The Ontario Securities Commission

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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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Toronto, Ontario
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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

JANUARY 16, 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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Carol S. Perry	—	CSP
Suresh Thakrar, FIBC	—	ST
Wendell S. Wigle, Q.C.	—	WSW

SCHEDULED OSC HEARINGS

January 19, 2009 10:00 a.m.	**Goldbridge Financial Inc., Wesley Wayne Weber and Shawn C. Lesperance** s. 127 J. Feasby in attendance for Staff Panel: LER/PLK
January 19, 2009 10:00 a.m.	**HudBay Minerals Inc.** s. 21.7 K. Daniels, N. Kanji in attendance for Staff Panel: JEAT/ST/KJK
January 20, 2009 3:00 p.m.	**Irwin Boock, Stanton De Freitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiants, 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(1) & (5) P. Foy in attendance for Staff Panel: JEAT/DLK
January 26-30, 2009 10:00 a.m.	**Darren Delage** s. 127 M. Adams in attendance for Staff Panel: TBA

February 2, 2009 10:00 a.m.	**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: JEAT/DLK/PLK
February 10, 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: TBA
February 12, 2009 10:00 a.m.	**Rajeev Thakur** s. 127 M. Britton in attendance for Staff Panel: TBA
February 13, 2009 9:00 a.m.	**Lyndz Pharmaceuticals Inc., Lyndz Pharma Ltd., James Marketing Ltd., Michael Eatch and Rickey McKenzie** s.127(1) & (5) J. Feasby in attendance for Staff Panel: WSW/ST
February 16, 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: LER/MCH
February 17, 2009 9:00 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: TBA
February 23, 2009 10:00 a.m.	**Roger D. Rowan, Watt Carmichael Inc., Harry J. Carmichael and G. Michael McKenney** s. 127 J. Superina in attendance for Staff Panel: PJL/ST/DLK
February 23 - March 13, 2009 10:00 a.m.	**John Illidge, Patricia McLean, David Cathcart, Stafford Kelley and Devendranauth Misir** S. 127 and 127.1 I. Smith in attendance for Staff Panel: TBA
February 25-27, 2009 10:00 a.m.	**James Richard Elliott** S. 127 J. Feasby in attendance for Staff Panel: TBA
March 3, 2009 2:30 p.m.	**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: JEAT/PLK
March 3, 2009 3:30 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
March 5, 2009 10:00 a.m.	**FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun** s. 127 M. Mackewn in attendance for Staff Panel: ST/MCH

March 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: TBA

March 23-April 3, 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
H. Craig in attendance for Staff
Panel: TBA

March 23-27, 2009
10:00 a.m.
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: PJL/KJK/ST

April 6, 2009
10:00 a.m.
Gregory Galanis
s. 127
P. Foy in attendance for Staff
Panel: TBA

April 13-17, 2009
10:00 a.m.
Matthew Scott Sinclair
s.127
P. Foy in attendance for Staff
Panel: TBA

April 20-27, 2009
10:00 a.m.
Al-Tar Energy Corp., Alberta Energy Corp., Drago Gold Corp., David C. Campbell, Abel Da Silva, Eric F. O'Brien and Julian M. Sylvester
s. 127
S. Horgan in attendance for Staff
Panel: TBA

April 20-May 1, 2009
10:00 a.m.
Shane Suman and Monie Rahman
s. 127 & 127(1)
C. Price in attendance for Staff
Panel: JEAT/DLK/MCH

May 4-29, 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

May 7-15, 2009
10:00 a.m.
MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric
s. 127 & 127(1)
D. Ferris in attendance for Staff
Panel: TBA

May 12, 2009 2:30 p.m.	**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** s. 127 M. Britton in attendance for Staff Panel: JEAT/ST
May 25 – June 2, 2009 10:00 a.m.	**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
June 1-3, 2009 10:00 a.m.	**Robert Kasner** s. 127 H. Craig in attendance for Staff Panel: TBA
June 4, 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/CSP/PLK
June 4, 2009 11:00 a.m.	**Abel Da Silva** s.127 M. Boswell in attendance for Staff Panel: TBA
June 10, 2009 10:00 a.m.	**Global Energy Group, Ltd. and New Gold Limited Partnerships** s. 127 H. Craig in attendance for Staff Panel: TBA
August 10, 2009 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
September 7-11, 2009; and 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
September 21-25, 2009 10:00 a.m.	**Swift Trade Inc. and Peter Beck** s. 127 S. Horgan 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 & 127.1 M. Britton 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
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	**Peter Sabourin, W. Jeffrey Haver, Greg Irwin, Patrick Keaveney, Shane Smith, Andrew Lloyd, Sandra Delahaye, Sabourin and Sun Inc., Sabourin and Sun (BVI) Inc., Sabourin and Sun Group of Companies Inc., Camdeton Trading Ltd. and Camdeton Trading S.A.** s. 127 and 127.1 Y. Chisholm in attendance for Staff Panel: JEAT/DLK/CSP
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: JEAT/MC/ST
TBA	**Rodney International, Choeun Chhean (also known as Paulette C. Chhean) and Michael A. Gittens (also known as Alexander M. Gittens)** s. 127 M. Britton in attendance for Staff Panel: WSW/ST
TBA	**Norshield Asset Management (Canada) Ltd., Olympus United Group Inc., John Xanthoudakis, Dale Smith and Peter Kefalas** s.127 P. Foy in attendance for Staff Panel: WSW/DLK/MCH
TBA	**Xi Biofuels Inc., Biomaxx Systems Inc., Xiiva Holdings Inc. carrying on Business as Xiiva Holdings Inc., Xi Energy Company, Xi Energy and Xi Biofuels, Ronald Crowe and Vernon Smith** s. 127 M. Vaillancourt in attendance for Staff Panel: WSW/DLK

TBA **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**

s. 127

E. Cole in attendance for Staff

Panel: LER/MCH

TBA **Hahn Investment Stewards & Co. Inc.**

s. 21.7

Y. Chisholm in attendance for Staff

Panel: TBA

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

Andrew Keith Lech

S. B. McLaughlin

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

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

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

Euston Capital Corporation and George Schwartz

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

ADJOURNED SINE DIE

Global Partners Capital, WS Net Solution, Inc., Hau Wai Cheung, Christine Pan, Gurdip Singh Gahunia

1.2 Notices of Hearing

1.2.1 Rajeev Thakur

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

AND

IN THE MATTER OF
RAJEEV THAKUR

NOTICE OF HEARING

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission, 20 Queen Street West, 17th Floor, Large Hearing Room, commencing on February 12, 2009 at 10:00 a.m. or as soon thereafter as the hearing can be held;

AND FURTHER TAKE NOTICE the purpose of the hearing is to consider whether it is in the public interest for the Commission to make an order that:

(a) pursuant to clause 2 of subsection 127(1), trading in any securities by the Respondent cease permanently or for such other period as specified by the Commission;

(b) pursuant to clause 2.1 of subsection 127(1), acquisition of any securities by the Respondent is prohibited, permanently or for the period specified by the Commission;

(c) pursuant to clause 3 of subsection 127(1), any exemptions contained in Ontario securities law do not apply to the Respondent permanently or for such other period as specified by the Commission;

(d) pursuant to clause 6 of subsection 127(1), the Respondent be reprimanded;

(e) pursuant to clause 7 of subsection 127(1), the Respondent resign one or more positions he holds as a director or officer of an issuer;

(f) pursuant to clause 8 of subsection 127(1), the Respondent be prohibited from becoming or acting as a director or officer of any issuer;

(g) pursuant to clause 9 of subsection 127(1), the Respondent pay an administrative penalty of not more than $1 million for each failure to comply with Ontario securities law to the Commission;

(h) pursuant to clause 10 of subsection 127(1), the Respondent disgorge to the Commission any amounts obtained as a result of non-compliance with securities law;

(i) pursuant to section 127.1, the Respondent pay the costs of the investigation and the costs of or related to the hearing incurred by or on behalf of the Commission; and,

(j) such other order as the Commission may consider appropriate.

BY REASON OF the allegations set out in the Statement of Allegations of Staff dated January 9, 2009 and such additional allegations as counsel may advise and the Commission may permit;

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

AND FURTHER TAKE NOTICE that if the Respondent to the proceedings fails to attend, the hearing may proceed in the absence of the party and the party is not entitled to any further notice of the proceeding.

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 9th day of January, 2009

"Daisy Aranha"
Per: 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
RAJEEV THAKUR**

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

Staff of the Ontario Securities Commission ("Staff") allege that:

I. THE RESPONDENT

1. Rajeev Thakur ("Thakur") was a resident of Ontario and is a former employee of Celestica Inc. ("Celestica").

II. OVERVIEW

2. Between January 28, 2003 and February 20, 2003, between April 21, 2004 and April 23, 2004, and between July 20, 2005 and July 22, 2005, Thakur purchased and sold securities of Celestica (the "Trades"). At the time of the Trades, Thakur was in a special relationship with Celestica with knowledge of material information with respect to Celestica that had not been generally disclosed.

III. BACKGROUND TO ALLEGATIONS

(a) Celestica

3. Celestica delivers electronic manufacturing services. It operates a highly sophisticated manufacturing network providing a broad range of services to leading Original Equipment Manufacturers. In 2005, it had revenue in excess of USD 8.4 billion. It is a reporting issuer in Ontario and its shares are traded on the TSX and the NYSE. As a reporting issuer, Celestica is obliged to provide periodic reporting of its financial results pursuant to the provisions of the Securities Act, R.S.O. 1990, c-S-5, as amended (the "Act").

(b) Thakur in Special Relationship with Celestica

4. At the time he made the Trades, Thakur was in a special relationship with Celestica. He was a manager with Integrated Services and a Director of Business Processing Outsourcing Strategies at Celestica. In 2002, Thakur had completed 3½ years in a position as a manager in Investor Relations at Celestica. During the time that he held this position, Thakur was exposed to the market's response to earnings announcements.

5. Since 2001, Thakur had unauthorized access to the emails of all employees of Celestica including senior management and executives.

IV. PARTICULARS OF ALLEGATIONS

(a) The 2003 Trades

6. On January 28, 2003, Celestica announced its Q4 2002 results. The earnings were weaker than expected and the economic outlook predicted by the company was soft.

7. As a result of the announcement, Celestica's share price fell by 22% from USD 14.74 to USD 11.50.

8. Thakur purchased, through his trading account at BMO InvestorLine, 851 put option contracts (each put option contract represents 100 underlying shares) between January 21, 2003 and January 24, 2003, (2 to 5 trading days prior to the announcement) for CAD 150,197.62. On February 20, 2003, Thakur exercised the put option contracts for the exercise price of CAD 22.56. The transaction was covered by the purchase of 70,000 Celestica shares, 11,888 of his own Celestica shares and by borrowing 3,212 Celestica shares at an average price of CAD 18.387.

9. Thakur sold the underlying shares for approximately CAD 355,122.31 and, as a result of the 2003 trades, earned a net profit of approximately CAD 204,924.69 (335,122.31-150,197.62 (cost of acquisition of put option contracts) = 204,924.69).

(b) The 2004 Trades

(i) Part A

10. On April 22, 2004, Celestica announced improved results for Q1 2004. As a result of the announcement, Celestica's share price increased 17.6% from USD 16.75 to USD 19.69.

11. Thakur purchased 65,900 shares of Celestica through the BMO trading account at CAD 22.25 to CAD 22.71 on April 21 and April 22, 2004 (the day before, and the day of, the announcement). On April 23, 2004, the day after Celestica's announcement, Thakur sold the 65,900 shares at prices varying from CAD 26.68 per share to CAD 27.05 per share.

12. As a result of these trades, Thakur made a profit of approximately CAD 282,000 in the trading account.

(ii) Part B

13. On April 16, 2004 and April 21, 2004, Thakur sold a total of 125,800 units of BMO Premium Money Market Fund to facilitate a trade in his BMO InvestorLine RRSP account where he purchased 5,700 Celestica shares for a total cost of CAD 127,153. On April 23, 2004, he then sold the 5,700 Celestica shares for CAD 151,051. He then repurchased 150,000 units of BMO Money Market Fund. By effecting these trades in Celestica shares, Thakur made a profit of approximately CAD 23,898 (151,051-127,153=23,898) in the RRSP account.

(c) The 2005 Trades

14. On July 21, 2005, Celestica announced lower revenues and earnings for Q2, 2005 as compared to the same period in the prior year.

15. As a result of the announcement, the price of Celestica shares declined 16% from USD 14.37 to USD 12.17.

16. On July 20, 2005 and July 21, 2005, Thakur shorted 45,000 shares and covered his position on July 22, 2005 (the day after the announcement). As a result of these trades, Thakur made a profit of approximately CAD 131,233.60.

(d) Unauthorized Access to Celestica Email

18. At the time that he made the trades, Thakur had obtained unauthorized access to the email of every person employed at Celestica from his sister who was employed in the IT Department at Celestica. This included access to email of senior management and executives concerning Celestica's pending public announcements, which provided Thakur with knowledge of material information about Celestica at the time he made the Trades.

V. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND CONTRARY TO THE PUBLIC INTEREST

19. Thakur purchased and sold securities of Celestica while in a special relationship with Celestica and with knowledge of material undisclosed information about Celestica contrary to section 76(1) of the Act and he acted contrary to the public interest.

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

DATED at Toronto, Ontario, this 9th day of January, 2009.

1.2.2 Darren Delage – s. 127

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

AND

IN THE MATTER OF
DARREN DELAGE

NOTICE OF HEARING
(Section 127)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the Commission offices, 20 Queen Street West, 17th Floor, in Hearing Room B, Toronto, Ontario, commencing on the 15th day of January, 2009 at 2:30 p.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;

BY REASON OF the allegations set out in the Notice of Allegations of Staff 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 the 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 13th day of January, 2009

"Daisy Aranha"
Per: John P. Stevenson

1.4 Notices from the Office of the Secretary

1.4.1 Rajeev Thakur

FOR IMMEDIATE RELEASE
January 13, 2009

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

AND

IN THE MATTER OF
RAJEEV THAKUR

TORONTO – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on February 12, 2009, at 10:00 a.m.or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated January 9, 2009 and Statement of Allegations of Staff of the Ontario Securities Commission dated January 9, 2009 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.2 Biovail Corporation et al.

FOR IMMEDIATE RELEASE
January 9, 2009

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

AND

IN THE MATTER OF
BIOVAIL CORPORATION, EUGENE N. MELNYK,
BRIAN H. CROMBIE, JOHN R. MISZUK AND
KENNETH G. HOWLING

TORONTO – Following a hearing held today, the Commission issued an Order approving the Settlement Agreement reached between Staff of the Commission and Biovail Corporation.

A copy of the Order and Settlement Agreement are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1-877-785-1555 (Toll Free)

1.4.3 Shane Suman and Monie Rahman

FOR IMMEDIATE RELEASE
January 13, 2009

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

AND

IN THE MATTER OF
SHANE SUMAN AND MONIE RAHMAN

TORONTO – Following a hearing held on July 30, 2008 and an Order issued on August 1, 2008 in the above named matter, the Panel released its Reasons for Decision on January 12, 2009.

A copy of the Reasons For Decision dated January 12, 2009 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries: Wendy Dey
Director, Communications
& Public Affairs
416-593-8120

Laurie Gillett
Manager, Public Affairs
416-595-8913

Carolyn Shaw-Rimmington
Assistant Manager,
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416-593-2361

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

1.4.4 HudBay Minerals Inc.

FOR IMMEDIATE RELEASE
January 13, 2009

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

AND

IN THE MATTER OF
HUDBAY MINERALS INC.

AND

IN THE MATTER OF
A DECISION OF THE
TORONTO STOCK EXCHANGE

TORONTO – The Ontario Securities Commission will hold a hearing on Monday, January 19, 2009 at 10:00 a.m. in the Large Hearing Room, 17th Floor at 20 Queen Street West to consider the Application made by Jaguar Financial Corporation for a hearing and review pursuant to section 21.7 of the Securities Act of a decision made by the Listed Issuer Services Committee of the Toronto Stock Exchange on December 10, 2008.

A copy of the Fresh As Amended Request For Hearing and Review dated January 6, 2009 is available at **www.osc.gov.on.ca**.

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1.4.5 Darren Delage

FOR IMMEDIATE RELEASE
January 13, 2009

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

AND

IN THE MATTER OF
DARREN DELAGE

TORONTO – The Office of the Secretary issued a Notice of Hearing today 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 Darren Delage. The hearing will be held on January 15, 2009 at 2:30 p.m. in the 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 January 13, 2009 is available at **www.osc.gov.on.ca**.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 AlphaPro Management Inc.

Headnote

NP 11-203 – Exemptive relief granted to ETF offered in continuous distribution from certain mutual fund requirements and restrictions on: transmission of purchase or redemption orders, issuing units for cash or securities, calculation and payment of redemptions, and date of record for payment of distributions – National Instrument 81-102 Mutual Funds.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 9.1, 9.4(2), 10.2, 10.3, 14.1, 19.1.

January 6, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

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

AND

IN THE MATTER OF
ALPHAPRO MANAGEMENT INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for exemptive relief from the following provisions of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) (the **Exemption Sought**):

1. Sections 9.1 and 10.2 to permit purchases and sales of units (the **Units**) of Horizons AlphaPro Managed S&P/TSX 60® ETF (formerly known as Jov Talisman Fund) (the **Existing ETF**) and such other exchange traded funds as the Filer, or an affiliate of the Filer, may establish in the future (each a **Future ETF** and together with the **Existing ETF**, the **ETFs** or individually, an **ETF**) on the Toronto Stock Exchange (the **TSX**), instead of through order receipt offices;

2. Section 9.4(2) to permit an ETF to accept a combination of cash and securities as subscription proceeds for units;

3. Section 10.3 to permit an ETF to redeem less than the Prescribed Number of Units (as defined below) of the ETF at a discount to their market price, instead of at their net asset value; and

4. Section 14.1 to permit an ETF to establish a record date for distributions in accordance with the rules of the TSX.

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

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

2. 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, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Basket of Securities means a group of securities determined by JovInvestment from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

Designated Broker means a registered broker or dealer that enters into an agreement with an ETF to perform certain duties in relation to the ETF.

JovInvestment means JovInvestment Management Inc., the investment manager of the Existing ETF.

Prescribed Number of Units means, in relation to an ETF, the number of Units of the ETF determined by the Filer from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

Underwriter means a registered broker or dealer that has entered into an underwriting agreement with an ETF and

that subscribes for and purchases Units of the ETF from the ETF.

Unitholder means a beneficial and registered holder of Units of an ETF.

Section references set out in this decision are references to NI 81-102, unless otherwise indicated.

Representations

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

1. The Existing ETF is, and each of the Future ETFs will be, a mutual fund trust governed by the laws of Ontario and a reporting issuer under the laws of all of the Jurisdictions.

2. The Existing ETF was previously offered by way of an amended and restated simplified prospectus dated August 20, 2008, as amended by amendment no. 1 dated October 22, 2008 and amendment no. 2 dated December 1, 2008 and will now be offered by way of a long form prospectus dated December 31, 2008.

3. On October 8, 2008, in accordance with applicable securities law, notice of a Unitholder's meeting (the **Meeting**) of the Existing ETF was provided to the OSC. Notice of the Meeting, along with all required proxy voting material, was provided to holders of Series A, F, and I units of the Existing Fund in accordance with applicable securities law. At the Meeting, Unitholders approved a change to the current investment objective of the Existing ETF, as well as other necessary changes in order to convert the Existing ETF into an actively managed exchange traded fund.

4. On December 31, 2008, the Filer filed a final long form prospectus in respect of the Existing ETF for the purpose of qualifying Units for distribution in all the Provinces and Territories of Canada.

5. The Filer has also applied to list the Units on the TSX and will apply to list the Units of each Future ETF on the TSX. The Filer will not file a final prospectus for any ETF until the TSX has conditionally approved the listing of Units of such ETF.

6. The Existing ETF's investment objective is to seek long-term capital growth by investing primarily in large capitalization equity, income trust and equity related securities that are constituents of the S&P/TSX 60 Index® or similar Canadian indices.

7. The Filer is a corporation incorporated under the laws of Ontario and it, or an affiliate, will act as the trustee and manager of each ETF. JovInvestment is the investment manager of the Existing ETF and is registered in the categories of investment counsel and portfolio manager under the *Securities Act* (Ontario) and as a commodity trading counsel and as a commodity trading manager under the *Commodity Futures Act* (Ontario).

8. Units of an ETF may only be subscribed for or purchased directly from the ETF by Underwriters or Designated Brokers and orders may only be placed for a Prescribed Number of Units (or a multiple thereof) of the ETF on any day when there is a trading session on the TSX.

9. Each Underwriter or Designated Broker that subscribes for Units must deliver, in respect of each Prescribed Number of Units to be issued, a Basket of Securities and cash in an amount sufficient so that the value of the Basket of Securities and cash delivered is equal to the net asset value of the Units subscribed for next determined following the receipt of the subscription order. The ETFs may also accept subscriptions for Units in cash only in an amount equal to the net asset value of the Units next determined following the receipt of the subscription order.

10. All subscriptions and redemptions for Units of an ETF may be submitted on any day on which there is a trading session on the TSX and will settle on the third day after that date.

11. Each ETF will appoint a Designated Broker(s) to perform certain functions which include standing in the market with a bid and ask price for Units of that ETF for the purpose of maintaining liquidity for Units of that ETF.

12. The net asset value per Unit of each ETF will be calculated and published on each day on which there is a trading session on the TSX and will be made available on the Filer's website.

13. Neither the Underwriters nor the Designated Brokers will receive any fees or commissions in connection with the issuance of Units of an ETF to them. The Filer may, at its discretion, charge an administration fee on the issuance of Units of an ETF to Underwriters or Designated Brokers.

14. Except as described above, Units of an ETF may not be purchased directly from the ETF. Investors are generally expected to purchase Units of an ETF through the facilities of the TSX. However, Units of an ETF may be issued directly to Unitholders of the ETF upon the reinvestment of distributions of income or capital gains.

15. Unitholders of an ETF that wish to dispose of their Units of the ETF may generally do so by selling their Units of the ETF on the TSX, through a registered broker or dealer, subject only to

customary brokerage commissions. A Unitholder that holds a Prescribed Number of Units or an integral multiple thereof may exchange such Units for Baskets of Securities and cash. Unitholders of an ETF may also redeem their Units of the ETF for cash at a redemption price equal to 95% of the closing price of the Units of the ETF on the TSX on the effective date of redemption.

16. As trustee and manager, the Filer will be entitled to receive a fixed annual fee from each ETF. Such annual fee will be calculated as a fixed percentage of the net asset value of the ETF. The Filer will be responsible for the payment of all expenses of the ETFs, except for the management fee, any expenses related to the implementation and on-going operation of an independent review committee under National Instrument 81-107 Independent Review Committee for Investment Funds, brokerage expenses and commissions, income taxes and withholding taxes and extraordinary expenses.

17. Unitholders of an ETF will have the right to vote at a meeting of Unitholders of the ETF prior to: any change in the fundamental investment objective of the ETF; any change to their voting rights; the introduction of a fee or expenses to be charged to the ETF or to Unitholders; or a change in the basis of the calculation of a fee or expenses charged to the ETF or Unitholders where such change could result in an increase in the amount of fees or expenses payable by the ETF or Unitholders.

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 as follows:

1. Sections 9.1 and 10.2 – to enable the purchase and sale of Units of an ETF on the TSX, which precludes the transmission of purchase or redemption orders to the order receipt offices of the ETF.

2. Section 9.4(2) – to permit payment for the issuance of Units of the ETFs to be made partially in cash and partially in securities, provided that the acceptance of securities as payment is made in accordance with Section 9.4(2)(b).

3. Section 10.3 – to permit the redemption of less than the Prescribed Number of Units of an ETF at a price equal to 95% of the closing price of the Units of the ETF on the TSX.

4. Section 14.1 – to relieve an ETF from the requirement relating to the record date for the payment of distributions, provided that the ETF complies with applicable TSX requirements.

"Vera Nunes"
Assistant-Manager, Investment Funds

2.1.2 AlphaPro Management Inc.

Headnote

NP 11-203 – Exemptive relief granted to exchange-traded fund for initial and continuous distribution of units, including: relief from dealer registration requirement to permit promoter to disseminate sales communications promoting the funds subject to compliance with Part 15 of NI 81-102, relief to permit the funds' prospectus to not contain an underwriter's certificate, and relief from take-over bid requirements in connection with normal course purchases of units on the Toronto Stock Exchange subject to undertaking by unitholders not to exercise any votes attached to units which represent more than 20% of the votes attached to all outstanding units of the funds – Securities Act (Ontario).

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 59(1), 74(1), 95-100, 104(2)(c), 147.

Rules Cited

National Instrument 81-102 Mutual Funds.

January 6, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

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

AND

IN THE MATTER OF
ALPHAPRO MANAGEMENT INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for exemptive relief from the Legislation (the **Exemption Sought)** so that:

1. the dealer registration requirement of the Legislation does not apply to the Filer, or an affiliate of the Filer, in connection with its dissemination of sales communications relating to the distribution of units (**Units**) of Horizons AlphaPro Managed S&P/TSX 60® ETF (formerly known as Jov Talisman Fund) (the **Existing ETF**) and such other exchange traded funds as the Filer, or an affiliate of the Filer, may establish in the future (each a **Future ETF** and together with the **Existing ETF**, the **ETFs** or individually, an **ETF**) (the **Registration Relief**);

2. in connection with the distribution of securities of the ETFs pursuant to a prospectus, the ETFs be exempt from the requirement that the prospectus contain a certificate of the underwriter or underwriters who are in a contractual relationship with the issuer whose securities are being offered (the **Underwriter Certificate Relief**); and

3. purchasers of Units of the ETFs be exempted from the requirements of the Legislation related to take-over bids, including the requirement to file a report of a take-over bid and the accompanying fee with each applicable Jurisdiction, (the **Take-over Bid Relief**) in connection with purchases of Units of the ETFs in the normal course through the facilities of the Toronto Stock Exchange (the **TSX**).

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

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

2. 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, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Basket of Securities means a group of securities determined by JovInvestment from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

Designated Broker means a registered broker or dealer that enters into an agreement with an ETF to perform certain duties in relation to the ETF.

JovInvestment means JovInvestment Management Inc., the investment manager of the Existing ETF.

Prescribed Number of Units means, in relation to an ETF, the number of Units of the ETF determined by the Filer from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

Underwriter means a registered broker or dealer that has entered into an underwriting agreement with an ETF and

that subscribes for and purchases Units of the ETF from the ETF.

Unitholder means a beneficial and registered holder of Units of an ETF.

Representations

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

1. The Existing ETF is, and each of the Future ETFs will be, a mutual fund trust governed by the laws of Ontario and a reporting issuer under the laws of the Jurisdiction.

2. The Existing ETF was previously offered by way of an amended and restated simplified prospectus dated August 20, 2008, as amended by amendment no. 1 dated October 22, 2008 and amendment no. 2 dated December 1, 2008 and will now be offered by way of a long form prospectus dated December 31, 2008.

3. On October 8, 2008, in accordance with applicable securities law, notice of a Unitholder's meeting (the **Meeting**) of the Existing ETF was provided to the OSC. Notice of the Meeting, along with all required proxy voting material, was provided to holders of Series A, F, and I units of the Existing Fund in accordance with applicable securities law. At the Meeting, Unitholders approved a change to the current investment objective of the Existing ETF, as well as other necessary changes in order to convert the Existing ETF into an actively managed exchange traded fund.

