiliate proposes to rely on the exemption from the adviser registration requirement in the CFA provided to the Named Applicants in the Order, subject to the terms and conditions specified in the Order.

7. The UBS Affiliate has not, and will not, rely on such exemption unless and until it has received from the Director a written Director's Consent, as provided in the form of Part B of Schedule A attached to the Decision.

DATED at :_____ this day of , 20 .

By:_____

Name:
Title:

Part B: Director's Consent

To: _____(the **UBS Affiliate**)

From: Director, Ontario Securities Commission

Re: In the Matter of UBS Global Asset Management (Canada) Inc., UBS Global Asset Management (Americas) Inc., UBS Global Asset Management (UK) Ltd., UBS O'Connor LLC, UBS Alternative and Quantitative Investments LLC, UBS Global Asset Management (Japan) Ltd., UBS Global Asset Management (Singapore) Ltd. and UBS AG

OSC File No.: 2009/077

I acknowledge receipt from the UBS Affiliate of its Identifying Notice, dated _____, 20__, by which the UBS Affiliate has applied to the Director, acting on behalf of the Commission under the Assignment in the Decision attached to the Identifying Notice, to specifically name the UBS Affiliate as a Named Applicant for purposes of the Order contained in the Decision.

Based on the representations contained in the Decision and in the Identifying Notice, and my being of the opinion that to do so would not be prejudicial to the public interest, on behalf of the Commission, as a Director for the purposes of the *Commodity Futures Act* (Ontario), I hereby vary the Order to specifically name the UBS Affiliate as an Named Applicant for the purposes of the Order.

DATED at :_____ this day of , 20 .

ONTARIO SECURITIES COMMISSION

By:_____
Name:
Title:

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Uxbridge Capital Funding Inc. – s. 26(3)

IN THE MATTER OF
UXBRIDGE CAPITAL FUNDING INC.

OPPORTUNITY TO BE HEARD BY THE DIRECTOR
UNDER SUBSECTION 26(3) OF THE SECURITIES ACT

Date:	August 26, 2009		
Director:	Marrianne Bridge, FCA Manager, Compliance Ontario Securities Commission		
Submissions:	Isabelita Chichioco	–	For Ontario Securities Commission staff
	Chris Carmichael Chief Financial Officer Uxbridge Capital Funding Inc.	–	For Uxbridge Capital Funding Inc.

Overview

By letter dated June 2, 2009, staff advised Uxbridge that it was deficient in meeting the minimum capital requirements in Regulation 107(3) under the *Securities Act* (Ontario) (Act) by $2,535 based on annual audited financial statements as at December 31, 2008. The capital deficiency was subsequently rectified.

As a direct consequence of the capital deficiency, staff recommended that terms and conditions be imposed on Uxbridge's registration for a minimum period of six months. The terms and conditions require the filing of monthly year-to-date unaudited financial statements (including a balance sheet and an income statement prepared in accordance with generally accepted accounting principles) and monthly capital calculations. The terms and conditions also require Uxbridge to review its procedures for compliance with Ontario securities law and file a report including:

- The reasons for its failure to meet the minimum capital requirements
- A certification from its Chief Compliance Officer that the firm has reviewed its systems for ongoing compliance with Ontario securities law and rectified the problem(s) that led to its failure to meet the minimum capital requirements
- Details of the specific measures that will be taken to sure that the minimum capital requirements will be satisfied at all times in the future.

These provisions are the standard terms and conditions recommended by staff for registrants with capital deficiencies.

Prior to a decision being made by the Director, Uxbridge had the option to oppose staff's recommendation for terms and conditions by requesting an opportunity to be heard under section 26(3) of the Act. Uxbridge had two options – it could either be heard through written submissions or through a personal appearance before the Director. By letter dated June 12, 2009, Chris Carmichael, Chief Financial Officer of Uxbridge, requested an opportunity to be heard through written submissions. Written submissions of Uxbridge were provided by letter of Chris Carmichael dated August 13, 2009.

This is the Director's decision based on staff's and Uxbridge's written submissions.

Submissions

Staff submissions

Maintaining adequate minimum capital by registrants is one of the most serious regulatory requirements in the Act. Financial solvency is one of the essential components of an adviser's continued suitability for registration. Capital deficiencies, regardless of their size, raise serious potential regulatory concerns and need to be addressed in a serious fashion.

For these reasons, staff generally recommend terms and conditions on registrants that are capital deficient. Staff does this notwithstanding the variety of reasons registrants provide for capital deficiencies including inadvertence/oversight, change in staffing at the registrant or its auditors, misclassification of accounts, or errors. In staff's opinion, maintaining adequate minimum capital is a serious regulatory obligation for registrants and only in extremely rare circumstances would staff consider not imposing terms and conditions. Staff argues that those circumstances are not present in this case.

Uxbridge submissions

Uxbridge submits that its capital deficiency resulted from start-up and audit costs. As a result, Uxbridge argues that its capital deficiency was a one-time occurrence and that it has since been rectified. Uxbridge submits that it will, on a go forward basis, segregate sufficient funds for required regulatory capital and its ongoing annual overhead costs. Uxbridge will also monitor its regulatory capital position on a monthly basis to ensure that it maintains sufficient regulatory capital. Uxbridge does not anticipate that it will have a regulatory capital deficiency "at any time in the near future".

Decision and reasons

My decision is to impose the recommended terms and conditions on the registration of Uxbridge Capital Funding Inc. for a minimum six month period. These terms and conditions are as follows:

> Uxbridge Capital Funding Inc. shall file on a monthly basis with the Compliance team of the Ontario Securities Commission, attention Financial Analyst, starting with the month ending August 31, 2009 the following information:
>
> (a) year-to-date unaudited financial statements including a balance sheet and an income statement, both prepared in accordance with generally accepted accounting principles; and
>
> (b) month end calculation of minimum required capital;
>
> no later than three weeks after each month end.
>
> The Firm will review its procedures for compliance with Ontario securities law and, no later than September 18, 2009, will file with the Compliance section of the Ontario Securities Commission, addressed to the attention of the "Assistant Manager", a report (the Compliance Report) setting out:
>
> (a) the reasons for its failure to meet the minimum capital requirements as at December 31, 2008 as required under Ontario securities law (the Capital Requirement);
>
> (b) a certification from its Chief Compliance Officer to the effect that the Firm has reviewed its system for on-going compliance with Ontario securities law and rectified the problem(s) that led to its failure to satisfy the Capital Requirement; and
>
> (c) details of the specific measures that will be taken to ensure that the Capital Requirement will be satisfied at all times in the future.

I agree with staff's submissions that the extremely rare circumstances that would result in staff not imposing terms and conditions for a registrant's failure to meet maintain adequate minimum capital are not present in this case. Registrants have an ongoing obligation to ensure that they maintain minimum regulatory capital at all times – including when they are relatively new registrants in the start-up phase of their operations.

August 26, 2009

"Marrianne Bridge, FCA"
Manager, Compliance
Ontario Securities Commission

3.1.2 James Richard Elliott – 127(1), 127(10)

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

AND

IN THE MATTER OF
JAMES RICHARD ELLIOTT

REASONS AND DECISION
Subsections 127(1) and 127(10) of the Securities Act, R.S.O. 1990 c. S.5

Hearing:	February 25, 2009		
Decision:	August 28, 2009		
Panel:	Wendell S. Wigle, Q.C.	–	Commissioner (Chair of the Panel)
	David L. Knight, FCA	–	Commissioner
Counsel:	Jonathon T. Feasby	–	for Staff of the Ontario Securities Commission
	James Richard Elliott	–	did not appear

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REASONS AND DECISION

I. BACKGROUND

[1] This was a hearing before the Ontario Securities Commission (the "Commission") on February 25, 2009 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 make an order imposing certain sanctions against James R. Elliott ("Elliott").

[2] This matter arose out of a Notice of Hearing issued by the Commission on November 24, 2008, in relation to a Statement of Allegations issued by Staff of the Commission ("Staff") on the same date. An Amended Statement of Allegations was issued by Staff on February 2, 2009, followed by an Amended Notice of Hearing issued by the Commission on February 5, 2009.

[3] Staff relies upon a procedure set out in paragraph 4 and 5 of subsection 127(10) of the Act, which provides that the Commission may make an order under subsection 127(1) or (5) "in respect of a person or company if … [t]he person or company is subject to an order made by a securities regulatory authority in any jurisdiction imposing sanctions, conditions, restrictions or requirements on the person or company" or if "[t]he person or company has agreed with a securities regulatory authority in any jurisdiction to be made subject to sanctions, conditions, restrictions or requirements".

[4] Pursuant to subsection 127(10) of the Act, Staff relies on a settlement agreement entered into by Elliott with the British Columbia Securities Commission ("BCSC"), *Re James Richard Elliott*, 2008 BCSECCOM 281 ("Settlement Agreement"), on May

28, 2008. The BCSC issued an order approving the settlement on the same date, *Re James Richard Elliott*, 2008 BCSECCOM 280 ("BCSC Order"). Facts set out in the Settlement Agreement are described fully below. Subsection 127(10) of the Act came into force on November 27, 2008, after the Settlement Agreement and BCSC Order were made.

[5] Staff filed written submissions the day before the hearing. Furthermore, in response to questions by this Panel during the hearing regarding the retrospective application of subsection 127(10) of the Act, Staff submitted supplementary written submissions on March 4, 2009.

[6] In this hearing, we have to determine whether Elliott "has agreed with a securities regulatory authority in any jurisdiction to be made subject to sanctions . . ." or "is subject to an order made by a securities regulatory authority in any jurisdiction imposing sanctions . . . ", and, if it is determined that Elliott agreed to be or has been sanctioned, whether the Commission should impose similar sanctions in Ontario.

II. PRELIMINARY ISSUES

A. Service and Elliott's Failure to Appear at the Hearing

[7] If an oral hearing is held, a party is entitled to notice of it and to be present at all times while evidence and submissions are being presented in order to obtain full disclosure of the case the party has to meet. However, pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990 c. S.22 (the "SPPA"), where a party who has been given proper notice of a hearing fails to respond or to attend, the tribunal may proceed in the party's absence and the party is not entitled to any further notice in the proceeding.

[8] Elliott was not present at the hearing, but we are satisfied that he received a copy of the Amended Notice of Hearing as well as a copy of the Amended Statement of Allegations. Staff submits that they were able to serve Elliott by email, and refers us to an email received from Elliott in response on February 3, 2009 as proof of service.

III. ANALYSIS

A. Subsection 127(10) of the Act

[9] On November 27, 2008 subsection 127(10) of the Act came into force. Staff relies upon the inter-jurisdictional enforcement provisions of the Act, specifically paragraphs 4 and 5 of subsection 127(10) of the Act, and seeks an order from the Commission imposing similar terms on Elliott as were made against him by the BCSC. Subsection 127(10) provides the following:

> **Inter-jurisdictional enforcement**
>
> 127. (10) Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:
>
> 1. The person or company has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities.
>
> 2. The person or company has been convicted in any jurisdiction of an offence under a law respecting the buying or selling of securities.
>
> 3. The person or company has been found by a court in any jurisdiction to have contravened the laws of the jurisdiction respecting the buying or selling of securities.
>
> 4. The person or company is subject to an order made by a securities regulatory authority in any jurisdiction imposing sanctions, conditions, restrictions or requirements on the person or company.
>
> 5. The person or company has agreed with a securities regulatory authority in any jurisdiction to be made subject to sanctions, conditions, restrictions or requirements.

[10] Specifically, Staff seeks the following order:

(1) Pursuant to subsections 127(1)2 and 127(1)2.1 of the Act, Elliott shall cease trading in and be prohibited from purchasing securities for a period commencing on the date of this Order and ending on May 27, 2013, except

that he may trade in one account in his own name through a registered representative if he provides a copy of this Order to the registered representative beforehand; and

(2) Pursuant to subsections 127(1)7 and 127(1)8 of the Act, Elliott shall resign any position he holds, and be prohibited from becoming or acting, as a director or officer of any issuer until the expiration of a period commencing on the date of this Order and ending on May 27, 2013.

B. The Settlement Agreement and the BCSC Order

[11] Staff submits that the BCSC Order and Settlement Agreement meet the threshold criteria set out in paragraph 4 and 5 of subsection 127(10) of the Act. In the Settlement Agreement, Elliott agreed to the following facts:

Elliott

1. Elliott was a resident in British Columbia and a director, the president, and chief executive officer of MDMI Technologies Inc. ("MDMI") from July 27, 1998 until November 25, 2005, when he resigned from all management positions.

2. He was registered as a salesperson in British Columbia from 1985 to 1987. Elliott was not registered in any capacity under the Securities Act, RSBC 1996, c. 418 at the time of the misconduct described in this Settlement Agreement.

3. Between 2003 to 2004, Elliott transferred his options to existing MDMI shareholders for proceeds of approximately $3,000,000. He gave all of the proceeds to MDMI for it's [sic] business purposes.

MDMI

4. MDMI has never filed a prospectus under the [British Columbia Securities Act].

5. All of the funds obtained from investors by MDMI went to research, development and marketing of its products.

Misconduct

6. Elliott held presentations, met with investors, and marketed the shares of MDMI from April 1999 to March 2005, raising approximately $2,306,105 from 262 British Columbia investors.

7. Elliott relied on the "friends and family" exemption, but approximately 259 investors did not qualify for this exemption.

8. Elliott acted contrary to sections 34(1)(a) and 61 of the [British Columbia Securities Act] by distributing shares without registration and without a prospectus having been filed.

Public Interest

9. Elliott acted contrary to the public interest by engaging in the conduct set out above.

Inability to Pay

10. There is no reasonable prospect of Elliott paying $70,000 that would otherwise be assessed in the public interest for the misconduct described in this Settlement Agreement. He has provided satisfactory evidence to the Executive Director that his liabilities exceed his assets.

[12] The Settlement Agreement also contains the following provision:

Consent to Reciprocal Orders

Any securities regulator in Canada may rely on the facts admitted in this agreement solely for the purpose of making an order similar to the one contemplated above.

[13] The following Order, as agreed upon in the Settlement Agreement, was made against Elliott by the BCSC:

> The Executive Director, considering it to be in the public interest to do so, orders, by consent, that:
>
> 1. under section 161(1)(a) of the *Securities Act*, RSBC 1996, c. 418, Elliott will comply fully with the Act, the *Securities Rules*, BC Reg. 194/97, and any applicable regulations;
>
> 2. under section 161(1)(b) of the Act, Elliott will cease trading in and be prohibited from purchasing any securities or exchange contracts for five years from the date of this Order, except that he may trade in one account in his own name through a registered representative if he provides a copy of this Order to the registered representative beforehand; and
>
> 3. under section 161(1)(d) of the Act, Elliott will resign any position he may hold, and be prohibited from becoming or acting, as a director or officer of any issuer, be prohibited from acting in a managing or consultative capacity in connection with activities in the securities market, and be prohibited from engaging in investor relations activities for the later of:
>
> (a) five years from the date of this Order; and
>
> (b) the date Elliott successfully completes a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers.

[14] We are satisfied that the BCSC Order is an "order made by a securities regulatory authority . . . imposing sanctions" for the purposes of paragraph 4 of subsection 127(10) of the Act, and that the Settlement Agreement constitutes an agreement for the purposes of paragraph 5 of subsection 127(10) of the Act.

[15] We also take notice that in the Settlement Agreement, Elliott explicitly consented to the use of the agreed upon facts by other securities regulators in Canada for the purpose of making similar orders.

C. The Applicability of Subsection 127(10) to this Matter

[16] As noted above, the Settlement Agreement was entered into on May 28, 2008, and the BCSC Order was made on the same date. Subsection 127(10) of the Act came into force on November 27, 2008. Staff submits that the fact that subsection 127(10) came into force after the Settlement Agreement and BCSC Order were made, should not impair their ability to rely on subsection 127(10) in this matter. Specifically, Staff submits that the presumption against retrospectivity is not applicable to subsection 127(10) because it is procedural and not substantive in nature.

[17] Staff refers us to the decision of the Alberta Court of Appeal in *Alberta Securities Commission v. Brost*, 2008 ABCA 326 ("*Brost*"). In *Brost* at para. 57, the Alberta Court of Appeal considered whether or not the increase in the maximum possible administrative penalty under the Alberta *Securities Act*, R.S.A. 2000, c. S-4 was retrospective:

> The Commission was correct to conclude that the presumption against retrospective application did not apply in this case because administrative penalties under the *Act* are not punitive but are instead designed to protect the public: *Brosseau v. Alberta Securities Commission*, [1989] 1 S.C.R. 301, 57 D.L.R. (4th) 458 at 471-3, cited in *Re Morrison Williams Investment Management Ltd.* (2000), 7 ASCS 2888. Moreover, contrary to what *Brost* and *Alternatives* suggest, it is well settled that "[e]xcept for criminal law, the retrospectivity and retroactivity of which is limited by s. 11(g) of the *Charter*, there is no requirement of legislative prospectivity embodied in n the rule of law or any provision of our Constitution": *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49, [2005] 2 S.C.R. 473 at para. 69.

[18] The British Columbia Court of Appeal considered the same issue in *Thow v. B.C. (Securities Commission)*, 2009 BCCA 46 at para. 50 ("*Thow*"), and concluded that the presumption against the retrospective application of legislation does apply to the increased maximum possible administrative penalty under the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418.

[19] The divergence of the conclusions reached by the Alberta Court of Appeal and the British Court of Appeal hinges, in part, on their differing interpretations of the Supreme Court of Canada decision in *Brosseau v. Alberta Securities Commission*, [1989] 1 S.C.R. 301 ("*Brosseau*").

[20] In *Brosseau*, the Supreme Court of Canada considered whether or not new sections in Alberta's *Securities Act*, R.S.A. 1981, c. S-6.1, which gave the Alberta Securities Commission the authority to prohibit individuals from trading in securities and to decide whether or not certain exemptions in the act apply, should attract the presumption against retrospectivity. L'Heureux-Dubé J., writing for the court, cited the following excerpt of the decision by Dickson J. (as he then was) in *Gustavson Drilling (1964) Ltd. v. Minister of National Revenue*, [1977] 1 S.C.R. 271 at p. 279, as the general principal with respect to the retrospectivity of legislative enactments:

> The general rule is that the statutes are not to be construed as having retrospective operation unless such a construction is expressly or by necessary implication required by the language of the Act. An amending enactment may provide that it shall be deemed to have come into force on a date prior to its enactment or it may provide that it is to be operative with respect to transactions occurring prior to its enactment. In those instances the statute operates retrospectively.

[21] However, the presumption against retrospectivity does not apply to all types of legislation. L'Heureux-Dubé J., in deciding that the changes to Alberta's *Securities Act* did not attract the presumption against retrospectivity, outlined an exception to the presumption where the goal of the legislation is not to punish, but rather to protect the public:

> The so-called presumption against retrospectivity applies only to prejudicial statutes. It does not apply to those which confer a benefit. As Elmer Driedger, *Construction of Statutes* (2nd ed. 1983), explains at p. 198:
>
> > . . . there are three kinds of statutes that can properly be said to be retrospective, but there is only one that attracts the presumption. First, there are the statutes that attach benevolent consequences to a prior event; they do not attract the presumption. Second, there are those that attach prejudicial consequences to a prior event; they attract the presumption. Third, there are those that impose a penalty on a person who is described by reference to a prior event, but the penalty is not intended as further punishment for the event; these do not attract the presumption.
>
> A sub-category of the third type of statute described by Driedger is enactments which may impose a penalty on a person related to a past event, so long as the goal of the penalty is not to punish the person in question, but to protect the public. This distinction was elaborated in the early case of *R. v. Vine* (1875), 10 L.R. Q.B. 195, where Cockburn C.J. wrote at p. 199:
>
> > If one could see some reasons for thinking that the intention of this enactment was merely to aggravate the punishment for felony by imposing this disqualification in addition, I should feel the force of Mr. Poland's argument, founded on the rule which has obtained in putting a construction upon statutes – that when they are penal in their nature they are not to be construed retrospectively, if the language is capable of having a prospective effect given to it and is not necessarily retrospective. But here the object of the enactment is not to punish offenders, but to protect the public against public-houses in which spirits are retailed being kept by persons of doubtful character . . . the legislature has categorically drawn a hard and fast line, obviously with a view to protect the public, in order that places of public resort may be kept by persons of good character; and it matters not for this purpose whether a person was convicted before or after the Act passed, one is equally bad as the other and ought not to be intrusted with a licence.
>
> Elmer Dreidger summarizes the point in "Statutes: Retroactive, Retrospective Reflections" (1978), 56 *Can. Bar Rev.* 264, at p. 275:
>
> > In the end, resort must be had to the object of the statute. If the intent is to punish or penalize a person for having done what he did, the presumption applies, because a new consequence is attached to a prior event. But if the new punishment or penalty is intended to protect the public, the presumption does not apply.

[22] Based on a plain reading of subsection 127(10) in the context of section 127 as a whole, we conclude that the purpose of subsection 127(10) is to protect the public. Hence, the presumption against retrospectivity is not applicable.

[23] The Supreme Court of Canada considered the nature of section 127 in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43:

> Rather, the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s.

> 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets: *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600.

[24] While the courts in *Brost* and *Thow* had to consider the retrospective application of a provision which expanded the sanctioning powers of a securities regulator, subsection 127(10) does no such thing. Rather, subsection 127(10) simply allows the Commission to consider any convictions or orders made against an individual in other jurisdictions, when deciding whether or not to make an order under subsection 127(1) or (5) in the public interest.

[25] Moreover, this Commission has considered the conduct of individuals in other jurisdictions in the past when making an order under subsections 127(1) and (5) in the public interest, even before subsection 127(10) came into effect (see *Re Biller* (2005), 28 O.S.C.B. 10131).

[26] In light of our conclusion that the presumption against retrospectivity is inapplicable due to the public protection purpose of subsection 127(10), it is not necessary to consider whether subsection 127(10) is procedural or substantive in nature.

D. Should Sanctions be Ordered?

[27] The applicability of subsection 127(10) to the BCSC Order and the Settlement Agreement does not automatically lead to the conclusion that this Panel must make an order similar to that made by the BCSC against Elliott. Rather, we must first consider whether or not sanctions are necessary to protect the public interest, before exercising any powers granted to us under subsections 127(1) and (5), and second, if necessary, consider what the appropriate sanctions should be.

[28] In deciding whether or not it is in the public interest that an order be made against Elliott, we are guided by the underlying purposes of the Act, as set out in section 1.1:

(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.

[29] In pursuing the purposes of the Act, we are also guided by the fundamental principles of the Act as enunciated by section 2.1, which include: "the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants"; that "effective and responsive securities regulation requires timely, open and efficient administration and enforcement of this Act by the Commission"; and that the "integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes".

[30] In making an order under section 127 of the Act, the Commission exercises its public interest jurisdiction in a protective and preventative manner. As stated in *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at pp. 1610-1611:

> . . . 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 doing so 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.

[31] In view of the Settlement Agreement, we considered the following factors in deciding whether or not sanctions against Elliott are in the public interest:

- Elliott admitted that his conduct in British Columbia was contrary to the public interest, and consented to the use of the agreed facts by other securities regulators in Canada for the purpose of making an order similar to the BCSC Order;
- the proposed sanctions by Staff are prospective in nature, and only affect Elliott if he attempts to participate in the Ontario capital markets;
- the proposed sanctions by Staff correspond with the fundamental principle that the Commission maintain "high standards of fitness and business conduct to ensure honest and responsible conduct by market participants" (section 2.1, paragraph 2 of the Act);

- relying on the BCSC Order and the Settlement Agreement as per subsection 127(10) of the Act, promotes a timely, open and efficient administration and enforcement of the Act by the Commission (section 2.1, paragraph 3 of the Act);

- if Elliott's conduct, as described in the Settlement Agreement, had occurred in Ontario with Ontario investors, that conduct would have contravened subsection 25(1)(a) of the Act for trading in securities without registration and subsection 53(1) of the Act for distributing securities without a prospectus or receipt from the Director;

- the terms of the BCSC Order and Settlement Agreement indicate that the BCSC viewed Elliott's conduct as a serious threat to the public interest;

- the scale of Elliott's violation of the British Columbia Securities Act was large, Elliott raised approximately $2.3 million from 262 investors, only 3 of whom actually qualified for the "family and friends" exemption relied on by Elliott; and

- Elliott held presentations, met with investors, and marketed the shares of MDMI over a lengthy period of time (from April 1999 to March 2005).

[32] In light of the reasons listed above, we find that sanctions against Elliott are in the public interest.

E. The Appropriate Sanctions

[33] In determining the nature and duration of the appropriate sanctions, the Commission may consider a number of factors including:

(a) the seriousness of the allegations;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been recognition of the seriousness of the improprieties;

(e) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered but any like-minded people from engaging in similar abuses of the capital markets; and

(f) any mitigating factors.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743, at paras. 25-26)

[34] Further, the Supreme Court of Canada in *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 has affirmed that the Commission may properly impose sanctions which are a general deterrent, stating ". . . it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative".

[35] Staff referred us to the following cases in support of their proposed sanctions against Elliott: *Re James Frederick Pincock* (2002), 26 O.S.C.B. 1602 ("*Pincock*"), *Re Anwar Heidary* (2000), 23 O.S.C.B. 591 ("*Heidary*"), and *Re Robert James Emerson* (2002), 25 O.S.C.B. 1125 ("*Emerson*").

[36] In *Pincock*, the Commission approved a settlement agreement in which the respondent admitted to trading in securities where such trading was a distribution, without complying with the prospectus requirements, without the benefit of an exemption and without registration. Pincock raised over $2 million from over 150 investors and received over $200,000 in commissions. Under the terms of the settlement, the respondent was prohibited from trading in securities or acting as an officer or director of an issuer for five years, reprimanded and required to pay $20,000 in costs.