4. On December 31, 2008, the Filer filed a final long form prospectus in respect of the Existing ETF for the purpose of qualifying Units for distribution in all the Provinces and Territories of Canada.

5. The Filer has also applied to list the Units on the TSX and will apply to list the Units of each Future ETF on the TSX. The Filer will not file a final prospectus for any ETF until the TSX has conditionally approved the listing of Units of such ETF.

6. The Existing ETF's investment objective is to seek long-term capital growth by investing primarily in large capitalization equity, income trust and equity related securities that are constituents of the S&P/TSX 60 Index® or similar Canadian indices.

7. The Filer is a corporation incorporated under the laws of Ontario and it, or an affiliate, will act as the trustee and manager of each ETF. JovInvestment is the investment manager of the Existing ETF and is registered in the categories of investment counsel and portfolio manager under the *Securities Act* (Ontario) and as a commodity trading counsel and as a commodity trading manager under the *Commodity Futures Act* (Ontario).

8. Units of an ETF may only be subscribed for or purchased directly from the ETF by Underwriters or Designated Brokers and orders may only be placed for a Prescribed Number of Units (or a multiple thereof) of the ETF on any day when there is a trading session on the TSX. Under Designated Broker and Underwriter agreements, the Designated Brokers and Underwriters agree to offer Units for sale to the public only as permitted by applicable Canadian securities legislation. Designated Brokers and Underwriters will deliver a copy of the prospectus of the ETFs to the first purchasers of Units of the ETFs in the secondary market.

9. Each Underwriter or Designated Broker that subscribes for Units must deliver, in respect of each Prescribed Number of Units to be issued, a Basket of Securities and cash in an amount sufficient so that the value of the Basket of Securities and cash delivered is equal to the net asset value of the Units subscribed for next determined following the receipt of the subscription order. The ETFs may also accept subscriptions for Units in cash only in an amount equal to the net asset value of the Units next determined following the receipt of the subscription order.

10. All subscriptions and redemptions for Units of an ETF may be submitted on any day on which there is a trading session on the TSX and will settle on the third day after that date.

11. Each ETF will appoint a Designated Broker(s) to perform certain functions which include standing in the market with a bid and ask price for Units of that ETF for the purpose of maintaining liquidity for Units of that ETF.

12. The net asset value per Unit of each ETF will be calculated and published on each day on which there is a trading session on the TSX and will be made available on the Filer's website.

13. Neither the Underwriters nor the Designated Brokers will receive any fees or commissions in connection with the issuance of Units of an ETF to them. The Filer may, at its discretion, charge an administration fee on the issuance of Units of an ETF to Underwriters or Designated Brokers.

14. Investors are generally expected to purchase Units of an ETF through the facilities of the TSX.

15. Because the Underwriters will not receive any remuneration for distributing Units of the ETFs, and because the Underwriters will change from time to time, it is not practical to require an

underwriter's certificate in the prospectus of the ETFs.

16. Units of an ETF may be issued directly to Unitholders of the ETF upon the reinvestment of distributions of income or capital gains.

17. Unitholders of an ETF that wish to dispose of their Units of the ETF may generally do so by selling their Units of the ETF on the TSX, through a registered broker or dealer, subject only to customary brokerage commissions. A Unitholder that holds a Prescribed Number of Units or an integral multiple thereof may exchange such Units for Baskets of Securities and cash. Unitholders of an ETF may also redeem their Units of the ETF for cash at a redemption price equal to 95% of the closing price of the Units of the ETF on the TSX on the effective date of redemption.

18. As trustee and manager, the Filer will be entitled to receive a fixed annual fee from each ETF. Such annual fee will be calculated as a fixed percentage of the net asset value of the ETF. The Filer will be responsible for the payment of all expenses of the ETFs, except for the management fee, any expenses related to the implementation and on-going operation of an independent review committee under National Instrument 81-107 *Independent Review Committee for Investment Funds*, brokerage expenses and commissions, income taxes and withholding taxes and extraordinary expenses.

19. No investment dealer will act as a principal distributor of an ETF in connection with the distribution of Units of the ETF. The Underwriters will not receive any commission or other payment from the ETFs. As a result, the Filer will be the only entity desiring to foster market awareness and promote trading in Units of the ETFs through the dissemination of sales communications.

20. Unitholders of an ETF will have the right to vote at a meeting of Unitholders of the ETF prior to: any change in the fundamental investment objective of the ETF; any change to their voting rights; the introduction of a fee or expenses to be charged to the ETF or to Unitholders; or a change in the basis of the calculation of a fee or expenses charged to the ETF or Unitholders where such change could result in an increase in the amount of fees or expenses payable by the ETF or Unitholders.

21. Although Units of an ETF will trade on the TSX and the acquisition of Units of the ETF can therefore be subject to the Take-Over Bid Requirements:

    (a) it will not be possible for one or more Unitholders of the ETF to exercise control or direction over the ETF as the master declaration of trust governing the ETF will ensure that there can be no changes made to the ETF which do not have the support of the Filer;

    (b) it will be difficult for purchasers of Units of the ETF to monitor compliance with Take-Over Bid Requirements because the number of outstanding Units of the ETF will always be in flux as a result of the ongoing issuance and redemption of Units by the ETF; and

    (c) the way in which Units of the ETF will be priced deters anyone from either seeking to acquire control, or offering to pay a control premium, for outstanding Units of the ETF because pricing of a Unit of the ETF will depend on the performance of the portfolio of the ETF as a whole.

22. The application of the Take-Over Bid Requirements to an ETF would have an adverse impact upon liquidity of a Unit of the ETF because they could cause Underwriters, Designated Brokers and other large Unitholders of the ETF to cease trading Units of the ETF once prescribed take-over bid thresholds are reached.

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 so long as:

1. the Filer or its affiliate comply with Part 15 of National Instrument 81-102 *Mutual Funds* in connection with an ETF's sales communications; and

2. in respect of the Take-over Bid Relief, prior to making any take-over bid for Units that is not otherwise exempt from the Take-over Bid Requirements, the Unit Purchaser, and any person or company acting jointly or in concert with the Unit Purchaser (a **Concert Party**), provides the Filer or its affiliate with an undertaking not to exercise any votes attached to the Units held by the Unit Purchaser and any Concert Party which represent more than 20% of the votes attached to all outstanding Units.

"Paulette Kennedy"

"Wendell S. Wigle"

2.1.3 Phillips, Hager & North Investment Management Ltd. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – A pooled fund and its registered portfolio manager want relief from sections 111(2)(a), 111(2)(c)(ii), 111(3) and 118(2)(a) to allow the fund to purchase and hold long-term debt securities of their related entities acquired in primary distribution – The purchase, sale or holding must be consistent with, or necessary to meet, the investment objectives of the mutual fund; the pooled fund has, or will establish, an IRC that will review and approve the transaction involving the perceived or actual conflict of interest; the IRC and the manager will comply with certain requirements of NI 81-107 as if that rule applied to the pooled fund; the primary offering will be at least $100 million and at least two independent purchasers will collectively purchase at least 20% of the offering; there are limits on the amount of its assets each pooled fund can invest in any one related person and how much all related pooled funds can purchase of any primary offering; the pooled fund provides disclosure to its unitholders about transactions with related parties and is required to file information about the transactions with the securities regulatory authorities.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 111(2)(a), 111(2)(c)(ii), 111(3), 113, 118(2)(a), 121(2)(a)(ii).

December 30, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION
(the Legislation) OF
BRITISH COLUMBIA, ONTARIO, 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
PHILLIPS, HAGER & NORTH INVESTMENT
MANAGEMENT LTD.
(the Filer)

AND

IN THE MATTER OF
THE POOLED FUNDS LISTED IN
SCHEDULES A AND B TO WHICH
NATIONAL INSTRUMENT 81-102 MUTUAL FUNDS
(NI 81-102) DOES NOT APPLY (each, an Existing
Pooled Fund and collectively, the Existing Pooled
Funds) AND ANY POOLED FUND THAT MAY BE
ESTABLISHED IN THE FUTURE FOR WHICH
THE FILER OR AN AFFILIATE OR ASSOCIATE
OF THE FILER ACTS AS PORTFOLIO ADVISOR
AND/OR MANAGER (each, a Future Pooled Fund
and collectively, the Future Pooled Funds)
(collectively, the Pooled Funds)

DECISION

Background

1 The securities regulatory authority or regulator in each of British Columbia and Ontario (Dual Exemption Decision Makers) and in each of British Columbia and Newfoundland and Labrador (Coordinated Exemptive Relief Decision

Makers) has received an application from the Filer in respect of the Pooled Funds for a decision under the securities legislations of the Jurisdictions (the Legislation) for relief (the Exemptive Relief Sought) from:

1. the prohibition in the Legislation of the Jurisdictions (the Related Shareholder Relief) that prohibits a mutual fund from making or holding an investment in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company (each a Related Shareholder) in order to permit the Pooled Funds to purchase and hold non-exchange traded debt securities issued by a Related Shareholder in a primary distribution or treasury offering (a Primary Offering);

2. the prohibition in the Legislation of the Jurisdictions (the Related Party Relief) that prohibits a mutual fund from making or holding an investment in an issuer in which a Related Shareholder has a significant interest (each, a Related Party) in order to permit the Pooled Funds to purchase and hold non-exchange traded debt securities issued by a Related Party in a Primary Offering; and

3. the prohibition in the Legislation of the Jurisdictions (the Related Issuer Relief) that prohibits a portfolio manager or a mutual fund (depending on the Jurisdiction) from investing the portfolio of the mutual fund in any issuer in which a responsible person or an associate of a responsible person is an officer or director, or where his or her own interest might distort his or her judgement (each, a Related Issuer), unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase, in order to permit the Pooled Funds to purchase non-exchange traded debt securities issued by a Related Issuer in a Primary Offering.

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

(a) the British Columbia Securities Commission (the BCSC) is the principal regulator for this application,

(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 Alberta, Saskatchewan Quebec, New Brunswick and Nova Scotia,

(c) the decision is the decision of the principal regulator and the decision evidences the decision of the securities regulatory authority or regulator in Ontario, and

(d) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker.

Interpretation

2 Defined terms contained in National Instrument 14-101 *Definitions*, in NI 81-102 and in National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) have the same meaning in this decision unless they are otherwise defined in this decision.

In this decision the term Related Person will be used to refer to a Related Shareholder, a Related Party or a Related Issuer depending on the provision that is being considered.

The Related Shareholder Relief, the Related Party Relief and the Related Issuer Relief will be collectively referred to as the Requested Related Person Securities Relief.

Representations

3 This decision is based on the following facts represented by the Filer in respect of the Filer and the Pooled Funds:

1. the Filer is a company organized under the laws of British Columbia having its head office located in Vancouver, British Columbia;

2. the Filer is registered under the Legislation of British Columbia as an adviser in the categories of investment counsel and portfolio manager (and in equivalent categories under the securities legislation in the other Jurisdictions); in addition, the Filer is registered under the Legislation of Ontario as a dealer in the category of mutual fund dealer;

3. the Filer and the Pooled Funds are not in default of securities legislation in any jurisdiction;

4. the Filer or an affiliate or associate of the Filer is or will be the manager of the Pooled Funds listed on Schedule A (the Managed Pooled Funds); the Filer or an affiliate or associate of the Filer is expected to be the principal portfolio adviser of the Managed Pooled Funds;

5. the Filer or an affiliate or related entity of the Filer will be the sub-advisor of any Pooled Funds listed on Schedule B, which are advised but not managed by the Filer or an affiliate or related entity of the Filer (the Advised Pooled Funds);

6. investors in the Pooled Funds are primarily sophisticated investors such as pension plans, foundations, crown agencies, other institutions and high net worth individuals; the Pooled Funds are primarily used to execute discretionary investment mandates for these investors;

7. units in the Pooled Funds are sold primarily in reliance on the accredited investor exemption, the minimum amount exemption, and the additional investment in investment funds exemption contained in National Instrument 45-106 *Prospectus and Registration Exemptions*;

8. the Filer or an affiliate or associate of the Filer, or, in the case of an Advised Fund, the manager of the Advised Fund will provide written disclosure regarding the Filer's relationship with the Related Person and the Filer's intention to invest in securities of the Related Person to (i) existing investors prior to relying on this relief; and (ii) new investors at the time of the new investor's initial investment in a Pooled Fund;

9. the independent review committee of the mutual funds managed by the Filer or its affiliate and associates which are subject to NI 81-102 (the IRC) has also been appointed as the IRC of the Managed Pooled Funds and oversees certain transactions with respect to the Managed Pooled Funds;

10. the investment strategies of each of the Pooled Funds that relies on the Requested Related Person Securities Relief permit or will permit it to invest in the securities purchased;

11. Related Persons of the Filer are significant issuers of securities;

12. the Filer obtained Related Shareholder Relief, Related Party Relief and Related Issuer Relief to permit the Filer on behalf of the Pooled Funds to purchase Related Person debt securities in the secondary market in a Passport Decision dated April 28, 2008;

13. the Filer also received relief to purchase debt securities of Related Persons on behalf of the Pooled Funds in a Primary Offering in a Passport Decision dated May 2, 2008; this relief expires on December 31, 2008;

14. Related Persons of the Filer are issuers of highly rated commercial paper and other debt instruments; the Filer considers that the Pooled Funds should have access to such securities for the following reasons:

    (a) there is currently and has been for several years a very limited supply of highly rated corporate debt;

    (b) diversification is reduced to the extent that a Pooled Fund is limited with respect to investment opportunities; and

    (c) to the extent that a Pooled Fund is trying to track or outperform a benchmark it is important for the Pooled Fund to be able to purchase any securities included in the benchmark. Debt securities of Related Persons of the Filer are included in most of the Canadian debt indices;

15. the Filer is seeking the Requested Related Person Securities Relief to permit the Pooled Funds to purchase and hold non-exchange traded securities that are debt securities with a term to maturity of 365 days or more issued by a Related Person in a Primary Offering, other than asset backed commercial paper securities;

16. each non-exchange traded security purchased by a Pooled Fund pursuant to the Requested Related Person Purchase Relief will be a debt security issued by a Related Person that has been given and continues to have, at the time of purchase, an "approved credit rating" by an approved credit rating organization; and

17. each non-exchange traded debt security purchased by a Pooled Fund pursuant to the Requested Related Person Purchase Relief will be purchased in a Primary Offering where the terms of the Primary Offering, such as the size and the pricing, will be a matter of public record as evidenced in a prospectus, offering memorandum, press release or other public document.

Decision

4 Each of the principal regulator, the securities regulatory authority or regulator in Ontario and the Coordinated Exemptive Relief Decision Makers is satisfied that the decision meets the test set out in the Legislation for the relevant regulator or securities regulatory authority to make the decision.

The decision of the Dual Exemptive Decision makers and the Coordinated Exemptive Relief Decision Makers under the Legislation is that:

1. the Requested Related Person Securities Relief is granted to permit the Filer to purchase and hold non-exchange traded debt securities with a term to maturity of 365 days or more, other than asset backed commercial paper securities, issued by a Related Person in a Primary Offering on behalf of the Pooled Funds, provided that:

   (a) the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Pooled Fund and represents the business judgment of the portfolio manager of the Pooled Fund uninfluenced by considerations other than the best interests of the Pooled Fund or in fact is in the best interests of the Pooled Fund;

   (b) an IRC has been established in respect of the Pooled Fund that is composed in accordance with the requirements of section 3.7 of NI 81-107 and is expected to comply with the standard of care set out in section 3.9 of NI 81-107, as if NI 81-107 applied to the Pooled Fund;

   (c) the mandate of the IRC established in respect of the Pooled Fund includes reviewing and approving purchases and sales by the Pooled Fund with Related Persons;

   (d) at the time of each purchase, the IRC of the Pooled Fund has approved the purchase on the same terms as are required under section 5.2(2) of NI 81-107 as if NI 81-107 applied to the Pooled Fund;

   (e) the manager of the Pooled Fund complies with section 5.1 of NI 81-107 as if NI 81-107 applies to the Pooled Fund;

   (f) the manager and the IRC of the Pooled Fund comply with section 5.4 of NI 81-107 as if NI 81-107 applies to the Pooled Fund for any standing instructions the IRC provides in connection with the purchase;

   (g) not less than annually, the IRC completes the review and assessment required by section 4.2(1) of NI 81-107 as if NI 81-107 applies to the Pooled Fund in connection with all the purchases in that period, the related policies and procedures established by the manager, and any related standing instructions provided or conditions imposed by the IRC;

   (h) if the IRC becomes aware of an instance where the manager of a Pooled Fund did not comply with the terms of this decision or with a condition imposed by the IRC in its approval, the IRC must, as soon as practicable, notify in writing the securities regulatory authority or regulator in the jurisdiction under the laws of which the Pooled Fund is organized;

   (i) the size of the Primary Offering is at least $100 million;

   (j) at least two purchasers who are independent, arm's-length purchasers, which may include "independent underwriters" within the meaning of National Instrument 33-105 *Underwriting Conflicts*, collectively purchase at least 20% of the Primary Offering;

   (k) no Pooled Fund shall participate in the Primary Offering if following its purchase the Pooled Fund would have more than 5% of its net assets invested in non-exchange traded debt securities of the Related Person;

   (l) no Pooled Fund shall participate in the Primary Offering if following its purchase the Pooled Fund together with related Pooled Funds will hold more than 20% of the securities issued in the Primary Offering;

   (m) the price paid for the securities by the Pooled Fund in the Primary Offering shall be no higher than the lowest price paid by any of the arm's length purchasers who participate in the Primary Offering; and

   (n) on or before the 90th day after the end of each financial year of the Pooled Fund, the Filer, or an affiliate or associate of the Filer, or in the case of an Advised Pooled Fund, the manager of the Advised Pooled Fund files with the securities regulatory authority or regulator in the jurisdiction under the laws of which the Pooled Fund is organized the particulars of any investments made in reliance on this relief; and

2. this decision will expire on the coming into force of any securities legislation relating to fund purchases of related party debt securities in a Primary Offering.

"Noreen Bent"
Acting Director, Corporate Finance
British Columbia Securities Commission

Schedule A

List of Managed Pooled Funds

1. Phillips, Hager & North U.S. Pooled Pension Fund
2. Phillips, Hager & North Institutional S.T.I.F.
3. Phillips, Hager & North Long Bond Pension Trust
4. Phillips, Hager & North High Grade Corporate Bond Fund
5. Phillips, Hager & North Investment Grade Corporate Bond Trust
6. Phillips, Hager & North Mortgage Pension Trust
7. Phillips, Hager & North Absolute Return Fund
8. Phillips, Hager & North Income Equity Pension Trust
9. Phillips, Hager & North Enhanced Income Equity Pension Trust
10. Phillips, Hager & North Global Equity Pension Trust
11. Phillips, Hager & North PRisM – Short
12. Phillips, Hager & North PRisM – Mid
13. Phillips, Hager & North PRisM – Long
14. Phillips, Hager & North Long Mortgage Pension Trust
15. Phillips, Hager & North Long Corporate Bond Pension Trust
16. Phillips, Hager & North Long Duration Swap Fund
17. Phillips, Hager & North Foreign Bond Fund
18. Phillips, Hager & North PRisM Balanced Fund
19. Phillips, Hager & North Canadian Equity 130/30 Fund
20. Phillips, Hager & North Canadian Equity Market Neutral Fund
21. Phillips, Hager & North Enhanced Total Return Fund
22. BonaVista Canadian Equity Fund
23. BonaVista U.S. Equity Fund
24. BonaVista Fixed Income Fund
25. BonaVista Money Market Fund
26. BonaVista Balanced Fund
27. BonaVista International Equity Fund
28. BonaVista Private Balanced Fund

Schedule B

List of Advised Pooled Funds

None currently.

2.1.4 Scotia Cassels Investment Counsel Limited

Headnote

Process for Exemptive Relief Applications in Multiple Jurisdictions – Portfolio manager and exempted from the dealer and adviser registration requirements in the Legislation in respect of trades in shares or units of mutual funds managed by an affiliate of the portfolio manager, made by portfolio manager through its officers and employees acting on its behalf, to managed accounts, subject to terms and conditions.

Statutes Cited

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

Rules Cited

Multilateral Instrument 11-102 Passport System.
National Instrument 14-101 Definitions.
National Instrument 81-101 Mutual Fund Prospectus Disclosure.
National Instrument 81-102 Mutual Funds.

December 30, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

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

AND

IN THE MATTER OF
SCOTIA CASSELS INVESTMENT
COUNSEL LIMITED
(Scotia Cassels)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Scotia Cassels (the **Filer**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for a decision that the requirement in the Legislation that prohibits a person or company from trading in a security unless the person or company is registered in the appropriate category of registration under the Legislation (the **Dealer Registration Requirement**) should not apply in respect of any trades in units of the Private Client Units class (**PCU**) of funds that are managed by Scotia Securities Inc. (the **Scotia Funds**), made by the Filer to a client account of the Filer that is a Managed Account (as defined below) (the **Requested Relief**).

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

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

(b) the Filers have 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, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, the Yukon, the Northwest Territories and Nunavut.

Interpretation

Defined terms contained 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 is registered as an adviser in the appropriate categories to provide discretionary advisory services in all provinces and territories of Canada. The Filer has a head office in Ontario.

2. The Filer is not, to its knowledge, in default of the Legislation of any Jurisdiction.

3. The Filer is the portfolio manager of many of the Scotia Funds which are offered pursuant to a prospectus prepared and filed in accordance with National Instrument 81-101 and that are subject to National Instrument 81-102.

4. The Filer's affiliate, Scotia Securities Inc. (the **Manager**), is the manager and trustee of the Scotia Funds.

5. The Filer provides discretionary portfolio management services to clients pursuant to investment management agreements between the clients and the Filer (**Managed Account Agreements**).

6. Based on the size of the assets of each client and depending on the allocation of a client's assets to a particular asset class, the Filer either manages the client's assets on a segregated account basis by investing directly in securities of various issuers (the **Managed Accounts**), or manages clients' assets on pooled basis by, *inter alia*, investing in the PCU's of Scotia Funds.

7. The PCU's were, and in the future shall be, established by the Manager of the Scotia Funds at the request of the Filer in order to assist the Filer in managing clients' assets on a pooled basis.

8. Pursuant to the Managed Account Agreements, the Filer has full authority to provide its portfolio management services to each client's accounts, including investing in mutual funds for which the Filer is the portfolio manager and changing those mutual funds as the Filer determines appropriate, in accordance with the mandate of each client.

9. From time to time, the Filer may determine that in lieu of holding securities in a Managed Account, a client would be better served by being invested in the PCUs of one or more of the Scotia Funds.

10. The Filer is required under the Legislation to meet "know your client", suitability, anti-money laundering and anti-terrorist financing requirements.

11. Currently, every order to purchase or redeem PCU's is forwarded to the Manager for acceptance and processing, acting in its capacity as both manager of the Scotia Fund and as a mutual fund dealer.

12. The Manager wishes to cease acting in the capacity of mutual fund dealer with regard to purchase and redemptions of the PCU's.

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 Requested Relief is granted for the Filer provided that:

(a) the Filer is at the time of trade, registered under the Legislation as an adviser in the category of "portfolio manager" (or the equivalent);

(b) the trade is for the PCU class of Scotia Funds which are established by the Manager of the Scotia Funds.

"Paulette Kennedy"
Commissioner
Ontario Securities Commission

"James E.A. Turner"
Commissioner
Ontario Securities Commission

2.1.5 JovFunds Management Inc.

Headnote

Process for Exemptive Relief Applications in Multiple Jurisdictions – Fund manager and administrator exempted from the dealer and adviser registration requirements in the Legislation in respect of trades in units of mutual funds it manages in connection with an automatic rebalancing program where portfolio holdings are proportionately adjusted quarterly based upon standing instructions from the unitholders and where no discretion is applied by the administrator, subject to terms and conditions.

Statutes Cited

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

Rules Cited

Multilateral Instrument 11-102 Passport System.
National Instrument 14-101 Definitions.
National Instrument 81-102 Mutual Funds.

December 30, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

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

AND

IN THE MATTER OF
JOVFUNDS MANAGEMENT INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from JovFunds Management Inc. (the **Applicant**) with respect to the Funds (as defined below) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Applicant from the adviser and dealer registration requirements of the Legislation in respect of trades that facilitate the rebalancing of units of one or more Funds as part of the administration of an automatic rebalancing program (the **ARP**) (the **Requested Relief**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

(i) the Ontario Securities Commission (the **OSC**) is the principal regulator for this application; and

(ii) the Manager and the Funds have provided notice that subsection 4.7(2) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other Provinces and Territories of Canada (together with Ontario, the **Jurisdictions**, and individually a **Jurisdiction**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Applicant is a mutual fund manager based in Toronto, Ontario and is the manager of several funds including the Jov Canadian Equity Class of Jov Corporate Funds Inc., Jov Talisman Fund, Jov North American Momentum Fund, Jov Leon Frazer Dividend Fund, Jov Bond Fund, Jov Winslow Global Green Growth Fund, Jov Fiera Conservative Tactical Portfolio, Jov Fiera Balanced Tactical Portfolio, and Jov Fiera Growth Tactical Portfolio (the **JovFunds**);

2. As of the date of this application, T.E. Investment Counsel Inc. (**TEIC**) is the manager and portfolio manager of Jov Prosperity Canadian Fixed Income Fund, Jov Prosperity Canadian Equity Fund, Jov Prosperity U.S. Equity Fund, Jov Prosperity International Equity Fund (the **Prosperity Funds**) (together, the JovFunds and the Prosperity Funds are the **Existing Funds**) and the Applicant is the administrator of the Prosperity Funds;

3. The Applicant or an affiliate may establish in the future and/or become the manager of other funds (each a **Future Fund** and together with the JovFunds and the Prosperity Funds, individually, a **Fund** and, collectively, the **Funds**);

4. The JovFunds and Prosperity Funds are, and any Future Fund will be, managed and offered subject to the requirements of National Instrument 81-102 *Mutual Funds*;

5. The Prosperity Funds are part of an ARP which is a service that can be applied to any account and monitors when the respective values of a unitholders investments within the Prosperity Funds in the ARP deviates by more than the established variance percentage from the unitholder's target allocation (the **Target Allocation**);

6. Currently, if at the end of a calendar quarter, a Prosperity Fund has deviated more than 5% from the target allocation, TEIC will ensure that the Prosperity Fund and all other Prosperity Funds in the ARP are rebalanced to the Target Allocation through a series of switches;

7. TEIC exercises no discretion in respect of the rebalancing as it is relying on a standing instruction from each investor that participates in the ARP;

8. The Target Allocations for each unitholder are determined by the unitholder with their dealer or adviser and the Target Allocation is then passed to the Applicant as a standing instruction under an ARP;

9. TEIC is registered as an investment counsel and portfolio manager in Ontario;

10. The Applicant is not registered under the securities laws of Ontario;

11. The Applicant and TEIC are each wholly-owned subsidiaries of Jovian Capital Corporation.

12. Effective November 1, 2008, the Applicant will assume the role of administrator of the Prosperity Funds from TEIC and TEIC will continue to be the portfolio manager of the Prosperity Funds;

13. In order to allow the Applicant to take over the administration of the ARP with respect to the Prosperity Funds or initiate an ARP with respect to the JovFunds, the Applicant must either become registered as an adviser or a dealer, or be exempt from the registration requirement in those limited circumstances.

14. In the future, the Applicant may wish to administer an ARP for the JovFunds.

15. The Applicant in administering an ARP will only carry out the standing instructions it has received from the unitholder to maintain certain proportions with respect to investments in the Funds, and will continue to carry out those instructions do so until such time as the unitholder withdraws or amends such instructions.

16. The Applicant will not exercise any discretion regarding the investment.

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 Requested Relief is granted and the Applicant shall not be subject to the adviser and dealer registration requirement in respect of any trade that facilitates the rebalancing of units of one or more Funds pursuant to an

ARP in those Jurisdictions in which that Fund is a reporting issuer.

December 30, 2008.

"Paulette Kennedy"
Commissioner
Ontario Securities Commission

"James E.A. Turner"
Commissioner
Ontario Securities Commission

2.1.6 AIC Limited et al.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemptive relief granted to a mutual funds allowing a 38 day extension of the prospectus lapse date – Extension of lapse date granted to facilitate consolidation of mutual funds' prospectus with prospectus of other mutual funds under common management.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5 as am., s. 62(5).

January 8, 2009

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

AND

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

AND

IN THE MATTER OF
AIC LIMITED
("AIC")

AND

AIC PRIVATE PORTFOLIO COUNSEL CANADIAN POOL, AIC PRIVATE PORTFOLIO COUNSEL U.S. SMALL TO MID CAP POOL, AIC PRIVATE PORTFOLIO COUNSEL GLOBAL POOL, AIC PRIVATE PORTFOLIO COUNSEL BOND POOL, AIC PRIVATE PORTFOLIO COUNSEL GLOBAL FIXED INCOME POOL, AIC PPC BALANCED INCOME PORTFOLIO POOL, AIC PPC BALANCED GROWTH PORTFOLIO POOL, AIC PPC CORE GROWTH PORTFOLIO POOL
(the "Funds")
(AIC and the Funds collectively, the "Filers")

DECISION

Background

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

for the time limits for renewal of the simplified prospectus of the Funds dated March 3, 2008, as amended (the "Prospectus") to be extended to those time limits that would be applicable if the lapse date of the Prospectus was April 10, 2009 (the "Exemptive Relief Sought").

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

(a) the Ontario Securities Commission is the principal regulator for the 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 Filers:

1. AIC is a private corporation existing under the laws of Ontario. AIC is the manager and trustee of the Funds. Each of the Funds is an open-ended mutual fund trust established under the laws of Ontario pursuant to a declaration of trust.

2. The Funds are reporting issuers under the Legislation and are not in default of any of the requirements of the Legislation.

3. The Funds are currently qualified for distribution in all Jurisdictions under the Prospectus, as amended.

4. Pursuant to the Legislation or the regulations made thereunder, the lapse date (the "Lapse Date") for the distribution of securities of the Funds under the Prospectus is March 3, 2009.

5. Pursuant to the Legislation or the regulations made thereunder, provided a pro forma simplified prospectus is filed 30 days prior to March 3, 2009, a final version is filed by March 13, 2009, and a receipt for the simplified prospectus issued by the securities regulatory authorities by March 23, 2009, the securities of the Funds may be distributed without interruption during the prospectus renewal period.

6. On November 28, 2008, AIC merged AIC PPC Balanced Income Portfolio Pool into Value Leaders Balanced Income Portfolio, AIC PPC Balanced Growth Portfolio Pool into Value Leaders Balanced Growth Portfolio, AIC PPC Core Growth Portfolio Pool into Value Leaders Growth Portfolio and AIC Private Portfolio Counsel Global Pool into AIC Global Premium Dividend Income Fund (formerly known as "AIC Global Diversified Fund"). On or about December 15, 2008, AIC plans to merge AIC Private Portfolio Counsel Bond Pool into AIC Bond Fund. The mergers have or will be effected in accordance with the requirements of National Instrument 81-102 ("NI 81-102") and National Instrument 81-106 ("NI 81-106"), including, without limitation, the requirement to obtain the approval of securityholders of the terminating funds and applicable continuing funds as contemplated by section 5.1(f) of NI 81-102 and the approval of the Decision Maker to the extent not already provided by section 5.6(1) of NI 81-102.

7. AIC also plans to rename the three remaining Funds on or about December 15, 2008. The three Funds are being re-branded as part of the AIC Trust Fund family as follows: AIC Private Portfolio Counsel Canadian Pool will be renamed AIC Canadian Equity Fund, AIC Private Portfolio Counsel Global Fixed Income Pool will be renamed AIC Global Fixed Income Fund and AIC Private Portfolio Counsel U.S. Small to Mid Cap Pool will be renamed AIC American Small to Mid Cap Fund (collectively the "Re-Branded Funds").

8. The AIC Trust Fund family is a group of open-end mutual fund trusts managed by AIC which are qualified for distribution in the Participating Jurisdictions under a simplified prospectus dated April 21, 2008, as amended. Pursuant to the Legislation or the regulations made thereunder, the lapse date of the AIC Trust Fund's simplified prospectus for the distribution of securities of the AIC Trust Funds is April 21, 2009.

9. If the Exemption Sought is not granted, a pro forma prospectus and a final prospectus for the Funds must be filed prior to February 1, 2009 and March 13, 2009 respectively in accordance with the existing time limits for the renewal of the Prospectus notwithstanding that the Re-Branded Funds will become part of the AIC Trust Fund family and be included in the AIC Trust Funds' renewal simplified prospectus and the other Funds would have merged as described herein. The financial costs and time involved in preparing, filing and printing a revised prospectus for the Funds which have not merged or been terminated would be unduly costly in light of the brief period of time during which such a prospectus would be relied upon.

10. Since March 3, 2008, the date of the Prospectus, no material change has occurred that has not been disclosed by way of an amendment to the Prospectus. Accordingly, as amended, the Prospectus will present up to date information regarding the Funds. The extension requested will not affect the currency or accuracy of the information contained in the Prospectus, as amended, and as

may be further amended in accordance with NI 81-106, and, accordingly, will not be prejudicial to the public interest.

Decision

The Decision Maker 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 Maker under the Legislation is that the Exemptive Relief Sought is granted.

"Darren McKall"
Assistant Manager, Investment Funds Branch
Ontario Securities Commission

2.1.7 Howson Tattersall Investment Counsel Limited and Howson Tattersall Private Asset Management Inc.

Passport System – Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 33-109 Registration Information (NI 33-109) – relief from certain filing requirements of NI 33-109 in connection with a bulk transfer of business locations and registered and non-registered individuals under an amalgamation.

Multilateral Instruments Cited

Multilateral Instrument 11-102 Passport System.

National Instruments Cited

National Instrument 33-109 Registration Information.

January 8, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

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

AND

IN THE MATTER OF
HOWSON TATTERSALL INVESTMENT
COUNSEL LIMITED (HTIC)
AND
HOWSON TATTERSALL PRIVATE ASSET
MANAGEMENT INC. (HTPAM)
(together, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of Ontario (the **Legislation**), for relief pursuant to section 7.1 of National Instrument 33-109 Registration Information (**NI 33-109**) to allow the bulk transfer of all of the registered individuals and all of the locations of the Filers to an amalgamated entity, Howson Tattersall Investment Counsel Limited (as described below) on or about December 31, 2008 in accordance with section 3.1 of the companion policy to NI 33-109 (the **Exemption Sought**).

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

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

(ii) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 Passport System (**MI 11-102**) is intended to be relied upon by each of the Filers on the same basis in all of the other provinces and territories of Canada (together with Ontario, the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 Definitions and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

HTIC

1. HTIC is an institutional investment management company that provides investment management services to mutual funds and pooled funds managed by Saxon Funds Management Limited according to a management agreement between the two for each of the Saxon funds. HTIC is incorporated under the Canada Business Corporations Act. The head office of HTIC is in Ontario.

2. HTIC is registered as an adviser in the categories of investment counsel and portfolio manger or equivalent in all the provinces and territories of Canada and as a dealer in the category of limited market dealer (**LMD**) in Ontario.

3. HTIC is not in default of the securities legislation in any of the Jurisdictions.

HTPAM

4. HTPAM is a private client asset management company which provides discretionary investment management to high net worth individuals and their related holding companies, registered plans, trusts and foundations. HTPAM is incorporated under the *Canada Business Corporations Act*. The head office of HTPAM is in Ontario.

5. HTPAM is registered in as an adviser in the categories of investment counsel and portfolio manager or equivalent in all of the provinces and territories of Canada and as a dealer in the category of LMD in Ontario.

6. HTPAM is not in default of the securities legislation in any of the jurisdictions.

Amalgamation

7. The Filers have confirmed that they amalgamated on January 1, 2009. The new entity has been named Howson Tattersall Investment Counsel Limited (**HTIC Amalco**).

8. Neither of the Filers are a member of any self-regulatory organization.

9. Effective on Janaury 1, 2009, all of the current registerable activities of the Filers were transferred to HTIC Amalco. HTIC Amalco has assumed all of the existing registrations and approvals for all of the registered individuals and all of the locations of the Filers. There was no disruption in the ability of the Filers to trade or advise on behalf of their respective clients prior to the amalgamation, and HTIC Amalco does not anticipate that there will be any disruption in its ability to trade or advise immediately after the amalgamation.

10. HTIC Amalco continues and will continue to be registered in the same categories of registration as the Filers across Canada and is subject to, and will comply with, all of Canada's applicable securities laws.

11. HTIC Amalco will carry on the combined business of the Filers.

12. The Exemption Sought will not be contrary to the public interest and will have no negative consequences on the ability of HTIC Amalco to comply with all applicable regulatory requirements or the ability to satisfy any obligations to clients of HTIC Amalco.

13. It would be difficult to individually transfer each of the locations and individuals to HTIC Amalco as per the requirements set out in 33-109 given the multiple jurisdictions in which the individuals are currently registered or approved. Moreover, it is imperative that the transfer of the locations and individuals occur on the same date, in order to ensure that there is no break in registration.

14. The head office location of HTIC Amalco remains the same as the current head office locations of HTIC and HTPAM.

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 the Filers make acceptable arrangements with CDS Inc. for the payment of the costs associated with the Bulk Transfer, and make such payment in advance of the Bulk Transfer.

"Dina Dizon"
Assistant Manager, Registrant Regulation
Ontario Securities Commission

2.1.8 TD Waterhouse Canada Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Registered dealers exempted from the requirements of section 36 of the Act, subject to certain conditions, to send trade confirmations for trades that the dealer executes on behalf of client where: client's account is fully managed by the dealer; account fees paid by the client are based on the amount of assets, and not the trading activity in the account; trades in the account are only made on the client's adviser's instructions; the client agreed in writing that confirmation statements will not be delivered to them; trade confirmations are provided to the client's adviser; and, the client is sent monthly statements that include the confirmation information.

Applicable Ontario Statutory Provisions

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

December 31, 2008

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

AND

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

AND

IN THE MATTER OF
TD WATERHOUSE CANADA INC.
TD ASSET MANAGEMENT INC.
AND
TD WATERHOUSE PRIVATE INVESTMENT COUNSEL INC.
(the Filers, or individually the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filers for a decision exempting each of them from the requirement (the Trade Confirmation Requirement) contained in the securities legislation of the Jurisdictions (the Legislation) that would otherwise require the Filer, in its capacity as a dealer, to send to its clients a written confirmation of any trade in securities that the Filer conducts:

(a) pursuant to discretionary investment authority that has been granted to the Filer by the client; or

(b) based on trading instructions that have been provided to the Filer by another Filer or any other affiliate of The Toronto-Dominion Bank (TD Bank) pursuant to the exercise of discretionary investment authority that has been granted to the other Filer or another affiliate of TD Bank (a TD Bank Affiliate), as the case may be, by the client.

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

(a) Ontario 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 as regards TD Waterhouse Canada Inc. (TDWCI), each of the Decision Makers in Nova Scotia and Newfoundland and Labrador as regards TD Asset Management Inc. (TDAM), and the Decision Maker in Newfoundland and Labrador as regards TD Waterhouse Private Investment Counsel Inc. (TDW PIC).

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 upon the following facts represented by the Filers:

1. TDWCI is a corporation incorporated under the *Business Corporations Act* (Ontario). It is a wholly-owned subsidiary of TD Bank and its head office is located in Toronto, Ontario.

2. TDWCI is registered as an investment dealer or its equivalent in all provinces and territories of Canada, it is a dealer member of the Investment Industry Regulatory Organization of Canada (IIROC) and it is an approved participant of the Montreal Exchange.

3. TDWCI is authorized to act as an adviser pursuant to an exemption from the adviser registration requirement that is available under the Legislation to dealers who are members of IIROC.

4. TDAM is a corporation amalgamated under the *Business Corporations Act* (Ontario). It is a wholly-owned subsidiary of TD Bank that has its head office located in Toronto, Ontario.

5. TDAM is registered as an investment counsel and portfolio manager or their equivalent under the securities legislation of all provinces and territories

of Canada, as a mutual fund dealer under the *Securities Act* (Nova Scotia), as a limited market dealer under the *Securities Act* (Ontario) and the *Securities Act* (Newfoundland and Labrador) and as a commodity trading manager under the *Commodity Futures Act* (Ontario).

6. TDW PIC is a corporation incorporated under the *Canada Business Corporations Act*. It is a wholly-owned subsidiary of TDAM that has its head office located in Toronto, Ontario.

7. TDW PIC is registered as an investment counsel and portfolio manager or their equivalent under the securities legislation of all provinces and territories of Canada and as a limited market dealer under the Securities Act (Ontario) and the *Securities Act* (Newfoundland and Labrador).

8. Each of the Filers is not in default of securities legislation in any Jurisdiction.

9. TDWCI currently offers its clients two managed account options and may, in the future, offer other discretionary investment management services. The first option is the Premier Managed Portfolio Program (the Premier Program) and the second option is the Managed Account Program.

10. The Premier Program is a "wrap" account program that provides TDWCI's clients participating in the Premier Program (Premier Clients) with access to investment advice from a number of different portfolio management firms that are located in a variety of different jurisdictions throughout the world. The Decision Makers have previously granted TDWCI an exemption from the Trade Confirmation Requirement in respect of Premier Clients.

11. The Managed Account Program is a more traditional asset management service that provides TDWCI's clients with access to the discretionary investment management services that are available from TDWCI's investment advisers.

12. TDWCI clients that participate in the Managed Account Program (MA Clients) enter into a managed account client agreement with TDWCI (Managed Account Agreement) pursuant to which TDWCI is granted discretionary investment authority over an MA Client's account.

13. TDAM conducts an investment management business offering passive, quantitative, enhanced and active portfolio management services to a large and diversified client base.

14. As part of its operations, TDAM provides discretionary portfolio management services to separately managed accounts (SMAs) pursuant to a written agreement (a SMA Agreement) between TDAM and its client (a SMA Client). The SMA Agreement grants TDAM discretionary investment authority to purchase or sell securities for an SMA.

15. TDAM is also the manager and promoter of various investment funds (the TDAM Funds) that are offered for sale by means of confidential offering memoranda to institutional investors, members of corporate sponsored group plans and SMAs pursuant to exemptions from prospectus and registration requirements of applicable securities legislation.

16. TDAM also acts as the trustee, manager and promoter of the TD Mutual Funds, the TD MAP Portfolios, the TD Private Funds and the TD Pools (collectively, the TD Funds), and as the manager and promoter of the TD Emerald Pooled Funds and the TD Emerald Treasury Management Pooled Funds (collectively, the TD Emerald Funds). The TD Funds and the TD Emerald Funds are offered for sale by means of simplified prospectuses and annual information forms that have been prepared and filed in accordance with applicable Canadian securities regulatory requirements.

17. TDW PIC utilizes the TD Private Funds to provide customized investment strategies to clients (PIC Clients) who have $500,000 or more of investable assets. PIC Clients must enter into an investment management agreement (the PIC Agreement) with TDW PIC. The PIC Agreement grants TDW PIC discretionary investment authority over a PIC Client's account and it authorizes TDW PIC to exercise such discretion to purchase and redeem units of the TD Private Funds on behalf of the PIC Client.

18. The TD Private Funds currently consist of 12 different mutual funds that are used for servicing accounts that are fully managed by TDW PIC. TDAM is the trustee, manager and promoter of the TD Private Funds.

19. In addition to the Premier Program and the Managed Account Program offered by TDWCI, the SMAs offered by TDAM and the customized investment strategies that are provided to PIC Clients by TDW PIC, TDWCI, TDAM, TDW PIC and other TD Bank Affiliates (collectively, the TD Portfolio Managers) may offer other discretionary investment management services (Other Discretionary Investment Services) to their clients from time to time.

20. Before offering any Other Discretionary Investment Services to a client, a TD Portfolio Manager will enter into a written agreement (a Discretionary Investment Agreement) with the client (a Discretionary Investment Client) pursuant to which the Discretionary Investment Client will grant the TD Portfolio Manager discretionary

authority to make investment decisions and trade securities on behalf of the Discretionary Investment Client without obtaining the specific consent of the Discretionary Investment Client to specific trades subject to, and in accordance with, the terms and conditions of the Discretionary Investment Agreement including, without limitation, the investment objective, and any investment restrictions and policies, of the Discretionary Investment Client set out in the Discretionary Investment Agreement.

21. Each TD Portfolio Manager is, or will be, registered, or exempt from registration, as an investment counsel and portfolio manager or their equivalent under the securities Legislation of each Jurisdiction in which its MA Clients, SMA Clients, PIC Clients and/or Discretionary Investment Clients who are also customers of a Filer (collectively, TD Clients), as the case may be, are located.

22. Each TD Client agrees, or will agree, to pay a fee calculated on the basis of the TD Client's assets under management by a TD Portfolio Manager which will be payable monthly or quarterly in arrears and will not be based on transactions effected on behalf of the TD Client.

23. Each TD Client that does not wish to receive trade confirmations from a Filer for trades that are executed by the Filer either in its capacity as the TD Client's TD Portfolio Manager or based upon trading instructions received from the TD Client's TD Portfolio Manager must provide a written waiver of the Trade Confirmation Requirement in respect of all such trades (the Trade Confirmation Waiver) to the TD Client's TD Portfolio Manager.

24. Each TD Client that provides a Trade Confirmation Waiver will be entitled to terminate the Trade Confirmation Waiver by providing its TD Portfolio Manager with a written notice of termination of the Trade Confirmation Waiver which shall be effective upon receipt of the written notice by its TD Portfolio Manager as regards all trades conducted following the date of receipt thereof.

25. Trade confirmations for trades that are the subject of a Trade Confirmation Waiver received from a TD Client will be delivered to the TD Client's TD Portfolio Manager.

26. Each TD Client who provides a TD Portfolio Manager with a Trade Confirmation Waiver will receive a statement of account from the TD Portfolio Manager that is prepared and delivered to the TD Client no less frequently than quarterly, and on a monthly basis for each month during which there has been activity in the TD Client's account, in accordance with applicable securities regulatory requirements and each such statement of account shall identify the assets that are being managed by the TD Portfolio Manager on behalf of the TD Client, and shall include a list of all transactions during the relevant period, a statement of portfolio at the end of the relevant period, and for each trade conducted on behalf of the TD Client during the relevant period, the information that would otherwise have been provided to the TD Client in accordance with the Trade Confirmation Requirement save and except for the following (the Omitted Information):

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

    (b) the name of the salesperson, if any, in the transaction; and

    (c) if acting as agent in a trade, the name of the person or company from or to or through whom the security was bought or sold.

27. Each TD Portfolio Manager will maintain Omitted Information in respect of each of its TD Clients in its books and records and will make the Omitted Information available to the TD Client immediately following its receipt of a request for the Omitted Information from the TD Client.

28. TDWCI and any other TD Portfolio Manager that becomes a dealer member of IIROC will otherwise comply with all applicable IIROC Rules including, without limitation, client account statement, trade confirmation and managed account requirements found in IIROC Rules 200 and 1300.

Decision

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

The decision of the Decision Makers is that TDWCI is exempt from the Trade Confirmation Requirement in the Legislation of all Jurisdictions, that TDAM is exempt from the Trade Confirmation Requirement in the Legislation of Ontario, Nova Scotia and Newfoundland and Labrador, and that TDW PIC is exempt from the Trade Confirmation Requirement in the Legislation of Ontario and Newfoundland and Labrador provided that:

    (a) each TD Portfolio Manager is, or will be, registered, or exempt from registration, as an investment counsel and portfolio manager or their equivalent under the Legislation of each Jurisdiction in which its TD Clients are located;

    (b) each TD Client pays a fee that is calculated on the basis of the TD Client's assets under management by a TD Portfolio Manager which will be payable monthly or quarterly in arrears and will

not be based on transactions effected on behalf of the TD Client;

(c) each TD Client that does not wish to receive trade confirmations from a Filer for trades that are executed by the Filer either in its capacity as the TD Client's TD Portfolio Manager or based upon trading instructions received from the TD Client's TD Portfolio Manager must provide a Trade Confirmation Waiver to its TD Portfolio Manager;

(d) each TD Client that provides a Trade Confirmation Waiver will be entitled to terminate the Trade Confirmation Waiver by providing its TD Portfolio Manager with a written notice of termination of the Trade Confirmation Waiver which shall be effective upon receipt of the written notice by its TD Portfolio Manager as regards all trades conducted following the date of receipt thereof;

(e) trade confirmations for trades that are the subject of a Trade Confirmation Waiver received from a TD Client will be delivered to the TD Client's TD Portfolio Manager; and

(f) each TD Client who provides a TD Portfolio Manager with a Trade Confirmation Waiver will receive a statement of account from the TD Portfolio Manager that is prepared and delivered to the Client no less frequently than quarterly, and on a monthly basis for each month during which there has been activity in the TD Client's account, in accordance with applicable securities regulatory requirements and each such statement of account shall identify the assets that are being managed by the TD Portfolio Manager on behalf of the TD Client, and shall include a list of all transactions during the relevant period, a statement of portfolio at the end of the relevant period, and for each trade conducted on behalf of the TD Client during the relevant period, the information that would otherwise have been provided to the TD Client in accordance with the Trade Confirmation Requirement save and except for the Omitted Information.

"Lawrence Ritchie"
Commissioner
Ontario Securities Commission

"Wendell S. Wigle"
Commissioner
Ontario Securities Commission

2.1.9 Star Hedge Managers Corp. and BMO Nesbitt Burns Inc.

Headnote

NP 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted to allow the administrator of an investment fund to act as prime broker in connection with a portion of the fund's assets – relief is conditional on the use of an independent third party investment manager by the fund and that the administrator will only accept instructions, with regard to assets it holds as prime broker, from the independent third party investment manager – relief granted to permit an entity to serve as custodian or sub-custodian of investment funds – relief was necessary because the filer's financial statements are not publicly disclosed.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, ss. 14.1(3), 14.2(1)(c)(i).

January 12, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the "Jurisdiction")

AND

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

AND

IN THE MATTER OF
STAR HEDGE MANAGERS CORP.
(the "Filer")

AND

BMO NESBITT BURNS INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the "**Legislation**") for relief from Section 14.1(3) of National Instrument 41-101 ("**NI 41-101**"), which provides that a manager of an investment fund may not act as a custodian or sub-custodian of the investment fund and from Section 14.2(1)(c)(i) of NI 41-101 that would enable the Filer and other investment funds subject to NI 41-101 that may in the future wish to engage BMO Nesbitt Burns Inc. to serve as a custodian or sub-custodian (the "**Additional Funds**") to enter into arrangements with BMO Nesbitt Burns Inc. to act as custodian or sub-custodian, as applicable, pursuant to Part 14 of NI 41-101.

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

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

(ii) the Filer has provided notice that section 4.7(1) of Multinational Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in the jurisdictions of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* and MI 11-102 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 is a mutual fund corporation incorporated under the laws of the Province of Ontario. BMO Nesbitt Burns Inc. (the "**Administrator**" or "**BMO Nesbitt**") is the administrator of the Filer. The principal office of the Filer and the Administrator is located at 1 First Canadian Place, 100 King Street West, 3rd Floor, P.O. Box 150, Toronto, Ontario M5X 1H3. The Filer is a reporting issuer and filed a final long form prospectus dated August 28, 2008 (the "**Prospectus**") in respect of an offering of units, each unit consisting of one Class A Share and one Warrant to purchase one Class A Share.

2. The Administrator is incorporated under the laws of Canada and is an indirect subsidiary of the Bank of Montreal, a bank listed in Schedule 1 of the Bank Act (Canada). The Administrator is a member of IIROC and is registered as an investment dealer (or equivalent) with the securities regulatory authorities in each province and territory of Canada. The Administrator's head office is in Toronto, Ontario. The financial results of BMO Nesbitt are consolidated with those of Bank of Montreal and as such are not reported separately to the public.

3. BMO Nesbitt is subject to regulatory oversight and regulatory capital requirements and accordingly files with the applicable regulators audited financial statements on a regular basis. BMO Nesbitt's most recent audited financial statements for the financial year ended October 31, 2008 indicate shareholders' equity in excess of $10 million.

4. BMO Nesbitt does not meet the requirements of subparagraph 14.2(1)(c)(i) of NI 41-101, as it does not have audited financial statements that have been made public. Otherwise BMO Nesbitt meets all other requirements of NI 41-101 in order to act as a custodian or sub-custodian of investment funds under NI 41-101.

5. The Filer has been created to provide investors with long-term capital growth by investing in a portfolio (the "**Portfolio**") consisting of private investment funds or portfolios managed by three of Canada's leading portfolio managers: Rohit Sehgal of Dynamic Funds, Eric Sprott of Sprott Asset Management Inc. and Normand Lamarche of Front Street Investment Management Inc. ("**Front Street**").

6. The Portfolio will initially consist of approximately equal investments in Dynamic Power Hedge Fund managed by Rohit Sehgal (the "**Dynamic Fund**"), Sprott Hedge Fund L.P. II managed by Eric Sprott (the "**Sprott Fund**") and a separate account managed by Norman Lamarche (the "**Front Street Managed Account**"). The Front Street Managed Account will employ investment strategies used by Front Street Resource Hedge Fund Ltd. and Front Street Special Opportunities Canadian Fund Ltd.

7. The Filer has appointed CIBC Mellon Trust Company ("**CIBC Mellon**") to act as custodian of the portfolio assets, which will include the units of the Dynamic Fund and the Sprott Fund and the securities and assets in the Front Street Managed Account. Front Street as an investment advisor has used the Administrator as its prime broker to facilitate portfolio transactions and if appointed as prime broker the Administrator would hold portfolio assets. To accommodate these arrangements for the Filer, CIBC Mellon as the Filer's custodian may retain the Administrator as one of its sub-custodians so that it may hold the Filer's assets that form part of the Front Street Managed Account.

8. The value of the assets in the Front Street Managed Account will be reflected in the CIBC Mellon account maintained for the Filer. As custodian, CIBC Mellon has the customary standard of care relating to the Filer's property received by it or a sub-custodian and has the other obligations of a custodian under applicable securities laws. The Administrator will cooperate with CIBC Mellon to allow CIBC Mellon to meets its obligations thereunder.