[37] In *Heidary*, the Commission approved a settlement agreement in which the respondent admitted to selling shares in two corporations without a prospectus or applicable exemption. The settlement agreement indicates that the respondent imprudently relied upon legal advice which indicated that his conduct was legal, but did not knowingly or intentionally violate the act. The respondent was prohibited from trading in securities for five years, with an exception for personal trading. The respondent was also allowed to sell scholarship plans, after two years from the date of the order if he completed the educational requirements necessary for registration.

[38] In *Emerson*, the Commission approved a settlement agreement in which the respondent admitted to trading in securities without complying with the prospectus requirements and to failing to deal with his clients honestly, fairly, and in good faith by transferring securities to clients when he was aware the securities were not distributed pursuant to a receipted prospectus. The respondent was prohibited from acting as an officer or director of a registrant or issuer with an interest in a registrant for five years, with the exception of his own company. He was prohibited from holding interest in a registrant and prohibited from trading for five years. He also received a reprimand.

[39] While we are mindful that in determining the appropriate sanctions in this matter, we must consider the specific circumstances to ensure that the sanctions are proportionate to the conduct involved (see *Re M.C.J.C. Holdings Inc. and Michael Cowpland*, (2002), 25 O.S.C.B. 1133 ("*Re M.C.J.C. Holdings*") at para. 26), we observe that Staff is seeking sanctions against Elliott which are similar to those imposed in the three cases discussed above; all of which involved conduct similar to Elliott's.

[40] We also observe that Elliott was not personally enriched by his conduct, that all of the funds obtained from investors in MDMI went to research, development, and the marketing of its products, and that Elliott's liabilities exceed his assets.

[41] Consequently, we find that Staff's proposed sanctions further the goals of the Act, and reflect a fair and proportionate outcome relative to Elliott's admitted conduct.

IV. CONCLUSION

[42] For the aforementioned reasons, we find that it is in the public interest to impose those sanctions sought by Staff against Elliott, which we note are similar to those imposed by the BCSC, as set out in our order dated August 28, 2009, which provides that Elliott cease trading in securities until May 27, 2013 with the exception that he may trade in one account in his name through a registered representative, and that Elliott resign any positions he holds as a director or officer of an issuer and be prohibited from becoming or acting as an officer or director of an issuer until May 27, 2013.

Dated at Toronto this 28th day of August, 2009

"Wendell S. Wigle"

"David L. Knight"

3.1.3 Swift Trade Inc. and Peter Beck

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

AND

IN THE MATTER OF
SWIFT TRADE INC. AND PETER BECK

HEARING HELD PURSUANT TO SECTIONS 127 AND 127.1 OF THE ACT

SETTLEMENT HEARING RE: SWIFT TRADE INC. AND PETER BECK

HEARING:	Tuesday, July 28, 2009		
PANEL:	Lawrence E. Ritchie	–	Vice-Chair (Chair of the Panel)
APPEARANCES:	Sean Horgan Andre Moniz	–	for Staff of the Ontario Securities Commission
	Katherine Kay	–	for Swift Trade Inc. and Peter Beck

ORAL RULING AND REASONS

The following text has been prepared for the purpose of publication in the Ontario Securities Commission Bulletin and is based on excerpts of the transcript of the hearing. The excerpts have been edited and supplemented and the text has been approved by the Chair of the Panel for the purpose of providing a public record of the decision.

Chair:

[1] This was a hearing under sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, (the "**Act**") for the Ontario Securities Commission (the "**Commission**") to consider whether it is in the public interest to approve the proposed Settlement Agreement (the "**Agreement**") between Staff of the Commission ("**Staff**") and the respondents Swift Trade Inc. ("**Swift Trade**") and Peter Beck ("**Beck**").

[2] Swift Trade has been registered with the Commission as a Limited Market Dealer since 2003. Swift Trade's head office is located at 55 St. Clair West, Toronto, Ontario.

[3] Beck resides in Toronto, Ontario. Beck is the co-founder and President of Swift Trade and owns 70.5% of BRMS Holdings Inc., which owns 100% of Swift Trade. Beck has been registered with the Commission since 1998. Since September 18, 2002, Beck was registered as a director and a trading officer of Swift Trade. From November 9, 2004, until August 22, 2006, Beck was designated as the compliance officer for Swift Trade.

[4] Barka Co. Limited ("**Barka**") was incorporated in Cyprus on January 22, 2004 for the sole purpose of trading securities on its own behalf, and is Swift Trade's largest client.

[5] This proceeding concerns the conduct of Beck during an examination under oath conducted by Staff on December 11, 2006 pursuant to section 31 of the Act, and consideration of whether that conduct was contrary to the public interest.

[6] The settlement is based upon specific facts agreed to by all parties (the "**Agreed Facts**"), which are set out in detail in the Agreement, and in particular the Agreed Facts section.

[7] In essence, the parties agree that certain statements were made by Beck on behalf of Swift Trade that were misleading with respect to the beneficial ownership of Swift Trade's largest client in the course of a compliance review examination.

[8] According to the Agreed Facts, Beck did not intend to mislead Staff. Nonetheless, he acknowledges that as a director, trading officer and registrant, he should have devoted more effort to developing a better understanding of the subjects of interest to Staff during their compliance examination, in order to be completely forthcoming and helpful with his responses.

[9] While Staff did not ask specific questions about the beneficial ownership of Barka, Beck should have been aware that Staff would be concerned about the beneficial ownership and the effective control of Barka, Swift Trade's largest client.

[10] Beck acknowledges that his non-wilful lack of disclosure about Barka resulted in Staff being misled. Beck apologizes for his course of conduct, which he acknowledges was contrary to the public interest.

[11] As Staff properly point out in their submissions, the role of a Commission panel reviewing a settlement agreement is not to substitute the sanctions it would impose in a contested hearing for what is proposed in the agreement, but rather to consider whether the agreed sanctions are within acceptable parameters (*Re Sohan Singh Koonar et al.* (2002), 25 O.S.C.B. 2691 at 2693).

[12] I have considered all the factors that the case law urges me to consider as reflected in *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at para. 25, *Re M.C.J.C. Holdings and Michael Cowpland* (2003), 26 O.S.C.B. 8206 at para. 55, *Cartaway Resources Corp. (Re)* [2004] 1 S.C.R. 672 at para. 60, and as set out in Staff's submissions.

[13] The integrity of field reviews and healthy ongoing relations between registrants and the compliance Staff is fundamental to the ability of the Commission to fulfill its dual responsibilities: providing protection to investors from unfair, improper or fraudulent practices; and, fostering fair and efficient capital markets and confidence in capital markets.

[14] It is crucial that participants, and registered participants in particular, act with the highest standards of integrity, honesty and frankness in their dealings with Staff.

[15] I note that in the Agreed Facts the non-disclosure at issue is characterized as “non-willful”. This is an important consideration for me in assessing the reasonableness of the sanctions. Nonetheless, this matter, this settlement, and the sanctions proposed demonstrate that registrants must at all times be frank and forthright with Staff and use best efforts to ensure that information provided to the Commission is correct and complete.

[16] I am of the view that based on all of the circumstances set out in the Agreed Facts, that it is in the public interest to approve the Agreement and to grant the order requested.

[17] Therefore, it is ordered that:

(1) the Settlement Agreement between the Respondents and Staff of the Commission is approved;

(2) pursuant to paragraph 127(6) of the Act, the Respondent Beck is reprimanded;

(3) pursuant to paragraph 127(1) of the Act, the terms and conditions imposed by the Decision of the Director of Compliance dated February 5, 2008 on the Respondent Swift Trade’s registration, shall be removed immediately; and

(4) pursuant to section 127.1 of the Act, the Respondents shall pay costs in the amount of $20,000 to the Commission.

[18] It is in the public interest to have these matters resolved by agreement and in this case I am of the view that the Agreement, based on the Agreed Facts is fair and reasonable.

[19] Having reached this resolution, it is hoped that Beck and Swift Trade can put this matter behind them.

Approved by the Chair of the Panel on August 31, 2009.

“Lawrence E. Ritchie”

3.1.4 Neo Material Technologies Inc. et al. – s. 127

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

AND

IN THE MATTER OF
NEO MATERIAL TECHNOLOGIES INC. AND
PALA INVESTMENTS HOLDINGS LIMITED AND
ITS WHOLLY-OWNED SUBSIDIARY 0833824 B.C. LTD.

REASONS FOR DECISION
Section 127 of the Securities Act, R.S.O. 1990, c. S.5

Hearing: May 7, 2009

Decision: September 1, 2009

Panel:	Lawrence E. Ritchie	–	Vice-Chair (Chair of the Panel)
	David L. Knight, FCA	–	Commissioner
Counsel:	Tom Friedland Grant McGlaughlin Rebecca Burrows Melanie Ouanounou	–	Pala Investments Holdings Limited and its wholly-owned subsidiary 0833824 B.C. Ltd.
	Peter F.C. Howard Edward J. Waitzer David Weinberger Samaneh Hosseini	–	Neo Material Technologies Inc.
	James Sasha Angus Shannon O'Hearn Paul Hayward Konata Lake	–	Staff of the Ontario Securities Commission

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REASONS FOR DECISION

I. BACKGROUND

A. Introduction

[1] In this proceeding, we have been asked to exercise the "public interest" jurisdiction of the Ontario Securities Commission (the "**Commission**") to set aside a shareholder rights plan established by the board of directors of the target of a hostile take-over bid. This request has invited us to consider some of the factors which influence this Commission's discretion as to whether to interfere with the decision of a board of directors relating to the establishment, as well as the longevity, of a shareholder rights plan, or "poison pill". In the case before us, we have specifically been asked to consider the circumstances under which the shareholder rights plan was proposed and adopted, and the impact of shareholder ratification of the plan.

[2] This matter arises out of an application brought by Pala Investments Holdings Limited ("**Pala**") and 0833824 B.C. Ltd. ("**083**") with respect to an offer by 083 to purchase for cash up to a maximum of 23 million (or approximately 20%) of the outstanding shares of Neo Material Technologies Inc. ("**Neo**") not already held by 083 and its affiliates at a price of $1.40 for each common share (the "**Pala Offer**"). The Pala Offer was subsequently amended on April 27, 2009 to: (i) increase the offer price to $1.70 per share; (ii) decrease the maximum number of shares to be taken up to 10.6 million (or approximately 9.5%); and (iii) extend the expiry time of the Pala Offer to May 15, 2009.

[3] Neo had a shareholder rights plan in place (the "**First Shareholder Rights Plan**") at the time that Pala announced its intention to make the Pala Offer. Neo subsequently adopted a second shareholder rights plan (the "**Second Shareholder Rights Plan**") in the face of the Pala Offer.

B. Relief Sought by Pala

[4] On April 16, 2009 Pala and 083 made an application (the "**Application**") to the Commission pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in connection with the Pala Offer. Specifically, in the Application, 083 and Pala seek a permanent order pursuant to subsection 127(1) of the Act that:

(a) trading cease in respect of any securities issued, or to be issued, under or in connection with the Second Shareholder Rights Plan; and

(b) trading cease in respect of any securities issued, or to be issued, under or in connection with the First Shareholder Rights Plan.

[5] In argument, Neo and Staff of the Commission ("**Staff**") take the position that our focus need be only on the Second Shareholder Rights Plan. All parties agree that if we do not grant the relief sought in respect of the Second Shareholder Rights Plan, the relief sought in respect of the First Shareholder Rights Plan is unnecessary.

[6] In essence, the bidder, Pala, has asked this panel to remove the impediment to shareholders' ability to tender their shares to the Pala Offer posed by the Second Shareholder Rights Plan. As set out in detail below, the Second Shareholder Rights Plan was adopted by Neo's Board of Directors (the "**Neo Board**") in the context of the Pala Offer, and can be seen as a

tactical defensive pill. As well, in the context of the unsolicited Pala Offer, a significant majority of Neo's shareholders recently voted to retain the Second Shareholder Rights Plan.

C. The Commission's Decision

[7] On May 7, 2009, we held a hearing to determine the merits of the Application at which we heard evidence and received submissions from Pala, Neo and Staff.

[8] On May 11, 2009, we issued our decision in this matter with full reasons to follow. We took this approach because the outcome of the Application was of some urgency as the Pala Offer was set to expire on May 15, 2009.

[9] After hearing extensive and well articulated argument from all parties, we dismissed the Application. In all of the circumstances, we were not satisfied that it was in the public interest to grant the relief sought at that time. A copy of our decision dated May 11, 2009 is attached as Schedule A to these Reasons.

[10] These are the full Reasons for our decision in this matter. We note that since we concluded that the Second Shareholder Rights Plan should be allowed to stand, our Reasons will not address the arguments raised by the parties with respect to the First Shareholder Rights Plan.

II. FACTS

[11] The parties to the Application helpfully provided us with an agreed statement of facts, as well as affidavit materials relied on respectively by each party. The extent to which agreement was reached on many of these facts, and that this matter was not unduly side tracked by disputes over the relevant facts, was greatly appreciated by this panel. For this, counsel, and their clients, are commended.

A. The Parties

1. Pala

[12] Pala is a multi-strategy investment company launched in 2006 and registered in Jersey, Channel Islands. It has a particular focus on mining and resource companies in both developed and emerging markets. Pala is advised on an exclusive basis by Pala Investments AG.

[13] Pala has been an investor in Neo since 2007. At the date of the Pala Offer, Pala had beneficial ownership of, or exercised control or direction over 23,640,000 common shares of Neo, representing approximately 20.46% of the 115,521,000 outstanding common shares of Neo. Since that time, Pala has not increased its interest in Neo.

2. 083

[14] 083 is a wholly-owned subsidiary of Pala. 083 was incorporated on August 29, 2008 under the laws of the Province of British Columbia. It was incorporated for the purpose of acquiring or investing in Canadian businesses, and as of the date of the Application, had made no such investment or acquisition. 083's head office and principal place of business is located in the City of Vancouver in the Province of British Columbia.

3. Neo

[15] Neo is a public corporation continued under the laws of Canada. Neo is headquartered in Toronto and has approximately 1,300 employees in 15 locations, across 10 countries. Neo's shares are listed on the Toronto Stock Exchange.

[16] Neo is a producer, processor and developer of neodymium-iron-boron magnetic powders, rare earths and zirconium based engineered materials and applications through its Magnequench and AMR Performance Materials business divisions. Neo's products are processed at plants in China and Thailand into products used in the manufacture of a wide range of products such as micro motors, precision motors, sensors, catalytic converters, computers, television display panels, optical lenses, mobile phones and electronic chips.

B. The Transaction

[17] The First Shareholder Rights Plan was effective immediately upon approval by the Neo Board on February 5, 2004, subject to receipt of all regulatory approvals and shareholder approval. The First Shareholder Rights Plan was approved by Neo's shareholders at the annual and special meeting of shareholders held June 28, 2004 and reconfirmed on April 18, 2007. It contains a minimum tender condition requiring that at least 50% of the independently held common shares of Neo must be

tendered in order for a bidder to take up and pay for any of the shares deposited under the offer (the "**Minimum Tender Condition**").

[18] On February 9, 2009, Pala announced that, through a wholly-owned subsidiary, it intended to acquire up to a maximum of 23 million of the outstanding common shares of Neo, representing approximately 20% of Neo's shares at a price of $1.40 per share. The Pala Offer, if completed, would have brought Pala's aggregate ownership interest to approximately 40% of the issued and outstanding Neo shares. Pursuant to the Pala Offer, if more than 23 million of the outstanding Neo shares were to be deposited, the shares to be purchased from each depositing shareholder would be taken up on a *pro rata* basis.

[19] The Pala Offer was structured to comply with the definition of a permitted bid contained in the First Shareholder Rights Plan by remaining open for at least 60 days, and, in the event that the Minimum Tender Condition was met, by remaining open for another 10 days from the date of the announcement that 50% had been tendered. The Pala Offer was formally launched on February 25, 2009 by means of a Take-over Bid Circular.

[20] In a letter to Neo's management dated February 9, 2009, Pala asked Neo to waive the Minimum Tender Condition contained in the First Shareholder Rights Plan.

[21] On February 12, 2009, the Neo Board adopted a second shareholder rights plan. The Second Shareholder Rights Plan is substantially similar to the First Shareholder Rights Plan except that it requires that any take-over bid be made to all Neo shareholders for *all* of their shares. In a press release announcing the adoption of the Second Shareholder Rights Plan, the Neo Board articulated the purpose of the Second Shareholder Rights Plan as follows:

> to prevent the acquisition of control of, or a creeping takeover bid for, the Company by means of a partial bid. The [Second Shareholder Rights Plan] requires that any offer to acquire shares of the Company be made to all shareholders for all of their shares to ensure that all shareholders of the Company are treated equally and fairly in connection with any take-over bid for the company. The [Second Shareholder Rights Plan] is being adopted to discourage discriminatory, coercive or unfair attempts to take over the Company.

[22] On February 24, 2009, Pala submitted a shareholder proposal (pursuant to section 137 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended (the "**CBCA**")) which sought the termination of the First Shareholder Rights Plan. On March 10, 2009, the Neo Board declined Pala's request to put the First Shareholder Rights Plan to a shareholder vote on the grounds, among others, that the request had not been made in a timely manner.

[23] On March 9, 2009, the Neo Board issued a press release announcing its Directors' Circular, dated March 9, 2009 and its accompanying recommendation that Neo shareholders reject the Pala Offer. On March 24, 2009 Neo filed its Notice of Annual and Special Meeting of the shareholders and Management Information Circular with a meeting date of April 24, 2009. One of the agenda items was the adoption of the Second Shareholder Rights Plan.

[24] On April 8, 2009, Pala proposed to limit the Pala Offer to a maximum of 13.8 million shares or 12% of the issued and outstanding shares of Neo. This proposal was conditional on: (i) Neo waiving the application of the First Shareholder Rights Plan; and (ii) Neo removing the Second Shareholder Rights Plan from the Agenda of the Special Meeting. The proposal was open until April 14, 2009. On April 14, 2009, Neo responded to Pala and the proposed amendment to the Pala Offer, and rejected the proposal on the basis that its board believed the Pala Offer to be inadequate from a financial point of view.

[25] On April 21, 2009, Neo issued a release providing an update on the Second Shareholder Rights Plan. The press release stated that the Second Shareholder Rights Plan was adopted in direct response to the Pala Offer and "will remain in effect until the 2010 annual meeting of the shareholders".

[26] On April 21, 2009, Pala issued a press release announcing its intention to vary and extend the Pala Offer to: (i) increase the offer price to $1.70 per share; (ii) decrease the maximum number of shares to be taken up to a maximum of 10.6 million; and (iii) extend the expiry time of the Pala Offer.

[27] At Neo's Annual and Special Meeting on April 24, 2009, Neo Shareholders passed a resolution to approve, ratify and confirm the adoption of the Second Shareholder Rights Plan. In a report of the voting results for the Annual and Special Meeting filed on SEDAR on April 30, 2009 pursuant to section 11.3 of National Instrument 51-102 – *Continuous Disclosure Obligations*, Neo indicated that excluding Pala's holdings, 56,199,241 shares representing 81.24% of the shares voted were in favour of the Second Shareholder Rights Plan and 12,976,593 shares representing 18.76% of the shares voted were against the Second Shareholder Rights Plan. Although not in the agreed statement of facts, it was not contested that 82.74% of Neo's shares were represented in person and by proxy at the meeting.

[28] On April 27, 2009, Pala filed its Notice of Variation and Extension which: (i) increased the offer price to $1.70 per share; (ii) extended the offer to May 15, 2009; and (iii) decreased the maximum number of shares to be taken up to 10.6 million.

III. ISSUES

[29] The Application raises the following legal issues:

1. Under what circumstances generally should the Commission exercise its public interest jurisdiction to cease trade a shareholder rights plan?

2. In the circumstances of this case, including the fact that the Second Shareholder Rights Plan was adopted as a tactical and strategic defense aimed at the Pala Offer, are there good and sufficient reasons for the Commission to exercise its jurisdiction to set aside Neo Board's adoption of the Second Shareholder Rights Plan?

3. If the Second Shareholder Rights Plan is allowed to stand, has the time come for it to be terminated by the Commission?

IV. SUMMARY OF CONCLUSION

[30] In this case, the applicants assert that Neo's "pill must go", and urge us to exercise our public interest jurisdiction to "cease trade" the Second Shareholder Rights Plan. In all of the circumstances, we are not satisfied that it is in the public interest to grant the relief sought at this time.

[31] While we will expand on these points below, we are influenced by the following considerations, as we noted in our decision of May 11, 2009:

(a) the Second Shareholder Rights Plan was adopted by the Neo Board in the context of, and in response to the Pala Offer;

(b) there is no evidence that the process undertaken by the Neo Board to evaluate and respond to the Pala Offer, including the decision to implement the Second Shareholder Rights Plan, was not carried out in what the Neo Board determined to be the best interests of the corporation and of Neo's shareholders, as a whole;

(c) an overwhelming majority of Neo's shareholders (excluding Pala) approved the Second Shareholder Rights Plan while the Pala Offer remained outstanding;

(d) the evidence supports a finding that Neo's shareholders were, or were provided with a reasonable opportunity to be, sufficiently informed about the Second Shareholder Rights Plan prior to casting their votes, and there is no evidence that Neo's shareholders were insufficiently informed; and

(e) there is no evidence to suggest that management or the Neo Board coerced or unduly pressured Neo's shareholders to approve the Second Shareholder Rights Plan.

V. LAW AND ANALYSIS

A. Under what circumstances generally should the Commission exercise its public interest jurisdiction to cease trade a shareholder rights plan?

[32] At the outset, it is important for us to keep in mind that we, as a Commission, are being asked to proactively intervene with, and, in fact, reverse the manifest intention of the Neo Board, which is accountable to the shareholders as a whole. The request in our view, must be considered carefully and with due caution.

[33] It is well established that the Commission has broad discretion in determining whether to exercise its public interest jurisdiction in a given matter. As the Supreme Court noted in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 ("*Asbestos*") at para. 39:

> [s]ection 127(1) of the Act provides the OSC with the jurisdiction to intervene in activities related to the Ontario capital markets when it is in the public interest to do so. The legislature clearly intended that the OSC have a very wide discretion in such matters. The permissive language of s. 127(1) expresses an intent to leave it for the OSC to determine whether and how to intervene in a particular case:
>
> > **127.** (1) 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 . . . . [emphasis in original]

[34] The scope of the Commission's public interest jurisdiction, however, must be interpreted in the context of the purpose of the Act as a whole. As the Supreme Court stated in *Asbestos* at para. 41:

> … the public interest jurisdiction of the OSC is not unlimited. Its precise nature and scope should be assessed by considering s. 127 in context. Two aspects of the public interest jurisdiction are of particular importance in this regard. First, it is important to keep in mind that the OSC's public interest jurisdiction is animated in part by both of the purposes of the Act described in s. 1.1, namely "to provide protection to investors from unfair, improper or fraudulent practices" and "to foster fair and efficient capital markets and confidence in capital markets". Therefore, in considering an order in the public interest, it is an error to focus only on the fair treatment of investors. The effect of an intervention in the public interest on capital market efficiencies and public confidence in the capital markets should also be considered. [emphasis in original]

[35] While the Commission has broad discretion in exercising its public interest jurisdiction, and it will not hesitate to do so in the appropriate circumstances, we are mindful of the fact that a degree of deference is owed to the decision of the board of directors of a market participant with respect to the issue under review. As the Commission noted in *Re Canadian Tire Corp.* (1987), 10 O.S.C.B. 857 at paras.154-155:

> … it would wreak havoc in the capital markets if the Commission took to itself a jurisdiction to interfere in a wide range of transactions on the basis of its view of fairness through the use of the cease-trade power under s. 123 [now s. 127]… The Commission's mandate under s. 123 is not to interfere in market transactions under some presumed rubric of insuring fairness.
>
> The Commission was cautious in its wording in *Cablecasting* and we repeat that caution here. To invoke the public interest test of s. 123, particularly in the absence of a demonstrated breach of the Act, the regulations or a policy statement, the conduct or transaction must clearly be demonstrated to be abusive of shareholders in particular, and of the capital markets in general. A showing of abuse is something different from, and goes beyond, a complaint of unfairness. A complaint of unfairness may well be involved in a transaction that is said to be abusive, but they are different tests. Moreover, the abuse must be such that it can be shown to the Commission's satisfaction that a question of the public interest is involved. That almost invariably will mean some showing of a broader impact on the capital markets and their operation.

[36] The Commission has the power to order that trading cease in respect of any securities issued under, or in connection with, a shareholder rights plan, if, in the Commission's opinion, it is in the "public interest" to make such an order, pursuant to section 127 of the Act. Subsection 1.1(1) of National Policy 62-202 – *Take-Over Bids – Defensive Tactics* ("**NP 62-202**") states:

> [t]he Canadian securities regulatory authorities recognize that take-over bids play an important role in the economy by acting as a discipline on corporate management and as a means of reallocating economic resources to their best uses. In considering the merits of a take-over bid, there is a possibility that the interests of management of the target company will differ from those of its shareholders. Management of a target company may take one or more of the following actions in response to a bid that it opposes:
>
> 1. Attempt to persuade shareholders to reject the bid.
>
> 2. Take action to maximize the return to shareholders including soliciting a higher bid from a third party.
>
> 3. Take other defensive measures to defeat the bid.