9. The Administrator has referred the arrangements between Front Street and the Administrator as prime broker to the Filer's independent review committee (the "**IRC**"). The IRC has provided a positive recommendation to the Administrator and will continue to review any arrangements between Front Street and the Administrator as prime broker on an annual basis. In that regard the IRC will obtain a certificate from Front Street setting out the rationale for using the Administrator as prime broker including service, operational and pricing considerations

10. The Filer will disclose that the Administrator acts as prime broker and sub-custodian if that is the case in the Related Party Transactions section of the Filer's management report of fund performance.

11. BMO Nesbitt wishes to have the flexibility to agree to act as a custodian or a sub-custodian for Additional Funds without having to make separate applications for relief.

12. If appointed prime broker to the Filer, the Administrator will give the Filer and its custodian, as applicable, a copy of its audited summary statement of consolidated financial position in respect of the financial year ended October 31, 2008 and will continue to give to the Filer, its custodian, as applicable, and the Additional Funds (including their custodians,

as applicable) such audited financial summary upon request to allow those entities to continue to conclude that BMO Nesbitt is qualified under NI 41-101 to act as a custodian or sub-custodian, as the case may be.

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:

(i) the exemption from Section 14.1(3) of NI 41-101 is granted provided that:

A. in the sub-custodian agreement between the Custodian and the Administrator, the Administrator will agree to exercise a custodian's normal standard of care and will be responsible for any loss that arises out of its failure to exercise the standard of care;

B. the Administrator will only act as prime broker for the Filer if Front Street acts as an investment manager to the Filer;

C. the Administrator will cease acting as sub-custodian in the event that Front Street uses another Canadian investment dealer as its principal prime broker for investment strategies used by the Filer;

D. with respect to the Filer's assets held by it as prime broker, the Administrator will only act on trade instructions received from Front Street; and

(ii) the exemption from Section 14.2 (1)(c)(i) is granted to permit the Filer and the Additional Funds to enter into arrangements with BMO Nesbitt to provide custodial services provided that:

A. the relief terminates 10 days following the date that:

(a) a Schedule I Bank ceases to own or control BMO Nesbitt directly or indirectly; or

(b) the shareholders' equity of BMO Nesbitt declines below $10 million;

B. the custodian or sub-custodian agreement, as applicable, between the Filer or any Additional Funds and BMO Nesbitt includes a provision requiring BMO Nesbitt to provide a copy of its audited summary statement of consolidated financial position in respect of its most recently completed financial year to the Filer or any Additional Funds (including their custodians, as applicable) upon request; and

C. the compliance report required by Subsection 14.6(2) of NI 41-101 to be delivered on behalf of the Filer or any Additional Funds, as applicable, includes a statement that:

(a) BMO Nesbitt is acting as custodian or sub-custodian of the Filer or any Additional Funds, as applicable, pursuant to the decision of the Canadian securities administrators; and

(b) the circumstances described in clause (A) above do not exist as of the date of the compliance report.

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

2.1.10 BP p.l.c.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – subsection 1(10) of the Securities Act – Application by issuer incorporated in the United Kingdom for a decision that it is not a reporting issuer – Canadian resident shareholders beneficially own less than 2% of the issuer's outstanding securities and represent less than 2% of the total number of securityholders worldwide – In the last 12 months, issuer has not conducted an offering of its securities in Canada or taken any steps that indicate that there is a market for its securities in Canada – issuer has no plans to seek a public offering of its securities in Canada – no securities of the issuer trade on a marketplace in Canada – issuer's securities are listed on the NYSE, the London Stock Exchange and other European exchanges – issuer is subject to reporting requirements under United States securities law – issuer has issued a press release announcing that it has submitted an application for a decision that it is not a reporting issuer – issuer has undertaken to concurrently send or provide to its securityholders resident in Canada, all disclosure material that it is required to send or provide to United States resident holders of its securities – requested relief granted.

Applicable Legislative Provisions

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

Citation: BP p.l.c., Re, 2009 ABASC 1

January 12, 2009

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

AND

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

AND

IN THE MATTER OF
BP P.L.C.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer be deemed to have ceased to be a reporting issuer under the Legislation in each of 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 is registered in England and Wales and was formed on December 31, 1998, as a result of the merger of Amoco Corporation (incorporated in Indiana, USA in 1889) and The British Petroleum Company plc (registered in 1909 in England and Wales).

2. The Filer's registered office and worldwide headquarters is located in London, United Kingdom.

3. The Canadian management of the Filer's operations in Canada is based in Alberta. The Filer has more assets in Alberta than in any other Canadian jurisdiction.

4. The Filer has its ordinary shares listed for trading on the London Stock Exchange (as well as other European exchanges). The Filer is not in default of any filing requirements of the London Stock Exchange nor the regulatory authorities in the United Kingdom.

5. The Filer's ordinary shares represented by American Depositary Shares (the **ADSs**) are registered in the United States pursuant to section 12(b) of the 1934 Act. The ADSs are listed for trading in the United States on the New York Stock Exchange (the **NYSE**). The Filer is subject to reporting requirements under the 1934 Act and to disclosure requirements of the NYSE, and is not in default of any such reporting or disclosure requirements.

6. The Filer has made a good faith investigation to confirm the residency of the holders of its outstanding securities. Based on this investigation, the Filer has concluded that residents of Canada (a) do not directly or indirectly beneficially

own more than 2% of each class or series of outstanding securities of the Filer worldwide, and (b) do not directly or indirectly comprise more than 2% of the total number of security holders of the Filer worldwide.

7. The Filer's ADSs were voluntarily delisted from the TSX as of August 15, 2008, primarily because of the low trading volume of the ADSs on the TSX. For the year ended December 31, 2007, 63,104 ADSs traded on the TSX, as compared to 1,002,993,432 ADSs traded on the NYSE.

8. The Filer's ordinary shares (including those represented by ADSs) are not now listed or posted for trading on any "marketplace" in Canada (as defined in National Instrument 21-101 *Marketplace Operation*). The Filer has no present intention to list its securities on any stock exchange or market in Canada.

9. The Filer has not conducted a prospectus offering of its securities in any jurisdiction in Canada in the past 12 months and has no present intention of seeking such public financing in any jurisdiction in Canada in the future.

10. The Filer is a reporting issuer under the Legislation in each of the Jurisdictions and is not in default of any of its obligations as a reporting issuer thereunder, other than the requirements:

    (a) since 2004 to file the certificates relating to its quarterly reports as required under section 4.1(2) of Multilateral Instrument 52-109 *Certification of Disclosure In Issuer's Annual and Interim Filings*. The Filer is not in default of the requirements of section 4.1(1);

    (b) since 2004 to annually file a statement of reserves data and other oil and gas information and related reports under Part 2 of National Instrument 51-101 *Standards for Oil and Gas Activities*; and

    (c) since 2004 to disclose the reporting currency in its interim financial statements as required under section 3.4 of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*.

11. The Filer is subject to, and in compliance with, the laws of England and Wales, those listing rules of the United Kingdom Listing Authority and those rules of the London Stock Exchange. As a "foreign private issuer" in the United States, the Filer is also governed by, and in compliance with, corporate governance and disclosure standards imposed by the SEC, the 1933 Act, the 1934 Act, the United States Sarbanes-Oxley Act of 2002 and the rule making authority of the NYSE (collectively, the **US Rules**).

12. The Filer is not required to file continuous disclosure documents in electronic format under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* and so access to the Filer's Canadian disclosure record is generally limited to manual inspection of the records maintained by or on behalf of the Decision Makers.

13. Disclosure materials required by the US Rules, which have been filed electronically through EDGAR by the Filer, are available to the Filer's security holders through the SEC's website at www.sec.gov.

14. The Filer undertakes to continue to send or provide to its security holders in Canada all disclosure material that it is required to send or provide to U.S. resident holders of the Filer's securities of the same class or series, in the same manner and at the same time that such material is required to be sent or provided to U.S. resident security holders under applicable U.S. federal securities laws or exchange requirements.

15. On December 3, 2008, the Filer issued a press release announcing that it has applied for a decision deeming it to have ceased to be a reporting issuer in the Jurisdictions and that, if the decision is granted, the Filer will no longer be a reporting issuer in any jurisdiction in Canada.

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
Alberta Securities Commission

2.1.11 Middlefield Fund Management Limited and Middlefield Canadian Growth Class

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from the illiquid assets purchase restriction in National Instrument 81-102 Mutual Funds granted to mutual fund to permit the fund to purchase assets acquired under a rollover transaction with flow through limited partnership under common management – rollover transaction will result in minimal increase of illiquid assets held by the mutual fund as a percentage of net assets – substantially all of the shareholders of the mutual fund are former limited partners of flow-through limited partnerships established by the fund manager – the mutual fund will be able to reduce its illiquid holdings in compliance with subsections 2.4(2) and (3) if the 15% limit in illiquid holdings is reached – the increase in illiquid assets as a result of the rollover transaction will not impair the mutual fund's ability to meet redemptions on demand.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.4(1), 19.1.

December 16, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the "Jurisdiction")

AND

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

AND

IN THE MATTER OF
MIDDLEFIELD FUND MANAGEMENT LIMITED
(the "Applicant")

AND

IN THE MATTER OF
MIDDLEFIELD CANADIAN GROWTH CLASS
("Growth Class")
(the Applicant and Growth Class are the "Filers")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for relief from the restriction contained in section 2.4(1) of National Instrument 81-102 – *Mutual Funds* ("**NI 81-102**") in order to permit the Growth Class to acquire certain illiquid assets from MRF 2006 II Resource Limited Partnership ("**MRF 2006 II**") on or about December 16, 2008, notwithstanding that, immediately after such acquisition, more than 10% of the net assets of Growth Class, taken at market value at the time of the acquisition, will consist of illiquid assets (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; and

(b) the Filers have 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, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territory, Nunavut and the Northwest Territories.

Interpretation

Terms defined in National Instrument 14-101 – *Definitions* and MI 11-102 have the same meanings if used in this decision, unless otherwise defined.

Representations

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

The Applicant

1. The Applicant is a corporation organized under the *Business Corporations Act* (Ontario). The head office of the Applicant is located at 1 First Canadian Place, 58th Floor, P.O. Box 192, Toronto, Ontario, M5X 1A6.

2. The Applicant is the manager of the Growth Class.

3. The Applicant is also the promoter and manager of certain flow-through limited partnerships, including MRF 2006 II.

The Growth Class

4. The Growth Class is a class of shares of Middlefield Mutual Funds Limited (the "**Mutual Fund**"), a mutual fund corporation established under the *Business Corporations Act* (Ontario).

5. The fundamental objective of the Growth Class is to provide investors long-term growth of capital through investment in equity and some debt securities. Investments are primarily in equity securities of issuers operating primarily in the Canadian resource sectors, including assets that are "illiquid assets" as defined in NI 81-102.

6. The Growth Class is a reporting issuer in each of the provinces and territories of Canada pursuant to a simplified prospectus filed on May 26, 2008 in each of the provinces and territories of Canada. The net assets of the Growth Class as at December 12, 2008 were approximately $77.4 million.

7. The Growth Class is not in default of any of the requirements of the securities legislation in any of the provinces or territories of Canada.

MRF 2006 II

8. MRF 2006 II is a flow-through limited partnership formed pursuant to the *Limited Partnerships Act* (Ontario) on August 18, 2006. MRF 2006 II is a reporting issuer in each of the provinces and territories of Canada (other than the Northwest Territories and Nunavut) pursuant to a prospectus filed on September 20, 2006 (the "**Prospectus**") offering for sale up to 2,000,000 limited partnership units of the Partnership at a price of $25 per unit.

9. MRF 2006 II was formed to achieve capital appreciation and significant tax benefits to enhance after-tax returns to its limited partners through investment in a diversified portfolio of equity securities, including flow-through shares and flow-through warrants to acquire shares (collectively, "**Flow-Through Shares"**) of companies involved primarily in oil and gas, mining or renewable energy exploration, development and production ("**Resource Companies**").

10. MRF 2006 II is a short-term special purpose vehicle which is to be dissolved in February 2009. The primary investment purpose of MRF 2006 II is not to achieve capital appreciation, although this is a secondary benefit, but rather to obtain for limited partners the significant tax benefits that accrue when Resource Companies renounce resource exploration and development expenditures to MRF 2006 II through the Flow-Through Shares.

11. The limited partnership units of MRF 2006 II (the "**Units**") are not and will not be listed or quoted for trading on any stock exchange or market. The Units are not redeemable by the limited partners. Generally, the Units are not transferred by limited partners since limited partners must be holders of the Units on the last day of each fiscal year of MRF 2006 II in order to obtain the desired tax deduction.

12. As at December 12, 2008, the net assets of MRF 2006 II were approximately $25 million.

Roll-Over Transaction

13. All of the assets of MRF 2006 II, including certain common shares of resource issuers that are Flow-Through Shares will, pursuant to a transfer agreement entered into with the Growth Class, be transferred to the Growth Class on a tax-deferred "rollover" basis in exchange for redeemable shares of the Growth Class of the Mutual Fund (the "**Roll-Over Transaction**"). Under the terms of the partnership agreement, MRF 2006 II is authorized to enter into the Roll-Over Transaction on or before December 16, 2008. The Roll-Over Transaction is intended to provide the limited partners of MRF 2006 II with enhanced liquidity and the potential for long-term growth of capital and income.

14. The portfolio assets of the Growth Class and MRF 2006 II are valued using the same valuation policies and procedures.

15. Following the transfer of its assets to the Growth Class, MRF 2006 II will be dissolved and upon dissolution, the limited partners will receive their pro rata interest in the redeemable shares of the Growth Class on a tax-deferred basis.

16. Details surrounding the transfer of the assets of MRF 2006 II to the Growth Class were disclosed in the Prospectus and in the Growth Class's simplified prospectus. In addition, the Prospectus disclosed the fact that the Roll-Over Transaction would be subject to the receipt of any regulatory approvals that may be necessary.

17. The illiquid assets held by MRF 2006 II consist of shares of Laricina Energy Ltd. ("**Laricina**"), a private company. At the time of purchase, the shares of Laricina constituted approximately 3.4% of the net assets of MRF 2006 II. As of December 12, 2008, the shares of Laricina constituted 13.7% of the net assets of MRF 2006 II.

18. The valuation of the shares of Laricina is based on the most recent trade in shares of Laricina and other factors determined by the Applicant in accordance with its valuation policies for valuing private company shares. Both the Growth Class and MRF 2006 II currently hold shares of Laricina which are valued at the same amount per share.

19. As of December 12, 2008, 10.6% of the net assets of Growth Class consisted of illiquid assets.

20. It is expected that, based on the net assets of MRF 2006 II and the Growth Class as at December 12, 2008, immediately after the transfer of the assets of MRF 2006 II to the Growth Class, the combined illiquid assets held by the Growth Class will represent approximately 11.3% of the net assets of the Growth Class, taken at market value at the time of the Roll-Over Transaction.

21. The increased volatility of equity markets in the last number of months has contributed to the increase in the percentage of illiquid assets held by the Growth Class and MRF 2006 II. Due to recent market conditions, MRF 2006 II was unable to sell its Laricina shares prior to the Roll-Over Transaction despite efforts to do so.

22. Substantially all the shareholders of the Growth Class are former limited partners of flow-through limited partnerships established by the Applicant and will have had exposure to illiquid assets prior to becoming shareholders of the Growth Class.

23. The Applicant will ensure that the Growth Class maintains, at all times, liquid assets sufficient to fund potential redemption requests. The increase in the Growth Class's illiquid assets as a result of the Roll-Over Transaction will not impair the ability of Growth Class to meet redemptions on demand.

24. The Applicant is of the view that it will be able to reduce the Growth Class's illiquid holdings within 90 days to 15% or less of the fund's net assets if the 15% investment limit in section 2.4(2) of NI 81-102 is exceeded.

25. The Applicant is of the view that the Roll-Over Transaction will benefit Growth Class shareholders by increasing the size of the Growth Class, which will reduce the management expense ratio since the fixed expenses of the Growth Class will be spread across a larger base.

26. The Applicant believes that Laricina has the potential for significant capital appreciation. The acquisition of the assets of MRF 2006 II is in compliance with the investment objectives and strategies of the Growth Class.

27. In the absence of the Exemption Sought, the Growth Class would be prohibited from purchasing the illiquid assets from MRF 2006 II pursuant to section 2.4(1) of NI 81-102 in connection with the Roll-Over Transaction as, immediately after the purchase, more than 10% of the net assets of the Growth Class, taken at market value at the time of the purchase, would consist of illiquid assets.

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.

"Darren McKall"
Assistant Manager, Investment Funds
Ontario Securities Commission

2.1.12 Toronto-Dominion Bank and TD Capital Trust IV

Headnote

MI 11-102 and NP 11-203 – capital trust established by bank to issue trust subordinated notes as cost-effective means of raising capital for Canadian bank regulatory purposes exempted from eligibility requirements to file a short form prospectus, certain form requirements and permitted to abridge 10-day notice requirement – relief granted as disclosure regarding the bank is more relevant and bank has been reporting issuer for many years – relief subject to conditions – National Instrument 44-101 Short Form Prospectus Distributions – relief also granted for temporary confidentiality of decision.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions, ss. 2.3, 2.8.
Form 44-101F1 Short Form Prospectus, items 6 and 11.

December 29, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the "Jurisdiction")

AND

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

AND

IN THE MATTER OF
THE TORONTO-DOMINION BANK (the "Bank") AND
TD CAPITAL TRUST IV (the "Trust" and, together with the Bank, the "Filers")

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the "**Application**") from the Filers for a decision (the "**Requested Relief**") under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") that:

A. the Trust be exempted from the following requirements of the Legislation in connection with offerings by the Trust from time to time of Notes (as defined herein):

   (i) the qualification requirements (the "**Qualification Requirements**") of Part 2 of National Instrument 44-101 *Short Form Prospectus Distributions* ("**NI 44-101**"), such that the Trust is qualified to

file a prospectus in the form of a short form prospectus; and

(ii) the disclosure requirements (the "**Disclosure Requirements**") in Item 6 (Earnings Coverage Ratios) and Item 11 (Documents Incorporated by Reference), with the exception of Item 11.1(1)(5), of Form 44-101F1 of NI 44-101 ("**Form 44-101F1**") in respect of the Trust, as applicable; and

B. the Application and this decision document be held in confidence by the principal regulator, subject to certain conditions.

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; and

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in each of the provinces and territories of Canada other than Ontario.

Interpretation

The terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined herein.

"Bank Act" means the Bank Act (Canada); and

"Tax Act" means the Income Tax Act (Canada).

Representations

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

The Bank

1. The Bank is a Schedule 1 chartered bank subject to the provisions of the Bank Act. The head office of the Bank is located at P.O. Box 1, Toronto-Dominion Centre, Toronto, Ontario M5K 1A2.

2. The authorized share capital of the Bank consists of an unlimited number of: (i) common shares ("**Bank Common Shares**"); and (ii) Class A First Preferred Shares ("**Bank Preferred Shares**"), issuable in series.

3. The Bank Common Shares are listed and posted for trading on the Toronto Stock Exchange and the New York Stock Exchange.

4. The Bank is a reporting issuer in each province and territory of Canada and is not, to the best of its knowledge, in default of any requirement of the securities legislation in such jurisdictions.

5. The Bank is qualified to use the short form prospectus system provided under NI 44-101.

The Trust

6. The Trust will be a trust established under the laws of the Province of Ontario pursuant to a declaration of trust, prior to the filing of a preliminary prospectus by the Trust.

7. The Trust is proposing to conduct an initial public offering (the "**Offering**") of one or more series of subordinated notes (the "**Notes**") in each of the provinces and territories of Canada and may, from time to time, issue further series of Notes. It is currently anticipated that the first series of Notes will be designated as TD Capital Trust IV Notes – Series 2009-1 ("**TD CaTS IV Notes – Series 2009-1**"). As a result of the Offering, the capital of the Trust will consist of the Notes issued pursuant to the Offering and voting trust units, issuable in series (the "**Voting Trust Units**" and, collectively with the Notes, the "**Trust Securities**"). All of the Voting Trust Units will be held, directly or indirectly, by the Bank.

8. The Trust will be established for the purpose of effecting offerings of Trust Securities in order to provide the Bank with a cost-effective means of raising capital for Canadian bank regulatory purposes by means of: (i) offering Notes to the public from time to time; and (ii) acquiring and holding assets, which will consist primarily of one or more senior deposit notes of the Bank (the "**Trust Assets**"). The Trust Assets will generate income for distribution to holders of Trust Securities. The Trust will not carry on any operating activity other than in connection with offerings of Trust Securities and in connection with the Trust Assets.

9. The Trust is not currently a reporting issuer in any province or territory of Canada. As a result of the Offering, it is anticipated that the Trust will become a reporting issuer in each of the provinces and territories of Canada.

TD CaTS IV Notes – Series 2009-1

10. The TD CaTS IV Notes - Series 2009-1 will pay a fixed rate of interest on such date(s) (each, an "**Interest Payment Date**") as may be described in the prospectus for the Offering (the "**Prospectus**") until such date as described in the Prospectus, following which the interest will be reset every 5 years (each such interest reset date, an "**Interest Reset Date**") until maturity at a Government of Canada Yield (as defined in the Prospectus) plus a spread to be described in the Prospectus.

11. Under an agreement to be entered into among the Bank, the Trust and a party acting as trustee, the Bank will agree, for the benefit of the holders of TD CaTS IV Notes - Series 2009-1, that in the event that (i) the Bank elects prior to the commencement of the interest period for the TD CaTS IV Notes - Series 2009-1 ending on the day preceding the relevant Interest Payment Date to require holders of TD CaTS IV Notes - Series 2009-1 to invest interest paid thereon on such Interest Payment Date in a new series of Bank Deferral Preferred Shares (as defined below); or (ii) for whatever reason, interest is not paid in full in cash on the TD CaTS IV Notes-Series 2009-1 on any Interest Payment Date (or the next following business day if the relevant Interest Payment Date is not a business day), the Bank will not declare dividends of any kind on any Bank Preferred Shares or, failing any Bank Preferred Shares being outstanding, on all of the Bank Common Shares (collectively, the "**Dividend Restricted Shares**") until a period of time specified in the Prospectus has elapsed (the "**Dividend Stopper Undertaking**"). Accordingly, it is in the interest of the Bank to ensure, to the extent within its control, that the Trust complies with the obligation to pay the interest in cash on each Interest Payment Date so as to avoid triggering the Dividend Stopper Undertaking.

12. The TD CaTS IV Notes – Series 2009-1 will be automatically exchanged, without the consent of the holder, for a new series of newly-issued Bank Preferred Shares upon the occurrence of certain stated events relating to the solvency of the Bank or actions taken by the Superintendent of Financial Institutions (the "**Superintendent**") in respect of the Bank.

13. The Trust may, subject to regulatory approval, at its option, on a date to be described in the Prospectus not prior to five years following the date of issuance of the TD CaTS IV Notes - Series 2009-1, redeem the TD CaTS IV Notes - Series 2009-1 without the consent of the holders thereof. The price payable per $1,000 principal amount of TD CaTS IV Notes - Series 2009-1 so redeemed will be: (i) par, if redeemed on an Interest Reset Date; and (ii) the greater of par and a Canada Yield Price to be described in the Prospectus if redeemed on a day other than an Interest Reset Date, together, in each case, with accrued and unpaid interest to, but excluding, the date fixed for redemption (in either case, the "**Redemption Price**").

14. Upon the occurrence of certain regulatory or tax events affecting the Bank or the Trust (each a "**Special Event**"), the Trust may, at its option, without the consent of holders of the TD CaTS IV Notes - Series 2009-1 but subject to regulatory approval, redeem all but not less than all of the TD CaTS IV Notes - Series 2009-1 at a price equal to par plus accrued and unpaid interest to, but excluding, the date fixed for redemption.

15. The Bank will covenant that it will maintain direct or indirect ownership of 100% of the outstanding Voting Trust Units. Subject to regulatory approval, the TD CaTS IV Notes – Series 2009-1 will constitute Tier 1 capital of the Bank.

16. As long as any TD CaTS IV Notes - Series 2009-1 are outstanding and are held by any person other than the Bank, or an affiliate of the Bank, the Trust may only be terminated with the approval of the Bank as the holder, directly or indirectly, of the Voting Trust Units and with the approval of the Superintendent: (i) upon the occurrence of a Special Event prior to a date to be specified in the Prospectus; or (ii) for any reason on one or more dates to be specified in the Prospectus. As long as any TD CaTS IV Notes - Series 2009-1 are outstanding and held by any person other than the Bank, or an affiliate thereof, the Bank will not approve the termination of the Trust unless the Trust has sufficient funds to pay the Redemption Price.

17. On each Interest Payment Date on which a Deferral Event has occurred holders of TD CaTS IV Notes - Series 2009-1 will be required to invest interest paid on the TD CaTS IV Notes - Series 2009-1 in a new series of Bank Preferred Shares (the "**Bank Deferral Preferred Shares**"). A "**Deferral Event**" will occur in circumstances where either: (i) the Bank has failed to declare cash dividends on the Dividend Restricted Shares in accordance with ordinary dividend practice in the last 90 days preceding the commencement of the interest period for the TD CaTS IV Notes - Series 2009-1 ending on the day preceding the relevant Interest Payment Date; (ii) for whatever reason, interest is not paid in full in cash on the TD CaTS IV Notes-Series 2009-1 on any Interest Payment Date (or the next following business day if the relevant Interest Payment Date is not a business day); or (iii) the Bank elects prior to the commencement of the interest period ending on the day preceding the relevant Interest Payment Date, that holders of TD CaTS IV Notes-Series 2009-1 invest interest paid on the TD CaTS IV Notes-Series 2009-1 on the relevant Interest Payment Date in Bank Deferral Preferred Shares. All such Bank Deferral Preferred Shares so issued will be held in escrow by a party to be named in the Prospectus on behalf of holders of TD CaTS IV Notes - Series 2009-1 until the next following Interest Payment Date which is not subject to a Deferral Event, upon which such shares will be released from escrow to holders of TD CaTS IV Notes - Series 2009-1, unless an Automatic Exchange, redemption or maturity of the TD CaTS IV Notes - Series 2009-1 shall have occurred prior thereto, in which case the shares will be released

upon the Automatic Exchange, redemption or maturity, as the case may be.

18. The TD CaTS IV Notes – Series 2009-1 will be non-voting and will be unsecured obligations of the Trust ranking at least equally with other subordinated indebtedness of the Trust from time to time issued and outstanding. On a liquidation or winding-up of the Trust, the indebtedness evidenced by the TD CaTS IV Notes – Series 2009-1 will be subordinate in right of payment to the prior payment in full of all other liabilities of the Trust except liabilities which by their terms rank in right of payment equally with or subordinate to the indebtedness represented by the TD CaTS IV Notes – Series 2009-1. Apart from the rights to receive the interest described herein, holders of TD CaTS IV Notes – Series 2009-1 have no further right in the income of the Trust. The holders of TD CaTS IV Notes – Series 2009-1 will not be entitled to initiate proceedings for the termination of the Trust.

19. Pursuant to an administration and advisory agreement to be entered into between the trustee of the Trust (the "**Trustee**") and the Bank, the Trustee will delegate to the Bank certain of its duties in relation to the administration of the Trust. The Bank, as administrative agent, will provide advice and counsel with respect to management of the assets of the Trust and other matters as may be requested by the Trustee from time to time and will administer the day-to-day operations of the Trust.

20. The Trust may, from time to time (including pursuant to the Offering), issue further series of Notes which qualify as Tier 1 capital of the Bank for regulatory purposes, the proceeds of which would be used to acquire additional Trust Assets.

21. Because of the terms of the Notes, and the various covenants of the Bank, information about the affairs and financial performance of the Bank, as opposed to that of the Trust, is meaningful to holders of Notes.

22. It is expected that the TD CaTS IV Notes – Series 2009-1 will receive an approved rating from an approved rating organization, as defined in NI 44-101.

23. At the time of the filing of any prospectus in connection with offerings of Notes (including the Offering):

    (i) the prospectus will be prepared in accordance with the short form prospectus requirements of NI 44-101 other than the Disclosure Requirements, except as permitted by the Legislation;

    (ii) the Trust will comply with all of the filing requirements and procedures set out in NI 44-101 other than the Qualification Requirements, except as permitted by the Legislation;

    (iii) the prospectus will incorporate by reference the documents that would be required to be incorporated by reference under Item 11 of Form 44-101F1 if the Bank were the issuer of such securities;

    (iv) the prospectus disclosure required by Item 11 (other than Item 11.1(1)(5)) of Form 44-101F1 in respect of the Trust) will be addressed by incorporating by reference the Bank's public disclosure documents referred to in paragraph 23(iii) above; and

    (v) the Bank will satisfy the criteria in section 2.2 of NI 44-101 if the word "issuer" is replaced with "Bank".

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 Requested Relief is granted provided that:

(i) the Trust and the Bank, as applicable, comply with paragraph 23 above;

(ii) the Bank remains the direct or indirect beneficial owner of all of the outstanding Voting Trust Units;

(iii) the Bank, as holder of the Voting Trust Units, will not propose changes to the terms and conditions of any outstanding Notes offered and sold pursuant to a short form prospectus of the Trust filed under this decision that would result in such Notes being exchangeable for securities other than Bank Preferred Shares;

(iv) the Trust has minimal assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the Trust Securities or the administration of the Trust Assets;

(v) the Trust issues a news release and files a material change report in accordance with Part 7 of NI 51-102, as amended, supplemented or replaced from time to time, in respect of any material change in the affairs of the Trust that is not also a

material change in the affairs of the Bank;

(vi) the Trust becomes, on or before the filing of a preliminary prospectus in connection with the Offering, and thereafter remains, an electronic filer under NI 13-101;

(vii) following the Offering, the Trust is a reporting issuer in at least one jurisdiction of Canada;

(viii) following the Offering, the Trust files with the securities regulatory authority in each jurisdiction in which it becomes a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction: (a) under all applicable securities legislation; (b) pursuant to an order issued by the securities regulatory authority; or (c) pursuant to an undertaking to the securities regulatory authority;

(ix) the securities to be distributed (a) have received an approved rating on a provisional basis; (b) are not the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and (c) have not received a provisional or final rating lower than an approved rating from any approved rating organization; and

(x) the Trust files a notice of intention pursuant to Section 2.8 of NI 44-101 concurrently with the filing of the Preliminary Prospectus.

The further decision of the principal regulator is that the application of the Filers and this decision shall be held in confidence by the principal regulator until the earlier of (i) the date that a preliminary short form prospectus is filed in respect of the Offering, and (ii) April 30, 2009.

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

2.1.13 BMO Investments Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to from paragraph 2.5(2)(a) of National Instrument 81-102 Mutual Funds to permit mutual funds to invest up to 10% of net assets in exchange-traded commodity pools that correlate to a multiple (or inverse multiple) of the performance of an underlying index, which are not subject to National Instrument 81-101 Mutual Fund Prospectus Disclosure, and qualified for sale using a long form prospectus, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.5(2)(a), 19.1.

January 13, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO

AND

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

AND

IN THE MATTER OF
BMO INVESTMENTS INC.
BMO HARRIS INVESTMENT MANAGEMENT, INC.
BMO NESBITT BURNS INC.
CALDWELL INVESTMENT MANAGEMENT LTD.
FÉDÉRATION DES CAISSES
DESJARDINS DU QUÉBEC
FIRST DEFINED PORTFOLIO MANAGEMENT CO.
GUARDIAN GROUP OF FUNDS LTD.
MACKENZIE FINANCIAL CORPORATION
QWEST INVESTMENT MANAGEMENT CORP. AND
SPROTT ASSET MANAGEMENT INC.
(EACH A MANAGER)

AND

IN THE MATTER OF
BETAPRO MANAGEMENT INC.
(BETAPRO)

DECISION

Background

The Ontario Securities Commission has received an application from the Managers with respect to mutual funds managed by them that are subject to National Instrument 81-102 *Mutual Funds* (**NI 81-102**) (the **Existing Funds**), and such other mutual funds subject to NI 81-102 that are

managed by a Manager or an affiliate of the Manager in the future (together with the Existing Funds, individually, a **Fund** and, collectively, the **Funds**), and BetaPro, the manager and trustee of the Horizons BetaPro ETFs listed in Schedule A (each an **Existing HBP ETF**) and such other similar funds managed by BetaPro in the future (together with the Existing HBP ETFs, individually a **HBP ETF** and, collectively, the **HBP ETFs**), for a decision under Ontario securities legislation (the **Legislation**) exempting the Funds from paragraph 2.5(2)(a) of NI 81-102 to permit each Fund to invest in HBP ETFs (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

(ii) the Managers on behalf of the Funds have provided notice that subsection 4.7(2) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other Provinces and Territories of Canada (together with Ontario, the **Jurisdictions**, and individually a **Jurisdiction**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by each of the Managers on its own behalf and on behalf of the Funds it or an affiliate manages or will manage, and by BetaPro on its own behalf and on behalf of the HBP ETFs:

Managers

1. Each Existing Fund is managed by a Manager. Each future Fund will be managed by a Manager, or an affiliate of the Manager.

2. None of the Managers, or any of the Existing Funds, is in default of securities legislation in any of the Jurisdictions.

3. Each Existing Fund is, and each future Fund will be, (a) a mutual fund organized under the laws of Canada or a Jurisdiction, and (b) a reporting issuer under the laws of one or more of the Jurisdictions.

4. Securities of each Existing Fund are, and securities of each future Fund will be, distributed pursuant to a prospectus that has been filed with, and receipted by, some or all of the securities regulatory authorities in the Jurisdictions.

5. The location of the head office of each Manager is as follows:

BMO Investments Inc.	Toronto, Ontario
BMO Harris Investment Management, Inc.	Toronto, Ontario
BMO Nesbitt Burns Inc.	Toronto, Ontario
Caldwell Investment Management Ltd.	Toronto, Ontario
Fédération des Caisses Desjardins Du Québec	Montreal, Québec
First Defined Portfolio Management Co.	Toronto, Ontario
Guardian Group of Funds Ltd.	Toronto, Ontario
Mackenzie Financial Corporation	Toronto, Ontario
Qwest Investment Management Corp.	Vancouver, British Columbia
Sprott Asset Management Inc.	Toronto, Ontario

BetaPro

6. BetaPro, a corporation incorporated under the laws of Canada, acts as the trustee and manager of each HBP ETF, and will act as the trustee and manager of any future HBP ETF. The head office of BetaPro is located in Toronto, Ontario.

7. Neither BetaPro, nor any of the HBP ETFs listed in Schedule A, are in default of securities legislation in any of the Jurisdictions.

8. Each HBP ETF is, and each future HBP ETF will be, (a) a mutual fund organized under the laws of Ontario, and (b) a reporting issuer under the laws of some or all of the Jurisdictions.

9. Securities of each HBP ETF are, and securities of any future HBP ETF will be, listed on the Toronto Stock Exchange (the **TSX**). BetaPro will not file a final prospectus for an HBP ETF unless the TSX has conditionally approved the listing of securities of the HBP ETF.

10. Each HBP ETF is, and each future HBP ETF will be, a commodity pool, as such term is defined in section 1.1(1) of National Instrument 81-104 *Commodity Pools* (**NI 81-104**), in that each HBP ETF has adopted, and each future HBP ETF will adopt, fundamental investment objectives that permit that HBP ETF to use or invest in financial instruments in a manner that is not permitted under NI 81-102.

11. Each HBP ETF's investment objective is, and each future HBP ETF's investment objective will be, to provide daily results, before fees, expenses, distributions, brokerage commissions and other transaction costs, that endeavour to correspond to a multiple or the inverse (opposite) multiple of the daily performance of a "permitted index" as defined in NI 81-102 (the **Underlying Index**).

12. In order to achieve its investment objective, each HBP ETF will invest in equity securities and/or other financial instruments, including derivatives.

13. An HBP ETF will not track its Underlying Index by a multiple (or inverse multiple) that exceeds +200% (or -200%) on a daily basis. Each bull HBP ETF uses, or will use, financial instruments to track its Underlying Index by +200% on a daily basis (a **Bull HBP ETF**). Each bear HBP ETF uses, or will use, financial instruments to track its Underlying Index by -200% on a daily basis (a **Bear HBP ETF**).

14. Each Bull HBP ETF will be rebalanced daily to ensure that its exposure and performance will be +200% of its Underlying Index on each day on which it is valued and each Bear HBP ETF will be rebalanced daily to ensure that its exposure and performance will be -200% of its Underlying Index on each day on which it is valued.

15. The maximum exposure of an investment by a Fund in a HBP ETF will be the amount invested by the Fund in securities of the HBP ETF.

16. The HBP ETFs are attractive investments for the Funds as they provide an efficient and cost effective means of achieving diversification and exposure that would not otherwise be possible.

17. An investment by a Fund in units of a HBP ETF will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

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 in those Jurisdictions in which a Fund is a reporting issuer provided that:

(a) A Fund may not purchase securities of an HBP ETF if, immediately after the purchase, more than 10% of the net assets of the Fund, taken at market value at the time of the purchase, would consist of securities of HBP ETFs;

(b) In addition to (a), if short selling relief has been obtained in respect of a Fund, the Fund may not purchase securities of a Bear HBP ETF or sell any security short if, immediately after the transaction, the aggregate market value of (i) all securities sold short by the Fund, and (ii) all securities of Bear HBP ETFs held by the Fund, would exceed 20% of the Fund's net assets, taken at market value at the time of the transaction;

(c) the investment by a Fund in securities of a HBP ETF is in accordance with the fundamental investment objective of the Fund;

(d) the Exemption Sought does not apply to a Fund that is a money market fund;

(e) the prospectus of each Fund discloses, or will disclose the next time it is renewed after the date hereof, (i) to the extent applicable, the risks associated with an investment in HBP ETFs, and (ii) in the Investment Strategy section of the prospectus, the fact that the Fund has obtained relief that permits it to invest in commodity pools that use financial instruments that correlate to a multiple (or inverse multiple) of the performance of an Underlying Index; and

(f) a Fund will not invest in an HBP ETF with an Underlying Index based, directly or indirectly through a specified derivative or otherwise, on a physical commodity other than gold.

"Rhonda Goldberg"
Manager, Investment Funds
ONTARIO SECURITIES COMMISSION

Schedule A

HBP ETFs

Horizons BetaPro S&P/TSX 60® Bull Plus ETF
Horizons BetaPro S&P/TSX 60® Bear Plus ETF
Horizons BetaPro S&P/TSX® Global Mining Bull Plus ETF
Horizons BetaPro S&P/TSX® Global Mining Bear Plus ETF
Horizons BetaPro COMEX® Gold Bullion Bull Plus ETF
Horizons BetaPro COMEX® Gold Bullion Bear Plus ETF
Horizons BetaPro S&P/TSX® Capped Financials Bull Plus ETF
Horizons BetaPro S&P/TSX® Capped Financials Bear Plus ETF
Horizons BetaPro S&P/TSX® Capped Energy Bull Plus ETF
Horizons BetaPro S&P/TSX® Capped Energy Bear Plus ETF
Horizons BetaPro S&P/TSX® Global Gold Bull Plus ETF
Horizons BetaPro S&P/TSX® Global Gold Bear Plus ETF
Horizons BetaPro S&P 500® Bull Plus ETF
Horizons BetaPro S&P 500® Bear Plus ETF
Horizons BetaPro NASDAQ-100® Bull Plus ETF
Horizons BetaPro NASDAQ-100® Bear Plus ETF
Horizons BetaPro MSCI Emerging Markets Bull Plus ETF
Horizons BetaPro MSCI Emerging Markets Bear Plus ETF
Horizons BetaPro US Dollar Bull Plus ETF
Horizons BetaPro US Dollar Bear Plus ETF
Horizons BetaPro US 30-year Bond Bull Plus ETF
Horizons BetaPro US 30-year Bond Bear Plus ETF

2.1.14 Patricia Mining Corp. – s. 1(10)

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Issuer deemed to no longer be a reporting issuer under securities legislation.

Applicable Legislative Provisions

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

January 14, 2009

Patricia Mining Corp.
8 King Street East
Suite 1300
Toronto (Ontario) M5C 1B5

Dear Sirs/Mesdames:

Re: Patricia Mining Corp. (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.

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

2.2 Orders

2.2.1 NorthRoad Capital Management LLC – s. 218 of the Regulation

Headnote

Application for an order, pursuant to section 218 of the Regulation, exempting the Applicant from the requirement in section 213 of the Regulation that the Applicant be incorporated, or otherwise formed or created, under the laws of Canada or a province or territory of Canada, for the Applicant to be registered under the Act as a dealer in the category of limited market dealer.

Regulation Cited

R.R.O. 1990, Regulation 1015, am. to O. Reg. 500/06, ss. 213, 218.

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

AND

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

AND

IN THE MATTER OF
NORTHROAD CAPITAL MANAGEMENT LLC

ORDER
(Section 218 of the Regulation)

UPON the application (the **Application**) of NorthRoad Capital Management LLC (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to section 218 of the Regulation, exempting the Applicant from the requirement under section 213 of the Regulation that the Applicant be incorporated, or otherwise formed or created, under the laws of Canada or a province or territory of Canada as a condition of registration under the Act as a dealer in the category of limited market dealer (**LMD**);

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a limited liability company governed by the laws of the State of New York of the United States of America. The head office of the Applicant is located at 530 Fifth Avenue, 3rd Floor, 10036, USA.

2. The Applicant is registered in the United States as an adviser under the Investment Advisers Act of 1940 with the U.S. Securities and Exchange Commission.

3. The Applicant carries on business as an adviser in the United States.

4. The Applicant is not presently registered in any capacity under the Act. However, the Applicant has applied for registration under the Act in the categories of international adviser and LMD.

5. As an LMD in Ontario, the Applicant proposes to engage in trading in securities with “accredited investors” (as defined under National Instrument 45-106 – *Prospectus and Registration Exemptions*) in Ontario, or otherwise pursuant to prospectus exemptions.

6. person formed or created, under the laws of Canada or a province or territory of Canada.

7. The Applicant is not incorporated, formed or created under the laws of Canada or any province or territory of Canada. The Applicant is not a resident in Canada and does not require a separate Canadian company to carry out its proposed

LMD activities in Ontario. It is more efficient and cost-effective to carry out those activities through the existing company.

8. The Applicant requests an exemption from the requirement under section 213 of the Regulation to permit it to obtain registration as an LMD without having to incorporate a separate company under the laws of Canada or a province or territory of Canada.

9. Without the relief requested the Applicant would not meet the requirements of the Regulation for registration as an LMD as it is not a company incorporated, or a person formed or created under the laws of Canada or a province or territory of Canada.

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

IT IS ORDERED, pursuant to section 218 of the Regulation, that, in connection with the registration of the Applicant as an LMD under the Act, section 213 of the Regulation shall not apply to the Applicant for a period of three years, provided that:

1. Before the Applicant carries on any trading activities for any person or company pursuant to its registration under the Act as an LMD, the Applicant shall (if it has not already done so) provide to that person or company a statement in writing that:

   (a) discloses the non-resident status of the Applicant in Ontario;

   (b) identifies the Applicant's jurisdiction of residence and the name and address of the Applicant's agent for service of process in Ontario; and

   (c) discloses that legal rights may not be enforceable as a result of the non-resident status of the Applicant in Ontario.

2. The Applicant will not change its agent for service of process in Ontario without giving the Commission and its clients 30 days' prior written notice of such change, which shall, in the case of the Commission, be given by filing with the Commission (Attention: Manager, Registrant Regulation) a new *Submission to Jurisdiction and Appointment of Agent for Service of Process*, in the required form.

3. The Applicant and each of its registered salespersons, directors, officers and partners irrevocably and unconditionally submit to the non-exclusive jurisdiction of the judicial, quasi-judicial, and administrative tribunals of Ontario and any administrative proceedings in Ontario, in any proceedings arising out of or related to or concerning its registration under the Act or its activities in Ontario as a registrant.

4. The Applicant must ensure that all securities, cash, and other property of a client of the non-resident registrant are held

   (a) directly by the client;

   (b) on behalf of the client by a custodian or sub-custodian that

      (i) meets the guidelines prescribed for acting as a sub-custodian of the portfolio securities of a mutual fund in Part 6 of National Instrument 81-102 *Mutual Funds*, and

      (ii) is subject to the Bank for International Settlements' framework for international convergence of capital measurement and capital standards, or

   (c) on behalf of the client by a registered dealer that is a member of an SRO that is a member of the Canadian Investor Protection Fund or other comparable compensation fund or contingency fund.

5. The Applicant will inform the Director immediately upon the Applicant becoming aware that:

   (a) that it has ceased to be registered with the United States Securities and Exchange Commission as an adviser;

   (b) of its registration in any other jurisdiction not being renewed or being suspended or revoked;

   (c) that it is the subject of a regulatory proceeding, investigation or disciplinary action by any financial services or securities regulatory authority or self-regulatory authority,

(d) that the registration of its salespersons, directors, officers or partners who are registered in Ontario have not been renewed or have been suspended or revoked in any Canadian or foreign jurisdiction; or

(e) that any of its salespersons, directors, officers or partners who are registered in Ontario are the subject of a regulatory proceeding, investigation or disciplinary action by any financial services or securities regulatory authority or self-regulatory authority in any Canadian or foreign jurisdiction.

6. The Applicant will pay the increased compliance and case assessment costs of the Commission due to the Applicant's location outside Ontario, including the cost of hiring a third party to perform a compliance review on behalf of the Commission.

7. The Applicant will make its books and records outside Ontario, including electronic records, readily accessible in Ontario, and will produce physical records for the Commission within a reasonable time if requested.

8. If the laws of the jurisdiction in which the Applicant's books and records are located prohibit production of the books and records in Ontario without the consent of the relevant client, the Applicant shall, upon a request by the Commission:

(a) so advise the Commission; and

(b) use its best efforts to obtain the client's consent to the production of the books and records.

9. The Applicant will, upon the Commission's request, provide a representative to assist the Commission in compliance and enforcement matters.

10. The Applicant and each of its registered salespersons, directors, officers or partners will comply, at the Applicant's expense, with requests under the Commission's investigation powers and orders under the Act in relation to the Applicant's dealings with Ontario clients, including producing documents and witnesses in Ontario, submitting to audit or search and seizure process or consenting to an asset freeze, to the extent such powers would be enforceable against the Applicant if the Applicant were resident in Ontario.

11. If the laws of the Applicant's jurisdiction of residence that are otherwise applicable to the giving of evidence or production of documents prohibit the Applicant or the witnesses from giving the evidence without the consent or leave of the relevant client or any third party, including a court of competent jurisdiction, the Applicant shall:

(a) so advise the Commission; and

(b) use its best efforts to obtain the client's consent to the giving of the evidence.

12. The Applicant will maintain appropriate registration and regulatory organization membership, in the jurisdiction of its principal operations, and if required, in its jurisdiction of residence.

January 6, 2009

“Paulette L. Kennedy”
Commissioner
Ontario Securities Commission

“Wendell S. Wigle”
Commissioner
Ontario Securities Commission

2.2.2 Pyramis Global Advisors, LLC et al. – ss. 78(1), 80 of the CFA

Headnote

Subsection 78(1) of the Commodity Futures Act (Ontario) – Revocation of the previous order granting relief from the adviser registration requirements of subsection 22(1)(b) of the CFA to sub-adviser not ordinarily resident in Ontario in respect of advice regarding trades in commodity futures contracts and commodity futures options.

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-adviser 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).

Fees waived as application only required because previous order will expire and amendments to or a rule under the CFA that would have a similar effect as section 7.3 of Rule 35-502 have not yet been adopted.

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
PYRAMIS GLOBAL ADVISORS, LLC,
FIDELITY INVESTMENTS MONEY MANAGEMENT, INC.
FIDELITY INVESTMENTS CANADA ULC
AND
PYRAMIS CANADA ULC

ORDER
(Section 80 and Subsection 78(1) of the CFA)

UPON the application (the **Application**) of Pyramis Global Advisors, LLC (**Pyramis**), Fidelity Investments Money Management, Inc. (the **Sub-Adviser**), Fidelity Investments Canada ULC (**Fidelity**) and Pyramis Canada ULC (**Pyramis Canada** and, together with Pyramis and Fidelity, the **Principal Advisers**) to the Ontario Securities Commission (the **Commission**) for an order:

(a) pursuant to subsection 78(1) of the CFA, revoking the exemption order granted by the Commission to the Sub-Adviser on December 30, 2005 (the **Previous Order**, as described below); and

(b) pursuant to section 80 of the CFA, that the Sub-Adviser (including its directors, officers and employees) be exempt, for a period of five years, from the requirements of paragraph 22(1)(b) of the CFA in respect of acting as an adviser to Funds (as defined below) in respect of trades in commodity futures contracts and commodity futures options traded on commodity futures exchanges and cleared through clearing corporations;

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

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

1. Pyramis is a limited liability company organized under the laws of the State of Delaware and is resident in the United States of America. Pyramis is registered as an investment adviser with the United States Securities and Exchange Commission

2. Pyramis is registered with the Commission as an adviser under the categories of non-Canadian Adviser under the *Securities Act* (Ontario) (the **OSA**) and commodity trading manager under the Act.

3. The Sub-Adviser is a corporation organized under the laws of the State of New Hampshire and is resident in the United States of America. The Sub-Adviser is not required under applicable commodity futures legislation in the United States of America to be registered as a commodity trading adviser with the U.S. Commodity Futures Trading Commission, nor is the Sub-Adviser required to be a member of the National Futures Association, in order to provide the Proposed Advisory Services (as defined below) to the relevant Principal Adviser.

4. The Sub-Adviser is not registered under the CFA as either an adviser or dealer.

5. Fidelity was incorporated under the laws of Canada and has subsequently been continued under the laws of Alberta. Fidelity is resident in Ontario.

6. Fidelity is registered with the Commission as a dealer in the category of mutual fund dealer and as an adviser in the categories of investment counsel and portfolio manager under the OSA, and commodity trading manager under the CFA.

7. Pyramis Canada was incorporated under the laws of Alberta and is resident in Canada.

8. Pyramis Canada is registered with the Commission as an adviser in the categories of investment counsel and portfolio manager under the OSA, and commodity trading manager under the CFA.

9. The Principal Advisers act as advisers to (a) certain mutual funds offered from time to time to the public in Canada that are governed by National Instrument 81-102 – *Mutual Funds*, and (b) certain pooled funds offered from time to time to pension plans and other institutional investors (**Private Clients**) pursuant to exemptions from the prospectus and registration requirements of securities legislation pursuant to National Instrument 45-106 – *Prospectus and Registration Exemptions*. The Principal Advisers may in the future establish or advise certain other mutual or pooled funds for which it engages the Sub-Adviser to provide advisory services (each such mutual fund or pooled fund, a Fund and collectively, the **Funds**).

10. The Funds may, as a part of their investment program, invest in commodity futures contracts and commodity futures options traded on commodity futures exchanges and cleared through clearing corporations.

11. Each Principal Adviser may, pursuant to a written agreement to be entered into between the Principal Adviser and a Fund or Private Client:

    (a) act as an adviser (as defined in the OSA) to the Fund or Private Client, in respect of securities, and

    (b) act as an adviser to the Fund or Private Client, in respect of trading commodity futures contracts and commodity futures options,

    by exercising discretionary authority in respect of the investment portfolio of the Fund, with discretionary authority to purchase or sell on behalf of the Fund:

        (i) securities, and

        (ii) commodity futures contracts and commodity futures options.

12. In connection with a Principal Adviser acting as an adviser to a Fund or Private Client, in respect of the purchase or sale of commodity futures contracts and commodity futures options, that Principal Adviser may, from time to time, pursuant to a written agreement made between the Principal Adviser and the Sub-Adviser, 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 Fund, with discretionary authority to buy or sell commodity futures options and commodity futures contracts for the Fund, provided that:

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

    (b) in no case will any trading in commodity futures options or commodity futures contracts constitute the primary focus or investment objective of the Fund.

13. 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.

14. By providing the Proposed Advisory Services, the Sub-Adviser will be acting as an adviser with respect to commodity futures contracts and commodity futures options and, in the absence of being granted the requested relief, would be required to register as an adviser under the CFA.

15. There is presently no rule under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA for a person or company acting as an adviser in respect of commodity futures contracts and commodity futures options 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**).

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

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

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

17. The Sub-Adviser is not a resident of any province or territory of Canada.

18. The 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 to the Funds pursuant to the applicable legislation of its principal jurisdiction.

19. Prior to purchasing any securities in one or more of the Funds, all investors in the Funds 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 relevant Fund or 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.

20. On December 30, 2005, the Commission granted the Sub-Adviser an exemption from the requirements of paragraph 22(1)(b) of the CFA in respect of the Proposed Advisory Services (the **Previous Order**). The Previous Order is scheduled to expire on December 30, 2008.

AND UPON the Commission being satisfied that to it would not be prejudicial to the public interest for the Commission to grant the exemption requested on the basis of the terms and conditions proposed;

IT IS ORDERED, pursuant to subsection 78(1) of the CFA, that the Previous Order is revoked;

IT IS FURTHER ORDERED, pursuant to section 80 of the CFA, that the Sub-Adviser (including its directors, officers and employees) is exempted from the requirements of paragraph 22(1)(b) of the CFA, in respect of the Proposed Advisory Services provided to the Principal Advisers, for a period of five years, provided that at the relevant time that such activities are engaged in:

(a) each 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 Funds pursuant to the applicable legislation of its principal jurisdiction;

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

(d) each 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 Advisers cannot be relieved by the Fund or its securityholders (including Private Clients) from their responsibility for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations; and

(f) prior to purchasing any securities in one or more of the Funds, all investors in the Funds who are Ontario residents will receive written disclosure that includes:

(i) 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

(ii) a statement that there may be difficulty in enforcing any legal rights against the relevant Fund or 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.

December 19, 2008

"Lawrence E. Ritchie"
Commissioner
Ontario Securities Commission

"James E.A. Turner"
Commissioner
Ontario Securities Commission

2.2.3 Pyramis Global Advisors, LLC et al. – ss. 78(1), 80 of the CFA

Headnote

Subsection 78(1) of the Commodity Futures Act (Ontario) – Revocation of the previous order granting relief from the adviser registration requirements of subsection 22(1)(b) of the CFA to sub-adviser not ordinarily resident in Ontario in respect of advice regarding trades in commodity futures contracts and commodity futures options.

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-adviser 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).