[37] In determining how the Commission exercises its public interest jurisdiction in the circumstances of a hostile take-over bid, this panel has regard to the objectives of the take-over bid provisions as stated in section 1.1 of NP 62-202. That section provides that:

> …
>
> (2) [t]he primary objective of the take-over bid provisions of Canadian securities legislation is the protection of the bona fide interests of the shareholders of the target company. A secondary objective is to provide a regulatory framework within which take-over bids may proceed in an open and even-handed environment. The take-over bid provisions should favour neither the offeror nor the management of the target company, and should leave the shareholders of the target company free to make a fully informed decision. The Canadian securities regulatory authorities are

> concerned that certain defensive measures taken by management of a target company may have the effect of denying to shareholders the ability to make such a decision and of frustrating an open take-over bid process.
>
> …
>
> (5) The Canadian securities regulatory authorities consider that unrestricted auctions produce the most desirable results in take-over bids and they are reluctant to intervene in contested bids. However, they will take appropriate action if they become aware of defensive tactics that will likely result in shareholders being deprived of the ability to respond to a take-over bid or to a competing bid.
>
> (6) The Canadian securities regulatory authorities appreciate that defensive tactics… may be taken by a board of directors of a target company in a genuine attempt to obtain a better bid. Tactics that are likely to deny or limit severely the ability of the shareholders to respond to a take-over bid or a competing bid may result in action by the Canadian securities regulatory authorities....

[38] It is worth emphasizing that the language in subsection 1.1(6) of NP 62-202 is permissive; it recognizes that the Commission retains a discretion to intervene, in appropriate circumstances, where the Commission has formed the view that it is in the public interest to do so.

[39] When dealing specifically with shareholder rights plans, the Commission has historically taken the approach of balancing the public interest regarding the right of the shareholders of the target to tender their shares to the bidder of their choice against the duties of the target board to maximize shareholder value (*Re Falconbridge Limited* (2006), 29 O.S.C.B. 6783 ("*Falconbridge*") at para. 33).

[40] In *Lac Minerals,* the Commission stated:

> [t]he Commission will only make an order under section 127 of the Act when it is in the public interest to do so. In considering whether to make an order in this case, the real issue the Commission has to determine was whether, the extent to which, and when the Commission should interfere with the conduct of the Lac Board, professed to be directed at maximizing shareholder value, in the interests of allowing the shareholders of Lac to respond to one of the two outstanding take-over bids.
>
> This issue involved interesting questions about the relationship between securities law and corporate law. It raised the tension between (i) the board's duty to manage the corporation honestly and in good faith with a view to the best interests of the corporation; and (ii) the shareholders' "right" to decide whether to sell their shares in response to a take-over bid.
>
> (*Re Lac Minerals Ltd. and Royal Oak Mines Inc.* (1994), 17 O.S.C.B. 4963 ("*Lac Minerals*") at 4968-4969)

[41] Similarly, in *Royal Host*, the Ontario, British Columbia and Alberta securities commissions noted that the challenge was:

> … finding the appropriate balance between permitting the directors to fulfill their duty to maximize shareholder value in the manner they see fit and protecting the right of the shareholders to decide whether to tender their shares to the bid.
>
> (*Re Royal Host Real Estate Investment Trust and Canadian Income Properties Real Estate Investment Trust* (1999), 22 O.S.C.B. 7819 ("*Royal Host*") at 7828)

[42] In deciding whether interference with a decision of a board of directors is necessary to protect the bona fide interests of target shareholders, the Commission may consider any number of factors. These factors include but are not limited to:

(a) whether shareholder approval of the rights plan was obtained;

(b) when the plan was adopted;

(c) whether there is broad shareholder support for the continued operation of the plan;

(d) the size and complexity of the target company;

(e) the other defensive tactics, if any, implemented by the target company;

(f) the number of potential, viable offerors;

(g) the steps taken by the target company to find an alternative bid or transaction that would be better for the shareholders;

(h) the likelihood that, if given further time, the target company will be able to find a better bid or transaction;

(i) the nature of the bid, including whether it is coercive or unfair to the shareholders of the target company;

(j) the length of time since the bid was announced and made;

(k) the likelihood that the bid will not extend if the rights plan is not terminated.

(*Royal Host* at 7828)

[43] Which factors are relevant will vary from case to case since all shareholder rights plans are unique to the circumstances of the bid (*Falconbridge* at para. 36). The Commission has made it clear that:

> … it is fruitless to search for the "holy grail" of a specific test, or series of tests, that can be applied in all circumstances. Take over bids are fact specific; the relevant factors, and the relative importance to be attached to each, will vary from case to case. As a result, a test that focuses on certain factors to the exclusion of others will almost certainly be inappropriate in some cases to which we attempt to apply it.
>
> (*Royal Host* at 7828)

[44] The Commission has consistently considered shareholder support of a rights plan as relevant when evaluating whether to "cease trade" a rights plan. In addition to being one of the *Royal Host* factors, the Commission specifically acknowledges in subsection 1.1(3) of NP 62-202 that it is "prepared to examine target company tactics in specific cases to determine whether they are abusive of shareholder rights. Prior shareholder approval of corporate action would, in appropriate cases, allay such concerns". This Commission stated in *Falconbridge* that shareholder approval was a relevant consideration. As counsel for Pala properly point out, however, shareholder approval does not necessarily mean that a rights plan is protected from the Commission's "public interest" jurisdiction.

[45] As the Commission stated in *Re Cara Operations Ltd.* (2002), 25 O.S.C.B. 7997 ("*Re Cara*") at para. 65:

> [i]f a plan does not have shareholder approval, it generally will be suspect as not being in the best interest of the shareholders; however, shareholder approval of itself will not establish that a plan is in the best interests of shareholders.

[46] Further, it is not simply that shareholder approval has been given that is an influential factor; rather, such approval ought to be informed, provided freely and fairly, and in the absence of coercion or undue pressure (*Re Pulse Data Inc.,* 2007 ABASC 895 ("*Pulse Data*") at para. 101 and *Re MDC Corporation and Regal Greetings & Gifts Inc.* (1994), 17 O.S.C.B. 4971 ("*Regal*") at para. 11).

[47] In summary, the Commission should examine all of the circumstances surrounding the establishment of a shareholder rights plan, including whether informed shareholder approval was given, and the context of such shareholder approval.

B. In the circumstances of this case, are there good and sufficient reasons for this Commission to exercise its public interest jurisdiction to set aside Neo Board's adoption of the Second Shareholder Rights Plan?

[48] In this case, our analysis is guided by the factors discussed above. However, given the unique fact scenario which has been presented to us, we will only make reference to those factors which are relevant to disposing of the issues at hand.

[49] The unique circumstances of this case are worth summarizing here:

1. Pala is Neo's largest shareholder, holding 20.46% of the issued and outstanding Neo shares.

2. The Pala Offer is an unsolicited partial bid, for up to 10.6 million shares of Neo (approximately 9.5%). If the Pala Offer were to be successful, Pala would hold a 29.9% interest in Neo.

3. The Second Shareholder Rights Plan was adopted by the Neo Board in the context of, and in direct response to the Pala Offer.

4. An overwhelming majority of Neo's shareholders (excluding Pala) approved the Second Shareholder Rights Plan. The record shows that: (i) excluding Pala's holdings, 81.24% of the shares voted at Neo's Annual and Special Meeting on April 24, 2009 were in favour of the Second Shareholder Rights Plan; and (ii) 82.74% of Neo's shares were represented in person and by proxy at the meeting.

5. Prior to casting a vote on the approval of the Second Shareholder Rights Plan, Neo's shareholders were provided with a number of documents which contained detailed information about Neo's financial position at the time of the Pala Offer, the Pala Offer itself and the Second Shareholder Rights Plan, including: (i) the Take-Over Bid Circular; (ii) the Directors' Circular rejecting the Pala Offer; (iii) the Management Information Circular; and (iv) a press release dated April 16, 2009 issued by Pala for the benefit of Neo's shareholders discussing the impact of adopting the Second Shareholder Rights Plan which contains a link to an online presentation made by Pala for Neo's shareholders outlining the benefits of the Pala Offer.

[50] Against this background, we turn to the consideration of the impact of shareholder approval and support of a rights plan.

1. Was the Shareholder Approval Informed?

a. Position of the Parties

(i) Neo

[51] Neo submits that it is trite law that corporations are governed by a majority of their shareholders and the Commission has never second-guessed the judgment of such an overwhelming majority of shareholders as to their own interests and ought not do so in this case.

[52] Neo takes the position that the premise of take-over bid legislation in Canada is based on shareholder choice (*Re Chapters Inc.* (2001), 24 O.S.C.B. 1657 at 1662). According to Neo, shareholder approval is an important and highly relevant consideration in determining whether a rights plan is in the public interest, particularly when such approval is informed (*Royal Host* at 7828; *Pulse Data* at para. 101; and *Regal* at 4980).

[53] In Neo's view, the overwhelming shareholder ratification of the Second Shareholder Rights Plan at the Annual and Special Meeting held on April 24, 2009 is determinative and it cannot be argued that Neo's shareholders have been precluded unreasonably from considering or responding to the Pala Offer. According to Neo, the vote to approve the tactical pill was clearly a vote to reject the Pala Offer since: (i) the vote was informed; (ii) all shareholders knew that no competing or alternative bid was imminent; and (iii) the vote was active. As such, there is no need for the Commission to provide shareholders with another opportunity to do so.

[54] In support of its position, Neo relies on the Alberta Securities Commission decision in *Pulse Data*, which, in Neo's submissions is the only case involving shareholder rights plans that is directly on point and, as such, should be determinative. In *Pulse Data*, the Alberta Securities Commission dismissed the bidder's application to cease trade the rights plan where approximately 74% of the shares voted at the shareholders' meeting were voted in favour of the rights plan. The Alberta Securities Commission stated, in *Pulse Data* at para. 87, that there is no "…public interest reason to override the clear expression of shareholder democracy manifested by the very recent and fully informed shareholder approval of the Rights Plan in the face of the Offer".

(ii) Pala

[55] Pala contends that Neo's position overemphasizes the impact of shareholders under Canadian corporate and securities law and oversimplifies the role of the Commission in the context of "cease trade" applications. In Pala's view, rather than being governed by a majority of its shareholders, the business and affairs of a corporation are managed or supervised by its directors who, in turn, are subject to fiduciary duties owed to the corporation.

[56] Pala takes the position that while shareholder approval is a relevant consideration for the Commission, such approval of itself will *not* establish that a plan is in the best interest of the shareholders. It is only one of the many indicia the Commission must consider when deciding whether a pill should be allowed to continue.

[57] Pala submits that the Alberta Securities Commission decision in Pulse Data is distinguishable on various grounds. Moreover, it argues that the *Pulse Data* decision is troubling in many respects and, in Pala's view, is wrongly decided. Lastly, Pala contends that even if *Pulse Data* was rightfully decided, it does not represent Ontario law and has only persuasive value.

[58] In support of its position, Pala relies on the Commission's decision in *Re Cara* at para. 65, where the Commission stated that:

> [i]f a plan does not have shareholder approval, it generally will be suspect as not being in the best interest of the shareholders; however, shareholder approval of itself will not establish that a plan is in the best interest of the shareholders.

[59] Pala further contends that the best interpretation of the shareholder ratification of Neo's Second Shareholder Rights Plan is that Neo's shareholders simply voted to give management more time to pursue value-enhancing transactions. Since affirmation of the Second Shareholder Rights Plan by Neo's shareholders is but one consideration for the Commission in determining whether to exercise its public interest jurisdiction, Pala takes the position that the Commission should give little or no weight to the shareholder vote.

(iii) Staff

[60] Staff argues that the overwhelming shareholder ratification of the Second Shareholder Rights Plan on April 24, 2009 is determinative of the entire issue of whether the Commission should exercise its public interest jurisdiction to cease trade the Second Shareholder Rights Plan. According to Staff, the Commission should not intervene and cease trade the Second Shareholder Rights Plan unless the Commission is of the view that:

(i) in approving the Second Shareholder Rights Plan, Neo shareholders were insufficiently informed about the Second Shareholder Rights Plan and the Pala Offer;

(ii) there is evidence to suggest that management or the Neo Board coerced or unduly pressured Neo's shareholders to approve the Second Shareholder Rights Plan; or

(iii) there is evidence that Neo Board's process in evaluating and responding to the Pala Offer, including the decision to implement the Second Shareholder Rights Plan, was not done in the best interest of Neo's shareholders.

[61] Staff refers to two decisions in which informed shareholder approval of a rights plan was found to be strongly persuasive or determinative. In *Regal*, in deciding to maintain a rights plan in the face of a hostile bid, the Commission placed substantial weight on the fact that 71% of shareholders had approved the board's decision to implement the plan one week before the hostile bid was launched. Similarly, as discussed above, the Alberta Securities Commission in *Pulse Data* found it determinative that 74% of the shares voted at the shareholders' meeting were voted in favour of the rights plan, allowing the plan to stand.

[62] Furthermore, Staff's submissions point to subsection 1.1(3) of NP 62-202, which states that the Commission is "…prepared to examine the target company tactics in specific cases to determine whether they are abusive of shareholder rights. Prior shareholder approval of corporate action would, in appropriate cases, allay such concerns".

[63] Staff submits that Neo's shareholders made an informed decision when they voted on the Second Shareholder Rights Plan. This vote in favour of the Second Shareholder Rights Plan went against the recommendation of RiskMetrics, an institution whose voting guidelines are used in Canada by institutional shareholders, which, in Staff's view, strongly suggests a fully informed decision on the part of Neo's shareholders. According to Staff, by voting for the Second Shareholder Rights Plan, Neo's shareholders knew, or ought reasonably to have known, that they were voting against the Pala Offer. As such, any concerns that the Second Shareholder Rights Plan may be abusive of shareholder rights should be allayed.

b. Analysis

[64] We have been provided with, referred to, and considered more than a dozen cases involving shareholder rights plans decided in the last two decades. While all were informative, of these cases, we have found two decisions to be of particular assistance.

[65] In *Regal*, the board of directors of the target, Regal Greetings & Gifts ("**Regal**") adopted a shareholder rights plan on March 4, 1994. The plan was ratified by Regal's shareholders at the first annual and special meeting held on July 20, 1994, one week before the bidder, MDC, announced its intention to make an all-cash take-over bid for all of the issued and outstanding common shares of Regal, not including the shares already owned by MDC or its affiliates or associates.

[66] In deciding to maintain the rights plan, the Commission put substantial weight on: (i) the fact that 71% of shareholders had approved the board's decision to implement the plan one week before the hostile bid was launched; and (ii) the fact that the decision was informed by the management information circular which notified the shareholders of the plan's purpose (to pursue alternatives to maximize shareholder value in the event of an unsolicited bid). In addition, the Commission noted that around

80% of Regal's shares were held by 15 or 16 institutional shareholders, who were not unfamiliar with rights plans. The Commission therefore concluded that the views of the holders of the majority of the common shares could be ascertained at the time of the application. The Commission stated:

> … [n]o shareholders, other than MDC, came forward to ask us to terminate the Plan so as to allow the RGG bid to be completed. Two substantial shareholders (or representatives of shareholders) told us that the "time had not yet come". No other evidence was led on the subject by MDC. Accordingly, we had no reason to believe that the shareholders of Regal, other than MDC, wanted us to terminate the Plan as against MDC at the time of the hearing.
>
> (*Regal* at 4980)

[67] In *Pulse Data*, the Alberta Securities Commission considered whether it is appropriate to take action against a "tactical pill", which had been approved by the shareholders during the course of a pending hostile offer in the absence of any competing or alternative offer. *Pulse Data* involved an offer for all the shares of the target which was not supported by a "majority of the minority" and thus prevented the offeror from acquiring a control position. In dismissing the offeror's application to cease trade the rights plan, the Alberta Securities Commission found it determinative that: (i) a substantial majority of the target's shareholders representing approximately 74% of the shares voted at the shareholders' meeting voted in favour of the rights plan; (ii) the ratification vote took place in the face of the take-over bid which was the focus of the recently adopted rights plan; and (iii) the shareholders' approval was informed. The Alberta Securities Commission stated:

> [i]n our view, this very recent and informed Pulse Shareholder approval, given in the absence of any imminent alternatives to the Offer, demonstrated that the continuation of the Rights Plan as at 27 September 2007 was in the *bona fide* interests of Pulse Shareholders…
>
> (*Pulse Data* at para. 102)

[68] It is noteworthy that the Alberta Securities Commission placed great emphasis on the fact that, in order to be determinative, any shareholder approval in the face of a hostile bid must be informed. In concluding that the shareholder vote represented an informed decision of the target shareholders, the Alberta Securities Commission pointed to the following considerations:

1. Prior to voting, shareholders had disclosure of all relevant information about the offer, the rights plan and the effect of the plan on the offer.

2. This information came from multiple documents including the Offer to Purchase and Circular, a Notice of Variation, the Directors' Circular, the Management Information Circular in connection with the shareholders' meeting called to seek approval of the plan, and four valuation analyses referred to in the Directors' Circular.

3. This information included details about alternative transactions, the board's plans going forward, the value of the offer and the effect the rights plan would have on the offeror's ability to make a creeping take-over of the company.

4. Collectively, the various disclosure documents gave Pulse shareholders the necessary information to evaluate the rights plan in the face of a hostile bid.

(See *Pulse Data* at para. 101)

[69] We are in agreement with the position taken by the Alberta Securities Commission that, as a general matter, recent and informed shareholder ratification of a rights plan, erected in the face of the hostile take-over bid is suggestive of a finding that the continuation of the shareholder rights plan is in the *bona fide* interest of a target's shareholders.

[70] Turning to the case at hand, in deciding that it is not in the public interest to cease trade the Second Shareholder Rights Plan at this time, we were influenced by the following considerations:

1. The Second Shareholder Rights Plan was adopted by the Neo Board in the context of, and in direct response to the Pala Offer.

2. An overwhelming majority of Neo's shareholders (excluding Pala) approved the Second Shareholder Rights Plan. The record shows that (i) excluding Pala's holdings, 81.24% of the shares voted at Neo's Annual and Special Meeting on April 24, 2009 were in favour of the Second Shareholder Rights Plan.

3. 82.74% of Neo's shares were represented in person and by proxy at the meeting. The record indicates that this was the highest voting level in five years.

4. The evidence supports a finding that Neo's shareholders were sufficiently informed about the Second Shareholder Rights Plan prior to casting their votes (At the very least, shareholders were provided with a reasonable opportunity to be informed, and there is no evidence that the shareholders were insufficiently informed.).

[71] In support of the finding that Neo's shareholders were sufficiently informed when they voted to ratify the Second Shareholder Rights Plan, we note the following:

1. Neo's shareholders had the benefit of disclosure of all relevant information by virtue of having sufficient time to review and consider the following sources: (i) the Take-Over Bid Circular; (ii) the Directors' Circular rejecting the Pala Offer; (iii) the Management Information Circular; and (iv) a press release dated April 16, 2009 issued by Pala for the benefit of Neo's shareholders, discussing the impact of adopting the Second Shareholder Rights Plan, which contains a link to an online presentation made by Pala to Neo's shareholders outlining the benefits of the Pala Offer.

2. Specifically,

   (a) The Directors' Circular dated March 9, 2009 contained the recommendation that Neo's shareholders reject the Pala Offer for, among others, the following reasons: (i) the Pala Offer is financially inadequate; (ii) the Pala Offer seeks to provide Pala with effective control of Neo, without offering an appropriate control premium for the shares purchased and no premium for the shares not purchased; (iii) if successful, the Pala Offer will have an adverse effect on the liquidity of the shares; (iv) the Pala Offer significantly undervalues Neo's assets and businesses; (v) the Pala Offer does not reflect Neo's strong financial position, the value of Neo's recent strategic initiatives and Neo's future growth and acquisition opportunities; (vi) the timing of the Pala Offer is opportunistic; and (vii) the Pala Offer is not a permitted bid under the Second Shareholders Rights Plan.

   (b) The Management Information Circular dated March 24, 2009 (prepared in connection with the Annual and Special Meeting of the Shareholders of Neo which took place on April 24, 2009) provided an overview of the Second Shareholder Rights Plan, including its stated purpose to "prevent unfair attempts to make a creeping take-over of the Corporation (such as the Pala Partial Offer)".

   (c) The Pala press release issued on April 16, 2009 specifically advises Neo shareholders that the Second Shareholder Rights Plan strips Neo Shareholders of a fundamental investment right: the ability to sell their shares at the time of their choosing. Moreover, the press release contains a link to an online presentation prepared by Pala for the benefit of Neo's shareholder which outlines the advantages to tendering to the Pala Offer and the impact of adopting the Second Shareholder Rights Plan. The presentation clearly states at page 15 that "the [Second Shareholder Rights Plan] prevents Neo shareholders from being [able] to participate in Pala's Partial Offer".

3. There is further evidence of an informed shareholder decision as evidenced by the fact that several Neo institutional shareholders voted in favour of the Second Shareholder Rights Plan, despite their normal policy of voting against rights plans that ban partial bids. This vote in favour of the Second Shareholder Rights Plan went against the recommendation of RiskMetrics. We agree with Staff's submission that such a vote suggests a fully informed decision on the part of Neo's shareholders in this instance.

[72] We are therefore of the opinion that by voting for the Second Shareholder Rights Plan, Neo's shareholders knew, or ought reasonably to have known, that they were voting against the Pala Offer and we have not been presented with any evidence to suggest otherwise.

[73] This being said, we endorse Staff's position that a fully informed shareholder approval of a rights plan implemented in the face of a hostile bid is not determinative where:

1. there is evidence that the board process in evaluating and responding to the bid, including the decision to implement a shareholder rights plan, was not carried out in the best interest of the corporation and the target's shareholders, as a whole; or

2. there is evidence to suggest that management or the board of directors coerced or unduly pressured the target's shareholders to approve the shareholder rights plan.

[74] We consider these two issues below and assess whether any factors exist which would counter-balance the impact of shareholder approval for the continuation of the Second Shareholder Rights Plan.

2. Is there Evidence that the board process in evaluating and responding to the bid, including the decision to implement a shareholder rights plan, was not carried out in the best interest of the corporation and the target's shareholders, as a whole?

a. Position of the Parties

(i) Pala

[75] According to Pala, securities commissions have exercised, and should exercise their discretion to set aside shareholder rights plans that have been approved by shareholders. When they have not done so, it is because they see a continued legitimate purpose to the operation of the pill at least for a further limited period of time (*Re Cara*, *Royal Host*, *Lac Minerals* and *Regal*).

[76] Pala takes the view that an implicit but vitally important prerequisite to allowing a rights plan to continue is a determination that the board is, in fact, fulfilling its fiduciary duty by pursuing alternative value-enhancing transactions. According to Pala, the only proper use of a shareholder rights plan in the face of a take-over bid is to allow a board of directors sufficient time to seek out alternative bidders and only for the amount of time necessary to accomplish that task.

[77] In support of this proposition, Pala makes reference to subsection 1.1(6) of NP 62-202 which states that defensive tactics "…may be taken by a board of directors of a target company in a *genuine attempt to obtain a better bid*". [emphasis added]

[78] Pala further submits that Canadian law does not permit the Neo Board to permanently "just say no" to the Pala Offer. Pala refers to the Ontario Court of Appeal decision in *Maple Leaf Foods Inc. v. Schneider Corp.*, where the Court stated:

> [a]n auction is merely one way to prevent the conflicts of interest that may arise when there is a change of control by requiring that directors act in a neutral manner toward a number of bidders: *Barkan v. Amstead Industries Inc.* 567 A.2d 1279 (Del. 1989). The more recent *Paramount* decision in the United States … has recast the obligation of directors when there is a bid for change of control as an obligation to seek *the best value reasonably available to shareholders in the circumstances*… [emphasis added]
>
> When it becomes clear that a company is for sale and there are several bidders, an auction is an appropriate mechanism to ensure that the board of a target company acts in a neutral manner to achieve the best value reasonably available to shareholders in the circumstances. When the board has received a single offer and has no reliable grounds upon which to judge its adequacy, *a canvass of the market to determine if higher bids may be elicited is appropriate, and may be necessary*... [emphasis added.]
>
> (*Maple Leaf Foods Inc. v. Schneider Corp.* (1998), 42 O.R. (3d) 177 (Ont. C.A.) ("*Schneider*") at paras. 62 and 63)

[79] In Pala's submission, in the face of a take-over bid, the duty of directors is to "achieve the best value available to shareholders in the circumstances". At the very least, the Neo Board should be canvassing the market to determine whether higher bids may be elicited. According to Pala, the failure of the Neo Board to take any such steps, since the date the Pala Offer was announced, is a failure to properly discharge the fiduciary obligations owed by the Neo Board to Neo's shareholders.

[80] Pala further submits that there can be no doubt that a fundamental right of share ownership includes the right to freely alienate shares of a publicly traded corporation, subject only to very limited statutory exceptions. Pala makes reference to subsection 49(9) of the CBCA, which explicitly makes transferability a fundamental characteristic of a share:

> 49(9) A distributing corporation, any of the issued shares of which remain outstanding and are held by more than one person, *shall not have a restriction on the transfer of ownership of its shares* of any class or series except by way of a constraint permitted under section 174. [emphasis added]

[81] Pala also relies on the Supreme Court of Canada decision in *Edmonton Country Club v. Case* where the Court stated that "[t]he right of a shareholder to transfer his shares is undoubtedly one of the incidents of share ownership…" (*Edmonton Country Club Ltd. v. Case,* [1975] 1 S.C.R. 534 at 549). It also cites the Ontario Court of Appeal decision in *Royal Bank of Canada v. Central Capital Corp.* where the Court describes one of the basic rights of a shareholder to be "the right to transfer

ownership of the share" (R.M. Bryden in his chapter, "The Law of Dividends", contained in Ziegel ed., *Studies in Canadian Company Law* (1967), at p. 270, cited in *Royal Bank of Canada v. Central Capital Corp.* (1996), 132 D.L.R. (4th) 223 at para. 40).

[82] Pala argues that directors may make recommendations, but they cannot take steps to usurp the fundamental rights of ownership. Citing *Re Cara*, Pala states:

> [w]hile it may be important for shareholders to receive advice and recommendations from the directors of the target company as to the wisdom of accepting or rejecting a bid, and for directors to be satisfied that a particular bid is the best likely bid under the circumstances, in the last analysis the decision to accept or reject should be made by the shareholders, and not by the directors or others.
>
> (*Re Cara* at para. 53)

[83] Accordingly, Pala takes the position that it was improper for the Neo Board to implement a defensive mechanism which has the effect of denying Neo's shareholders the opportunity to tender to the Pala Offer.