Fees waived as application only required because previous order will expire and amendments to or a rule under the CFA that would have a similar effect as section 7.3 of Rule 35-502 have not yet been adopted.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., s. 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
PYRAMIS GLOBAL ADVISORS, LLC,
FMR CO., INC.
FIDELITY INVESTMENTS CANADA ULC
AND
PYRAMIS CANADA ULC

ORDER
(Section 80 and Subsection 78(1) of the CFA)

UPON the application (the **Application**) of Pyramis Global Advisors, LLC (**Pyramis**), FMR Co., Inc. (the **Sub-Adviser**), Fidelity Investments Canada ULC (**Fidelity**) and Pyramis Canada ULC (**Pyramis Canada** and, together with Pyramis and Fidelity, the **Principal Advisers**) to the Ontario Securities Commission (the **Commission**) for an order:

(a) pursuant to subsection 78(1) of the CFA, revoking the exemption order granted by the Commission to the Sub-Adviser on December 30, 2005 (the **Previous Order,** as described below); and

(b) pursuant to section 80 of the CFA, that the Sub-Adviser (including its directors, officers and employees) be exempt, for a period of five years, from the requirements of paragraph 22(1)(b) of the CFA in respect of acting as an adviser to Funds (as defined below) in respect of trades in commodity futures contracts and commodity futures options traded on commodity futures exchanges and cleared through clearing corporations;

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

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

1. Pyramis is a limited liability company organized under the laws of the State of Delaware and is resident in the United States of America. Pyramis is registered as an investment adviser with the United States Securities and Exchange Commission

2. Pyramis is registered with the Commission as an adviser under the categories of non-Canadian Adviser under the *Securities Act* (Ontario) (the **OSA**) and commodity trading manager under the Act.

3. The Sub-Adviser is a corporation organized under the laws of the Commonwealth of Massachusetts and is resident in the United States of America. The Sub-Adviser is not required under applicable commodity futures legislation in the United States of America to be registered as a commodity trading adviser with the U.S. Commodity Futures Trading Commission, nor is the Sub-Adviser required to be a member of the National Futures Association, in order to provide the Proposed Advisory Services (as defined below) to the relevant Principal Adviser.

4. The Sub-Adviser is not registered under the CFA as either an adviser or dealer.

5. Fidelity was incorporated under the laws of Canada and has subsequently been continued under the laws of Alberta. Fidelity is resident in Ontario.

6. Fidelity is registered with the Commission as a dealer in the category of mutual fund dealer and as an adviser in the categories of investment counsel and portfolio manager under the OSA, and commodity trading manager under the CFA.

7. Pyramis Canada was incorporated under the laws of Alberta and is resident in Canada.

8. Pyramis Canada is registered with the Commission as an adviser in the categories of investment counsel and portfolio manager under the OSA, and commodity trading manager under the CFA.

9. The Principal Advisers act as advisers to (a) certain mutual funds offered from time to time to the public in Canada that are governed by National Instrument 81-102 – *Mutual Funds*, and (b) certain pooled funds offered from time to time to pension plans and other institutional investors (**Private Clients)** pursuant to exemptions from the prospectus and registration requirements of securities legislation pursuant to National Instrument 45-106 – *Prospectus and Registration Exemptions*. The Principal Advisers may in the future establish or advise certain other mutual or pooled funds for which it engages the Sub-Adviser to provide advisory services (each such mutual fund or pooled fund, a Fund and collectively, the **Funds**).

10. The Funds may, as a part of their investment program, invest in commodity futures contracts and commodity futures options traded on commodity futures exchanges and cleared through clearing corporations.

11. Each Principal Adviser may, pursuant to a written agreement to be entered into between the Principal Adviser and a Fund or Private Client:

    (a) act as an adviser (as defined in the OSA) to the Fund or Private Client, in respect of securities, and

    (b) act as an adviser to the Fund or Private Client, in respect of trading commodity futures contracts and commodity futures options,

    by exercising discretionary authority in respect of the investment portfolio of the Fund, with discretionary authority to purchase or sell on behalf of the Fund:

        (i) securities, and

        (ii) commodity futures contracts and commodity futures options.

12. In connection with a Principal Adviser acting as an adviser to a Fund or Private Client, in respect of the purchase or sale of commodity futures contracts and commodity futures options, that Principal Adviser may, from time to time, pursuant to a written agreement made between the Principal Adviser and the Sub-Adviser, 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 Fund, with discretionary authority to buy or sell commodity futures options and commodity futures contracts for the Fund, provided that:

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

    (b) in no case will any trading in commodity futures options or commodity futures contracts constitute the primary focus or investment objective of the Fund.

13. 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.

14. By providing the Proposed Advisory Services, the Sub-Adviser will be acting as an adviser with respect to commodity futures contracts and commodity futures options and, in the absence of being granted the requested relief, would be required to register as an adviser under the CFA.

15. There is presently no rule under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA for a person or company acting as an adviser in respect of commodity futures contracts and commodity futures options 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**).

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

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

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

17. The Sub-Adviser is not a resident of any province or territory of Canada.

18. The 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 to the Funds pursuant to the applicable legislation of its principal jurisdiction.

19. Prior to purchasing any securities in one or more of the Funds, all investors in the Funds 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 relevant Fund or 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.

20. On December 30, 2005, the Commission granted the Sub-Adviser an exemption from the requirements of paragraph 22(1)(b) of the CFA in respect of the Proposed Advisory Services (the **Previous Order**). The Previous Order is scheduled to expire on December 30, 2008.

AND UPON the Commission being satisfied that to it would not be prejudicial to the public interest for the Commission to grant the exemption requested on the basis of the terms and conditions proposed;

IT IS ORDERED, pursuant to subsection 78(1) of the CFA, that the Previous Order is revoked;

IT IS FURTHER ORDERED, pursuant to section 80 of the CFA, that the Sub-Adviser (including its directors, officers and employees) is exempted from the requirements of paragraph 22(1)(b) of the CFA, in respect of the Proposed Advisory Services provided to the Principal Advisers, for a period of five years, provided that at the relevant time that such activities are engaged in:

(a) each 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 Funds pursuant to the applicable legislation of its principal jurisdiction;

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

(d) each 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 Advisers cannot be relieved by the Fund or its securityholders (including Private Clients) from their responsibility for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations; and

(f) prior to purchasing any securities in one or more of the Funds, all investors in the Funds who are Ontario residents will receive written disclosure that includes:

(i) 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

(ii) a statement that there may be difficulty in enforcing any legal rights against the relevant Fund or 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.

December 19, 2008

"Lawrence E. Ritchie"
Commissioner
Ontario Securities Commission

"James E.A. Turner"
Commissioner
Ontario Securities Commission

2.2.4 Pyramis Global Advisors, LLC et al. – ss. 78(1), 80 of the CFA

Headnote

Subsection 78(1) of the Commodity Futures Act (Ontario) – Revocation of the previous order granting relief from the adviser registration requirements of subsection 22(1)(b) of the CFA to sub-adviser not ordinarily resident in Ontario in respect of advice regarding trades in commodity futures contracts and commodity futures options.

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-adviser 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).

Fees waived as application only required because previous order will expire and amendments to or a rule under the CFA that would have a similar effect as section 7.3 of Rule 35-502 have not yet been adopted.

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
PYRAMIS GLOBAL ADVISORS, LLC,
PYRAMIS GLOBAL ADVISORS TRUST COMPANY
FIDELITY INVESTMENTS CANADA ULC
AND
PYRAMIS CANADA ULC

ORDER
(Section 80 and Subsection 78(1) of the CFA)

UPON the application (the **Application**) of Pyramis Global Advisors, LLC (**Pyramis**), Pyramis Global Advisors Trust Company (the **Sub-Adviser**), Fidelity Investments Canada ULC (**Fidelity**) and Pyramis Canada ULC (**Pyramis Canada** and, together with Pyramis and Fidelity, the **Principal Advisers**) to the Ontario Securities Commission (the **Commission**) for an order:

(a) pursuant to subsection 78(1) of the CFA, revoking the exemption order granted by the Commission to the Sub-Adviser on December 30, 2005 (the **Previous Order**, as described below); and

(b) pursuant to section 80 of the CFA, that the Sub-Adviser (including its directors, officers and employees) be exempt, for a period of five years, from the requirements of paragraph 22(1)(b) of the CFA in respect of acting as an adviser to Funds (as defined below) in respect of trades in commodity futures contracts and commodity futures options traded on commodity futures exchanges and cleared through clearing corporations;

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

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

1. Pyramis is a limited liability company organized under the laws of the State of Delaware and is resident in the United States of America. Pyramis is registered as an investment adviser with the United States Securities and Exchange Commission

2. Pyramis is registered with the Commission as an adviser under the categories of non-Canadian Adviser under the *Securities Act* (Ontario) (the OSA) and commodity trading manager under the Act.

3. The Sub-Adviser is a limited purpose trust company chartered under the laws of the State of New Hampshire and is resident in the United States. The Sub-Adviser is not required under applicable commodity futures legislation in the United States of America to be registered as a commodity trading adviser with the U.S. Commodity Futures Trading Commission nor is the Sub-Adviser required to be a member of the National Futures Association, in order to provide the Proposed Advisory Services (as defined below) to the relevant Principal Adviser.

4. The Sub-Adviser is not registered under the CFA as either an adviser or dealer.

5. Fidelity was incorporated under the laws of Canada and has subsequently been continued under the laws of Alberta. Fidelity is resident in Ontario.

6. Fidelity is registered with the Commission as a dealer in the category of mutual fund dealer and as an adviser in the categories of investment counsel and portfolio manager under the OSA, and commodity trading manager under the CFA.

7. Pyramis Canada was incorporated under the laws of Alberta and is resident in Canada.

8. Pyramis Canada is registered with the Commission as an adviser in the categories of investment counsel and portfolio manager under the OSA, and commodity trading manager under the CFA.

9. The Principal Advisers act as advisers to (a) certain mutual funds offered from time to time to the public in Canada that are governed by National Instrument 81-102 – *Mutual Funds*, and (b) certain pooled funds offered from time to time to pension plans and other institutional investors (**Private Clients**) pursuant to exemptions from the prospectus and registration requirements of securities legislation pursuant to National Instrument 45-106 – *Prospectus and Registration Exemptions*. The Principal Advisers may in the future establish or advise certain other mutual or pooled funds for which it engages the Sub-Adviser to provide advisory services (each such mutual fund or pooled fund, a Fund and collectively, the **Funds**).

10. The Funds may, as a part of their investment program, invest in commodity futures contracts and commodity futures options traded on commodity futures exchanges and cleared through clearing corporations.

11. Each Principal Adviser may, pursuant to a written agreement to be entered into between the Principal Adviser and a Fund or Private Client:

    (a) act as an adviser (as defined in the OSA) to the Fund or Private Client, in respect of securities, and

    (b) act as an adviser to the Fund or Private Client, in respect of trading commodity futures contracts and commodity futures options,

    by exercising discretionary authority in respect of the investment portfolio of the Fund, with discretionary authority to purchase or sell on behalf of the Fund:

        (i) securities, and

        (ii) commodity futures contracts and commodity futures options.

12. In connection with a Principal Adviser acting as an adviser to a Fund or Private Client, in respect of the purchase or sale of commodity futures contracts and commodity futures options, that Principal Adviser may, from time to time, pursuant to a written agreement made between the Principal Adviser and the Sub-Adviser, 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 Fund, with discretionary authority to buy or sell commodity futures options and commodity futures contracts for the Fund, provided that:

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

    (b) in no case will any trading in commodity futures options or commodity futures contracts constitute the primary focus or investment objective of the Fund.

13. 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.

14. By providing the Proposed Advisory Services, the Sub-Adviser will be acting as an adviser with respect to commodity futures contracts and commodity futures options and, in the absence of being granted the requested relief, would be required to register as an adviser under the CFA.

15. There is presently no rule under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA for a person or company acting as an adviser in respect of commodity futures contracts and commodity futures options 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**).

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

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

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

17. The Sub-Adviser is not a resident of any province or territory of Canada.

18. The 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 to the Funds pursuant to the applicable legislation of its principal jurisdiction.

19. Prior to purchasing any securities in one or more of the Funds, all investors in the Funds 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 relevant Fund or 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.

20. On December 30, 2005, the Commission granted the Sub-Adviser an exemption from the requirements of paragraph 22(1)(b) of the CFA in respect of the Proposed Advisory Services (the **Previous Order**). The Previous Order is scheduled to expire on December 30, 2008.

AND UPON the Commission being satisfied that to it would not be prejudicial to the public interest for the Commission to grant the exemption requested on the basis of the terms and conditions proposed;

IT IS ORDERED, pursuant to subsection 78(1) of the CFA, that the Previous Order is revoked;

IT IS FURTHER ORDERED, pursuant to section 80 of the CFA, that the Sub-Adviser (including its directors, officers and employees) is exempted from the requirements of paragraph 22(1)(b) of the CFA, in respect of the Proposed Advisory Services provided to the Principal Advisers, for a period of five years, provided that at the relevant time that such activities are engaged in:

(a) each 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 Funds pursuant to the applicable legislation of its principal jurisdiction;

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

(d) each 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 Advisers cannot be relieved by the Fund or its securityholders (including Private Clients) from their responsibility for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations; and

(f) prior to purchasing any securities in one or more of the Funds, all investors in the Funds who are Ontario residents will receive written disclosure that includes:

(i) 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

(ii) a statement that there may be difficulty in enforcing any legal rights against the relevant Fund or 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.

December 19, 2008.

"Lawrence E. Ritchie"
Commissioner
Ontario Securities Commission

"James E.A. Turner"
Commissioner
Ontario Securities Commission

2.2.5 Biovail Corporation et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
BIOVAIL CORPORATION, EUGENE N. MELNYK,
BRIAN H. CROMBIE, JOHN R. MISZUK AND
KENNETH G. HOWLING

ORDER
(Sections 127 and 127.1)

WHEREAS on March 24, 2008 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and related Statement of Allegations (the "Notice of Hearing") against Biovail Corporation ("Biovail"), Eugene N. Melnyk , Brian H. Crombie, John R. Miszuk and Kenneth G. Howling;

AND WHEREAS Biovail has entered into a settlement agreement with Staff of the Commission dated January 7, 2009 (the "Settlement Agreement") in relation to the matters set out in the Notice of Hearing;

UPON reviewing the Notice of Hearing and Settlement Agreement, and upon hearing submissions from counsel for Biovail and for Staff of the Commission;

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

IT IS HEREBY ORDERED that:

1. The Settlement Agreement is approved.

2. Biovail is reprimanded.

3. Biovail shall pay an administrative penalty of CAN$5,000,000.00 to be paid to or for the benefit of third parties designated by the Commission, pursuant to section 3.4(2) of the Act.

4. Biovail shall pay CAN$1,500,000.00 in respect of a portion of the costs of the investigation and hearing in relation to his matter.

5. Pursuant to a Consent Final Judgment entered in the United States District Court for the Southern District of New York in *Securities and Exchange Commissions v. Biovail Corporation, et al.*, dated March 18, 2008, Biovail has retained a consultant (the "Consultant") to conduct a comprehensive examination and review of Biovail's internal accounting controls, policies and procedures, training, ethics and compliance policies and procedures and other matters (the "Review"). The terms of reference for the Consultant are attached to the Settlement Agreement as Schedule "C". The Consultant is required to provide reports from time to time to Biovail's board of directors, audit committee and the United States Securities and Exchange Commission. Biovail will provide Staff with copies of any such reports.

6. Biovail shall retain a further consultant acceptable to Staff (the "Ontario Consultant") to examine and report on Biovail's training of its personnel concerning compliance with the financial and other reporting requirements of Ontario securities law (the "Ontario Review"). In conducting the Ontario Review, the Ontario Consultant shall consider the investigations carried out by, and the reports prepared by, the Consultant pursuant to the Review, and may conduct such further investigations as are reasonably necessary. The terms of reference for the Ontario Review are attached to the Settlement Agreement as Schedule "D".

7. Biovail shall use its best efforts to ensure that individuals who are current or former Biovail employees, and whom Staff wishes to interview, or call to testify at the hearing in this proceeding, are made available as Staff may reasonably require. Biovail shall use its best efforts to provide such additional documentation as Staff may reasonably require for the purposes of this proceeding.

Dated at Toronto this 9th day of January, 2009.

"Suresh Thakrar"

"Margot C. Howard"

"Paul K. Bates"

2.2.6 Mackenzie Financial Corporation – s. 233 of the Regulation

Headnote

The relief provides an exemption, pursuant to section 233 of Regulation 1015 made under the Securities Act (Ontario) (the Regulation) from the prohibition in section 227(2)(b)(ii) of the Regulation. The prohibition prevents a registrant, when acting as a portfolio manager with discretionary authority, from providing advice with respect to a client's account to purchase and/or sell the securities of a related issuer or a connected issuer of the registrant, unless the registrant (i) secures the specific and informed written consent of the client once in each twelve month period and (ii) provides the client with its statement of policies.

Statutes Cited

Regulation 1015 made under the Securities Act (Ontario), ss. 227(2)(b)(ii), 233.

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

AND

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

AND

IN THE MATTER OF
MACKENZIE FINANCIAL CORPORATION

ORDER
(Section 233 of the Regulation)

UPON the application (the **Application**) of Mackenzie Financial Corporation (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to Section 233 of the Regulation, exempting the Applicant from the requirement in subsection 227(2)(b) of the Regulation that a registrant acting as an adviser and exercising discretionary authority with respect to the investment portfolio or account of a client not purchase or sell the securities of a related issuer or, in the course of a distribution, securities of a connected issuer of the registrant, to invest in securities of funds managed, or to be managed, by the Applicant, unless once in each twelve month period it provides the client with a copy of its statement of policies and secures the specific and informed written consent of the client to the exercise of the discretionary authority in respect of the securities;

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a corporation amalgamated under the laws of Ontario and an indirect wholly-owned subsidiary of Power Financial Corporation. Its head office is located in Toronto. The Applicant is registered as an adviser in the categories of investment counsel and portfolio manager in Ontario, Manitoba and Alberta. The Applicant is also registered in Ontario as a dealer in the category of limited market dealer, as well as registered as a commodity trading manager under the *Commodity Futures Act* (Ontario). The Applicant is not in default of securities legislation in any jurisdiction.

2. The Applicant provides discretionary investment management services to certain high net worth and institutional investors (in each case, a **Client**). Each Client has a segregated, separate portfolio of securities managed by the Applicant.

3. The Applicant is also the portfolio manager for a suite of mutual funds that are subject to, among other rules, National Instrument 81-102 *Mutual Funds* and National Instrument 81-107 *Independent Review Committee for Investment Funds*. In connection with those activities, the Applicant is able, pursuant to certain conditions, to invest the assets of its mutual funds in securities of related and/or connected issuers.

4. Clients whose investments are managed by the Applicant will enter into an investment management agreement with the Applicant that authorizes the Applicant, where it may be desirable, to invest in the securities of related and connected issuers listed in Schedule A hereto (the **Related/Connected Issuers**) (the **Investment Management Agreement**). Most of the Related/Connected Issuers are related issuers to the Applicant by virtue of the ownership of equity interests, directly or indirectly, by affiliates or subsidiaries of Power Financial Corporation. The others are connected issuers to the Applicant because a director or officer of a Applicant's related issuer is also a director and/or officer of the issuer, and as a result of this relationship, a reasonable prospective purchaser may question if the issuer and the Applicant are independent.

5. Each Client will receive a copy of the Applicant's Statement of Policies (the **Statement of Policies**), as prescribed by the Regulation. The Statement of Policies includes a conflicts statement listing the Related/Connected Issuers of the Applicant, as those terms are defined in National Instrument 33-105 *Underwriting Conflicts*. The Statement of Policies will specifically identify the relationship between the Applicant and the Related/Connected Issuers. In the event of a significant change in its Statement of Policies, as required by the

Regulation, the Applicant provides to each of its Clients a copy of the revised version of, or amendment to, the Statement of Policies.

6. Pursuant to the Investment Management Agreement, each Client will consent to invest, where it may be desirable, in the securities of the Related/Connected Issuers. Each Client will specifically consent to the Applicant exercising its discretion under the Investment Management Agreement to buy and sell securities of the Related/Connected Issuers.

7. Clients receive statements of account on a quarterly basis that set out their portfolio holdings, including whether the Client holds securities of the Related/Connected Issuers.

8. Although the Applicant currently does not seek to invest the assets of its Clients in securities of its other related issuers, including its mutual funds and parent company IGM Financial Inc., these and all other applicable related and connected issuers are listed, or will be listed, in the Applicant's latest revised version of its Statement of Policies.

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

IT IS ORDERED, pursuant to section 233 of the Regulation, that the Applicant is exempt from the requirement in subsection 227(2)(b) of the Regulation that a registrant acting as an adviser and exercising discretionary authority with respect to the investment portfolio or account of a client not purchase or sell the securities of a related issuer or, in the course of a distribution, securities of a connected issuer of the registrant, to invest in securities of funds managed, or to be managed, by the Applicant, unless once in each twelve month period it provides the client with a copy of its statement of policies and secures the specific and informed written consent of the client to the exercise of the discretionary authority in respect of the securities, provided that:

(a) the Applicant will secure the specific and informed consent of its Clients in advance of the exercise of discretionary authority in respect of the purchase or sale of securities of the Related/ Connected Issuers;

(b) the Applicant has previously provided its Clients with a Statement of Policies which identifies the relationship between the Applicant and the Related/Connected Issuers and, in the event of a significant change in the Statement of Policies, will provide to each of its Clients a copy of the revised version of, or amendment to, the Statement of Policies; and

(c) regardless of any requirements under the Regulation, any account statement provided by the Applicant to the Client discloses which issuers are related and/or connected issuers of the Applicant.

January 9, 2009

"David L. Knight"
Commissioner
Ontario Securities Commission

"Carol S. Perry"
Commissioner
Ontario Securities Commission

Schedule A

Related/Connected Issuers

Adaltis Inc.
Alpha Energy Flow-Through (2006) Limited Partnership
BELLUS Health Inc.
The Canada Life Assurance Company
Canada Life Capital Trust
Canada Life Financial Corporation
Counsel Mutual Funds
The Great-West Life Assurance Company
Great-West Life Capital Trust
Great-West Lifeco Finance (Delaware) L.P.
Great-West Lifeco Finance (Delaware) L.P. II
Great-West Lifeco Inc.
Groupe Bruxelles Lambert S.A.
Howson Tattersall Pool Funds
IGM Financial Inc.
Imerys S.A.
Investors Group Corporate Class Inc.
Investors Group Mutual Funds
Investors Group Trust Co. Ltd.
Investors Syndicate Limited
Keystone Funds
M.R.S. Trust Company
MSP 2007 Resource Limited Partnership
MSP 2008 Resource Limited Partnership
MSP Maxxum Trust
Mackenzie Alternative Strategies Fund
Mackenzie Cundill Funds
Mackenzie Destination Funds
Mackenzie Financial Capital Corporation
Mackenzie Focus Funds
Mackenzie Funds
Mackenzie Ivy Funds
Mackenzie Master Limited Partnership
Mackenzie Maxxum Funds
Mackenzie Putnam Funds
Mackenzie Sentinel Funds
Mackenzie Universal Funds
Maxim Series Fund, Inc.
Multi-Class Investment Corp.
PanAgora Emerging Markets Multi-Alpha Fund, Ltd.
Pargesa Holdings S.A.
Power Corporation of Canada
Power Financial Corporation
Putnam Private Pooled Funds
Quadrus Mutual Funds
Saxon Mutual Funds
Setanta Constituted Unit Trusts
Symmetry Funds

and any future issuers related or connected to Mackenzie Financial Corporation.

2.2.7 Magnetar Financial LLC – 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
MAGNETAR FINANCIAL LLC

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 Magnetar Financial LLC (**Magnetar**), on its own behalf, and on behalf of the Magnetar 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 *Commodity Futures Act* (Ontario) (**CFA**), that Magnetar, and each of the Magnetar Affiliates that file an Identifying Notice to become a Named Applicant for the purposes of this Order (including their respective principals, members, partners, directors, officers, employees or other individual representatives, as the case may be, 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, 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 Magnetar Affiliates, that file an Identifying Notice, as a Named Applicant for the purposes of this Order;

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

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 Magnetar Affiliate, the Director's Consent referred to in paragraph 4, below;

"Fund" means an investment fund;

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

"Magnetar Affiliate" means an entity, other than Magnetar, that is an affiliate of, or entity organized by, Magnetar;

"Named Applicants" means:

(a) Magnetar; and

(b) Magnetar 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 Magnetar Affiliate, an objection notice, as described in paragraph 5 below, that is issued by the Director following the filing by the Magnetar 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 prospectus for the security have been filed and receipts obtained for them; 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

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

AND UPON Magnetar having represented to the Commission that:

1. Magnetar is a limited liability company organized under the laws of the State of Delaware in the United States. Any Magnetar 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.

2. A Named Applicant acts, or may act, as an adviser to the following Funds:

   (i) Magnetar Capital Fund, Ltd.; and

   (ii) other investment funds.

3. A Magnetar 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 the Schedule 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 Magnetar Affiliate as a Named Applicant for the purposes of the Order. The Identifying Notice will be filed not less than ten (10) days before the date the Magnetar Affiliate proposes to rely on the exemption set out in the Order.

4. If, in the Director's opinion, it would not be prejudicial to the public interest to specifically name a Magnetar 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 Magnetar Affiliate, issue to the Magnetar Affiliate a written consent (the **Director's Consent**, in the form of Part B of the attached Schedule). However, a Magnetar 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.

5. If, after reviewing an Identifying Notice for a Magnetar Affiliate, the Director is not of the opinion that it would not be prejudicial to the public interest to specifically name such Magnetar Affiliate as a Named Applicant for the purposes of this Order, the Director will issue to the Magnetar Affiliate a written notice of objection (the **Objection Notice**), in which case the Magnetar Affiliate will not be permitted to rely on the exemption from the adviser registration requirement in the CFA provided to Named Applicants in this Order, but may, by notice in writing sent by registered mail to the Secretary of the Commission within thirty (30) days after receiving the Objection Notice, request and be entitled to a hearing and review by the Commission of the Director's objection.

6. 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.

7. Any Fund 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 Fund are and will be primarily offered outside of Canada to institutional investors and high net worth individuals. To the extent the securities of the Fund will be offered to Ontario residents, such investors will qualify as "accredited investors" for the purposes of National Instrument 45-106 *Prospectus and Registration Exemptions*.

8. 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.

9. 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).

10. 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.

11. Magnetar is not 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 the purposes of this Order. If a Named Applicant advises any Fund (that has distributed its securities to any Ontario residents) as to investing in or the buying or selling securities, it will comply with the adviser registration requirement in the OSA. Currently, Magnetar is not registered in any capacity under the OSA.

12. 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 options or commodity futures contracts, 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.

13. 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 requirement in the OSA.

14. Each of the Named Applicants, where required, is or will be appropriately registered or licensed or is, or will be, entitled to rely on appropriate exemptions from such registration or licensing requirements to provide advice to the Funds pursuant to the applicable legislation of its principal jurisdiction. In particular, while the Funds may trade commodity futures and/or commodity options contracts, Magnetar is exempt from registration with the Commodity Futures Trading Commission as a commodity pool operator and a commodity trading adviser.