[84] Similarly, given that the primary objective of NP 62-202 is the protection of the *bona fide* interests of the shareholders of the target company, Pala urges the Commission to be mindful not to thwart the ability of shareholders to exercise their fundamental right of ownership to sell their shares as they see fit.

[85] In oral submissions, counsel for Pala expanded on Pala's position by submitting that if the Commission is of the opinion that shareholder rights plans can be used for a purpose other than attempting to obtain a better bid, then public interest dictates that the Commission should allow such rights plans to stand only in the most egregious of circumstances where a serious risk of harm to shareholders arises. In Pala's view, that is not the case here.

[86] Pala takes issue with Neo's postion that in this case, Neo has taken appropriate steps to consider alternatives to maximize shareholder value. Pala submits that Neo was only paying lip service to this fundamental purpose by establishing an independent committee and retaining independent legal and financial advice. Pala points out that the Neo Board has yet to find a better deal even though the offer has been on the table for a significant period of time.

[87] Pala relies on the Alberta Securities Commission decision in *Re Samson Canada, Ltd.* (1999), 8 ASCS 1791 ("*Re Samson*") (QL) at 3 and *Re 1153298 Alberta Ltd.*, 2005 ABASC 725 at para. 52, where the Alberta Securities Commission has held that the board of the target company bears the onus of establishing that the rights plan is in the best interest of the shareholders. Pala also relies on the Commission's decision in *Re Cara* at para. 66, where it was held that if, in the face of a take-over bid, directors act in a manner that raises serious questions as to whether they are acting solely in the best interest of the shareholders, then the onus of establishing that the rights plan is in the best interest of the shareholders may be "significantly increased".

[88] Pala also argues that the additional defensive tactics adopted by the Neo Board serve to entrench management. In particular, Pala refers to certain change of control provisions in key executive employment agreements which could trigger payments of approximately $5 million in the event that any person acquires beneficial ownership of 30% of Neo's common shares. Pala submits that these change of control provisions necessarily deter parties from seeking control of Neo. In Pala's view, the decision of the Neo Board to implement these change of control provisions was taken with a view to dissuading Pala from continuing with its bid regardless of whether the rights plans are ceased traded. Therefore, Pala argues, this conduct strongly suggests that the Neo Board is motivated by considerations other than the best interests of shareholders. As such, relying on *Re Cara*, the Neo Board is under a significantly higher onus to justify the continuation of the rights plans, which it is unable to do.

(ii) Neo

[89] Neo submits that two core principles underlie the take-over bid rules, namely procedural fairness for all, and the fulfillment of the fiduciary duty of directors. These principles, Neo submits, must be reflected in conduct and recommendations that are based upon the best interests of the shareholders generally (*Re Cara* at paras. 58 and 61).

[90] Neo takes the position that, in adopting the Second Shareholder Rights Plan, the Neo Board did not breach its fiduciary duties to Neo's shareholders since: (i) the motivation behind their actions and decisions was a valid business purpose; and (ii) it exercised reasonable business judgment. As such, in Neo's view, there is no basis for the Commission to assert and exercise its public interest jurisdiction.

[91] According to Neo, Canadian courts have recognized the business judgment rule and have shown deference to a decision made by directors provided that the directors have acted reasonably and fairly. Neo further submits that Canadian

courts have not recognized a "Revlon duty" *per se* which established that, when effecting a change of control transaction involving a Delaware corporation, directors have a fiduciary obligation to maximize value for the shareholders (*Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986)). As such, in Neo's view, directors are not necessarily under an obligation, in all cases, to enter into a change of control transaction or put the company "in play" simply because it would immediately result in proceeds to shareholders above current market prices (*Schneider* at para. 61); boards of directors can "just say no" after due consideration of an offer.

[92] Neo also takes the position that its response was appropriate and reasonable in light of the Pala Offer, and was in the best interest of Neo's shareholders. In support of this contention, Neo lists the following dangers associated with a successful Pala Offer:

(a) The Pala Offer is, or could lead to a creeping take-over bid.

(b) Given Neo's wide shareholder base and the historically low voting levels at meetings of shareholders (ranging from 53% to 76%), the Pala Offer would provide Pala with effective control of Neo, without offering an appropriate control premium for the shares purchased.

(c) The Pala Offer does not reflect Neo's strong financial position, the value of Neo's recent strategic initiatives and Neo's future growth and acquisition opportunities. Neo argues that: (i) the Pala Offer is opportunistically timed to take advantage of a recent period during which prices generally have declined as a result of the current economic crisis (65.7% drop in the price of Neo's shares since February 8, 2008); and (ii) the Pala Offer significantly undervalues Neo's assets and businesses.

(d) If Pala acquires effective control of Neo subsequent to a successful Pala Offering, there is a substantial risk associated with the potential loss of key management personnel.

(e) The Pala Offer seeks to provide Pala with effective control of Neo, without offering an appropriate control premium for the shares purchased and no premium for the shares not purchased.

(f) If successful, the Pala Offer will have an adverse effect on the liquidity of Neo's shares.

(g) Pala's intentions with respect to Neo are unclear.

[93] Neo submits that its board complied with its fiduciary obligations to consider the interests of all shareholders by taking the following actions:

(a) the Neo Board carefully reviewed and evaluated the Pala Offer by establishing a special committee of independent directors;

(b) the Neo Board obtained legal advice before implementing the Second Shareholder Rights Plan;

(c) the Neo Board retained financial advisors who gave an opinion that the consideration offered by Pala for Neo shares is inadequate;

(d) the Neo Board considered alternatives to maximizing shareholder value, including maintaining the status quo and pursuing the company's current business plan; and

(e) the Neo Board put the Second Shareholder Rights Plan to a shareholder vote at the next annual shareholder meeting.

[94] In addition, Neo disagrees with Pala's allegation that the Neo Board and management have taken steps that have the effect of entrenching management. In support of its position, Neo points out that the change of control provisions had existed in all the agreements and were disclosed years before the Pala Offer. Moreover, Neo submits that Pala has consistently praised the work of Neo's management and cited the strong management of Neo as a reason for its investment.

[95] Neo further submits that even if the Neo Board had made an improper decision in implementing the Second Shareholder Rights Plan (which is strongly denied), under Canadian corporate law, the impropriety could be waived by a majority of shareholders voting at a meeting (see *Bamford v. Bamford*, [1969] 2 W.L.R. 1107 (Eng. C.A.)). It argues that should the Commission decide in favour of Pala and set aside the Second Shareholder Rights Plan, the Commission would effectively be substituting its business judgment for that of Neo's shareholders and the Neo Board. Neo's position is that Canadian courts and securities commissions have consistently said that they cannot and will not do that.

(iii) Staff

[96] Staff takes the position that the Neo Board has acted in the best interests of the shareholders as a whole and, as such, the Commission's intervention to "cease trade" the Second Shareholder Rights Plan is not required.

[97] Staff agrees with Neo's submissions that at least two underlying principles emerge from the rules and policies for take-over bids and the various rights plan hearings. The first is the principle of procedural fairness. The second is the principle of the fiduciary duty of the directors, members of the special committee of directors and advisors. In support of this position, Staff refers us to the Commission's decision in *Re Cara* where the Commission took the stance that the exercise of fiduciary duties "…should be reflected in conduct and recommendations that are based upon the best interest of shareholders generally and not those of any group of shareholders, bidders, potential bidders or others" (*Re Cara* at paras. 57-61).

[98] Staff also referred to *Pulse Data* in which the Alberta Securities Commission stated that it was reluctant to interfere with a decision of the target's board, which has a fiduciary duty to act in the best interests of shareholders, particularly where that decision has very recently been approved by informed shareholders.

[99] Staff is of the view that there is no evidence that the process undertaken by the Neo Board to evaluate and respond to the Pala Offer, including the decision to implement the Second Shareholder Rights Plan, was not carried out in what the Neo Board determined to be the best interests of the corporation and of Neo's shareholders, as a whole.

[100] Staff agrees with Neo's submissions that the Neo Board discharged its fiduciary obligations by: (i) establishing an independent special committee; and (ii) retaining independent legal and financial advisors to assist the independent special committee in reviewing the Pala Offer.

[101] Staff refers us to subsection 1.1(3) of NP 62-202 which states that "…it is inappropriate to specify a code of conduct for directors of a target company, in addition to the fiduciary standard required by corporate law". Notwithstanding, according to Staff, the Commission should and does scrutinize the board process. Where there is evidence that the process has been compromised or is questionable, it will be more difficult for the Commission to conclude that the board or special committee actions are taken with the view to the best interests of the target shareholders. However, Staff submits that no such evidence exists in the present case.

b. Analysis

[102] We agree with Neo and Staff that in *Re Cara*, the Commission recognized that at least two underlying and animating principles emerge from the rules, policies and cases in the context of take-over bids: (1) the principle of procedural fairness for all; and (2) the principle of the fiduciary duty of directors, members of a special committee of directors, and their advisors (*Re Cara* at paras. 58 and 61). It flows from these principles that the process of implementing a shareholder rights plan in the face of a hostile take-over bid must be carried out in accordance with the fiduciary obligations of the directors, which, under Canadian corporate law, are owed *to the corporation*.

[103] A review of the case law supports the position that in ascertaining whether a board of directors has discharged its fiduciary obligations, the Commission must give effect to the business judgment rule. As the Ontario Court of Appeal stated in Schneider:

> [t]he law as it has evolved in Ontario and Delaware has the common requirements that the court must be satisfied that the directors have acted reasonably and fairly. The court looks to see that the directors made a reasonable decision not a perfect decision. Provided the decision taken is within a range of reasonableness, the court ought not to substitute its opinion for that of the board even though subsequent events may have cast doubt on the board's determination. As long as the directors have selected one of several reasonable alternatives, deference is accorded to the board's decision…This formulation of deference to the decision of the board is known as the "business judgment rule"…
>
> (*Schneider* at para. 36)

[104] We are therefore left to consider whether the Neo Board exercised reasonable business judgment in furtherance of its fiduciary obligations: (i) in adopting the Second Shareholder Rights Plan in the face of the Pala Offer; and (ii) in subsequently deciding not to trigger an auction in order to maximize shareholder value at that time. In other words, were these decisions within the range of reasonable alternatives?

[105] In our view, the Neo Board was entitled to adopt the Second Shareholder Rights Plan in the face of the Pala Offer. Such defensive tactics "…are neither novel nor exotic" (*Falconbridge* at para. 36) and their adoption has been explicitly recognized for legitimate business purposes in NP 62-202. Based on the evidence before us, we find that the Neo Board

undertook a rigorous process to evaluate its response to the Pala Offer and identified a number of concerns, as identified above. The principal concern was that the Pala Offer would have constituted or facilitated a creeping take-over.

[106] Furthermore, although we accept Pala's position that a fundamental right of share ownership includes the right to freely alienate shares of a publicly traded corporation, the Canadian take-over bid regime, and in particular NP 62-202, recognizes that this fundamental right is subject to reasonable restrictions. Indeed, the Canadian take-over bid regime itself restricts alienability, on policy grounds, by imposing limits on the manner in which certain prospective buyers can acquire shares. By their very nature shareholder rights plans impose restrictions on a shareholder's right to freely dispose of shares. Nevertheless, as discussed above, such defensive tactics are expressly permitted by NP 62-202. Moreover, we are of the view that the overwhelming shareholder ratification of the Second Shareholder Rights Plan, in the circumstances of this case, and in the face of the outstanding Pala Offer, can be seen as a clear rejection of the Pala Offer. Therefore, we do not agree with Pala that Neo's shareholders were deprived of an opportunity to respond to the take-over bid, as contemplated by subsection 1.1(6) of NP 62-202.

[107] We acknowledge that in many instances a primary purpose for adopting a shareholder rights plan is to allow the board to pursue alternative value-enhancing transactions, which includes seeking an alternate bid. In fact, we recognize that in the circumstances of many of the cases referred to, and considered by us, that obligation may have crystallized. However, we do not see this as the only legitimate purpose for a shareholder rights plan. As stated above, Canadian law imposes and recognizes a fiduciary duty owed by a board to the corporation as a whole. The so-called "business judgment" rule properly permits directors to make appropriate decisions sufficient to fulfill their fiduciary obligations. To the extent that the scope and content of these duties were not clear in the context of a hostile take-over bid, they have been better amplified by the recent statements of the Supreme Court of Canada in *BCE Inc., Re*, [2008] 3 S.C.R. 560 ("*BCE*"). In that case, the Supreme Court discussed the fiduciary duty of directors as follows:

> The fiduciary duty of the directors to the corporation originated in the common law. It is a duty to act in the best interests of the corporation. Often the interests of shareholders and stakeholders are co-extensive with the interests of the corporation. But if they conflict, the directors' duty is clear – it is to the corporation: *Peoples Department Stores*.
>
> The fiduciary duty of the directors to the corporation is a broad, contextual concept. *It is not confined to short-term profit or share value. Where the corporation is an ongoing concern, it looks to the long-term interests of the corporation*… [emphasis added]
>
> In *Peoples Department Stores*, this Court found that although directors *must* consider the best interests of the corporation, it may also be appropriate, although *not mandatory*, to consider the impact of corporate decisions on shareholders or particular groups of stakeholder. As stated by Major and Deschamps JJ., at para. 42:
>
> > We accept as an accurate statement of law that in determining whether they are acting with a view to the best interests of the corporation it may be legitimate, given all the circumstances of a given case, for the board of directors to consider, *inter alia*, the interests of shareholders, employees, suppliers, creditors, consumers, governments and the environment. [emphasis in original]
>
> (*BCE* at paras. 37-39)

[108] The Court went on to state:

> …[d]irectors, acting in the best interests of the corporation, may be obliged to consider the impact of their decisions on corporate stakeholders, such as the debentureholders in these appeals … However, the directors owe a fiduciary duty to the corporation, and only to the corporation. People sometimes speak in terms of directors owing a duty to both the corporation and to stakeholders. Usually this is harmless, since the reasonable expectations of the stakeholder in a particular outcome often coincides with what is in the best interests of the corporation. However, cases (such as these appeals) may arise where these interests do not coincide. In such cases, it is important to be clear that the directors owe their duty to the corporation, not to stakeholders, and that the reasonable expectation of stakeholders is simply that the directors act in the best interests of the corporation.
>
> (*BCE* at para. 66)

[109] In our view, these statements make it clear that there is no specific formula to apply on directors in every case, including an obligation to permit and facilitate an auction of company shares each and every time an offeror makes a bid. In fact,

Canadian courts have historically not imposed such duty on directors to the corporation. As the Ontario Court of Appeal stated in *Schneider*:

> [t]he decision in *Revlon v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986), stands for the proposition that if a company is up for sale, the directors have an obligation to conduct an auction of the company's shares. Revlon is not the law in Ontario. In Ontario, an auction need not be held every time there is a change of control of a company.
>
> (*Schneider* at para. 61)

[110] We also defer to the comments of the Supreme Court of Canada in *BCE* where the Court noted:

> What is clear is that the *Revlon* line of cases has not displaced the fundamental rule that the duty of directors cannot be confined to particular priority rules, but is rather a function of business judgment of what is in the best interest of the corporation, in the particular situation it faces….
>
> (*BCE* at para. 87)

[111] We are bound by this principle as a matter of law, and have a duty to apply it in cases such as these. However, we add that in our view this articulation is not a deviation from past Commission determinations but is consistent with them.

[112] As discussed above, in this case, Pala submits that the *only* proper use of a shareholder rights plan in the face of a take-over bid is to allow a board of directors sufficient time to seek out alternative bidders. Consistent with the Supreme Court's statements in *BCE* and the established body of corporate case law it is our view that, shareholder rights plans *may* be adopted for the broader purpose of protecting the long-term interests of the shareholders, where, in the directors' reasonable business judgment, the implementation of a rights plan would be in the best interests of the corporation.

[113] Based on the evidence before us, we find that after assessing the offer the Neo Board concluded that: (i) the current economic circumstances are, if not unique, a once in a lifetime event and have depressed the market prices of shares in a broad range of public companies, including Neo; (ii) Neo has little debt, strong cash reserves and solid business relationships and so, at present, is well positioned not only to survive the current economic situation but also to emerge a stronger and more valuable enterprise upon the eventual return of more normal conditions; (iii) now is an absolutely inappropriate time for the collectivity of Neo's shareholders to run an auction or allow effective control of Neo to be acquired by any one shareholder as that would be an impediment to such a transaction in the future; and (iv) the effect of a bid by a financial investor such as Pala would not be advantageous at this time for either Neo as an enterprise or the collectivity of Neo shareholders.

[114] It is evident that, in the view of the Neo Board, avoiding an auction *at this time* was in the long-term best interest of the corporation and of the shareholders, as a whole. This decision reflects the business judgment of the Neo Board, and there is no evidence to suggest that it was made in any manner other than in furtherance of its fiduciary obligations to the corporation.

[115] The Commission has historically scrutinized the integrity of the board process in responding to a take-over bid. Where there is evidence that the process has been compromised or is questionable, it will be more difficult for the Commission to conclude that board or special committee actions are taken with a view to the best interests of the target shareholders.

[116] Board process will be compromised where: (i) advisors to the special committee are not independent; or (ii) decisions by the target board or special committee suggest entrenchment.

[117] In *Re Cara*, the Commission was concerned that a longstanding legal advisor to the target could not truly act as an independent advisor to the special committee since the Commission concluded that if the offeror's bid were to succeed, the retainer of the legal advisor would very likely cease (*Re Cara* at para. 74). Moreover, the Commission became suspicious when the special committee recommended, and the board approved, reimbursement payments to the target's chairman for expenses by the chairman in respect of a potential "white knight" bid. The Commission commented on the behaviour of the board and special committee noting:

> [t]he decision … showed conduct that caused us to believe that the special committee and the directors who approved the reimbursements were not motivated solely by the best interests of the shareholders.
>
> (*Re Cara* at para. 75)

[118] Similarly, in *Re CW Shareholdings Inc.* (1998), 21 O.S.C.B. 2899 at para. 71, the Commission placed less reliance on the special committee's review of the bid where the committee was "… set up for purposes of convenience only, and not as an independent committee".

[119] We note that the Neo Board undertook a well-structured evaluation process in response to the Pala Offer which involved: (i) establishing a special committee of independent directors; (ii) obtaining legal advice before implementing the Second Shareholder Rights Plan; (iii) retaining financial advisors who gave an opinion that the consideration offered by Pala for Neo's shares is inadequate; (iv) considering alternatives to maximizing shareholder value, including maintaining the *status quo* and pursuing the company's current business plan; and (v) putting the Second Shareholder Rights Plan to a shareholder vote at the next annual shareholder meeting.

[120] There is no evidence that this evaluation process has been compromised. While Pala submits that the Neo Board and management have taken steps to entrench themselves, on the evidence, we are not convinced that this is the case.

[121] In summary, based on the foregoing, we conclude that there is no evidence that the board process in evaluating and responding to the bid, including the decision to implement the Second Shareholder Rights Plan, was not carried out in the best interest of the corporation and the shareholders, as a whole.

3. Is there evidence to suggest that management or the board of directors coerced or unduly pressured the target's shareholders to approve the shareholder rights plan?

a. Position of the Parties

[122] Pala argues that the actions of the Neo Board prior to the shareholder vote at the 2009 Annual and Special Meeting held on April 24, 2009 are suspicious and indicative of entrenchment. Specifically, Pala refers to the fact that the Neo Board waived the 48-hour proxy cut-off prior to the meeting.

[123] Pala submits that Neo waived the 48-hour proxy cut-off, "so as to enable itself to continue to solicit proxies in its favour and with knowledge of the identity of shareholders who had already voted against the Second Shareholder Rights Plan".

[124] In its oral submissions, Neo takes the position that the waiver of the proxy cut-off was done strictly in response to Pala's announcement on April 21, 2009 that the Pala Offer would be amended so as to: (i) increase the offer price to $1.70 per share; (ii) extend the offer to May 15, 2009; and (iii) decrease the maximum number of shares to be taken up to 10.6 million.

[125] Neo submits that the waiver of the proxy cut-off was in the best interest of the shareholders because it allowed them to make an informed choice based on up-to date facts.

[126] Staff submits that it is not aware of any evidence suggesting coercive tactics on behalf of the Neo Board.

b. Analysis

[127] In examining shareholder support, the Commission has scrutinized how that support was obtained. However, the fact that a target's board may approach and consult institutional shareholders regarding the implementation of a rights plan does not necessarily mean that shareholders have been coerced or unduly pressured to approve a plan.

[128] In *Regal*, the Commission was told that Regal management had consulted with its institutional shareholders about the rights plan and modified it to reflect their concerns. Despite that consultation, the Commission found "no suggestion of coercion or undue managerial pressure imposed on shareholders to ratify the Plan" (*Regal*, para. 11).

[129] The Alberta Securities Commission drew a similar conclusion in *Pulse Data* where it stated:

> [t]here was no suggestion of managerial coercion or inappropriate managerial pressure being brought to bear on Pulse Shareholders to approve the Rights Plan. Indeed, we noted that ISS, an independent advisory service, recommended to its institutional shareholder clients that they vote in favour of the Rights Plan at the special meeting of Pulse Shareholders….
>
> (*Pulse Data* at para. 101(d))

[130] While we were told that Neo management had consulted with institutional shareholders in the process of implementing the Second Shareholder Rights Plan, there is no evidence of coercion or undue managerial pressure imposed on shareholders to ratify the Second Shareholder Rights Plan. Moreover, we are not aware of any evidence that suggests the 48-hour proxy cut-off resulted in any solicitation by the Neo Board or that such solicitation, if it occurred, was coercive.

C. If the Second Shareholder Rights Plan is allowed to stand, has the time come for it to be terminated by the Commission?

1. Position of the Parties

[131] Pala takes the position that the fundamental question underlying a decision to dissolve or maintain a rights plan is whether it is likely to enhance, limit or deny shareholders' ability to respond to a take-over bid (*Re Tarxien Corporation and Ventra Group Inc.* (1996), 19 O.S.C.B. 6913 at 6919). According to Pala, this requires the regulators, with a view to the bona fide interests of the shareholders of the target company, to balance management's ability to generate competing bids if given more time against the danger that an existing bid will disappear if the rights plan is not dissolved. Therefore, Pala argues, the question becomes not if, but when the rights plan will be set aside.

[132] The jurisdiction of the Commission to intervene lies in its obligation to protect the public interest (*Re Canadian Jorex Ltd. and Mannville Oil & Gas Ltd.* (1992), 15 O.S.C.B. 257 ("*Re Jorex*") at 266 and 267).

[133] Pala submits that the key issue in determining whether it is time for the rights plan to go is whether the plan will facilitate an unrestricted auction of the corporation or will deprive the shareholders of their fundamental right to tender their shares to the offer (*Royal Host* at 7828 and *Falconbridge* at paras. 34 and 35). Ordinarily, the target company bears the burden of proof (*Re Samson* at 3).

[134] Pala argues that typically, when a target company is "put into play", its directors begin the process of attempting to maximize shareholder value. In this case, however, despite a considerable amount of time having elapsed since the launch of the Pala Offer, the Neo Board has not identified any alternative bids or transactions, or the possibility thereof, or even made any attempts to entice a competing bid. As such, Pala submits the Second Shareholder Rights Plan serves no central purpose and should be terminated.

[135] Pala further contradicts Neo's position that the Second Shareholder Rights Plan has not outlived its usefulness because this defensive pill has already resulted in an increased offer price by Pala. Pala contends that the increased offer price by Pala merely reflects the fact that stock prices have generally gone up across all markets and Pala's increased bid reflects that widespread increase.

[136] Neo submits that Canadian securities regulatory authorities expressly recognize in NP 62-202 that a board may adopt defensive tactics in a genuine attempt to obtain a better bid.

[137] According to Neo, the general thrust of Canadian decisions on whether the "pill must go" has been to treat the pills as devices whereby the target company board may require that the take up of shares under the offer be delayed beyond the period required by the statutory take-over bid legislation, in order to allow the board a longer opportunity to "conduct an auction". When the securities commission determines that this quest has gone on long enough, then it makes an order rendering the poison pill ineffective.

[138] Neo's position is that the Second Shareholder Rights Plan has not outlived its usefulness. Neo points out that since Pala announced its intention to launch its partial offer, Pala has since raised its offer price by over 20% in the absence of a competing bid. As such, Neo submits that the Commission should not adopt a premature or arbitrary timeline for when the tactical pill must be set aside.

[139] Staff agrees with Pala's position that past cases support the conclusion that there comes a time when a rights plan must go. According to Staff, the benchmark for determining when that time has come has generally been when the rights plan no longer serves its purpose – i.e. to provide time for the board to create an auction or consider other alternatives to maximize shareholder value.

[140] However, in Staff's view, the Second Shareholder Rights Plan stands in the way of the Pala Offer and therefore continues to serve its purpose, which reflects the will of the substantial majority of Neo shareholders.

2. Analysis

[141] We acknowledge that case law supports both Pala's and Staff's submissions that "there comes a time when a rights plan must go". In *Re Jorex*, the Commission had to consider whether it should exercise its public interest jurisdiction to cease trade a rights plan which was adopted, without shareholder approval, nine days after an offer by Mannville, the offeror, to acquire all of shares of Jorex, the target. Jorex had waived the plan in the face of a rival bid launched by Trans-Arctic, but not in Mannville's case. The Commission identified the sole issue before it as follows:

> [a]ll seemed to agree, as Commissioner Blain put it early on in the hearing, that "there comes a time when the pill has got to go." The only real issue before us, then (again, as succinctly framed by Commissioner Blain), was "when does the pill go".
>
> (*Re Jorex* at 263)

[142] Similarly, in *Lac Minerals* the Commission adopted the Re Jorex approach and observed that "[a]ll parties agreed that the critical issue that the Commission had to decide was 'is it time for the pill to go?'" (*Lac Minerals* at 4963).

[143] The principle that "it's not if but when a pill must go" was also reiterated in *Regal*. However, although the Commission recognized that the only real issue before it was "when does the pill go", the Commission noted:

> [i]t is true that Jorex teaches that "there comes a time when a pill has to go". However, this is not to say that, once a take-over bid has been made, a shareholder rights plan can have no effect, and it must automatically be struck down by the Commission so as to allow the bid to proceed at the stated expiry date of the acceptance period of the bid. If there appears to be a real and substantial possibility that, given a reasonable period of further time, the board of the target corporation can increase shareholder choice and maximize shareholder value, then, absent some other compelling reason requiring the termination of the plan in the interests of shareholders, it seems to us that the Commission should allow the *plan to function for such further period, so as to allow management and the board to continue to fulfil their fiduciary duties*. [emphasis added]
>
> (*Regal* at 4979)

[144] We echo the statements of the Commission in *Regal*, in finding that so long as the rights plan continues to allow the target's management and board the opportunity to fulfill their fiduciary duties, the plan continues to serve a purpose.

[145] In light of our findings above, we are not convinced that the time has come to "cease trade" the Second Shareholder Rights Plan. The Second Shareholder Rights Plan stands in the way of the Pala Offer and has continued to provide the Neo Board the opportunity to act in a manner which, based on the reasonable business judgment of the Neo Board and management, protects the long-term interests of Neo and the shareholders, as a whole.

[146] At the time the Application came before us, little time had passed since the shareholders' ratification of the Neo Board's decision to maintain the Second Shareholder Rights Plan. To paraphrase the words of this Commission in *Jorex*, the time for the pill to go is not yet upon us.

VI. CONCLUSION

[147] For the Reasons set out in our brief decision dated May 11, 2009, and the full Reasons set out above, we declined to exercise our public interest jurisdiction to "cease trade" the Second Shareholder Rights Plan at that time, and dismissed the Application.

Dated at Toronto this 1st day of September, 2009.

"Lawrence E. Ritchie"

"David L. Knight"

SCHEDULE A: DECISION, MAY 11, 2009

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

AND

**IN THE MATTER OF
NEO MATERIAL TECHNOLOGIES INC. AND
PALA INVESTMENTS HOLDINGS LIMITED AND
ITS WHOLLY-OWNED SUBSIDIARY 0833824 B.C. LTD.**

**DECISION (REASONS TO FOLLOW)
Section 127 of the Securities Act, R.S.O. 1990 c. S.5**

Hearing:	May 7, 2009		
Decision:	May 11, 2009		
Panel:	Lawrence E. Ritchie	–	Vice-Chair (Chair of the Panel)
	David L. Knight, FCA	–	Commissioner
Counsel:	Tom Friedland Grant McGlaughlin Rebecca Burrows Melanie Ouanounou	–	Pala Investments Holdings Limited and its wholly-owned subsidiary 0833824 B.C. Ltd.
	Peter F.C. Howard Edward J. Waitzer David Weinberger Samaneh Hosseini	–	Neo Material Technologies Inc.
	James Sasha Angus Shannon O'Hearn Paul Hayward Konata Lake	–	Staff of the Ontario Securities Commission

DECISION

[1] This is the decision of the Ontario Securities Commission (the "Commission") in connection with the application brought by Pala Investments Holdings Limited ("Pala") and 0833824 B.C. Ltd. ("083") related to the transaction under which Pala proposes to purchase for cash up to a maximum of 10.6 million (as amended on April 27, 2009) of the outstanding common shares of Neo Material Technologies Inc. ("Neo").

[2] This document does not constitute the Commission's reasons for our decision in this matter. Given the nature of the application and the facts that gave rise to it, we have been asked to render a decision as quickly as possible. Accordingly, we are issuing this decision now on an expedited basis. Full reasons will follow in due course for purposes of subsection 9(1) of the Securities Act, R.S.O. 1990, c. S.5, as amended (the "Act").

I. THE APPLICATION

[3] This matter arises out of an application brought by Pala and 083 seeking an order from this Commission made pursuant to section 127 of the Act in connection with an offer by 083 to purchase for cash up to a maximum of 23 million (or approximately 20%) of the outstanding shares of Neo not already held by 083 and its affiliates at a price of $1.40 for each common share (the "Pala Offer"). The Pala Offer was subsequently amended on April 27, 2009 (i) to increase the offer price to $1.70 per share (ii) to decrease the maximum number of shares to be taken up to a maximum of 10.6 million (or approximately 9.5%) and (iii) to extend the expiry time of the Pala Offer to May 15, 2009.

II. THE RELIEF SOUGHT BY PALA

[4] In connection with the Pala Offer, 083 and Pala seek a permanent order pursuant to subsection 127(1) of the Act that:

(a) trading cease in respect of any securities issued, or to be issued, under or in connection with the Second Shareholder Rights Plan (as defined below); and

(b) trading cease in respect of any securities issued, or to be issued, under or in connection with the First Shareholder Rights Plan (as defined below).

[5] In argument, the Respondent to this Application, Neo, and Staff of the Commission take the position that our focus need be only on the Second Shareholder Rights Plan. All parties agree that if we do no grant the relief sought in respect of the Second Shareholder Rights Plan, the relief sought in respect of the First Shareholder Rights Plan is unnecessary.

III. THE TRANSACTION

[6] The parties to this Application provided us with an agreed statement of facts, as well as affidavit materials relied on respectively by each party.

[7] Neo is a public corporation continued under the laws of Canada. It is a producer, processor and developer of neodymium-iron-boron magnetic powders, rare earths and zirconium based engineered materials and applications.

[8] Pala is a multi-strategy investment company launched in 2006 and registered in Jersey, Channel Islands. It has a particular focus on mining and resource companies in both developed and emerging markets. Pala has been an investor in Neo since July 2007. At the date of the Pala Offer, Pala had beneficial ownership of, or exercised control or direction over, 23,640,000 common shares of Neo, representing 20.46% of the 115, 521,000 outstanding common shares of Neo.

[9] 083 was incorporated on August 29, 2008 under the laws of the province of British Columbia. It was incorporated for the purpose of acquiring or investing in Canadian businesses.

[10] Neo has a shareholder rights plan dated as of February 5, 2004 (the "First Shareholder Rights Plan"). The First Shareholder Rights Plan was approved by the Neo shareholders at the annual and special meeting of shareholders held June 28, 2004 and reconfirmed on April 28, 2007. It contains a minimum tender condition requiring that at least 50% of the independently held common shares of Neo must be tendered in order for a bidder to take up and pay for any of the shares deposited under the offer (the "Minimum Tender Condition").

[11] On February 9, 2009, Pala announced that, through a wholly-owned subsidiary, it intended to acquire up to a maximum of 23 million of the outstanding common shares of Neo, representing approximately 20% of Neo's shares at a price of $1.40 per share. The Pala Offer was structured to comply with the Permitted Bid definition contained in the First Shareholder Rights Plan by remaining open for at least 60 days, and, in the event that the Minimum Tender Condition is met, by remaining open for another 10 days from the date of the announcement that 50% had been tendered.

[12] On February 12, 2009, Neo's Board of Directors (the "Neo Board") adopted a second shareholder rights plan (the "Second Shareholder Rights Plan"). The Second Shareholder Rights Plan is substantially similar to the First Shareholder Rights Plan except that it prohibits partial bids.

[13] Pala issued a Take-over Bid Circular on February 25, 2009.

[14] On April 21, 2009, Pala filed a press release announcing its intention to vary and extend the Pala Offer (i) to increase the offer price to $1.70 per share (ii) to decrease the maximum number of shares to be taken up to a maximum of 10.6 million and (iii) to extend the expiry time of the Pala Offer to May 15, 2009.

[15] At Neo's Annual and Special Meeting on April 24, 2009, Neo's shareholders passed a resolution to approve, ratify and confirm the adoption of the Second Shareholder Rights Plan. Although not in the agreed statement of facts, it was not contested that (i) excluding Pala's holdings, 81.24% of the shares voted were in favour of the Second Shareholder Rights Plan and (ii) 82.74% of Neo's shares were represented in person and by proxy at the meeting.

[16] On April 27, 2009, Pala formally amended the Pala Offer by filing its Notice of Variation and Extension.

IV. DECISION

[17] In this case, the Applicant asserts that Neo's "pill" must go, and urges us to exercise our public interest jurisdiction to "cease trade" the Second Shareholder Rights Plan. In all of the circumstances, we are not satisfied that it is in the public interest to grant the relief sought at this time.

[18] While we intend to expand on these points in the reasons to follow, at this time (and without limiting ourselves), we point out that we are influenced by the following considerations:

(a) the Second Shareholder Rights Plan was adopted by the Neo Board in the context of, and in response to the Pala Offer;

(b) there is no evidence that the process undertaken by the Neo Board to evaluate and respond to the Pala Offer, including the decision to implement the Second Shareholder Rights Plan, was not carried out in what the Neo Board determined to be the best interests of the corporation and of the Neo shareholders, as a whole;

(c) an overwhelming majority of the Neo shareholders (excluding Pala) approved the Second Shareholder Rights Plan while the Pala Offer remained outstanding;

(d) the evidence supports a finding that the Neo shareholders were sufficiently informed about the Second Shareholder Rights Plan prior to casting their votes; and

(e) there is no evidence to suggest that management or the Neo Board coerced or unduly pressured the Neo shareholders to approve the Second Shareholder Rights Plan.

[19] As a result of our decision, the Application is dismissed.

Dated at Toronto this 11th day of May, 2009.

"Lawrence E. Ritchie"

"David L. Knight"

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
Copper Mesa Mining Corporation	27 Aug 09	08 Sept 09		
Yukon Gold Corporation, Inc.	02 Sept 09	14 Sept 09		

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
Norwall Group Inc.	02 Sept 09	14 Sept 09			

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
Coalcorp Mining Inc.	18 Feb 09	03 Mar 09	03 Mar 09		
Wedge Energy International Inc.	04 May 09	15 May 09	15 May 09		
Sprylogics International Corp.	02 June 09	15 June 09	15 June 09		
Firstgold Corp.	22 July 09	04 Aug 09	04 Aug 09		
Medifocus Inc.	07 Aug 09	19 Aug 09	19 Aug 09		
Norwall Group Inc.	02 Sept 09	14 Sept 09			

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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 Pur. Price ($)	# of Securities Distributed
08/12/2009	5	Adventure Gold Inc. - Units	10,500.00	100,000.00
08/06/2009	1	Affinia Group, Inc - Notes	1,075,900.00	N/A
08/10/2009	1	Affinity Gold Corp. - Common Shares	56,097.60	N/A
07/02/2009	2	Alliance One International Inc. - Notes	1,747,950.00	1,500,000.00
08/18/2009	1	American Water Works Company, Inc. - Common Shares	106,200.00	5,000.00
07/08/2009	13	Amerix Precious Metals Corporation - Units	81,598.00	2,719,934.00
06/26/2009	121	Apoquindo Minerals Inc. - Units	6,983,044.25	10,743,145.00
08/10/2009	4	Apria Healthcare Group Inc. - Notes	12,364,295.47	5,750.00
08/14/2009	77	Aston Hill Financial Inc. - Common Shares	1,535,189.80	5,117,301.00
08/17/2009	2	BB&T Corporation - Common Shares	17,571,294.00	610,000.00
08/14/2009	6	Black Panther Mining Corp. - Units	415,000.00	1,660,000.00
06/09/2009	3	Brookdale Senior Living Inc. - Common Shares	16,737,720.00	1,381,000.00
08/20/2009	8	Canadian Horizons Blended Mortgage Investment Corporation - Preferred Shares	200,604.00	200,604.00
08/20/2009	28	Canadian Horizons First Mortgage Investment Corporation - Preferred Shares	763,010.00	763,010.00
06/30/2009	28	Canyon Copper Corp. - Common Shares	791,662.50	17,025,000.00
08/10/2009	9	Canyon Copper Corp. - Common Shares	557,587.20	12,850,000.00
08/20/2009 to 08/25/2009	21	CareVest Blended Mortgage Investment Corporation - Preferred Shares	1,312,852.00	1,312,852.00
08/20/2009	27	CareVest Capital Blended Mortgage Investment Corp. - Preferred Shares	950,906.00	950,906.00
08/20/2009	18	CareVest Capital First Mortgage Investment Corp. - Preferred Shares	1,117,807.00	1,117,807.00
08/20/2009	17	CareVest First Mortgage Investment Corporation - Preferred Shares	1,030,246.00	1,030,246.00
08/20/2009	7	CareVest Second Mortgage Investment Corporation - Preferred Shares	336,710.00	336,710.00
08/08/2009	1	CDH Fund IV, L.P. - Limited Partnership Interest	162,555,000.00	N/A
06/16/2009	1	Cinemark USA, Inc. - Notes	110,506,212.00	1.00

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
06/11/2009	5	Clearwater Paper Corp. - Notes	97,552.65	N/A
08/10/2009 to 08/19/2009	6	CMC Markets UK plc - Contracts for Differences	41,000.00	6.00
06/12/2009	13	Continent Resources Inc. - Units	341,550.00	3,105,000.00
05/27/2009	4	Disenco Energy plc - Common Shares	238,000.00	1,322,223.00
06/08/2009	9	Donner Metals Ltd. - Units	709,500.00	4,729,999.00
07/23/2009	1	Dorothy of Oz, LLC - Units	10,000.00	10,000.00
08/21/2009	1	Edgeworth Mortgage Investment Corporation - Preferred Shares	30,000.00	N/A
08/11/2009	1	EncorNOC Inc. - Common Shares	2,225,250.00	N/A
08/21/2009	5	Excel Gold Mining Inc. - Common Shares	800,000.00	N/A
08/21/2009	23	Exploration Lounor Inc. - Common Shares	265,000.00	N/A
06/10/2009	2	Exterran Holdings Inc. - Notes	3,885,350.00	N/A
08/18/2009	1	First Leaside Fund - Trust Units	25,000.00	25,000.00
08/18/2009	2	First Leaside Fund - Trust Units	54,000.00	54,000.00
08/14/2009	1	First Leaside Progressive Limited Partnership - Units	35,000.00	35,000.00
08/10/2009 to 08/17/2009	15	Forum Uranium Corp. - Flow-Through Shares	295,000.00	N/A
08/20/2009	1	Garibaldi Resources Corp. - Units	48,000.00	400,000.00
08/04/2009 to 08/07/2009	4	General Motors Acceptance Corporation of Canada, Limited - Notes	1,492,015.17	14,920.15
07/09/2009	6	Globex Mining Enterprises Inc. - Common Shares	736,000.00	640,000.00
06/09/2009	6	Huntington Bancshares Inc. - Common Shares	10,353,000.00	2,550,000.00
08/07/2009 to 08/12/2009	12	IGW Real Estate Investment Trust - Trust Units	184,552.32	183,098.99
12/01/2008 to 12/11/2008	1	iSHARES 100% Hedged To CAD 1 - Common Shares	309,719.85	16,910.00
12/01/2008 to 12/11/2008	2	iShares CDN S&P/TSX 60 Index Fund - Common Shares	2,275,448.19	141,395.00
12/19/2008	1	iShares CDN S&P/TSX Cap Energy - Common Shares	39,842.23	2,500.00
12/11/2008 to 12/18/2008	1	iShares DJ Select Dividend - Common Shares	9,295,138.21	188,860.00
12/23/2008	1	iShares Inc CDAindex Fund - Common Shares	59,720.62	3,000.00
12/11/2008	2	ISHARES INC MSCI AUSTRALIA INDEX - Common Shares	2,184,132.98	134,200.00

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
12/02/2008 to 12/09/2008	2	ISHARES INC MSCI JAPAN INDEX - Common Shares	315,972.25	30,180.00
12/22/2008 to 12/23/2008	2	IShares Inc MSCI UnitedKingdom - Common Shares	857,661.46	60,000.00
12/02/2008 to 12/03/2008	2	iShares MSCI Emerging Markets Index Fund - Common Shares	393,993.39	14,800.00
12/23/2008	1	iShares MSCI Germany Index Fund - Common Shares	59,720.62	10,900.00
12/19/2008	1	iShares Russell 1000 Index - Common Shares	1,906,413.08	32,155.00
12/19/2008	1	IShares Russell 1000 Value - Common Shares	97,516.24	1,630.00
12/02/2008 to 12/23/2008	5	iShares Russell 2000 - Common Shares	100,843,764.91	1,784,715.00
12/15/2008 to 12/16/2008	1	IShares Russell 2000 Growth - Common Shares	813,108.32	13,500.00
02/08/2008 to 02/19/2008	3	iShares S&P 500 Index Fund - Common Shares	3,889,256.14	35,330.00
12/19/2008	1	IShares S&P Global 100 Index Fund - Common Shares	443,611.56	7,320.00
12/04/2008 to 12/23/2008	5	ISHARES TR MSCI EAFE IDX - Common Shares	3,592,641.23	71,211.00
12/19/2008 to 12/22/2008	2	IShares TR S&P Euro Plus - Common Shares	929,823.73	25,100.00
06/16/2009	3	Limited Brands Inc. - Notes	9,061,600.00	N/A
06/22/2009	2	Lincoln National Corporation - Common Shares	31,248.00	1,800.00
06/24/2009	18	Mantis Mineral Corp. - Units	565,000.00	11,300,000.00
12/01/2008 to 12/17/2008	1	Market Vectors Gold Miners - Common Shares	441,157.43	13,500.00
08/14/2009	24	McConachie Development Investment Corporation - Units	416,990.00	416,699.00
08/14/2009	14	McConachie Development Limited Partnership - Units	757,280.00	75,728.00
07/30/2009	39	National Bank of Greece S.A. - Common Shares	1,897,046,024.69	110,367,615.00
07/28/2009	16	Nerium Biotechnology, Inc. - Common Shares	155,308.54	143,300.00
06/18/2009	45	New Dimension Resources Ltd. - Units	475,250.00	9,505,000.00
06/19/2009 to 06/24/2009	35	Newport Canadian Equity Fund - Units	910,000.00	8,653.59
06/19/2009 to 06/24/2009	90	Newport Fixed Income Fund - Units	3,876,440.43	37,322.46
06/22/2009 to 06/23/2009	14	Newport Global Equity Fund - Units	320,000.00	5,778.23

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
06/19/2009 to 06/24/2009	72	Newport Yield Fund - Units	6,388,050.00	62,766.04
06/23/2009	27	North Peace Energy Corp. - Units	11,609,950.00	21,109,000.00
07/24/2009	7	Northern Gold Mining Inc. - Units	221,622.98	4,432,659.00
08/11/2009	2	Novelis Inc. - Notes	6,469,452.00	1.00
08/21/2009	2	NQ Exploration Inc. - Flow-Through Shares	450,000.00	2,000,000.00
06/23/2009	12	Odyssey Resources Limited - Flow-Through Shares	1,200,000.00	4,800,000.00
08/11/2009	9	Ona Energy Inc. - Units	1,549,995.00	10,333,300.00
08/10/2009	3	Onex Partners III L.P. - Limited Partnership Interest	9,871,680.00	N/A
07/21/2009 to 08/11/2009	38	Oracle Energy Corp. - Units	341,650.00	6,833,000.00
06/26/2009	12	Osisko Mining Corporation - Common Shares	10,640,000.00	1,216,000.00
08/10/2009	2	Penn National Gaming, Inc. - Notes	5,424,000.00	N/A
06/03/2009	1	Penson Worldwide, Inc. - Notes	1,646,400.00	1.00
12/01/2008 to 12/19/2008	1	Powershares DB CMDTYIDXTrack Unit - Common Shares	230,015.65	9,000.00
07/17/2009	30	Quest Uranium Corporation - Common Shares	599,997.90	1,714,279.00
08/04/2009	1815	Randgold Resources Limited - Common Shares	365,585,000.00	5,750,000.00
08/19/2009	1	Saracen Mineral Holdings Limited - Common Shares	1,371,395.00	8,333,000.00
06/16/2009	26	Seaview Energy Inc. - Flow-Through Shares	5,000,400.00	4,167,000.00
06/16/2009	70	Seaview Energy Inc. - Receipts	10,684,175.00	N/A
08/14/2009	19	Sigma Dek Ltd. - Common Shares	306,514.00	N/A
08/14/2009 to 08/24/2009	44	Skyline Apartment Real Estate Investment Trust - Units	3,189,629.43	289,966.31
07/02/2009	6	Solo Cup Company - Notes	214,536.38	188,000.00
06/24/2009 to 07/03/2009	46	Soltoro Ltd. - Units	1,350,000.00	6,750,000.00
07/02/2009	2	Spartan Arbitrage Fund Limited Partnership - Units	45,000.00	4,500.00
12/01/2008 to 12/31/2008	3	SPDR Gold Trust - Common Shares	12,118,717.37	130,075.00
12/04/2008	1	SPDR KBW Bank - Common Shares	6,292,390.96	227,600.00
07/01/2009	5	Stacey Muirhead Limited Partnership - Limited Partnership Units	567,400.00	18,776.27

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
07/01/2009	4	Stacey Muirhead RSP Fund - Trust Units	513,310.20	59,768.55
08/17/2009	3	Starwood Lodging Corporation - Common Shares	9,972,000.00	450,000.00
08/11/2009	1	STEC, Inc. - Common Shares	17,030,000.00	10,350,000.00
06/23/2009	2	Sumitomo Mitsui Financial Group Inc. - Common Shares	51,139,400.00	1,105,000.00
06/03/2009	14	Talmora Diamond Inc. - Units	305,928.56	6,118,571.00
08/11/2009	1	Tanger Factory Outlet Centers, Inc.. - Common Shares	1,920,000.00	50,000.00
07/06/2009	3	Temex Resources Corp. - Common Shares	54,000.00	200,000.00
06/02/2009	2	Tesoro Corporation - Notes	2,436,075.00	2.00
06/30/2009	10	The Futura Loyalty Group Inc. - Units	620,000.00	N/A
06/10/2009	10	The Medipattern Corporation - Common Shares	1,728,957.40	8,644,787.00
06/10/2009	1	Transatlantic Holdings, Inc. - Common Shares	33,640.00	800.00
06/11/2009	3	Tribute Minerals Inc. - Flow-Through Shares	612,000.00	7,650,000.00
06/09/2009	1	Tribute Minerals Inc. - Units	50,000.00	833,333.00
06/24/2009	2	Tribute Minerals Inc. - Units	270,000.00	4,500,000.00
08/21/2009	4	UC Resources Ltd. - Common Shares	999,999.91	7,692,307.00
06/19/2009	114	Underworld Resources Inc. - Units	16,001,750.00	10,000.00
08/17/2009	38	U.S. Geothermal Inc. - Receipts	10,935,000.00	N/A
06/29/2009	4	Vaaldiam Resources Ltd. - Common Shares	235,671.64	6,284,577.00
06/09/2009	4	Valeant Pharmaceuticals International - Notes	306,706.72	N/A
08/06/2009	5	Victoria Gold Corp. - Flow-Through Shares	1,903,974.75	4,231,055.00
07/13/2009	4	Wallbridge Mining Company Limited - Units	90,000.00	900,000.00
08/14/2009	19	Walton AZ Silver Reef Investment Corporation - Common Shares	434,220.00	43,422.00
08/14/2009	28	Walton TX Garland Heights Investment Corporation - Common Shares	426,410.00	42,641.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
BlackWatch Energy Services Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated August 31, 2009
NP 11-202 Receipt dated August 31, 2009
Offering Price and Description:
$75,000,000.00 - 75,000,000 Common Shares Price: $1.00 per Common Share
Underwriter(s) or Distributor(s):
Peters & Co. Limited
Cormark Securities Inc.
FirstEnergy Capital Corp.
Scotia Capital Inc.
Promoter(s):
-
Project #1471189

Issuer Name:
BMG BullionFund
BMG Gold BullionFund
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Simplified Prospectuses dated August 27, 2009
NP 11-202 Receipt dated September 1, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Bullion Management Services Inc.
Project #1450525

Issuer Name:
BRADES RESOURCE CORP.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated August 28, 2009
NP 11-202 Receipt dated September 1, 2009
Offering Price and Description:
$349,999.95 - 2,333,333 Shares - $0.15 per Share Price: $0.15 per Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
CHERYL MORE
Project #1472180

Issuer Name:
Bridgeport Ventures Inc.
Type and Date:
Preliminary Long Form Prospectus dated August 31, 2009
Receipted on September 1, 2009
Offering Price and Description:
$800,000.00 to $1,200,000.00 - 4,000,000 to 6,000,000 Units Price: $0.20 per Unit
Underwriter(s) or Distributor(s):
Toll Cross Securities Inc.
Promoter(s):
Steven Mintz
Project #1471257

Issuer Name:
Central Fund of Canada Limited
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Base Shelf Prospectus dated August 31, 2009
NP 11-202 Receipt dated September 1, 2009
Offering Price and Description:
U.S.$1,000,000,000.00 - Class A non-voting, fully participating shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1470994

Issuer Name:
Crescent Point Energy Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated August 28, 2009
NP 11-202 Receipt dated August 28, 2009
Offering Price and Description:
$200,100,000.00 - 5,800,000 Common Shares Price: $34.50 per Common Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Market Inc.
RBC Dominion Securities Inc.
FirstEnergy Capital Corp.
TD Securities Inc.
National Bank Financial Inc.
GMP Securities L.P.
Peters & Co. Limited
Tristone Capital Inc.
Promoter(s):
-
Project #1469058

Issuer Name:
Dundee Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated August 28, 2009
NP 11-202 Receipt dated August 31, 2009
Offering Price and Description:
$115,000,000.00 - 4,600,000 Cumulative 5-Year Rate Reset First Preference Shares, Series 2 Price: $25.00 per Series 2 Preference Share to yield initially 6.75%
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Dundee Securities Corporation
National Bank Financial Inc.
TD Securities Inc.
Canaccord Capital Corporation
Raymond James Ltd.
Promoter(s):
-
Project #1470353