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 principals, members, partners, directors, officers, employees or other individual representatives, as the case may be, 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 the corresponding Contracts, pursuant to the applicable legislation of the Named Applicant's 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 on an exemption from the prospectus requirement in the OSA;

D. prior to their purchasing any securities of a Fund, all investors in the Fund 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 a 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 that CFA will not be available to purchasers of securities of the Fund; and

E. 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:

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

(ii) object, from time to time, to varying the above Order to specifically name any one or more Magnetar Affiliates that has filed an Identifying Notice, as described in paragraph 3, above, as a Named Applicant, by issuing to the Magnetar Affiliate an Objection Notice, as described in paragraph 5, above, provided, however, that, in the event of any such objection, the corresponding Magnetar Affiliate may, by notice in writing sent by registered mail to the Secretary of the Commission, within thirty (30) days after receiving the Objection Notice, request and be entitled to a hearing and review of the objection by the Commission.

January 13, 2009

"James E. A. Turner"
Commissioner
Ontario Securities Commission

"David L. Knight"
Commissioner
Ontario Securities Commission

SCHEDULE

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 ***Magnetar Affiliate***)

Re: ***In the Matter of Magnetar Financial LLC*** **(Magnetar)**
OSC File No.: **2008/0770**

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

1. On _____ ___, 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 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 Magnetar Affiliate has attached a copy of the Decision to this Identifying Notice.

3. The Magnetar Affiliate is an affiliate of Magnetar.

4. The Magnetar 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 Magnetar Affiliate as a Named Applicant for the purposes of the Order, pursuant to section 78 of the CFA.

5. The Magnetar 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 Magnetar Affiliate proposes to rely on the exemption from the adviser registration requirement in the CFA provided to Named Applicants in the Order, subject to the terms and conditions specified in the Order.

7. The Magnetar 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 the Schedule attached to the Decision.

Dated at _____ this ____ day of _____, 20___.

_____
Name:

_____
Title:

Part B: Director's Consent

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

From: Director
Ontario Securities Commission

Re: ***In the Matter of Magnetar Financial LLC*** **(Magnetar)**
OSC File No.: **2008/0770**

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

Dated at _____ this ____ day of _____, 20___.

ONTARIO SECURITIES COMMISSION

By:

_____
Name of Signatory

_____
Position of Signatory

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Biovail Corporation et al.

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

AND

IN THE MATTER OF
BIOVAIL CORPORATION, EUGENE N. MELNYK,
BRIAN H. CROMBIE, JOHN R. MISZUK AND
KENNETH G. HOWLING

SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
BIOVAIL CORPORATION

I. INTRODUCTION

1. By Notice of Hearing and related Statement of Allegations dated March 24, 2008 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider whether, pursuant to s. 127 and s. 127.1(1) and (2) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), it is in the public interest to make certain orders against Biovail Corporation ("Biovail"), Eugene N. Melnyk ("Melnyk"), Brian H. Crombie ("Crombie"), John R. Miszuk ("Miszuk") and Kenneth G. Howling ("Howling") as described in the Notice of Hearing.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding initiated in respect of Biovail by the Notice of Hearing in accordance with the terms and conditions set out below. Biovail agrees to the settlement on the basis of the facts agreed to in Part IV and consents to the making of an Order in the form attached as Schedule "A".

III. ACKNOWLEDGEMENT

3. Biovail admits the facts set out in Part IV of this Settlement Agreement solely for the purposes of this Settlement Agreement. This Settlement Agreement and the facts and admissions set out herein are without prejudice to Biovail in any other proceeding including, without limitation, any civil, administrative, quasi-criminal or criminal actions or proceedings that may be brought by any person or agency, whether or not this Settlement Agreement is approved by the Commission. On March 24, 2008 Biovail announced that it had resolved a proceeding issued on that day by the United States Securities and Exchange Commission involving similar issues to those raised in this proceeding.

4. Without limiting the generality of the foregoing, Staff and Biovail expressly agree that this Settlement Agreement and the facts and admissions contained in it are made without prejudice to any other respondent to this proceeding and are not intended to, and do not, bind any other respondent to this proceeding, whether in this proceeding or in any other proceeding. In particular, Staff and Biovail acknowledge that Staff intends to pursue all of the allegations raised in the Notice of Hearing against all of the remaining respondents.

IV. FACTS

5. Biovail is a reporting issuer in the province of Ontario. The common shares of Biovail are listed and posted for trading on the Toronto Stock Exchange and the New York Stock Exchange.

6. Biovail is Canada's largest publicly traded pharmaceutical company. Since the mid-1990s, Biovail's strategy has been to apply advanced drug-delivery technologies to improve the clinical effectiveness of medicines. The Company's business strategy involves commercializing these products both directly (as is the case in Canada) and through

strategic partners. Its main therapeutic areas of focus have historically been central nervous system disorders, pain management and cardiovascular disease.

7. Melnyk was the Chairman of the Board of Directors of Biovail until his resignation from the Board effective June 30, 2007. From December 2001 to October 2004 Melnyk was Chairman and Chief Executive Officer of Biovail. Melnyk resigned as CEO of Biovail on October 8, 2004. Melnyk first became a Director of Biovail in March of 1994. Melnyk became Executive Chairman of the Board of Biovail in November of 2004 and relinquished that title on June 27, 2006. Melnyk is no longer employed by Biovail and is no longer a director of Biovail.

8. Crombie was the Chief Financial Officer of Biovail from May 2000 to August 2004. He became the Senior Vice-President, Strategic Development in August 2004. Crombie is no longer employed by Biovail.

9. Miszuk was the Vice-President, Controller and Assistant Secretary of Biovail until 2008. He had held the positions of Vice-President and Controller since November of 1997, and the position of Assistant Secretary since June of 2000. Miszuk is no longer employed by Biovail

10. Howling was a Senior Vice-President and held the position of Chief Financial Officer of Biovail in 2006 and 2007. Howling was Biovail's Vice-President, Finance and Corporate Affairs from October 2004 to 2006 and Vice-President, Finance from May 2000 to October 2004. During the Material Time (as defined below), Howling also served as Biovail's head of investor relations.

Overview

11. The conduct at issue relates to Biovail's annual financial statements for the fiscal year ended December 31, 2001, interim financial statements for Q3 of 2001, Q1, Q2 and Q3 of 2002, and Q1, Q2 and Q3 of 2003, as well as conduct concerning Biovail's disclosure during that time. These time periods are referred to individually as the "Relevant Fiscal Periods" and collectively as the "Material Time".

12. As a reporting issuer in Ontario, Biovail has continuous disclosure obligations pursuant to Part XVIII of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the "Act"). Sections 77 and 78 of the Act and related provisions in the Regulations direct that all financial statements filed with the Commission must be prepared in accordance with generally accepted accounting principles ("GAAP") recommended in the Handbook of the Canadian Institute of Chartered Accountants. Moreover, all financial statements and other material filed with the Commission must not be misleading or untrue or omit a fact which would render them misleading.

13. Biovail filed with the Commission during the Material Time financial statements that, while represented to be prepared in accordance with Canadian GAAP, were, to the extent described herein, not prepared in accordance with Canadian GAAP and therefore such filings were contrary to sections 77 and 78 of the Act. Further, Biovail's representations that the financial statements had been prepared in accordance with Canadian GAAP were, to the extent described below, materially inaccurate, contrary to Ontario securities law and the public interest.

14. The matters that are the subject of this Settlement Agreement fall into five general categories:

    (a) Biovail's failure to disclose in the documents filed with the Commission which are listed in Schedule "B" hereto (Biovail's "Public Disclosure") the establishment of and its arrangements with Pharmaceutical Technologies Corporation ("PTC");

    (b) Biovail's improper recognition in its interim financial statements for Q2 of 2003 of revenue relating to a sale of Wellbutrin XL tablets;

    (c) Biovail's failure to correct and disclose, on a timely basis, a material error in its 2003 financial statements;

    (d) Biovail's dissemination of incorrect statements in certain press releases in October 2003 and March 2004, in an analyst conference call held on October 3, 2003, and in investor meetings held in October 2003 relating to a truck accident; and

    (e) Biovail's provision of materially inaccurate information to OSC Staff during a continuous disclosure review conducted in 2003 and 2004 (the "Continuous Disclosure Review").

Biovail's Failure to Disclose the Establishment of and its Arrangements with PTC

(a) The Establishment and Activities of PTC

15. In 2001, Biovail sponsored the creation of a research and development vehicle, eventually incorporated as PTC. PTC was created to engage in the application of Biovail's drug delivery technologies to the formulation and development of a portfolio of six products.

16. On June 28, 2001, an individual equity investor acquired 100 percent of the common shares of PTC for $U.S. 1 million. The equity investor acted as a consultant to Biovail from November 1999 to November 2001.

17. On June 29, 2001, the equity investor entered into a Share Option Agreement pursuant to which the equity investor granted to Biovail an irrevocable option, exercisable at any time until December 31, 2006 and at Biovail's sole discretion, to purchase all, but not less than all, of the outstanding common shares of PTC, at a price that increased over time.

18. On June 29, 2001, PTC entered into a Product Development and Royalty Agreement ("PDRA") with Biovail. Under the PDRA, PTC contracted to develop six products owned by Biovail Laboratories Inc. ("BLI"), a Biovail subsidiary, in exchange for the receipt of royalties upon the commercialization and sale of these products. PTC was also granted a license to use certain technology owned by BLI to complete the development of the products.

19. During the period June 30, 2001 to December 31, 2002, PTC engaged Biovail and third party developers to carry out research and development activities for the products in question.

20. On December 31, 2002, Biovail acquired 100 percent of the outstanding shares of PTC for $22,600,000, including costs of acquisition. Biovail represents that, through the acquisition of PTC, Biovail extinguished any future milestone or royalty obligations that Biovail may have had to PTC resulting from the approval and successful commercialization of any of the products.

(b) Biovail's Failure to Disclose its Arrangements with PTC

21. During the period from June 2001 to December 2002 an issuer's continuous disclosure obligations included the filing of an Annual Information Form ("AIF") and an annual and interim Management's Discussion & Analysis ("MD&A") accompanying its financial statements. OSC Rule 51-501- "AIF & MD&A" set out the filing and delivery requirements of AIF and MD&A, as well as the form and content of these documents. The AIF was to be prepared in accordance with Form 44-101F1 and the MD&A was to be prepared in accordance with Form 44-101F2.

22. Pursuant to these disclosure requirements, Biovail was required to disclose, among other things, any event occurring during the reporting period that was reasonably expected to have a material effect on Biovail's business, financial condition or results of operations. Biovail filed AIFs and annual and interim MD&As during the Material Time.

23. On November 5, 2001, Biovail filed a Short Form Base Shelf Prospectus with the Canadian provincial securities commissions in relation to the potential sale of up to U.S. $1.5 billion in any combination of common shares, debt securities and warrants. Subsequently, on November 14, 2001 and March 26, 2002, Biovail filed two Prospectus Supplements for offerings of 12.5 million common shares for U.S. $587.5 million and U.S. $400 million of senior subordinated notes, respectively (the "Prospectus Supplements"). All of these filings are referred to collectively as the "Prospectuses". Biovail was required to provide full, true and plain disclosure of material facts in the Prospectuses.

24. The Prospectus Supplement filed on November 14, 2001 incorporated by reference, among other things, the Q3 interim financial statements for the 2001 fiscal year. The Prospectus Supplement filed on March 26, 2002 also incorporated by reference, among other things, its press release dated February 21, 2002 containing condensed consolidated balance sheets and income statements as at December 31, 2001.

25. The transfer of the development of the products and the related development expenses from Biovail to PTC was an event that was reasonably expected to have a material effect on Biovail's business, financial condition or results of operations and was a material fact.

26. The acquisition of PTC by Biovail was disclosed in a Form 20-F filed on May 20, 2003, which contained the annual and Q4 interim financial statements for its 2002 fiscal year. This was several months after Biovail had purchased PTC.

27. Biovail failed to disclose in its Public Disclosure during the Material Time the existence of PTC and the nature and substance of Biovail's arrangements with PTC. In so doing, Biovail violated the requirements of Ontario securities law and acted in a manner contrary to the public interest.

Misleading Information Provided to OSC Staff during Continuous Disclosure Review

28. During the Continuous Disclosure Review, Staff requested information from Biovail in relation to several issues, including the arrangements between Biovail and PTC.

29. A letter to Staff from Biovail dated January 28, 2003 contained the following statement: "[n]one of Biovail, nor any of its affiliates, directors or officers were involved in the formation of [PTC]". This statement was materially inaccurate. By making this statement, Biovail violated Ontario securities law and engaged in conduct contrary to the public interest.

Improper Revenue Recognition in Q2 2003 Financial Statements – the Wellbutrin XL Bill and Hold Arrangement

30. On July 29, 2003, Biovail released its financial results for the quarter ending June 30, 2003 (the "Q2 2003 Press Release"). These results were further disseminated in a conference call and webcast held on July 29, 2003 (the "Q2 2003 Analyst Call"). Biovail subsequently filed financial statements for this quarter with the Commission on August 29, 2003 (the "Q2 2003 Financial Statements").

31. The Q2 2003 Press Release, Q2 2003 Analyst Call and the Q2 2003 Financial Statements included in Biovail's revenue for the quarter approximately U.S. $8 million relating to a sale of Wellbutrin XL ("WXL") tablets to GlaxoSmithKline PLC ("GSK") that was purportedly carried out on a "bill-and-hold" basis. Inclusion of this amount in revenue for the quarter increased Biovail's operating income by approximately U.S. $4.4 million. The transaction did not meet all of the revenue recognition requirements under Canadian GAAP for a bill and hold arrangement. Accordingly, the inclusion of the revenue in Q2 2003 was improper.

(a) The Wellbutrin XL Agreement

32. On October 26, 2001, Biovail (through its subsidiary BLI) entered into a Development, License and Co-Promotion Agreement with GSK. This agreement was modified by a Memorandum of Understanding effective January 1, 2003 (together, these two documents form the "Agreement"). Under the Agreement, Biovail agreed to manufacture and supply all of GSK's requirements for tablets of WXL.

33. Under the Agreement, Biovail was to supply GSK with WXL tablets at two price points: "trade" prices for tablets which were to be sold to the public, and "sample" prices for tablets which were to be distributed free through physicians in order to promote the tablets in the marketplace.

34. Under the Agreement, the prices were fixed for sample tablets. Prices for trade tablets were based upon a tiered percentage of GSK's net sales of WXL, and were higher than the sample tablet prices. The Agreement contemplated that Biovail would package the trade tablets at its own expense.

35. At the time of entering into the Agreement, WXL had not been approved by the U.S. Food and Drug Administration, and thus could not be sold to the public.

36. The FDA approved WXL on August 28, 2003. This included approving the form of packaging and labelling for WXL.

(b) GSK's Purchase Orders

37. The Agreement did not impose an obligation on Biovail to manufacture WXL prior to FDA approval. The Agreement did not make specific provision, whether through milestone payments or otherwise, for the expenses of pre-launch manufacture of WXL. It also did not specifically contemplate a price at which pills manufactured prior to launch would be sold.

38. During 2002, Biovail and GSK representatives met to discuss the pre-launch manufacture of WXL.

39. In April 2003, GSK sent out an initial order for 30,400,000 WXL tablets, for which it proposed to pay the sample prices provided in the Agreement (the "April Purchase Order"). These tablets were requested for June delivery.

40. Throughout April, May and June 2003, GSK and Biovail representatives continued to discuss the pre-launch manufacture of WXL. The parties agreed that in addition to the April Purchase Order, GSK would place an order for WXL for which it would pay a fixed price.

41. On June 20, 2003, GSK sent Biovail a purchase order requesting 27,090,000 WXL tablets at a fixed price per tablet and a $1.00 per bottle packaging fee (the "June Purchase Order"). The June Purchase Order replaced the April Purchase Order and therefore also contained an order for 30,400,000 WXL tablets at sample prices.

(c) The Recognition of Revenue

42. On June 30, 2003, Biovail invoiced GSK for a total of 18,020,244 WXL tablets at fixed trade prices for a total amount of $8,073,051.24 (the "June Invoice"). Biovail recorded this latter figure as revenue for its fiscal quarter ending June 30, 2003. The inclusion of this revenue increased Biovail's operating income for the quarter by approximately $4.4 million, which was a material amount.

(d) The Purported Bill-And-Hold Arrangement

43. The June Invoice identified by lot number the specific WXL tablets that it encompassed (the "Specified Tablets"). Biovail represents that, subsequent to June 30, 2003, it maintained the Specified Tablets in a segregated area of its warehouse in Steinbach, Manitoba, and in a designated "site" in its inventory system. Biovail did not, however, supply all of the Specified Tablets to GSK in accordance with the terms reflected on the June Purchase Order and the June Invoice.

44. On August 1, 2003 and August 22, 2003, Biovail shipped some of the Specified Tablets to GSK as sample product. By August 31, 2003 Biovail had replaced most of those Specified Tablets with new WXL tablets (the "Pill Switch").

45. Biovail ultimately cancelled the June Invoice and re-issued a different invoice, with different lot numbers, reflecting the sale of the new WXL tablets at the fixed prices agreed in the June Purchase Order. Credit notes were issued to prevent double-billing.

46. In July 2003, during the review of Biovail's Q2 2003 financial statements by Biovail's auditors, Biovail was questioned about the sale of the Specified Tablets at fixed trade prices. Biovail did not, at that time, inform its auditors that the sale was conducted on a "bill and hold" basis or of the Pill Switch.

47. In early 2004, as part of their 2003 year-end audit, Biovail's auditors questioned the WXL revenue recorded on June 30. In response, Biovail represented that the WXL arrangement had been conducted on a bill-and-hold basis. Biovail represented that it had reached an agreement with GSK prior to June 30, 2003 that the Specified Tablets would be initially segregated within its warehouse and later shipped to GSK after FDA approval was received. The auditors required Biovail to obtain confirmation of certain particulars of the bill and hold arrangement that had not been memorialized in any contemporaneous documentation. Biovail asked for and received confirmation from GSK in the form required by the auditor.

(e) Premature Recognition of Revenue

48. Canadian GAAP provides that in most cases, revenue is not recognized until the passing of possession of goods. In other words, in most cases, revenue should not be recognized until delivery has occurred. Delivery generally is not considered to have occurred unless the product has been delivered to the customer's place of business or to another site specified by the customer.

49. "Bill and hold" transactions, in which delivery of the goods does not immediately take place, provide an exception to general revenue recognition principles. Such transactions, however, must meet very specific accounting requirements.

50. Biovail represents that it recognized the revenue with respect to the sale of the Specified Tablets on June 30, 2003 on a "bill and hold" basis.

51. However, Biovail now acknowledges that the revenue recognition requirements, under Canadian GAAP, for a "bill and hold" arrangement were not met with respect to the Specified Tablets.

52. Accordingly Biovail should not have recognized revenue in its Q2 2003 Financial Statements from the sale of WXL pills pursuant to the purported "bill and hold" arrangement. Biovail therefore violated Ontario securities law and engaged in conduct contrary to the public interest.

53. In its Q2 2003 Press Release and Q2 2003 Analyst Call, Biovail disseminated the financial results which incorporated this improperly recognized revenue. Doing so violated Ontario securities law and was contrary to the public interest.

Biovail's Failure to Correct and Disclose on a Timely Basis a Material Financial Statement Error – The Foreign Exchange Error

54. On April 29, 2003 Biovail released its financial results for the quarter ending March 31, 2003 (the "Q1 2003 Press Release"). As set out above, Biovail released its financial results for Q2 2003 on July 29, 2003. On October 30, 2003 Biovail released its financial results for the quarter ending September 30, 2003 (the "Q3 2003 Press Release"). Biovail

subsequently filed financial statements for the first quarter on May 30, 2003 (the "Q1 2003 Financial Statements"), for the second quarter on August 29, 2003 (as defined above, the "Q2 2003 Financial Statements") and for the third quarter on November 28, 2003 (the "Q3 2003 Financial Statements").

55. Biovail failed to account properly for an obligation denominated in Canadian dollars in its Q1 2003 Financial Statements, its Q2 2003 Financial Statements and its Q3 2003 Financial Statements. Although questions regarding the proper recording of the Canadian dollar obligation had been raised by Biovail accounting personnel in early July 2003, prior to the release of its Q2 2003 financial results and the filing of the Q2 2003 Financial Statements, Biovail did not disclose the error until it issued on March 3, 2004 its earnings release for the fourth quarter 2003 and the full fiscal year ended December 31, 2003 (the "March 3, 2004 Press Release").

56. In December of 2002, Biovail, through its subsidiary BLI, acquired the rights to certain drugs. In so doing, Biovail assumed an obligation denominated in Canadian dollars. Since Biovail reported its results in U.S. dollars, it was required to account for this obligation in its financial statements in U.S. dollars. Biovail properly accounted for this obligation in December 2002 when it converted the obligation from Canadian dollars to U.S. dollars using the then current U.S.$/CAN$ exchange rate ("FX Rate").

57. Canadian GAAP requires that any outstanding balance of a foreign currency denominated obligation that is a monetary item be revalued using the FX Rate current at each balance sheet date. At March 31, 2003, however, Biovail, continued to use the FX Rate from December 2002 (the "Error"). Biovail also continued to use the FX Rate from December 2002 on June 30, 2003 and September 30, 2003. The interim financial statements for Q1, Q2 and Q3 of 2003 therefore did not accurately reflect any unrealized exchange losses or gains and the outstanding balance of the obligation.

58. In early July 2003, the Error was raised with Biovail by BLI. Biovail represents that no immediate steps were taken to analyse the issue and confirm whether the appropriate accounting treatment was being used. The interim financial statements issued for Q2 2003 and Q3 2003 continued to record the debt obligation based on the FX Rate as of December 2002.

59. In 2004, in consultation with its auditors, Biovail took steps to file restated interim financial statements for Q1, Q2 and Q3 2003. Biovail disclosed the Error in a Press Release on March 3, 2004 and filed its restated interim financial statements on May 14, 2004. As a result of the restatement, Biovail's net income decreased by U.S. $5.4 million and $3.9 million for the Q1 and Q2 2003 Financial Statements respectively, and increased by $3.1 million for the Q3 2003 Financial Statements.

60. In relation to the Error, Biovail failed to promptly analyze and deal with an issue that had the potential to, and did in fact, have a material effect on their financial statements. This resulted in the material under-reporting of income in one quarter, and the material over-reporting of income in two quarters. Biovail's conduct in this regard was contrary to Ontario securities law and the public interest.

Biovail's Statements in Press Releases – The Truck Accident

61. Biovail made statements in press releases issued on October 3, 8 and 30, 2003 and March 3, 2004 that, in a material respect, inaccurately disclosed the implications, for Biovail, of a truck accident that occurred on October 1, 2003.

62. The press releases concerned Biovail's disclosure that its preliminary financial results for its third quarter of 2003 would be below previously issued guidance. Particulars of the statements are outlined below.

(a) Biovail's Revenue and Earnings Expectations

63. On February 7, 2003, Biovail publicly disclosed in a press release its revenue and earnings guidance for 2003. The revenue range projected for the third quarter of 2003 was U.S. $260 million to U.S. $300 million.

64. Biovail did not achieve its third quarter 2003 revenue and earnings expectations. Rather, in its October 30, 2003 press release, Biovail reported U.S. $215.3 million in revenue for that quarter.

(b) The October 3, 2003 Press Release

65. In a press release issued on October 3, 2003 (the "October 3, 2003 Press Release"), Biovail stated that its preliminary results for its 2003 third quarter "will be below previously issued guidance … Contributing significantly to this unfavourable variance was the loss of revenue and income associated with a significant in-transit shipment loss of Wellbutrin XL as a result of a traffic accident … Revenue associated with this shipment is in the range of [U.S.] $10 to [U.S.] $20 million".

66. A truck carrying WXL tablets, destined for GSK's facility in the United States, departed from Biovail's warehouse in Steinbach, Manitoba on September 30, 2003.

67. The contractual delivery term between Biovail and GSK meant that Biovail would be entitled to recognize the revenue associated with a WXL shipment only when that shipment reached GSK's facility.

68. The truck carrying the WXL shipment was scheduled to reach GSK's facility after September 30, 2003. Biovail, therefore, could recognize the revenue associated with the WXL shipment only in its fourth quarter which ended on December 31, 2003.

69. On October 1, 2003, the truck carrying the WXL shipment was involved in an accident. However, given the f.o.b. destination contractual term, the truck accident had no impact on Biovail's revenue for its 2003 third quarter.

70. The traffic accident referred to in the press release was therefore not a reason for Biovail's failure to meet its previously issued revenue guidance for the third quarter of 2003.

71. The October 3, 2003 Press Release also stated that "[r]evenue associated with the [WXL] shipment was in the range of [U.S.] $10 million to [U.S.] $20 million". This statement was incorrect. Regardless of the truck accident, Biovail would not have been able to recognize the associated revenue until its fourth quarter for the reasons outlined above. Further, Biovail's statement that the value of the WXL shipment was U.S. $10 million to U.S. $20 million was materially in error. Biovail later stated in a March 3, 2004 press release, discussed below, that the "actual revenue loss" from the shipment on the truck was U.S. $5 million.

(c) The October 8, 2003 Press Release

72. On October 8, 2003, Biovail issued a further press release (the "October 8, 2003 Press Release") which stated that Biovail had recovered the WXL shipment involved in the accident and that 60 percent of the shipment was saleable and might be re-shipped within 30 days. The press release went on to state "Biovail re-confirms that the sales value of these goods is within previously stated guidance".

(d) The October 30, 2003 Press Release

73. In its earnings press release for the third quarter of 2003 issued on October 30, 2003 (the "October 30, 2003 Press Release"), Biovail stated that "[a] late third quarter 2003 shipment of Wellbutrin XL involved in an accident outside of Chicago was returned to Biovail's facility on October 8, 2003 for inspection. No revenue was recognized from this shipment in Q3 2003."

(e) The March 3, 2004 Press Release

74. The March 3, 2004 Press Release stated that "Biovail announced [on October 3, 2003] that its estimated revenue from Wellbutrin XL for third quarter 2003 would be less than [U.S.] $10 million partially as a result of the truck accident and that the loss in revenue due to the accident would be in the range of [U.S.] $10.0 million to [U.S.] $20.0 million". The March 3, 2004 Press Release further stated that "the actual revenue loss from the accident was determined to be [U.S.] $5.0 million". In fact, Biovail knew that there was no revenue loss in Q3 2003 as a result of the truck accident.

75. The October 8 and October 30, 2003 Press Releases, and the March 3, 2004 Press Release continued to disseminate the prior information provided by Biovail in its October 3, 2003 Press Release and failed to correct the incorrect information previously provided to the investing public.

(f) October 3, 2003 Analyst Call

76. Biovail held a conference call with analysts and a webcast held on October 3, 2003 following the release of the October 3, 2003 Press Release (the "October 3, 2003 Analyst Call"). During the October 3, 2003 Analyst Call, Biovail stated that the accident would have a material negative financial impact on its third quarter revenues. Biovail further stated that the negative impact of the truck accident on revenue would be in the range of U.S. $15 million to U.S. $20 million.

77. During the October 3, 2003 Analyst Call, an analyst questioned whether the accident would have fourth quarter rather than third quarter implications. Biovail responded that it was purely a third quarter issue.

78. For the reasons previously described, the above statements were incorrect in a material respect.

(g) October 2003 Investor Meetings

79. In October 2003, Biovail held a series of meetings with investors to, among other things, deal with questions surrounding the truck accident and the related announcements that followed (the "Investor Meetings"). The Investor Meetings took place in various cities on October 10, 13, 14 and 15 of 2003. The presentation materials contained similar incorrect statements to those described above.