Issuer Name:
Exchange Income Corporation
Principal Regulator - Manitoba
Type and Date:
Preliminary Short Form Prospectus dated August 26, 2009
NP 11-202 Receipt dated August 26, 2009
Offering Price and Description:
$30,000,000.00 - 7.50% SERIES G CONVERTIBLE SENIOR SECURED DEBENTURES Price: $1,000.00 per Debenture
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Wellington West Capital Inc.
CIBC World Markets Inc.
Raymond James Ltd.
Research Capital Corporation
Promoter(s):
-
Project #1465682

Issuer Name:
Fortress Energy Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated August 31, 2009
NP 11-202 Receipt dated September 1, 2009
Offering Price and Description:
Up to $11,000,000.00: Minimum Offering: $7,000,000.00 (● Common Shares); Maximum Offering: $11,000,000.00 (● Common Shares) of which up to $3,000,000.00 may be Flow-Through Shares (● Flow-Through Shares) Price: $● per Common Share; $● per Flow-Through Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
-
Project #1471742

Issuer Name:
Greystar Resources Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated August 31, 2009
NP 11-202 Receipt dated August 31, 2009
Offering Price and Description:
$55,000,000.00 - * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
Jennings Capital Inc.
Scotia Capital Inc.
HMP Securities L.P.
Promoter(s):
-
Project #1471173

Issuer Name:
New Gold Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated August 27, 2009
NP 11-202 Receipt dated August 27, 2009
Offering Price and Description:
$100,125,000.00 - 26,700,000 Common Shares Price: $3.75 per Common Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Canaccord Capital Corporation
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
National Bank Financial Inc.
Paradigm Capital Inc.
Wellington West Capital Markets Inc.
Promoter(s):
-
Project #1466660

Issuer Name:
Pathway Mining 2009-II Flow-Through Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated August 25, 2009
NP 11-202 Receipt dated August 28, 2009
Offering Price and Description:
$15,000,000.00 (Maximum Offering); $2,500,000.00 (Minimum Offering) A Maximum of 1,500,000 and a Minimum of 250,000 Limited Partnership Units Minimum Subscription: 250 Limited Partnership Units Subscription Price:$10.00 per Limited Partnership Unit
Underwriter(s) or Distributor(s):
Wellington West Capital Inc.
HSBC Securities (Canada) Inc.
Burgeonvest Securities Limited
Canaccord Capital Corporation
Raymond James Ltd.
Blackmont Capital Corporation
Dundee Securities Corporation
GMP Securities L.P.
Research Capital Corporation
Integral Wealth Securities Limited
Argosy Securities Inc.
Promoter(s):
Pathway Mining 2009-II Inc.
Project #1468587

Issuer Name:
Rocky Mountain Dealerships Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated August 28, 2009
NP 11-202 Receipt dated August 28, 2009
Offering Price and Description:
$21,700,000.00 - 3,500,000 Common Shares Price: $6.20 per Offered Share
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Canaccord Capital Corporation
Raymond James Ltd.
Macquarie Capital Markets Canada Ltd.
Promoter(s):
-
Project #1468450

Issuer Name:
Sunstone U.S. Opportunity (No. 2) Realty Trust
Sunstone U.S. (No. 2) L.P.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated August 28, 2009
NP 11-202 Receipt dated August 28, 2009
Offering Price and Description:
Minimum: $5,000,000.00 (4,000 Trust Units); Maximum: $50,000,000.00 (40,000 Trust Units)
Price: $1,250 per Trust Unit
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
Raymond James Ltd.
Canaccord Capital Corporation
Sora Group Wealth Advisors Inc.
Blackmont Capital Inc.
GMP Securities L.P.
HSBC Securities Inc.
MGI Securities Inc.
Promoter(s):
Sunstone Realty Advisors Inc.
Project #1470042/1470016

Issuer Name:
T-Ray Science Inc.
Type and Date:
Preliminary Prospectus - MJDS (NI 71-101) dated August 31, 2009
Received on August 31, 2009
Offering Price and Description:
Minimum of $1,000,000 (5,000,000 Common Shares)
Maximum of $1,500,000 (7,500,000 Common Shares)
Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Research Capital Corporation
Promoter(s):
-
Project #1471870

Issuer Name:
Thompson Creek Metals Company Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated August 31, 2009
NP 11-202 Receipt dated August 31, 2009
Offering Price and Description:
C$217,000,000.00 - 15,500,000 Common Shares Price: $14.00 per Common Share
Underwriter(s) or Distributor(s):
UBS Securities Canada Inc.
GMP Securities L.P.
BMO Nesbitt Burns Inc.
Credit Suisse Securities (Canada) Inc.
Desjardins Securities Inc.
Deutsche Bank Securities Limited
Scotia Capital Inc.
Promoter(s):
-
Project #1470683

Issuer Name:
Integra Balanced Fund
Integra Bond Fund
Integra Canadian Value Growth Fund
Integra International Equity Fund
Integra Short Term Investment Fund
Integra U.S. Value Growth Fund
Analytic Core U.S. Equity Fund
Acadian Core International Equity Fund
Integra Newton Global Equity Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated August 25, 2009
NP 11-202 Receipt dated August 26, 2009
Offering Price and Description:
Mutual fund trust units at net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1450386

Issuer Name:
All in West! Capital Corporation
Principal Regulator - Manitoba
Type and Date:
Final Long Form Prospectus dated August 26, 2009
NP 11-202 Receipt dated August 27, 2009
Offering Price and Description:
Offering of Rights to Subscribe for 8.0% Series C Senior Convertible Debentures: Maximum: $2,592,620.00; Minimum: $2,000,000.00
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Promoter(s):
-
Project #1449652

Issuer Name:
BioSyntech, Inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated August 31, 2009
NP 11-202 Receipt dated September 1, 2009
Offering Price and Description:
$3,100,000.00 - Rights to Subscribe for up to 310,000 Units Price: $10 per Unit
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1463606

Issuer Name:
Claymore Canadian Financial Monthly Income ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated August 13, 2009 to the Long Form Prospectus dated January 29, 2009
NP 11-202 Receipt dated September 1, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Claymore Investments, Inc.
Promoter(s):
-
Project #1367952

Issuer Name:
CMP 2009 II Resource Limited Partnership
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated August 28, 2009
NP 11-202 Receipt dated August 31, 2009
Offering Price and Description:
Price per Unit: $1,000
Maximum Offering: $50,000,000.00 (50,000 Units);
Minimum Offering: $10,000,000.00 (10,000 Units)
Minimum Subscription: $5,000 (Five Units)
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Capital Corporation
Blackmont Capital Inc.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Promoter(s):
CMP 2009 II Corporation
Project #1454831

Issuer Name:
Dundee Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated August 31, 2009
NP 11-202 Receipt dated August 31, 2009
Offering Price and Description:
$61,472,500.00 - 3,350,000 REIT Units, Series A PRICE: $18.35 per Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
Dundee Securities Corporation
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Brookfield Financial Corp.
Desjardins Securities Inc.
Genuity Capital Markets
HSBC Securities (Canada) Inc.
National Bank Financial Inc.
Promoter(s):
-
Project #1463545

Issuer Name:
EdgePoint Canadian Portfolio
EdgePoint Global Portfolio
EdgePoint Canadian Growth & Income Portfolio
EdgePoint Global Growth & Income Portfolio
(Series A Units, Series B Units, Series F Units, Series I Units and Series O Units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus and Annual Information Form (NI 81-101) dated August 25, 2009
NP 11-202 Receipt dated August 26, 2009
Offering Price and Description:
Series A Units, Series B Units, Series F Units, Series I Units and Series O Units @ Net Asset Value
Underwriter(s) or Distributor(s):
EdgePoint Wealth Management Inc.
Promoter(s):
EdgePoint Wealth Management Inc.
Project #1451403

Issuer Name:
Enerplus Resources Fund
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated September 1, 2009
NP 11-202 Receipt dated September 1, 2009
Offering Price and Description:
$200,262,500.00 - 9,250,000 Trust Units $21.65 per Trust Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
National Bank Financial Inc.
FirstEnergy Capital Corp.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Canaccord Capital Corporation
Peters & Co. Limited
Tristone Capital Inc.
Promoter(s):
-
Project #1463128

Issuer Name:
Fairfax Financial Holdings Limited
Principal Regulator - Ontario
Type and Date:
Final Short Form Base Shelf Prospectus dated August 31, 2009
NP 11-202 Receipt dated August 31, 2009
Offering Price and Description:
US$1,000,000,000.00:
Subordinate Voting Shares
Preferred Shares
Debt Securities
Warrants
Share Purchase Contracts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1463953

Issuer Name:
FNX Mining Company Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated August 31, 2009
NP 11-202 Receipt dated August 31, 2009
Offering Price and Description:
$125,450,000.00 - 13,000,000 Units Price: $9.65 per Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Dundee Securities Corporation
RBC Dominion Securities Inc.
Promoter(s):
-
Project #1463605

Issuer Name:
frontierAlt Oasis Canada Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated August 25, 2009
NP 11-202 Receipt dated August 31, 2009
Offering Price and Description:
Mutual fund trust units at net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1446560

Issuer Name:
Horizons Global Contrarian Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated August 26, 2009
NP 11-202 Receipt dated August 31, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1448636

Issuer Name:
Jov Bond Fund (Class A, F and I Units)
Jov Leon Frazer Dividend Fund (Class A, F and I Units)
Jov Winslow Global Green Growth Fund (Class A and F Units)
Jov Fiera Conservative Tactical Portfolio (Class A, F and T Units)
Jov Fiera Balanced Tactical Portfolio (Class A, F and T Units)
Jov Fiera Growth Tactical Portfolio (Class A, F and T Units)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated August 17, 2009 to the Simplified Prospectuses and Annual Information Forms dated May 1, 2009
NP 11-202 Receipt dated August 27, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
MGI Securities Inc.
Promoter(s):
-
Project #1392002

Issuer Name:
Jov Canadian Equity Class
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated August 17, 2009 to the Simplified Prospectus and Annual Information Form dated July 3, 2009
NP 11-202 Receipt dated August 27, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1426159

Issuer Name:
Jov Leon Frazer Preferred Equity Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated August 17, 2009 to the Simplified Prospectus and Annual Information Form dated January 26, 2009
NP 11-202 Receipt dated August 27, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
JovFunds Management Inc.
Project #1360424

Issuer Name:
KJH Capital Preservation Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated August 27, 2009
NP 11-202 Receipt dated August 31, 2009
Offering Price and Description:
Mutual Fund Units @ Net Asset Value
Underwriter(s) or Distributor(s):
K.J. Harrison & Partners Inc.
Promoter(s):
K.J. Harrison & Partners Inc.
Project #1450021

Issuer Name:
Mavrix Tax Deferred Income Trust Pool
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated August 26, 2009
NP 11-202 Receipt dated August 28, 2009
Offering Price and Description:
Series O Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Mavrix Fund Management Inc.
Project #1450453

Issuer Name:
A series, F series and O series shares of:
MFI CANADIAN EQUITY FUND
MFI ENERGY EQUITY FUND
MFI SMALL CAP FUND
and
A series, F series and O series units of:
MFI BALANCE FUND
Principal Regulator - Alberta
Type and Date:
Final Simplified Prospectuses dated August 28, 2009
NP 11-202 Receipt dated August 31, 2009
Offering Price and Description:
A series, F series and O series shares and A series, F series and O series units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Matco Financial Inc.
Project #1457928

Issuer Name:
Red Rock Capital Corp.
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated August 27, 2009
NP 11-202 Receipt dated August 28, 2009
Offering Price and Description:
Minimum Offering: $275,000.00 or 1,375,000 Common Shares; Maximum Offering: $600,000.00 or 3,000,000 Common Shares PRICE: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Integral Wealth Securities Limited
Promoter(s):
-
Project #1458370

Issuer Name:
Sceptre Income & Growth Fund (Class A, D, F and O Units)
Sceptre Bond Fund (Class A, D and O Units)
Sceptre High Income Fund (Class A, D, F and O Units)
Sceptre Canadian Equity Fund (Class A, D, F and O Units)
Sceptre Equity Growth Fund (Class A, D, F and O Units)
Sceptre U.S. Equity Fund (Class O Units)
Sceptre Global Equity Fund (Class A, D and O Units)
Sceptre Money Market Fund (Class A and O Units)
Sceptre Large Cap Canadian Equity Fund (Class O Units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated August 26, 2009
NP 11-202 Receipt dated August 28, 2009
Offering Price and Description:
Mutual fund trust units at net asset value
Underwriter(s) or Distributor(s):
Sceptre Investment Counsel Limited
Promoter(s):
-
Project #1449144

Issuer Name:
VentureLink Brighter Future Fund Inc.
Type and Date:
Final Long Form Prospectus dated August 25, 2009
Receipted on August 28, 2009
Offering Price and Description:
Mutual fund securities at net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1450549

Issuer Name:
VentureLink Diversified Income Fund Inc.
Type and Date:
Final Long Form Prospectus dated August 25, 2009
Receipted on August 28, 2009
Offering Price and Description:
Mutual fund securities at net asset value
Underwriter(s) or Distributor(s):
VL Advisors Inc.
Promoter(s):
-
Project #1450538

Issuer Name:
VentureLink Financial Services Innovation Fund Inc.
Type and Date:
Final Long Form Prospectus dated August 25, 2009
Receipted on August 28, 2009
Offering Price and Description:
Mutual fund securities at net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1450557

Issuer Name:
Western Financial Group Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated August 31, 2009
NP 11-202 Receipt dated August 31, 2009
Offering Price and Description:
$15,000,000.00 (Minimum Offering); $30,000,000.00 (Maximum Offering) - A Minimum of 150,000 and a Maximum of 300,000 First Preferred Shares, Series Five
Underwriter(s) or Distributor(s):
TD Securities Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Desjardins Securities Inc.
Jennings Capital Inc.
GMP Securities L.P.
Acumen Capital Finance Partners Limited
Industrial Alliance Securities Inc.
Promoter(s):
-
Project #1462131

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change of Category	McLean Budden Limited	From: Limited Market Dealer & Investment Counsel and Portfolio Manager To: Mutual Fund Dealer Limited Market Dealer & Investment Counsel and Portfolio Manager	August 26, 2009
New Registration	Summit Securities Group LLC	International Dealer	August 26, 2009
New Registration	Chasson Financial Inc.	Limited Market Dealer	August 27, 2009
New Registration	IMC Limited Partnership	Limited Market Dealer, Investment Counsel & Portfolio Manager	August 27, 2009
Change of Category	Global Securities Corporation	From: Investment Dealer To: Investment Dealer & Futures Commission Merchant	August 28, 2009
New Registration	Skyton Securities Inc.	Limited Market Dealer	August 31, 2009
New Registration	MNP Corporate Finance Inc.	Limited Market Dealer	September 1, 2009
Consent to Suspension (Rule 33-501 Surrender of Registration)	Tamarack Capital Advisors Inc.	Limited Market Dealer	September 1, 2009
New Registration	Reibridge Capital Management Inc.	Limited Market Dealer and Commodity Trading Manager	September 2, 2009

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 MFDA Hearing Panel Makes Findings Against Wayne Larson

NEWS RELEASE
For immediate release

MFDA HEARING PANEL MAKES FINDINGS AGAINST WAYNE LARSON

August 28, 2009 (Toronto, Ontario) – A disciplinary hearing in the matter of Wayne Larson was held yesterday before a Hearing Panel of the Prairie Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") in Edmonton, Alberta.

The Hearing Panel found that the three allegations set out by MFDA staff in the Notice of Hearing dated July 2, 2008 had been established. The Hearing Panel made the following orders at the conclusion of the hearing and advised that it would issue written reasons for its decision in due course:

- A permanent prohibition on the authority of Mr. Larson to conduct securities related business while in the employ of, or associated with, any MFDA Member,
- A fine in the aggregate amount of $250,000 in respect of the three allegations set out in the Notice of Hearing, and
- Costs attributable to conducting the investigation and prosecution of the matter in the amount of $7,500.

A copy of the Notice of Hearing is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 145 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

13.1.2 TSX Notice of Approval – Housekeeping Amendments to the TSX Company Manual

TORONTO STOCK EXCHANGE

NOTICE OF APPROVAL

HOUSEKEEPING AMENDMENTS TO THE TORONTO STOCK EXCHANGE COMPANY MANUAL

Introduction

In accordance with the "Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals" between the Ontario Securities Commission (the "OSC") and Toronto Stock Exchange ("TSX"), TSX has adopted, and the OSC has approved, amendments (the "Amendments") to the TSX Company Manual (the "Manual"). The Amendments are housekeeping in nature and therefore are considered non-public interest amendments.

Reasons for the Amendments

The Amendments have been made to Appendix H Form 3 – Change in Officers/Directors/Trustees.

The changes in Appendix H of the Manual to Form 3 – Change in Officers/Directors/Trustees represent: (i) a change to clarify the review that TSX may conduct in respect of the officer/director/trustee on receipt of the Form 3; and (ii) a change to ensure that the issuer is authorized to submit the Form 3 for the officer/director/trustee and accepts the representation and warranty regarding personal information, in compliance with the *Personal Information Protection and Electronic Documents Act* (Canada). The review conducted by TSX pursuant to a Form 3 is done in accordance with Section 716 of the Manual. The changes to Form 3 are being made in compliance with protection of personal information considerations and do not represent a substantive change to the Manual or Form 3.

Text of Amendments

The Amendments are attached as **Appendix A**.

Effective Date

The Amendments become effective on September 4, 2009.

APPENDIX A

NON-PUBLIC INTEREST AMENDMENTS TO THE TSX COMPANY MANUAL

FORM 3 – CHANGE IN OFFICERS/DIRECTORS/TRUSTEES

REPRESENTATION AND WARRANTY REGARDING PERSONAL INFORMATION

By submitting this Form 3 to TSX, the Company represents and warrants that the Company has obtained all consents required under applicable law (including without limitation the *Personal Information Protection and Electronic Documents Act* (Canada)) in order for TSX to use, collect and disclose information ~~about an identifiable individual~~ contained in this Form ~~3,~~3 that relates to an identifiable individual, and information about such individual collected subsequently by TSX in accordance with Exhibit 1 to this Form 3 (Form 3 Personal Information Collection Policy), for the purposes set out in Exhibit 1 to this Form 3.

EXHIBIT 1: FORM 3 PERSONAL INFORMATION COLLECTION POLICY

Collection, Use and Disclosure

TSX Inc. and its affiliates, their authorized agents, subsidiaries and divisions, including Toronto Stock Exchange and TSX Venture Exchange (collectively referred to as "TSX") collect the information (which may include personal, confidential, non-public, criminal or other information) in Form 3 and in other forms that are submitted by an Issuer and use it for the following purposes:

- to conduct background checks on the individual to whom such information relates (the "Subject"),
- to verify the information that has been provided about the Subject,
- to consider the Subject's suitability to act as an officer, director or insider of an Issuer, as applicable,
- to detect and prevent fraud, and
- to determine whether to request a TSX Personal Information Form (Form 4) for the Subject.

As part of this process, TSX also collects additional information about the Subject from public ~~media~~and non-public sources, including news, regulatory, bankruptcy and court records, and internal TSX databases, to ensure that the purposes set out above can be accomplished.

TSX may from time to time use third parties to process information and/or provide other administrative services. In this regard, we may share the information with our carefully selected service providers.

~~By clicking the button below you accept the REPRESENTATION AND WARRANTY REGARDING PERSONAL INFORMATION stated above.~~

By clicking the button below, you confirm:
1) you are authorized to submit this form on behalf of the Company and
2) the Company accepts the REPRESENTATION AND WARRANTY REGARDING PERSONAL INFORMATION stated above

13.1.3 Re-Publication of Notice and Request for Comment – Proposed Amendments to Sections 1 (Definitions) and 3 (Directors) of MFDA By-law No. 1

SECOND PUBLICATION FOR COMMENT OF PROPOSED AMENDMENTS TO SECTIONS 1 (DEFINITIONS) AND 3 (DIRECTORS) OF MFDA BY-LAW NO. 1 - CORRECTION

The Commission is re-publishing proposed amendments to MFDA By-law No. 1 related to Directors to reflect changes to the transitional requirements for the MFDA's Director selection process in 2009 as determined by the MFDA's Governance Committee on August 26, 2009. We originally published the proposed amendments for comment on August 21, 2009.

The changes update the transition provisions in Section 3.3.3 of the By-law. Specifically, the changes clarify the remaining terms of office for incumbent MFDA Directors according to the recommendations made by the MFDA's Task Force on Governance Issues and as provided for in the proposed amendments. The maximum term of office, including terms served to date, is 8 years for any Director. The MFDA has advised us that the form of proposed amendments to By-law No. 1 republished with its Notice will accompany the materials to be sent to MFDA Members in connection with the special meeting of Members to be held on October 2, 2009.

As indicated when the proposed amendments were originally published for comment on August 21, 2009, the jurisdictions that recognize the MFDA (the Recognizing Regulators) approved amendments to the MFDA's By-law No. 1 related to directors in November 2008, but these were not implemented. The Recognizing Regulators will revoke their approval of those amendments and will consider the MFDA's current proposal in its entirety.

The comment period expiry date continues to be September 21, 2009. Details on the process for submitting comments are included in Section V of the MFDA's notice.

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

PROPOSED AMENDMENTS TO SECTIONS 1 (DEFINITIONS) AND 3 (DIRECTORS) OF MFDA BY-LAW NO. 1

I. OVERVIEW

A. Current By-Law

Section 1 of MFDA By-law No. 1 defines "Public Director". Section 3 of the By-law specifies the number and composition of the MFDA Board of Directors, the election process, terms of office, remuneration and provides details with respect to committees of MFDA Board of Directors.

Under the current By-law, the Board of Directors consists of 13 Directors.

The current definition of "Public Director" disqualifies certain individuals from acting as Public Directors on the MFDA Board of Directors. These individuals include:

(A) a director, partner, significant shareholder, officer, employee or agent of (or an associate or affiliate of): (i) a Member protection fund or of the IDA or IFIC, or (ii) a member of such fund, the IDA or IFIC;

(B) an employee of a federal, provincial or territorial government or Crown agency;

(C) a member of the House of Commons or of a provincial or territorial legislature;

(D) an employee of a federal, provincial or territorial Crown agency;

(E) a provider of services to the MFDA, a Member protection fund or a Member; and

(F) an individual who is a member of the immediate family of an individual who would otherwise be disqualified from being a Public Director pursuant to clauses (A) to (E) above.

In addition, individuals who, within two years prior to their election as a Public Director, would have been disqualified from acting as a Public Director under clauses (A) to (D) above are not eligible as Public Directors.

The terms of office for Industry Directors of the MFDA are 2 years with a maximum of 3 terms (i.e. 6 years); and for Public Directors the terms are 3 years with a maximum of 2 terms (i.e. 6 years).

B. The Issues

The issues that the proposed amendments to MFDA By-law No. 1 are intended to address are the subject of the Report of the MFDA Task Force on Governance Issues (the "Task Force Report") discussed below and include:

- improving the representation of the diversity of Members (particularly small and medium-sized firms) on the MFDA Board of Directors;
- broadening the pool of potentially eligible Public Directors for MFDA;
- providing flexibility in selecting directors of the MFDA by shortening the length and increasing the number of terms of office; and
- clarifying and providing transparency in the director selection and nomination process.

The Task Force Report is posted on the MFDA website at www.mfda.ca.

C. Objectives

The proposed amendments are intended to address some of the key recommendations contained in the Task Force Report, as discussed below.

D. Effect of Proposed Amendments

The proposed amendments will increase the number of Directors from 13 to an odd number of not less than 13 and no more than 17, as determined by a resolution, will address transitional matters and clarify certain terms used in the By-law. This will permit greater opportunities to ensure that the Board of Directors reflects the diversity of MFDA Members, particularly small and medium size firms.

The proposed amendments will also permit individuals currently ineligible as Public Directors on the basis described above to qualify as Public Directors where appropriate in accordance with MFDA's nominating procedures. In addition, the proposed amendments will change the terms of office of all Directors of MFDA (i.e. Industry and Public Directors) to 2 years with a maximum tenure of 4 terms.

II. DETAILED ANALYSIS

A. Relevant History

The MFDA's current governance structure, including the definition of "Public Director", is the result of the "Report of the Corporate Governance Committee on a Plan for Governance by the MFDA" as adopted by the MFDA Board of Directors in February 2003 (the "2003 Report"). The corporate governance structure adopted was intended to be rigorous and "leading edge", particularly in the area of ensuring that the public interest is best served and undesirable conflicts of interest or influence do not arise. In this regard, the 2003 Report and the structure adopted were tilted to a prescriptive approach in using detailed rules rather than a principle-based approach, which preserved the objectives of the 2003 Report but permitted some flexibility in applying the principles. This prescriptive approach is particularly apparent in the adoption of the definition of Public Directors of the MFDA. At the same time, the 2003 Report recognized that the key to sound governance for the MFDA (as is the case with most organizations) is a robust director nomination process where a strong governance committee can identify, assess and recommend the nomination of effective directors including Public Directors with appropriate independence. The MFDA's Governance Committee has been developed and operates in that manner and the MFDA believes that its Board of Directors properly reflects the balance of the diversity of MFDA Members' interests as well as having strong independent Public Directors. The terms of reference for the Governance Committee do and will continue to reflect this mandate.

However, the experience of the MFDA's Governance Committee in identifying and assessing potential Public Directors has demonstrated that certain aspects of the criteria for Public Directors may be too rigid and inappropriate. This conclusion is not surprising in light of the fact that the 2003 Report was developed without the benefit of much MFDA Board selection experience. Moreover, the standards for general corporate governance have been subject to considerable scrutiny and change in the past few years. These kinds of changes were anticipated in the Report, as it endorsed the need for the MFDA's governance to be under regular review. The proposed amendments are a result of such review and are based on the actual experience of the MFDA's Public Director nomination process.

In February of 2008, the MFDA Board of Directors approved amendments to MFDA By-law No. 1 relating to the definition of "Public Director" to permit individuals currently ineligible as Public Directors on the basis described above to qualify as Public Directors where appropriate in accordance with MFDA's nominating procedures. In addition, and in a manner that is consistent

with the approach adopted by the Investment Industry Regulatory Organization of Canada (“IIROC”), amendments to MFDA By-law No. 1 were passed to change the terms of office of all Directors of MFDA (i.e. Industry and Public Directors) to 2 years with a maximum tenure of 4 terms (i.e. 8 years).

On March 18, 2008, the MFDA applied to the securities regulatory authorities of the Recognizing Jurisdictions for: (i) an amendment and restatement of the terms and conditions of the Order of each such Commission recognizing the MFDA as a self-regulatory organization respecting the definition of the term "Public Director" in order to remove the definition from the terms and conditions; and (ii) approval for corresponding amendments to the definition of “Public Director” in the MFDA By-law No. 1.

The Recognizing Jurisdictions issued the requested variation orders and approvals or non-objection of the proposed amendments in fall of 2008. The MFDA planned for the variation orders and approvals to be effective for and acted upon at the Annual General and Special Meeting of Members (“AGM”) to be held on December 4, 2008 and the proposed amendments to By-law No. 1 were presented to the meeting for confirmation. As it happened, for various reasons, the proposed amendments were not confirmed by vote of a sufficient (2/3) majority of the Members, with the result that they did not become effective. The further result of the proposed amendments not becoming effective was that three Public Directors were not elected as proposed and the extended terms of the office for all directors were not effective. The response of the MFDA and its Board of Directors to this circumstance was to immediately review and determine the reasons for the failure of the proposed amendments to be approved by the Members and to identify solutions to various governance issues that had arisen in the interests of Members and the public.

This work was entrusted to a special Task Force that was established and the Task Force recently completed its Report of Task Force on Governance Issues and presented it to the MFDA Board of Directors at its meeting held on June 22, 2009. The Board unanimously approved the release and publication of the Task Force Report for comment by Members, interested industry groups and the public. Copies of the Task Force Report were filed with the Recognizing Jurisdictions. In addition, the MFDA communicated with the Recognizing Jurisdictions as to its work and has responded to specific requests for information made by the Recognizing Jurisdictions relating to the status of MFDA's governance following the 2008 AGM. The Task Force received and considered the comments submitted and finalized its Report on August 11, 2009. The Board of Directors accepted the Task Force Report at its meeting on August 18, 2009 and also passed the proposed amendments and approved other matters relating to the Board selection process including revised terms of reference for the Governance Committee. A special meeting of the Members of the MFDA has been scheduled for October 2, 2009 to confirm the proposed amendments, subject to regulatory approval.

The Task Force Report contains detailed information as to the work of the Task Force and communication with Members, as well as several recommendations relating to the governance structure of the MFDA. The Task Force endorsed the changes to the MFDA By-laws, as approved by the Recognizing Jurisdictions in fall 2008, subject to some enhancements that would increase the role of Members in the Board selection process.

Accordingly, the Task Force Report recommended that the MFDA's director nomination process ensure that at all times two Industry Directors be selected by the Members at large. As stated in the Task Force Report, the practical result will be that small/medium size firms will be assured a determinative voice in selecting a portion of the Industry Directors because they represent a large majority of Members. In order to better accommodate this change, the size of the Board is to be increased from 13 to 15.

The proposed revised director nomination and selection process would be provided for in the MFDA Governance Committee terms of reference, and not in the By-law. The revised terms of reference for the Governance Committee reflect the recommendations in the Task Force Report, in particular Recommendations 5 through 10, inclusive. In summary, the governance structure will balance: (i) the ability of Members to ensure that two Industry Directors at all times are, in effect, selected by Members with (ii) the ability of the Governance Committee to nominate other directors under the current system. The approach is intended to ensure that the Board diversity, as required by the Orders, is maintained. The revised terms of reference for the Governance Committee will be included in the materials sent to Members for the October 2, 2009 meeting.

B. Proposed Amendments

The proposed amendments to MFDA By-law No. 1 relate to: (a) the increase in the size of the Board to a minimum of 13 persons and a maximum of 17 persons; (b) changes in the definition of "Public Director" to permit individuals currently ineligible as Public Directors on the basis described above to qualify as Public Directors where appropriate in accordance with MFDA’s nominating procedures; (c) changes in the terms of office of all Directors of MFDA (i.e. Industry and Public Directors) to 2 years with a maximum tenure of 4 terms (i.e. 8 years); and (d) transitional matters and some terminology clarifications.

C. Issues and Alternatives Considered

Issues that relate to the proposed amendments (identified in Section I.B above) have been considered previously by the MFDA, its 2003 Corporate Governance Committee, the Recognizing Jurisdictions and Member groups. In these reviews, the

governance structures of other comparator organizations have been considered, the closest of which is the Investment Industry Regulatory Organization of Canada (“IIROC”). IIROC and its sponsored investor protection organization, the Canadian Investor Protection Fund (“CIPF”), have each adopted by-laws similar in effect to the proposed amendments. The Board of MFDA's corresponding investor protection organization, the MFDA Investor Protection Corporation (“MFDA IPC”) has also approved similar by-law amendments (not yet in effect pending the proposed amendments becoming effective).

D. Comparison with Similar Provisions

Reference is made to the comparator organizations identified in Section II.C and the fact that corresponding governance provisions have been considered. However, the history of the MFDA's development and the mutual fund dealer industry in Canada which it regulates are unique in many respects and the work of the Task Force, including its recommendations relating to MFDA's By-laws, attempt to respond to the special circumstances of MFDA.

E. Systems Impact of Amendments

It is not anticipated that there will be any systems impact on Members as a result of the proposed amendments.

F. Best Interests of the Capital Markets

The Board has determined that the proposed amendments are consistent with the best interests of the capital markets in that the self-regulation of mutual fund dealers in Canada will improve.

G. Public Interest Objective

The proposed amendments are in the public interest and will permit a broader range of persons to be considered as Public Directors, providing the MFDA governance process with a wider choice of potential candidates. The MFDA governance and nominating procedures allow for adequate consideration as to whether any particular individual is appropriate to serve as a Public Director.

The proposed amendments are in the public interest as they address the recommendations contained in the Task Force Report by, among other things, increasing the number of Directors on the MFDA Board of Directors and thereby improving the diversity of Member representation on the Board.

III. COMMENTARY

A. Filing in Other Jurisdictions

The proposed amendments will be filed for approval with the Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Ontario Securities Commissions and the Saskatchewan Financial Services Commission.

B. Effectiveness

The proposed amendments are simple and effective.

C. Process

The proposed amendments have been prepared in consultation with relevant departments within the MFDA. The MFDA Board of Directors approved the proposed amendments on August 18, 2009.

D. Effective Date

The proposed amendments will be effective on a date to be subsequently determined by the MFDA. The intention is that the resulting changes to the MFDA's board selection process will be applied for the Annual General Meeting of Members to be held in December 2009.

IV. SOURCES

MFDA By-law No. 1
IIROC By-law No. 1
CIPF By-law No. 1
2003 Report of the Corporate Governance Committee and Plan for Governance by the MFDA
June 22, 2009 MFDA Report of the Task Force on Governance Issues

V. REQUIREMENT TO PUBLISH FOR COMMENT

The MFDA is required to publish for comment the proposed amendments to its By-laws so that the issues referred to above may be considered by the Recognizing Regulators.

The MFDA has determined that the entry into force of the proposed amendments would be in the public interest and is not detrimental to the capital markets. Comments are sought on the proposed amendments. Comments should be made in writing. One copy of each comment letter should be delivered by **Monday, September 21, 2009** (within 30 days of the publication of this notice), addressed to the attention of the Corporate Secretary, Mutual Fund Dealers Association of Canada, 121 King St. West, Suite 1000, Toronto, Ontario, M5H 3T9 and one copy addressed to the attention of Sarah Corrigall-Brown, Senior Legal Counsel, British Columbia Securities Commission, 701 West Georgia Street, P.O. Box 10142, Pacific Centre, Vancouver, British Columbia, V7Y 1L2.

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the MFDA website at www.mfda.ca.

Questions may be referred to:

Jason Bennett
Corporate Secretary & Director, Regional Councils
Mutual Fund Dealers Association of Canada
(416) 943-7431

SCHEDULE A

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

DEFINITION OF PUBLIC DIRECTOR (Sections 1 and 3 of By-law No. 1)

CHANGES FROM THE BY-LAW APPROVED BY THE RECOGNIZING JURISDICTIONS IN 2008

On August 26, 2009, the Board of Directors of the Mutual Fund Dealers Association of Canada made the following amendments to sections 1 (Definitions) and 3 (Directors) of MFDA By-law No. 1:

1. DEFINITIONS

"**Associate**", where used to indicate a relationship with any person, means:

(a) any corporation of which such person beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the corporation for the time being outstanding;

(b) a partner of that person;

(c) any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity;

(d) any relative of such person who resides in the same home as that person;

(e) any person who resides in the same home as the person and to whom that person is married, or with whom that person is living in a conjugal relationship outside of marriage; or

(f) any relative of a person mentioned in clause (e) above who has the same home as such person;

"Public Director" means a Director who is not:

(a) an officer (other than the Chair or a Vice-Chair) or an employee of the Corporation;

(b) a current partner, director, officer, employee or person acting in a similar capacity of, or the holder of a Significant Interest in:

(i) a Member;

(ii) an Associate of a Member; or

(iii) an affiliate of a Member; or

(c) an Associate of a partner, director, officer, employee or person acting in a similar capacity of, or the holder of a Significant Interest in, a Member.

For all purposes of this By-law, a Public Director as at the date this definition of Public Director became effective and who does not qualify as a Public Director under such definition shall be deemed to qualify as a Public Director and to continue so qualified as long as and until he or she ceases to be qualified as a Public Director according to the definition of that term in force immediately before the date this definition becomes effective.

"Significant Interest" means in respect of any person the holding, directly or indirectly, of the securities of such person carrying in aggregate 10% or more of the voting rights attached to all of the person's outstanding voting securities.

3. DIRECTORS

3.1 Duties and Number

The affairs of the Corporation shall be managed by a Board of Directors~~.~~ consisting of an odd number of directors of not less than 13 and not more than 17. The number of ~~persons comprising the Board of Directors shall be 13.~~ directors shall be determined from time to time by a resolution passed at a meeting of directors.

3.2 Composition of the Board of Directors

The Board of Directors shall be composed of ~~6~~the same even number of Public Directors~~, 6~~ and Industry Directors and the President and Chief Executive Officer. The members of the Board of Directors (other than the President and Chief Executive Officer) shall collectively and over time be nominated and ~~elected~~appointed on the basis that there will be timely and appropriate regional representation on the Board of Directors of Members of the Corporation across Canada, provided that at any time (subject to the occurrence of vacancies) not less than 4 of the directors shall represent regions other than the Provinces of Ontario and Quebec. In addition, at any time (subject to the occurrence of vacancies) ~~five~~5 of the Industry Directors shall be officers or employees of a Member of the Corporation or of an affiliate or corporation which is an Associate of a Member. No Member, affiliate or corporation which is an Associate of a Member shall have more than 1 director, officer, employee or other representative on the Board of Directors and, if such event should occur, the Board of Directors in its discretion may request the resignation of or remove as a director, any director or directors in order that the requirements of this section are satisfied. Each director shall be at least 18 years of age.

3.3 Election and Term

3.3.1 Public Directors

At each Annual Meeting, 3 Public Directors shall be elected to fill the vacancies created by the expiry of the terms of office of the ~~3~~ Public Directors whose terms have expired at such meeting or since the last Annual Meeting. The term for each Public Director to be elected at an Annual Meeting shall expire at the second Annual Meeting next following such election on the election of his or her successors, unless expired earlier in accordance with this By-law. The Board of Directors shall be authorized to fix the term of any Public Director to be elected for a period of less than 2 years in order to maintain the intended staggered terms of all Public Directors~~,~~ but no such term shall be shortened if the Public Director has commenced his or her term of office. A Public Director shall be eligible to serve for only 4 successive terms of 2 years which shall include any shorter term as may have been fixed by the Board of Directors in accordance with this By-law, but shall exclude any portion of a term of office in respect of a vacancy filled pursuant to Section 3.5. Each Public Director to be elected at an Annual Meeting shall have been recommended by the Governance Committee to the Board of Directors for nomination for election by the Members according to the requirements of the By-laws and the terms of reference of the Governance Committee adopted by the Board of Directors. Any Member shall be entitled to submit to the Governance Committee recommendations for Public Directors provided that such recommendations shall have been received by the Corporation not less than 60 days prior to the relevant Annual Meeting.

3.3.2 Industry Directors

At each Annual Meeting, 3 Industry Directors shall be elected to fill the vacancies created by the expiry of the terms of office of the ~~3~~ Industry Directors whose terms have expired at such meeting or since the last Annual Meeting. The term for each Industry Director to be elected at an Annual Meeting shall expire at the second Annual Meeting next following such ~~election~~ appointment on the ~~election~~ appointment of his or her successors, unless expired earlier in accordance with this By-law. The Board of Directors shall be authorized to fix the term of any Industry Director to be elected for a period of less than 2 years in order to maintain the intended staggered terms of all Industry Directors, but no such term shall be shortened if the Industry Director has commenced his or her term of office. An Industry Director shall be eligible to serve only 4 successive terms of 2 years which shall include any shorter term as may have been fixed by the Board of Directors in accordance with this By-law, but shall exclude any portion of a term of office in respect of a vacancy filled pursuant to Section 3.5. Each Industry Director to be elected at an Annual Meeting shall have been recommended by the Governance Committee to the Board of Directors for nomination for election by the Members according to the requirements of the By-laws and the terms of reference of the Governance Committee adopted by the Board of Directors. Any Member shall be entitled to submit to the Governance Committee recommendations for Industry Directors provided that such recommendations shall have been received by the Corporation not less than 60 days prior to the relevant Annual Meeting.

3.3.3 Transition

At the Annual Meeting in ~~2008 when this Section 3.3.3 is sanctioned and becomes effective~~ 2009,

(i) Public Directors whose terms were to expire at ~~such time (having~~the Annual Meeting in 2008 and who had then served 2 consecutive 2 or 3 year terms~~)~~ shall be eligible to be nominated and elected for 1 further ~~2~~1 year term;

(ii) Public Directors whose terms ~~do not~~ expire at ~~such time (having~~ the Annual Meeting in 2009 and who have then served ~~less than~~ 2 consecutive 2 or 3 year terms~~)~~ shall ~~remain~~be eligible to be nominated and elected ~~as Public Directors at subsequent Annual Meetings~~ for 1 further ~~consecutive 2 year terms provided that no such Public Director shall be eligible to serve in aggregate for more than 8 consecutive years as a Public Director~~2 year term;

(iii) ~~Industry~~ Public Directors whose terms do not expire at ~~such time (having then~~the Annual Meeting in 2009 and who have served ~~3~~less than 2 consecutive 2 or 3 year terms~~)~~ shall ~~be~~remain eligible to be nominated and elected as Public Directors at subsequent Annual Meetings for ~~1~~ further consecutive 2 year ~~term; and~~terms;

(iv) Industry Directors whose terms expire at the Annual Meeting in 2009 and who have then served 3 consecutive 2 year terms shall be eligible to be nominated and elected for 1 further 2 year term; and

(v) Industry Directors whose terms do not expire at ~~such time (having~~ the Annual Meeting in 2009 and who have served less than 3 consecutive 2 year terms~~)~~ shall remain eligible to be nominated and elected as Industry Directors at subsequent Annual Meetings for further consecutive 2 year terms;

provided that in no event shall any such Public or Industry Director ~~shall~~ be eligible to serve in aggregate for more than 8 consecutive years as ~~an Industry Director~~ a director.

3.4 Vacancies

The office of a director shall be automatically vacated:

3.4.1 if the director by notice in writing to the Corporation resigns his or her office, which resignation shall be effective at the time it is received by the Secretary of the Corporation or at the time specified in the notice, whichever is later;

3.4.2 if the director is found to be a mentally incompetent person or becomes of unsound mind;

3.4.3 if the director dies;

3.4.4 if the director becomes bankrupt or suspends payment of debts generally or makes an arrangement with creditors or makes an assignment or is declared insolvent;

3.4.5 in the case of a Public Director, if the director ceases to be qualified as a Public Director;

3.4.6 if the director is requested to resign pursuant to Section 3.2 and does not do so in a reasonable time;

3.4.7 if the Public or Industry Director is removed by a resolution passed by either three-quarters of the votes cast at a meeting of the Board of Directors or two-thirds of the votes cast at a meeting of Members;

3.4.8 in the case of the President and Chief Executive Officer, the director ceases to hold such office.

3.5 Filling Vacancies

If a vacancy in the Board of Directors shall occur for any reason, the vacancy shall be filled by a resolution electing or appointing a director passed by either a majority of the votes cast at a meeting of the Members or the Board of Directors, provided that in either case the director has been identified and recommended by the Governance Committee to the Board of Directors for nomination for election or appointment and the nominee is otherwise qualified as a director. In recommending any such nominee as a director, the Governance Committee shall ensure the requirements for the composition of the Board of Directors set out in Section 3.3.2 are satisfied and that the nomination process followed by the Governance Committee shall be in accordance with the requirements for nominees to be recommended to the Board of Directors for the election of directors at Annual Meetings except that no notice of the vacancy or request for nominations need be given to Members.

3.6 Committees

3.6.1 Governance Committee

The Board of Directors shall establish a Governance Committee composed of 2 Public Directors and 2 Industry Directors. The 2 Industry Director members of the Governance Committee shall be officers or employees of a Member of the Corporation or of an affiliate or corporation which is an Associate of a Member. The Chair of the Governance Committee shall be 1 of the 2 Public Directors as selected by the Board of Directors. The Governance Committee shall be responsible for identifying and recommending to the Board of Directors Public and Industry Directors for election or appointment to the Board of Directors in accordance with the By-laws and the terms of reference adopted for the Governance Committee by the Board of Directors. In addition, the Governance Committee shall perform such other duties as the Board of Directors may delegate or direct from time to time. 1 Public Director and 1 Industry Director shall constitute a quorum of the Governance Committee.

3.6.2 Audit Committee

The Board of Directors shall establish an Audit Committee composed of 2 Public Directors and 1 Industry Director. The Chair of the Audit Committee shall be 1 of the 2 Public Directors as selected by the Board of Directors. The Audit Committee shall review and report to the Board of Directors on the annual financial statements of the Corporation and shall perform such other duties as the Board of Directors may delegate or direct from time to time. 1 Public Director and 1 Industry Director shall constitute a quorum of the Audit Committee.

3.6.3 Executive Committee

The Board of Directors may in its discretion establish an executive committee (which may be otherwise named) composed of an equal number of Public Directors and Industry Directors. The Chair of the Executive Committee, if any, may be either a Public Director or Industry Director and shall be selected by the Board of Directors. The Executive Committee shall exercise such powers and such duties as are delegated or directed by the Board of Directors including, without limitation, the authority to exercise any of the powers of the Board of Directors. 1 Public Director and 1 Industry Director shall constitute a quorum of the Executive Committee.

3.6.4 Other Board Committees

The Board of Directors may from time to time in its discretion appoint any other committee or committees as it considers necessary or appropriate for such purposes and with such powers as the Board of Directors may determine including, without limitation, the authority to exercise any of the powers of the Board of Directors and to act in all matters for and in the name of the Board of Directors under the By-laws. Subject to any provisions of the By-laws otherwise, any such committee may be composed of Public Directors or Industry Directors, or both. A majority of the members of a committee established under this Section 3.6.4 shall constitute a quorum, provided that if the committee is composed of 1 or more Public Directors, a quorum shall include 1 Public Director.

3.6.5 Committee Membership and Procedures

Members of any committee of the Board of Directors including, without limitation, the Governance Committee, Audit Committee, Executive Committee (if any) or any other committee established pursuant to Section 3.6.4 and shall be appointed and subject to removal by the Board. The Board of Directors may prescribe rules and procedures not inconsistent with the Act and the By-laws relating to the calling of meetings of, and conduct of business by, committees of the Board. Subject to the By-laws and any resolution of the Board of Directors, meetings of any such committee shall be held at any time and place to be determined by the Chair of the committee or its members provided that 48 hours' prior written notice of such meetings shall be given, other than by mail, to each member of the committee. Notice by mail shall be sent at least 14 days prior to the meeting. No error or accidental omission in giving notice of any meeting of a committee shall invalidate such meeting or make void any proceedings taken at such meeting.

3.7 Remuneration of Directors

The Board of Directors may determine from time to time such reasonable remuneration, if any, to be paid to the directors of the Corporation for serving as such and the Board may determine that such remuneration need not be the same for all directors including, without limitation, as between Public and Industry Directors. Public and Industry Directors may be reimbursed for reasonable expenses incurred by the director in the performance of the director's duties. Subject to Sections 6 and 7.1, nothing herein contained shall be construed to preclude any director from serving the Corporation as an officer or in any other capacity and receiving compensation therefor.

SCHEDULE B

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

DEFINITION OF PUBLIC DIRECTOR (Sections 1 and 3 of By-law No. 1)

CHANGES FROM THE CURRENT BY-LAW, APPROVED BY THE MFDA BOARD OF DIRECTORS ON FEBRUARY 7, 2008 AND AUGUST 26, 2009

1. DEFINITIONS

"**a~~A~~ssociate**", where used to indicate a relationship with any person, means:

(a) any corporation of which such person beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the corporation for the time being outstanding;

(b) a partner of that person ~~acting on behalf of the partnership of which they are partners~~;

(c) any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity;

(d) any relative of such person who resides in the same home as that person ~~including his/her spouse, or his/her spouse who has the same home as such person~~;

(e) any person who resides in the same home as the person and to whom that person is married, or with whom that person is living in a conjugal relationship outside of marriage; or

(f) any relative of a person mentioned in clause (e) above who has the same home as such person;

~~but where the Board of Directors orders that two persons shall, or shall not, be deemed to be associates, then such order shall be determinative of their relationships in the application of By-laws, Rules and Forms, with respect to that Member;~~

"**Public Director**" means a ~~d~~Director who is not:

(a) an officer (other than the Chair or a Vice-Chair) or an employee of the Corporation;

(b) a current partner, director, officer, employee or person acting in a similar capacity of, or the holder of a Significant Interest in:

(i) a Member;

(ii) an Associate of a Member; or

(iii) an affiliate of a Member; or

(c) an Associate of a partner, director, officer, employee or person acting in a similar capacity of, or the holder of a Significant Interest in, a Member.

For all purposes of this By-law, a Public Director as at the date this definition of Public Director became effective and who does not qualify as a Public Director under such definition shall be deemed to qualify as a Public Director and to continue so qualified as long as and until he or she ceases to be qualified as a Public Director according to the definition of that term in force immediately before the date this definition becomes effective.

"Significant Interest" means in respect of any person the holding, directly or indirectly, of the securities of such person carrying in aggregate 10% or more of the voting rights attached to all of the person's outstanding voting securities.

~~(a) who is not a current director (other than a Public Director), officer or employee of, or of an associate or affiliate of:~~

~~(i) the MFDA;~~

(ii) any protection or contingency fund in which Members (at the time the director holds the relevant office) are required to participate; or

(iii) the Investment Funds Institute of Canada or the Investment Dealers Association of Canada;

(b) who is not a current employee of a federal, provincial or territorial government or a current employee of an agency of the Crown in respect of such government;

(c) who is not a current member of the federal House of Commons or member of a provincial or territorial legislative assembly;

(d) who has not, in the two years prior to election as a Public Director, held a position described in (a) (d) above;

(e) who is not:

(i) an individual who provides goods or services to and receives direct significant compensation from, or

(ii) an individual who is a director, partner, significant shareholder, officer or employee of an entity that receives significant revenue from services the entity provides to, if such individual's compensation from that entity is significantly affected by the services such individual provides to,

the MFDA or any protection or contingency fund in which Members are required to participate, or a Member of the MFDA; and

(f) who is not a member of the immediate family of the persons listed in (a) (f) above.

For the purposes of this definition:

(i) "significant compensation" and "significant revenue" means compensation or revenue the loss of which would have, or appear to have, a material impact on the individual or entity:

(ii) "significant shareholder" means an individual who has an ownership interest in the voting securities of an entity, or who is a director, partner, officer, employee or agent of an entity that has an ownership interest in the voting securities of another entity, which voting securities in either case carry more than 10% of the voting rights attached to all voting securities for the time being outstanding.

3. DIRECTORS

3.1 Duties and Number

The affairs of the Corporation shall be managed by a Board of Directors consisting of an odd number of directors of not less than 13 and no more than 17. The number of persons comprising the Board of Directors shall be 13directors shall be determined from time to time by a resolution passed at a meeting of directors.

3.2 Composition of the Board of Directors

The Board of Directors shall be composed of 6 the same even number of Public Directors, 6 and Industry Directors and the President and Chief Executive Officer. The members of the Board of Directors (other than the President and Chief Executive Officer) shall collectively and over time be nominated and elected appointed on the basis that there will be timely and appropriate regional representation on the Board of Directors of Members of the Corporation across Canada, provided that at any time (subject to the occurrence of vacancies) not less than 4 of the directors shall represent regions other than the Provinces of Ontario and Quebec. In addition, at any time (subject to the occurrence of vacancies) five 5 of the Industry Directors shall be officers or employees of a Member of the Corporation or of an affiliate or associated corporation which is an Associate of a Member. No Member, affiliate or associated corporation which is an Associate of a Member shall have more than 1 director, officer, employee or other representative on the Board of Directors and, if such event should occur, the Board of Directors in its discretion may request the resignation of or remove as a director, any director or directors in order that the requirements of this section are satisfied. Each director shall be at least 18 years of age.

3.3 Election and Term

~~3.3.1 Initial Election~~

~~At the Annual Meeting of the Corporation when this Section 3 By-law No. 1 is sanctioned and becomes effective, 12 directors shall be elected from persons nominated and recommended to the Board of Directors by an ad hoc nominating committee established by the Board of Directors according to the requirements of Section 3.6.1 as if that Section were in force and a Governance Committee has been established in accordance with its provisions. Of the 6 Public Directors to be so elected, the terms of 3 Public Directors to be designated by the Board of Directors shall each expire at the second and third successive Annual Meetings. Of the 6 Industry Directors to be so elected, the terms of 3 such Industry Directors to be designated by the Board of Directors shall each expire at the first and second successive Annual Meetings on the election of their successors.~~

3.3.~~2~~1 *Public Directors*

At each Annual Meeting ~~commencing in the year 2005~~, 3 Public Directors shall be elected to fill the vacancies created by the expiry of the terms of office of the ~~3~~ Public Directors whose terms have expired at such meeting~~.~~ or since the last Annual Meeting. The term for each Public Director to be elected at an Annual Meeting shall expire at the ~~third~~second Annual Meeting next following such election on the election of his or her successors, unless expired earlier in accordance with this By-law. The Board of Directors shall be authorized to fix the term of any Public Director to be elected for a period of less than ~~3~~ 2 years in order to maintain the intended staggered terms of all Public Directors~~,~~ but no such term shall be shortened if the Public Director has commenced his or her term of office. A Public Director shall be eligible to serve for only ~~2~~ 4 successive terms of ~~3~~ 2 years which shall include any shorter term as may have been fixed by the Board of Directors in accordance with this By-law, but shall exclude any portion of a term of office in respect of a vacancy filled pursuant to Section 3.5. Each Public Director to be elected at an Annual Meeting shall have been recommended by the Governance Committee to the Board of Directors for nomination for election by the Members according to the requirements of the By-laws and the terms of reference of the Governance Committee adopted by the Board of Directors. Any Member shall be entitled to submit to the Governance Committee ~~nominations~~recommendations for Public Directors provided that such ~~nominations~~recommendations shall have been received by the Corporation not less than 60 days prior to the relevant Annual Meeting.

3.3.3~~2~~ Industry Directors

At each Annual Meeting ~~commencing in the year 2004~~, 3 Industry Directors shall be elected to fill the vacancies created by the expiry of the terms of office of the ~~3~~ Industry Directors whose terms have expired at such meeting~~.~~ or since the last Annual Meeting. The term for each Industry Director to be elected at an Annual Meeting shall expire at the second Annual Meeting next following such ~~election~~ appointment on the ~~election~~ appointment of his or her successors, unless expired earlier in accordance with this By-law. The Board of Directors shall be authorized to fix the term of any Industry Director to be elected for a period of less than 2 years in order to maintain the intended staggered terms of all Industry Directors, but no such term shall be shortened if the Industry Director has commenced his or her term of office. An Industry Director shall be eligible to serve only ~~3~~ 4 successive terms of 2 years which shall include any shorter term as may have been fixed by the Board of Directors in accordance with this By-law, but shall exclude any portion of a term of office in respect of a vacancy filled pursuant to Section 3.5. Each Industry Director to be elected at an Annual Meeting shall have been recommended by the Governance Committee to the Board of Directors for nomination for election by the Members according to the requirements of the By-laws and the terms of reference of the Governance Committee adopted by the Board of Directors. Any Member shall be entitled to submit to the Governance Committee ~~nominations~~recommendations for Industry Directors provided that such ~~nominations~~recommendations shall have been received by the Corporation not less than 60 days prior to the relevant Annual Meeting.

3.3.3 Transition

At the Annual Meeting in 2009,

(i) Public Directors whose terms were to expire at the Annual Meeting in 2008 and who had then served 2 consecutive 2 or 3 year terms shall be eligible to be nominated and elected for 1 further 1 year term;

(ii) Public Directors whose terms expire at the Annual Meeting in 2009 and who have then served 2 consecutive 2 or 3 year terms shall be eligible to be nominated and elected for 1 further 2 year term;

(iii) Public Directors whose terms do not expire at the Annual Meeting in 2009 and who have served less than 2 consecutive 2 or 3 year terms shall remain eligible to be nominated and elected as Public Directors at subsequent Annual Meetings for further consecutive 2 year terms;

(iv) Industry Directors whose terms expire at the Annual Meeting in 2009 and who have then served 3 consecutive 2 year terms shall be eligible to be nominated and elected for 1 further 2 year term; and

(v) Industry Directors whose terms do not expire at the Annual Meeting in 2009 and who have served less than 3 consecutive 2 year terms shall remain eligible to be nominated and elected as Industry Directors at subsequent Annual Meetings for further consecutive 2 year terms;

provided that in no event shall any such Public or Industry Director be eligible to serve in aggregate for more than 8 consecutive years as a director.

3.4 Vacancies

The office of a director shall be automatically vacated:

3.4.1 if the director by notice in writing to the Corporation resigns his or her office, which resignation shall be effective at the time it is received by the Secretary of the Corporation or at the time specified in the notice, whichever is later;

3.4.2 if the director is found to be a mentally incompetent person or becomes of unsound mind;

3.4.3 if the director dies;

3.4.4 if the director becomes bankrupt or suspends payment of debts generally or makes an arrangement with creditors or makes an assignment or is declared insolvent;

3.4.5 in the case of a Public Director, if the director ceases to be qualified as a Public Director;

3.4.6 if the director is requested to resign pursuant to Section 3.2 and does not do so in a reasonable time;

3.4.7 if the Public or Industry Director is removed by a resolution passed by either three-quarters of the votes cast at a meeting of the Board of Directors or two-thirds of the votes cast at a meeting of Members;

3.4.8 in the case of the President and Chief Executive Officer, the director ceases to hold such office.

3.5 Filling Vacancies

If a vacancy in the Board of Directors shall occur for any reason, the vacancy shall be filled by a resolution electing or appointing a director passed by either a majority of the votes cast at a meeting of the Members or the Board of Directors, provided that in either case the director has been identified and recommended by the Governance Committee to the Board of Directors for nomination for election or appointment and the nominee is otherwise qualified as a director. In recommending any such nominee as a director, the Governance Committee shall ensure the requirements for the composition of the Board of Directors set out in Section 3.3.2 are satisfied and that the nomination process followed by the Governance Committee shall be in accordance with the requirements for nominees to be recommended to the Board of Directors for the election of directors at Annual Meetings except that no notice of the vacancy or request for nominations need be given to Members.

3.6 Committees

3.6.1 Governance Committee

The Board of Directors shall establish a Governance Committee composed of 2 Public Directors and 2 Industry Directors. The 2 Industry Director members of the Governance Committee shall be officers or employees of a Member of the Corporation or of an affiliate or ~~associated~~ corporation which is an Associate of a Member. The Chair of the Governance Committee shall be 1 of the 2 Public Directors as selected by the Board of Directors. The Governance Committee shall be responsible for identifying and recommending to the Board of Directors Public and Industry Directors for election or appointment to the Board of Directors in accordance with the By-laws and the terms of reference adopted for the Governance Committee by the Board of Directors. In addition, the Governance Committee shall perform such other duties as the Board of Directors may delegate or direct from time to time. 1 Public Director and 1 Industry Director shall constitute a quorum of the Governance Committee.

3.6.2 *Audit Committee*

The Board of Directors shall establish an Audit Committee composed of 2 Public Directors and 1 Industry Director. The Chair of the Audit Committee shall be 1 of the 2 Public Directors as selected by the Board of Directors. The Audit Committee shall review and report to the Board of Directors on the annual financial statements of the Corporation and shall perform such other duties as the Board of Directors may delegate or direct from time to time. 1 Public Director and 1 Industry Director shall constitute a quorum of the Audit Committee.

3.6.3 Executive Committee

The Board of Directors may in its discretion establish an executive committee (which may be otherwise named) composed of an equal number of Public Directors and Industry Directors. The Chair of the Executive Committee, if any, may be either a Public Director or Industry Director and shall be selected by the Board of Directors. The Executive Committee shall exercise such powers and such duties as are delegated or directed by the Board of Directors including, without limitation, the authority to exercise any of the powers of the Board of Directors. 1 Public Director and 1 Industry Director shall constitute a quorum of the Executive Committee.

3.6.4 *Other Board Committees*

The Board of Directors may from time to time in its discretion appoint any other committee or committees as it considers necessary or appropriate for such purposes and with such powers as the Board of Directors may determine including, without limitation, the authority to exercise any of the powers of the Board of Directors and to act in all matters for and in the name of the Board of Directors under the By-laws. Subject to any provisions of the By-laws otherwise, any such committee may be composed of Public Directors or Industry Directors, or both. A majority of the members of a committee established under this Section 3.6.4 shall constitute a quorum, provided that if the committee is composed of 1 or more Public Directors, a quorum shall include 1 Public Director.

3.6.5 Committee Membership and Procedures

Members of any committee of the Board of Directors including, without limitation, the Governance Committee, Audit Committee, Executive Committee (if any) or any other committee established pursuant to Section 3.6.4 and shall be appointed and subject to removal by the Board. The Board of Directors may prescribe rules and procedures not inconsistent with the Act and the By-laws relating to the calling of meetings of, and conduct of business by, committees of the Board. Subject to the By-laws and any resolution of the Board of Directors, meetings of any such committee shall be held at any time and place to be determined by the Chair of the committee or its members provided that 48 hours' prior written notice of such meetings shall be given, other than by mail, to each member of the committee. Notice by mail shall be sent at least 14 days prior to the meeting. No error or accidental omission in giving notice of any meeting of a committee shall invalidate such meeting or make void any proceedings taken at such meeting.

3.7 Remuneration of Directors

The Board of Directors may determine from time to time such reasonable remuneration, if any, to be paid to the directors of the Corporation for serving as such and the Board may determine that such remuneration need not be the same for all directors including, without limitation, as between Public and Industry Directors. Public and Industry Directors may be reimbursed for reasonable expenses incurred by the director in the performance of the director's duties. Subject to Sections 6 and 7.1, nothing herein contained shall be construed to preclude any director from serving the Corporation as an officer or in any other capacity and receiving compensation therefore.

13.1.4 CDS Rule Amendment Notice – Technical Amendments to CDS Procedures – CDS Test Region Facilities

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

CDS TEST REGION FACILITIES

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE CDS PROCEDURE AMENDMENT

Background

This procedure amendment is being put forward at the request of the CDS Board of Directors, based on its approval for CDS to proceed and implement effective September 14, 2009 a fee for providing access to CDS's test regions for specific one off testing requests that are unrelated to CDS initiatives or new participants joining CDS.

CDS currently facilitates testing by participants, service bureaus and acceptable third party vendors, such as alternative trading systems, as part of its existing services so that participants can use CDS's services. Testing generally occurs when CDS offers a new service or implements a material enhancement to an existing service, when a participant subscribes to an existing service it has not used before or when a new participant is preparing to go live.

CDS does not have a test region dedicated exclusively for the use of participants or other external parties. Instead, the separate test regions, C2 and Z1, used by CDS for internal testing are also used for testing by external parties. Typically, when a change initiated by CDS needs to be tested by participants or when a new participant plans to join CDS, there is sufficient advance notice to allow the test region to be set up and made available for the particular test.

To recover the costs associated with providing access to CDS's test regions for specific one off testing requests that are unrelated to CDS initiatives or new participants joining CDS, CDS is going to apply a fee for such requests. CDS will charge a daily rate of $1,000, with a minimum of $1,000, and a premium rate of $1,500 for tests conducted on weekends or for exceptional requests outside of published testing times.

Testing for new CDS participants and to support the implementation of changes to CDS functionality would continue to be made available free of charge, as the associated costs are covered by new participants' entrance fees and the costs allocated to the budget for service enhancements or new services. CDS will apply a time limit after which testing will not be provided free of charge for these cases in order to avoid unplanned testing requests that add costs and disrupt CDS's ability to meet its other deliverables. This free testing period would be based on 90 calendar days for a new participant's start-up from the date of the board's approval of the new participant's application or a specified amount of time based on any testing required as a result of a CDS release which will be defined and communicated to participants during the CDSX release schedules

To assist requesters in planning their testing activities in addition to procedures, CDS will publish a testing calendar, explanation of testing requirements and a new CDS test region form on the CDS.ca website indicating the dates when the testing regions and resources are available for such requests.

In conclusion, the testing services offered by CDS remain unchanged. With the implementation of the new testing region form, published testing schedule and procedures CDS is documenting current practices and charging a fee to recover the associated costs of providing one off tests.

The CDS Procedures marked for the amendments may be accessed at the CDS website at:

http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-blacklined?Open.

Description of Proposed Amendments

Participating in CDS Services (Release 5.9)
Ch 6: Registering and withdrawing from CDS services, s 6.4: CDS test region facilities

In addition, the following form will be added:
Test Region Request form (CDSX844)

CDS Procedure Amendments are reviewed and approved by CDS's Strategic Development Review Committee ("SDRC"). The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by participants and CDS. The SRDC's membership includes representatives from the CDS Participant community and it meets on a monthly basis.

These amendments were reviewed and approved by the SDRC on July 30, 2009

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed pursuant to this Notice are considered technical amendments as matters of a technical nature in routine operating procedures and administrative practices relating to the settlement services.

C. EFFECTIVE DATE OF THE CDS PROCEDURE AMENDMENT

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the Recognition and Designation Order, as amended on November 1, 2006, and Annexe A ("Protocole d'examen et d'approbation des Règles de Services de Dépot et de Compensation CDS Inc. par l'Autorité des marchés financiers") of AMF Decision 2006-PDG-0180, made effective on November 1, 2006, CDS has determined that the proposed amendments will become effective on a date subsequently determined by CDS, and as stipulated in the related CDS Bulletin.

D. QUESTIONS

Questions regarding this notice may be directed to:

Aaron Ferguson
Senior Product Manager, Product Support
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

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13.1.5 Material Amendments to CDS Procedures – FINet Intraday Netting – Request for Comments

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO CDS PROCEDURES

FINET INTRADAY NETTING

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED CDS PROCEDURE AMENDMENTS

The proposed amendments to the CDS procedures are designed to illustrate the differences between the eligible trades that are considered for the FINet intraday and end-of-day netting processes.

The CDS Procedures marked for the amendments may be accessed at the CDS website at:

http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-blacklined?Open.

B. NATURE AND PURPOSE OF THE PROPOSED CDS PROCEDURE AMENDMENTS

The proposed amendments to the CDS procedures, relative to the change being made to the intraday netting process, is based on a request from participants that subscribe to the FINet service. This request was made during the May 14, 2009 FINet Working Group meeting. Some FINet participants are currently not allowing some of their FINet eligible trades to be netted by FINet, because the intraday netting process nets eligible trades regardless of their value dates. When the FINet intraday netting process runs at approximately 2:00 p.m. ET, some participants need to have the ability to modify their eligible future value-dated trades but, once a trade is netted, many of its details can no longer be modified. As such, some participants have requested that CDS exclude FINet eligible trades with a future value date, from the 2:00 PM intraday netting cycle and to net these trades at the end of day (approximately 5:30 PM) instead. Members of the FINet working group have concurred with this change. Modifying the intraday netting process so that it will only net eligible current or past value-dated trades (i.e. not new eligible future value-dated trades), will address this problem and facilitate the inclusion of more eligible trades in FINet which will benefit all of the participants that subscribe to FINet.

C. IMPACT OF THE PROPOSED CDS PROCEDURE AMENDMENTS

Participants will need to be aware that eligible future value-dated trades will no longer be netted during the FINet intraday netting process. Eligible future value-dated trades will continue to be netted as part of the FINet end-of-day netting process.

FINet participant fund requirements may be impacted (i.e. increased/decreased) as fewer eligible trades may be netted during the FINet intraday netting process and more eligible trades may be netted during the FINet end-of-day netting process.

C.1 Competition

There is no impact to competition as CDS is the sole provider of a fixed income netting and settlement service in Canada.

C.2 Risks and Compliance Costs

No known risks or compliance costs will be introduced to CDS or its participants because of the change to the FINet intraday netting process.

C.3 Comparison to International Standards – (a) Committee on Payment and Settlement Systems of the Bank for International Settlements, (b) Technical Committee of the International Organization of Securities Commissions, and (c) the Group of Thirty

FINet exceeds the standards in terms of credit exposures. Mark-to-market occurs twice a day using current prices. CDS also back-tests FINet participant fund collateral requirements to ensure that they are sufficient and potential losses are limited through documented default procedures and a loss allocation mechanism.

Furthermore, FINet has its own participant fund designed to contain the losses resulting from the default of a participant (who subscribes to FINet) without spill-over to other services. Participants who subscribe to FINet provide collateral to the participant fund and each participant's collateral requirement represents an estimate of the potential loss that their default could create.

D. DESCRIPTION OF THE PROCEDURE DRAFTING PROCESS

D.1 Development Context

Development/testing is required in order to modify the FINet intraday netting process so that only eligible current or past value-dated trades are considered:

- The existing procedure (Section 5.6 – FINet netting of Chapter 5 – FINet within the Trade and Settlement Procedures) describes the FINet netting processes. Text has been added that describes the difference between the intraday and end-of-day netting processes.

- The existing procedure (Section 18.4.1 – Settlement today marks of Chapter 17 – FINet Participant Fund within Participating in CDS services) describes the intraday and end-of-day marking processes. Text related to extracted eligible non-exchange trades has been removed.

D.2 Procedure Drafting Process

CDS procedure amendments are reviewed and approved by CDS's Strategic Development Review Committee ("SDRC"). The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by participants and CDS. The SRDC's membership includes representatives from the CDS Participant community and it meets on a monthly basis.

The proposed amendments were reviewed and approved by the SDRC on August 27, 2009.

D.3 Issues Considered

No issues related to the procedural amendments associated with FINet intraday netting and/or new instrument types were identified/considered.

In addition, all of the FINet participants were asked to comment on the proposed change to the FINet intraday netting process and no potential issues were brought to CDS's attention.

D.4 Consultation

Input to the proposed amendments to the procedures was provided by participants, as well as, staff from CDS's Customer Service & Product Development and Risk Management divisions.

D.5 Alternatives Considered

Running the FINet intraday netting process later in the day (i.e. the FINet intraday netting process currently runs at approximately 2:00 p.m. ET) was considered. This alternative was rejected as insufficient time would be available for participants to satisfy their intraday collateral requirements.

D.6 Implementation Plan

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the Ontario *Securities Act*. The Autorité des marches financiers has authorized CDS to carry on clearing activities in Québec pursuant to sections 169 and 170 of the Québec *Securities Act*. In addition CDS is deemed to be the clearing house for CDSX®, a clearing and settlement system designated by the Bank of Canada pursuant to section 4 of the *Payment Clearing and Settlement Act*. The Ontario Securities Commission, the Autorité des marches financiers and the Bank of Canada will hereafter be collectively referred to as the "Recognizing Regulators".

The amendments to Participant Procedures may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment.

A CDS Bulletin will also be released prior to implementing the changes to the FINet intraday netting process.

E. TECHNOLOGICAL SYSTEMS CHANGES

No technological systems changes are required by CDS's participants or other market participants however, development/testing will be required by CDS in order to change the FINet intraday netting extraction process.

The FINet intraday netting extraction process will be modified so that eligible future value-dated trades are not netted (only eligible current or past value-dated trades will be netted).

F. COMPARISON TO OTHER CLEARING AGENCIES

The Depository Trust Clearing Corporation, through its subsidiary, the Fixed Income Clearing Corporation ("FICC") provides a fixed income netting service in the U.S. CDS's previous fixed income netting service (DetNet) was modeled after DTCC's Government Securities Clearing Corporation ("GSCC"), the predecessor of the FICC. CDS's new fixed income netting service (FINet) is an enhancement to DetNet and is similar to FICC's Government Securities Division (GSD).

G. PUBLIC INTEREST ASSESSMENT

CDS has determined that the proposed amendments are not contrary to the public interest.

H. COMMENTS

Comments on the proposed amendments should be in writing and submitted within 30 calendar days following the date of publication of this notice in the Ontario Securities Commission Bulletin to:

Rob Argue
Senior Product Manager, Product Development
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9
Telephone: 416-365-3887
Fax: 416-365-0842
Email: rargue@cds.ca

Copies should also be provided to the Autorité des marchés financiers and the Ontario Securities Commission by forwarding a copy to each of the following individuals:

M^{e} Anne-Marie Beaudoin
Secrétaire del'Autorité
Autorité des marchés financiers
800, square Victoria, 22^{e} étage
C.P. 246, tour de la Bourse
Montréal, Québec, H4Z 1G3
Télécopieur: (514) 864-6381
Courrier électronique: consultation-en-cours@lautorite.qc.ca

Manager, Market Regulation
Capital Markets Branch
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario, M5H 3S8
Fax: 416-595-8940
e-mail: marketregulation@osc.gov.on.ca

CDS will make available to the public, upon request, all comments received during the comment period.

I. PROPOSED CDS PROCEDURE AMENDMENTS

Appendix "A" contains text of current CDS Participant Procedures marked to reflect proposed amendments as well as text of these procedures reflecting the adoption of the proposed amendments.

APPENDIX "A" – PROPOSED CDS PROCEDURE AMENDMENTS

Text of CDS Participant Procedures marked to reflect proposed amendments	Text CDS Participant Procedures reflecting the adoption of proposed amendments
5.6 FINet netting	**5.6 FINet netting**
FINet-eligible trades are entered and confirmed in CDSX following the same process as all other non-exchange trades; however, when the FINet netting process (intraday and end-of-day) is running, netted trades cannot be modified by online interface, InterLink messages or files. For more information, see Trade eligibility on page 44.	FINet-eligible trades are entered and confirmed in CDSX following the same process as all other non-exchange trades; however, when the FINet netting process (intraday and end-of-day) is running, netted trades cannot be modified by online interface, InterLink messages or files. For more information, see Trade eligibility on page 44.
The FINet intraday netting process only nets eligible trades with value dates that are equal to or less than the current business date, while the FINet end-of-day netting process nets eligible trades regardless of their value dates.	The FINet intraday netting process only nets eligible trades with value dates that are equal to or less than the current business date, while the FINet end-of-day netting process nets eligible trades regardless of their value dates.
As part of the FINet netting process (intraday and end-of-day), trades are reviewed for FINet eligibility and are then netted as follows:	As part of the FINet netting process (intraday and end-of-day), trades are reviewed for FINet eligibility and are then netted as follows:
Individual trades are deleted from CDSX and replaced with a single net trade. The net trade is either a buy or sell transaction between CDS's CUID (ZNET) and each applicable FINet participant for each security and value date combination.	Individual trades are deleted from CDSX and replaced with a single net trade. The net trade is either a buy or sell transaction between CDS's CUID (ZNET) and each applicable FINet participant for each security and value date combination.
As more trades are netted for each ISIN and value date combination, the details of an existing net trade (if one already exists) are changed or a new net trade is created (if one does not already exist).	As more trades are netted for each ISIN and value date combination, the details of an existing net trade (if one already exists) are changed or a new net trade is created (if one does not already exist).
FINet performs all necessary trade entry and modifications for FINet net trades. Participants are not required to perform any activity on FINet net trades.	FINet performs all necessary trade entry and modifications for FINet net trades. Participants are not required to perform any activity on FINet net trades.
18.4.1 Settlement today marks	**18.4.1 Settlement today marks**
The settlement today marks described in the table below are processed differently for the intraday and end-of-day marking process.	The settlement today marks described in the table below are processed differently for the intraday and end-of-day marking process.

Process	Description
Intraday marking	The marks (repo and non-repo marks) associated with the ~~extracted eligible non-exchange trades and~~ underlying trades with value dates less than or equal to the current business day are considered settlement today marks
End-of-day marking	The marks (repo and non-repo marks) associated with the extracted eligible non-exchange trades and underlying trades with value dates less than or equal to the current business day+1 business day are considered settlement today marks

Process	Description
Intraday marking	The marks (repo and non-repo marks) associated with the underlying trades with value dates less than or equal to the current business day are considered settlement today marks
End-of-day marking	The marks (repo and non-repo marks) associated with the extracted eligible non-exchange trades and underlying trades with value dates less than or equal to the current business day+1 business day are considered settlement today marks

13.1.6 MFDA Issues Notice of Settlement Hearing Regarding Douglas St. Arnault

NEWS RELEASE
For immediate release

MFDA ISSUES NOTICE OF SETTLEMENT HEARING
REGARDING DOUGLAS ST. ARNAULT

August 31, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") today announced that it has issued a Notice of Settlement Hearing regarding the presentation, review and consideration of a proposed settlement agreement by a Hearing Panel of the MFDA's Pacific Regional Council.

The settlement agreement will be between staff of the MFDA and Douglas Richard St. Arnault (the "Respondent") and involves matters for which the Respondent may be disciplined by a Hearing Panel pursuant to MFDA By-laws.

The subject matter of the proposed settlement agreement concerns allegations that, during March and April 2008, the Respondent:

(a) made racist and sexist remarks to MFDA Staff while they were conducting a compliance examination, contrary to MFDA Rule 2.1.1(b) and (c); and

(b) denied MFDA Staff free access to the premises and documents of the Member and thereby impeded and delayed the completion of a compliance examination, contrary to s. 22.2 of By-law No. 1 of the MFDA.

The settlement hearing is scheduled to commence at 10:00 a.m. (Pacific) on October 14, 2009 in the Hearing Room located at the Morris J. Wosk Centre for Dialogue, 580 West Hastings Street, Vancouver, British Columbia. The hearing will be open to the public, except as may be required for the protection of confidential matters. A copy of the Notice of Settlement Hearing is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 145 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

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