80. Specifically, the presentation materials included a slide with the heading "Revised third quarter guidance" which stated "Revenue and EPS effected (sic) by three items[:] 1. Wellbutrin XL shipment / traffic accident …". Another slide entitled "Wellbutrin XL – timing issue" stated "Impact to Q3 … Revenue [U.S.] $10 to [U.S.] $20 million".

81. In summary, in the October 3, 2003 Press Release, Biovail made the claim that a truck accident was one of the reasons for Biovail's failure to meet previously issued revenue guidance for the quarter. Also, Biovail disseminated information in its statement that the revenue associated with the WXL shipment was in the range of U.S. $10 million to U.S. $20 million. Biovail repeated, or implicitly reinforced these claims during the October 3, 2003 Analyst Call, and in statements made in the October 8, 2003 Press Release, the October 30, 2003 Press Release, the March 3, 2004 Press Release and the Investor Meetings.

82. Biovail should have taken greater care, from the outset, to accurately assess the revenue associated with the product on the truck, and to accurately assess whether, but for the accident, it would have been able to recognize revenue from the sale of the product on the truck in Q3. Upon learning the true state of affairs, Biovail should have clearly disclosed, at the earliest opportunity, that the truck accident was a Q4 issue. Biovail should have clearly disclosed, at the earliest opportunity, the revenue associated with the product on the truck. Biovail should have clearly disclosed, at the earliest opportunity, that previous statements suggesting that the truck accident was one of the reasons for the Q3 earnings miss, and that the revenue associated with the product on the truck was between $10 million and $20 million, were incorrect. By failing to do so, Biovail violated Ontario securities law and engaged in conduct contrary to the public interest.

V. TERMS OF SETTLEMENT

83. Biovail agrees to the terms of settlement listed below.

84. The Commission will make an order pursuant to section 127(1) and section 127.1 of the Act that:

(a) The Settlement Agreement be approved;

(b) Biovail be reprimanded;

(c) Biovail pay an administrative penalty of CAN$5 million, to be paid to or for the benefit of third parties designated by the Commission, pursuant to section 3.4(2) of the Act;

(d) Biovail pay CAN$1.5 million in respect of a portion of the costs of the investigation and hearing in relation to his matter;

(e) Pursuant to a Consent Final Judgment entered in the United States District Court for the Southern District of New York in *Securities and Exchange Commissions v. Biovail Corporation, et al.*, dated March 18, 2008, Biovail has retained a consultant (the "Consultant") to conduct a comprehensive examination and review of Biovail's internal accounting controls, policies and procedures, training, ethics and compliance policies and procedures and other matters (the "Review"). The terms of reference for the Consultant are attached hereto as Schedule "C". The Consultant is required to provide reports from time to time to Biovail's board of directors, audit committee and the United States Securities and Exchange Commission. Biovail will provide Staff with copies of any such reports;

(f) Biovail shall retain a further consultant acceptable to Staff (the "Ontario Consultant") to examine and report on Biovail's training of its personnel concerning compliance with the financial and other reporting requirements of Ontario securities law (the "Ontario Review"). In conducting the Ontario Review, the Ontario Consultant shall consider the investigations carried out by, and the reports prepared by, the Consultant pursuant to the Review, and may conduct such further investigations as are reasonably necessary. The terms of reference for the Ontario Review are attached hereto as Schedule "D"; and

(g) Biovail shall use its best efforts to ensure that individuals who are current or former Biovail employees, and whom Staff wishes to interview, or call to testify at the hearing in this proceeding, are made available as Staff

may reasonably require. Biovail shall use its best efforts to provide such additional documentation as Staff may reasonably require for the purposes of this proceeding.

VI. STAFF COMMITMENT

85. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding against Biovail under Ontario securities law in relation to the facts alleged in the Notice of Hearing.

86. If the Commission approves this Settlement Agreement and Biovail fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against Biovail. These proceedings may be based on, but are not limited to, the facts alleged in the Notice of Hearing as well as the breach of the Settlement Agreement.

VII. PROCEDURE FOR APPROVAL OF SETTLEMENT

87. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.

88. Staff and Biovail agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing.

89. If the Commission approves this Settlement Agreement, Biovail agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

90. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

91. Whether or not the Commission approves this Settlement Agreement, Biovail will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

VIII. DISCLOSURE OF SETTLEMENT AGREEMENT

92. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

    (a) this Settlement Agreement and all discussions and negotiations between Staff and Biovail before the settlement hearing takes place will be without prejudice to Staff and Biovail; and

    (b) Staff and Biovail will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Notice of Hearing. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

93. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

IX. EXECUTION OF SETTLEMENT AGREEMENT

94. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

95. A fax copy of any signature will be treated as an original signature.

DATED AT Toronto, this 7th day of January, 2009

STAFF OF THE ONTARIO SECURITIES COMMISSION

By: "Peggy Dowdall-Logie"
Name: Peggy Dowdall-Logie
Title: Executive Director

BIOVAIL CORPORATION

By: "Wendy Kelley"
Name: Wendy Kelley
Title: General Counsel & Corporate Secretary

I have authority to bind the corporation

SCHEDULE – "A" – DRAFT ORDER

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

AND

IN THE MATTER OF
BIOVAIL CORPORATION, EUGENE N. MELNYK,
BRIAN H. CROMBIE, JOHN R. MISZUK AND
KENNETH G. HOWLING

ORDER
(Sections 127 and 127.1)

WHEREAS on March 24, 2008 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and related Statement of Allegations (the "Notice of Hearing") against Biovail Corporation ("Biovail"), Eugene N. Melnyk , Brian H. Crombie, John R. Miszuk and Kenneth G. Howling;

AND WHEREAS Biovail has entered into a settlement agreement with Staff of the Commission dated January 7, 2009 (the "Settlement Agreement") in relation to the matters set out in the Notice of Hearing;

UPON reviewing the Notice of Hearing and Settlement Agreement, and upon hearing submissions from counsel for Biovail and for Staff of the Commission;

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

IT IS HEREBY ORDERED that:

1. The Settlement Agreement is approved.

2. Biovail is reprimanded.

3. Biovail shall pay an administrative penalty of CAN$5,000,000.00 to be paid to or for the benefit of third parties designated by the Commission, pursuant to section 3.4(2) of the Act.

4. Biovail shall pay CAN$1,500,000.00 in respect of a portion of the costs of the investigation and hearing in relation to his matter.

5. Pursuant to a Consent Final Judgment entered in the United States District Court for the Southern District of New York in *Securities and Exchange Commissions v. Biovail Corporation, et al.*, dated March 18, 2008, Biovail has retained a consultant (the "Consultant") to conduct a comprehensive examination and review of Biovail's internal accounting controls, policies and procedures, training, ethics and compliance policies and procedures and other matters (the "Review"). The terms of reference for the Consultant are attached to the Settlement Agreement as Schedule "C". The Consultant is required to provide reports from time to time to Biovail's board of directors, audit committee and the United States Securities and Exchange Commission. Biovail will provide Staff with copies of any such reports.

6. Biovail shall retain a further consultant acceptable to Staff (the "Ontario Consultant") to examine and report on Biovail's training of its personnel concerning compliance with the financial and other reporting requirements of Ontario securities law (the "Ontario Review"). In conducting the Ontario Review, the Ontario Consultant shall consider the investigations carried out by, and the reports prepared by, the Consultant pursuant to the Review, and may conduct such further investigations as are reasonably necessary. The terms of reference for the Ontario Review are attached to the Settlement Agreement as Schedule "D".

7. Biovail shall use its best efforts to ensure that individuals who are current or former Biovail employees, and whom Staff wishes to interview, or call to testify at the hearing in this proceeding, are made available as Staff may reasonably require. Biovail shall use its best efforts to provide such additional documentation as Staff may reasonably require for the purposes of this proceeding.

Dated at Toronto this day of January, 2009.

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_____ _____

SCHEDULE "B" – BIOVAIL'S PUBLIC DISCLOSURE

Document Description	Content	Filing Date
Form 20-F – For the year ended December 31, 2001	AIF, Cdn. and U.S. GAAP MD&A and financial statements	21-May-2002
Form 20-F – For the year ended December 31, 2002	AIF, Cdn. and U.S. GAAP MD&A and financial statements	20-May-2003
Form 6K – For the quarter ended September 30, 2001	U.S. GAAP MD&A and financial statements	13-Nov-2001
Third Quarter 2001 Interim Report - For Canadian Regulatory Purposes	Cdn. GAAP MD&A and financial statements	13-Nov-2001
Form 6K - For the quarter ended March 31, 2002	Cdn.. and U.S. GAAP MD&A and financial statements	30-May-2002
Form 6K - For the quarter ended June 30, 2002	Cdn. and U.S. GAAP MD&A and financial statements	29-Aug-2002
Form 6K - For the quarter ended September 30, 2002	Cdn. and U.S. GAAP MD&A and financial statements	26-Nov-2002
Shelf Prospectus	----	05-Nov-2001
Prospectus Supplement	----	14-Nov-2001
Prospectus Supplement	----	26-Mar-2002

SCHEDULE "C" – TERMS OF REFERENCE FOR THE CONSULTANT

5. Defendant agrees to comply with the following undertakings:

A. Retention of a Consultant

i. Biovail shall retain, pay for, and enter into an agreement with an independent consultant ("Consultant"), not unacceptable to the Commission staff, to conduct a comprehensive examination and review of the areas specified below and to make recommendations to Biovail's board of directors and the Commission staff. The Consultant's compensation and expenses shall be borne exclusively by Biovail, and shall not be deducted from any amount due under the provisions of the Final Judgment.

ii. The agreement with the Consultant ("Agreement") shall provide that the Consultant examine:

a. Biovail's internal accounting controls and its internal controls over financial reporting, provided, however, that the Consultant may, if appropriate, rely on Biovail's independent accountant's attestation and report on management's assessment of the effectiveness of Biovail's internal control structure and procedures pursuant to Section 404 of the Sarbanes-Oxley Act;

b. The policies, procedures, and effectiveness of Biovail's regulatory and compliance functions, including the operations of any committees or other mechanisms established to review and approve transactions or for the purpose of preventing the recording of transactions or financial reporting results in a manner that is not in compliance with U.S. generally accepted accounting principles;

c. Biovail's training of its accounting staff concerning financial reporting and U.S. generally accepted accounting principles;

d. Biovail's ethics and compliance policies, including the adequacy and effectiveness of any whistleblower procedures designed to allow employees and others to report confidentially matters that may bear on Biovail's financial reporting obligations;

e. Biovail's records management and retention policies and procedures, including without limitation such procedures with respect to e-mail and other electronically stored information;

f. The functioning of Biovail's audit committee, including the audit committee's policies and procedures and the methods for the selection of its members;

g. Biovail's policies and procedures with respect to compliance with Rule 302(b) of Regulation S-T;

h. Biovail's investor relations and public affairs functions, including policies and procedures designed to enhance the quality and accuracy of Biovail's press releases, investor conference calls, and other similar public disclosures;

i. Biovail's policies and procedures concerning its communications with its outside auditors.

B. Consultant's Reporting Obligations

i. The Consultant shall issue a report to Biovail's board of directors, its audit committee, and to the Commission staff within three months of appointment, provided however, that the Consultant may seek to extend the period of review for one additional three-month term by requesting such an extension from the Commission's staff. The Commission's staff, after consultation with Biovail, shall have discretion to grant such extension for the period requested if deemed reasonable and warranted.

ii. The Consultant's report shall address the Consultant's review of the areas specified in paragraph 5.A.ii above and shall include a description of the review performed, the conclusions reached, the Consultant's recommendations for any changes or improvements to Biovail's policies and procedures as the Consultant reasonably deems necessary to conform to the law and best practices, and a procedure for implementing the recommended changes or improvements.

iii. Biovail shall adopt all recommendations contained in the Consultant's report, provided, however, that within forty-five days of its receipt of the report, Biovail shall in writing advise the Consultant and the Commission staff of any recommendation that it considers to be unnecessary or inappropriate. With respect to any recommendation that Biovail considers unnecessary or inappropriate, Biovail need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose.

iv. As to any recommendations of the Consultant with respect to which Biovail and the Consultant do not agree, such parties shall attempt in good faith to reach an agreement within ninety days of the issuance of the Consultant's report. In the event Biovail and the Consultant are unable to agree on an alternative proposal, Biovail shall abide by the determinations of the Consultant.

v. Biovail shall retain the Consultant for a period of twelve months from the date of appointment in accordance with paragraph 5.C below. After the Consultant's recommendations become final pursuant to paragraph 5.B above, the Consultant shall oversee the implementation of such recommendations and provide a report to Biovail's board of directors, its audit committee, and to the Commission staff twelve months after appointment concerning the progress of the implementation. If, at the conclusion of this twelve-month period, less than all the recommendations of the consultant (to the extent deemed significant by the Commission staff) have been substantially implemented for at least two successive fiscal quarters, the Commission staff may, in its discretion, direct Biovail to extend the Consultant's term of appointment until such time as all recommendations (to the extent deemed significant by the Commission staff) have been substantially implemented for at least two successive fiscal quarters.

vi. In addition to the reports identified above, the Consultant shall provide Biovail's board of directors, its audit committee, and the Commission staff with such documents or other information concerning the areas specified in paragraph 5.A.ii above as any of them may request during the pendency or at the conclusion of the review.

C. Terms of Consultant's Retention

i. Within forty-five days after the date of entry of the Final Judgment, Biovail will submit to the Commission staff a proposal setting forth the identity, qualifications, and proposed terms of retention of the Consultant. The Commission staff, within thirty days of such notice, will either (a) deem Biovail's choice of Consultant and proposed terms of retention not unacceptable or (b) require Biovail to propose an alternative Consultant and/or revised proposed terms of retention within fifteen days. This process will continue, as necessary, until the proposed Consultant and retention terms are not unacceptable to the Commission staff.

ii. The Consultant shall have reasonable access to all of Biovail's books and records and the ability to meet privately with Biovail's personnel. Biovail shall instruct and otherwise encourage its officers, directors, and employees to cooperate fully with the review conducted by the Consultant, and inform its officers, directors, and employees that failure to cooperate with the review may be grounds for dismissal, other disciplinary actions, or other appropriate actions.

iii. The Consultant shall have the right, as reasonable and necessary in his or her judgment, to retain, at Biovail's expense, attorneys, accountants, and other persons or firms, other than officers, directors, or employees of Biovail, to assist in the discharge of the Consultant's obligations. Biovail shall pay all reasonable fees and expenses (as reasonably documented) of any persons or firms retained by the Consultant.

iv. The Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered,. in connection with the performance of his or her responsibilities, and require all persons and firms retained to assist the Consultant to do so as well.

v. If the Consultant determines that he or she has a conflict with respect to one or more of the areas described in paragraph 5.A.ii above, he or she shall delegate his or her responsibilities with respect to that subject to a person who is chosen by the Consultant and who is not unacceptable to the Commission staff.

vi. For the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Biovail, or any of its present or former affiliates, directors, officers,

employees, or agents acting in their capacity as such, and shall require that any firm with which the Consultant is affiliated or of which the Consultant is a member, or any person engaged to assist the Consultant in performance of the Consultant's duties under the Final Judgment not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Biovail, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

SCHEDULE "D" – TERMS OF REFERENCE FOR THE ONTARIO REVIEW

A. Retention of the Ontario Consultant

i. The Ontario Consultant's compensation and expenses shall be borne exclusively by Biovail.

B. The Ontario Consultant's Reporting Obligations

i. The Ontario Consultant shall issue a report to Biovail's board of directors, its audit committee, and to Staff within three months of appointment, provided however, that the Ontario Consultant may seek to extend the period of review for one additional three-month term by requesting such an extension from Staff. Staff, after consultation with Biovail, shall have discretion to grant such extension for the period requested if deemed reasonable and warranted.

ii. The Ontario Consultant's report shall address the Ontario Consultant's review of the areas specified in paragraph 84(f) of the Settlement Agreement and shall include a description of the review performed, the conclusions reached, the Ontario Consultant's recommendations for any changes or improvements to Biovail's policies and procedures as the Ontario Consultant reasonably deems necessary to conform to the law and best practices, and a procedure for implementing the recommended changes or improvements.

iii. Biovail shall adopt all recommendations contained in the Ontario Consultant's report, provided, however, that within forty-five days of its receipt of the report, Biovail shall in writing advise the Ontario Consultant and Staff of any recommendation that it considers to be unnecessary or inappropriate. With respect to any recommendation that Biovail considers unnecessary or inappropriate, Biovail need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose.

iv. As to any recommendations of the Ontario Consultant with respect to which Biovail and the Ontario Consultant do not agree, such parties shall attempt in good faith to reach an agreement within ninety days of the issuance of the Ontario Consultant's report. In the event Biovail and the Ontario Consultant are unable to agree on an alternative proposal, Biovail shall abide by the determinations of the Ontario Consultant.

v. Biovail shall retain the Ontario Consultant for a period of twelve months from the date of appointment. After the Ontario Consultant's recommendations become final pursuant to paragraph iv above, the Ontario Consultant shall oversee the implementation of such recommendations and provide a report to Biovail's board of directors, its audit committee, and to Staff twelve months after appointment concerning the progress of the implementation. If, at the conclusion of this twelve-month period, less than all the recommendations of the consultant (to the extent deemed significant by Staff) have been substantially implemented for at least two successive fiscal quarters, Staff may, in its discretion, direct Biovail to extend the Ontario Consultant's term of appointment until such time as all recommendations (to the extent deemed significant by Staff) have been substantially implemented for at least two successive fiscal quarters.

vi. In addition to the reports identified above, the Ontario Consultant shall provide Biovail's board of directors, its audit committee, and Staff with such documents or other information concerning the areas specified in paragraph 84(f) of the Settlement Agreement as any of them may request during the pendency or at the conclusion of the review.

C. *Terms of the Ontario Consultant's Retention*

i. Within forty-five days after the approval of the Settlement Agreement, Biovail will submit to Staff a proposal setting forth the identity, qualifications, and proposed terms of retention of the Ontario Consultant. Staff, within thirty days of such notice, will either (a) deem Biovail's choice of Ontario Consultant and proposed terms of retention not unacceptable or (b) require Biovail to propose an alternative Ontario Consultant and/or revised proposed terms of retention within fifteen days. This process will continue, as necessary, until the proposed Ontario Consultant and retention terms are not unacceptable to Staff.

ii. The Ontario Consultant shall have reasonable access to all of Biovail's books and records and the ability to meet privately with Biovail's personnel. Biovail shall instruct and otherwise encourage its officers, directors, and employees to cooperate fully with the review conducted by the Ontario Consultant, and inform its officers, directors, and employees that failure to cooperate with the Ontario Review may be grounds for dismissal, other disciplinary actions, or other appropriate actions.

iii. The Ontario Consultant shall have the right, as reasonable and necessary in his or her judgment, to retain, at Biovail's expense, lawyers, accountants, and other persons or firms, other than officers, directors, or employees of Biovail, to assist in the discharge of the Ontario Consultant's obligations. Biovail shall pay all reasonable fees and expenses (as reasonably documented) of any persons or firms retained by the Ontario Consultant.

iv. The Ontario Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of his or her responsibilities, and require all persons and firms retained to assist the Ontario Consultant to do so as well.

3.1.2 Shane Suman and Monie Rahman

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

AND

IN THE MATTER OF
SHANE SUMAN AND MONIE RAHMAN

REASONS FOR DECISION

Hearing:	July 30, 2008		
Order:	August 1, 2008		
Decision:	January 12, 2009		
Panel:	Lawrence E. Ritchie	–	Vice-Chair and Chair of the Panel
	David L. Knight, FCA	–	Commissioner
	Carol S. Perry	–	Commissioner
Counsel:	Cullen Price Kathryn Daniels	–	For the Ontario Securities Commission
	Randy Bennett Sara J. Erskine	–	For Monie Rahman
	Shane Suman	–	Representing himself

REASONS FOR DECISION

I. BACKGROUND

A. Overview

[1] The Application before us raises the issue of a respondent's right to have access to proprietary information of a third party, when that information is in the hands of Staff of the Ontario Securities Commission (the "Commission"). In considering the Applicant's request, we, as a Commission panel, must consider and balance (a) the legitimate interest of the third party in ensuring the protection of sensitive commercial information, and (b) Staff's ability to garner cooperation from witnesses in its investigative process, against (c) a respondent's right to make full answer and defence to serious allegations with potentially serious consequences.

[2] After the hearing on July 30, 2008, we issued our Order, dated August 1, 2008, which set out a protocol by which, in our view, the various interests of the parties are best accommodated. The following are our Reasons for making that Order.

[3] This matter arises out of a Statement of Allegations and Notice of Hearing dated July 24, 2007. Staff of the Commission ("Staff") alleges that Shane Suman ("Suman"), a former employee of MDS Sciex, a division of MDS Inc. ("MDS"), conveyed material non-public information about MDS to his wife, Monie Rahman ("Rahman"). The information concerned the proposed acquisition by MDS of Molecular Devices Corporation ("MDCC"), a U.S. issuer listed on the NASDAQ. The acquisition was publicly announced on January 29, 2007 (the "Announcement"). Staff alleges that Suman and Rahman (collectively, the "Respondents") bought 12,000 shares and 900 options contracts in MDCC in the days immediately prior to the Announcement. Staff alleges that the Respondents liquidated the MDCC securities on March 16, 2007 for a profit of $954,938.

[4] Staff alleges that Suman, as an employee of MDS, was a person in a special relationship with MDS in accordance with subsection 76(5) of the Securities Act, R.S.O. 1990, c. S.22, as amended (the "Act") at the time of the subject trading and at the time of the Announcement. Staff alleges that Suman traded in MDCC securities with knowledge of material undisclosed information respecting it, being its proposed acquisition by MDS, contrary to the public interest. Staff also alleges that Suman improperly advised Rahman about the proposed acquisition, contrary to subsection 76(2) of the Act and contrary to the public interest. With respect to Rahman, Staff alleges that she traded in MDCC securities with the knowledge of a material undisclosed fact, being the acquisition of MDCC by MDS, having acquired the knowledge from her husband, whom she knew to be an employee of MDS, contrary to the public interest.

[5] Staff seeks an order that Suman be prohibited from becoming or acting as an officer or director of an issuer, pursuant to paragraph 8 of subsection 127(1) of the Act, that he cease trading in any securities for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1), pay an administrative penalty of not more than $1,000,000, pursuant to paragraph 9 of subsection 127(1), disgorge any amounts he obtained by virtue of his non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1), and pay the costs of the Commission investigation and hearing, pursuant to subsection 127(1) [sic]. With respect to Rahman, Staff seeks an order that she be prohibited from becoming or acting as an officer or director of an issuer, pursuant to paragraph 8 of subsection 127(1), that she cease trading in any securities for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1), and that she be ordered to pay the costs of the Commission investigation and hearing.

[6] At the time of the Application, the hearing on the merits was scheduled to begin on October 20, 2008. The hearing was subsequently adjourned to a future date.

B. The Disclosure Motion

[7] On August 28, 2007, counsel for Staff and counsel for the Respondents attended before the Commission for a first appearance. On consent, the matter was adjourned to a pre-hearing conference on October 23, 2007. Further pre-hearing conferences were held on November 26, 2007, December 28, 2007, January 29, 2008, February 12, 2008 and June 27, 2008.

[8] By the date of the pre-hearing conference on October 23, 2007, Staff had produced to the Respondents the September 3, 2007 report of Steven L. Rogers, whom Staff proffers as a forensic computer expert (the "Rogers Report"), setting out the results of his forensic analysis of computer hard drives belonging to Suman (the "Suman Images") and forensic images taken from computer hard drives belonging to MDS (the "MDS Images"). By the date of the second pre-hearing conference, held on November 26, 2007, Staff had produced to the Respondents copies of the Suman Images.

[9] In December 2007, Staff produced copies of the MDS Images to then counsel to the Respondents, ("Previous Counsel"), which Staff submits contain confidential and highly sensitive commercial information of a third party. As a condition to the production, Staff sought and obtained an undertaking from Previous Counsel, to safeguard any confidential information contained in them. In January 2008, Previous Counsel terminated his retainer with the Respondents. In accordance with his undertaking, he returned the copies to Staff.

[10] On March 7, 2008, Staff produced to the Respondents five of seven MDS Images that did not raise confidentiality concerns. Staff declined to produce copies of the two remaining images (the "Disputed Hard Drive Images"), taking the position that the Disputed Hard Drive Images contain private personal employee information and highly sensitive commercial information. Further, Staff took the position that the Disputed Hard Drive Images contain little, if any, relevant information. Staff nonetheless, offered to provide the Respondents with an opportunity to review the Disputed Hard Drive Images at the Commission's offices "in a private setting at a mutually convenient time but without the ability to make copies given the confidentiality concerns expressed above."

[11] The Respondents objected to the offered conditions and gave notice that they would bring a motion for disclosure of the Disputed Hard Drive Images. At a sixth pre-hearing conference, held on June 27, 2008, at which Suman acted for himself and as agent for Rahman, the disclosure motion was set down for July 17, 2008.

[12] On July 14, 2008, Staff refined its offer to provide limited access to the material, saying that it would permit the Respondents access to the Disputed Hard Drive Images on the basis that:

(i) the Respondents would retain counsel on a limited basis to maintain possession and control of the electronic disclosure by providing and fulfilling the terms of an undertaking to safeguard the confidential information in a form acceptable to Staff;

(ii) upon receipt of the undertaking, signed by counsel, Staff would provide counsel with copies of the Disputed Hard Drive Images; and

(iii) the Respondents would consent to an order not to obtain, use or distribute, for any reason collateral to their defence in this matter, any of the confidential information.

[13] On the evening of July 14, 2008, Rahman retained new counsel. However, Suman continues to represent himself.

[14] On July 17, 2008, the motion was adjourned to July 30, 2008, when it was heard.

II. THE POSITIONS OF THE PARTIES

A. The Respondents

[15] The Respondents submit that complete and unrestricted disclosure of the Disputed Hard Drive Images is necessary to enable them to make full answer and defence, and that Staff has failed to comply with its disclosure obligations.

[16] Kevin Lo ("Lo") has been retained by Rahman's counsel to provide expert forensic analysis of the Disputed Hard Drive Images. In his affidavit sworn July 25, 2008, Lo states that he requires physical possession of complete copies of the Disputed Hard Drive Images in order to verify that the images referred to in the Rogers Report are actually on the Disputed Hard Drive Images and to conduct a forensic analysis of the Disputed Hard Drive Images. He estimates that it will take 4 to 6 full days to conduct his analysis. He also states that he will need to review the Disputed Hard Drive Images with Suman, who would have familiarity with their content.

[17] Rahman submits that in Commission proceedings, the principles of natural justice and fairness require a high standard of disclosure akin to that in criminal trials. Rahman submits that the Commission has accepted that Staff must meet the standard for disclosure established in *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 (S.C.C.) ("*Stinchcombe*"). Rahman cites a number of cases decided in the context of Commission proceedings in support of this standard for disclosure (*Re Market Regulation Services Inc.* (2008), 31 O.S.C.B. 5441 ("*Re Berry*"), at paras. 66-68, *Deloitte & Touche LLP v. Ontario (Securities Commission)*, [2003] S.C.J. No. 62 (S.C.C.) ("*Deloitte*"), and *Re Biovail Corporation et al.*, (2008), 31 O.S.C.B. 7161 ("*Re Biovail*")).

[18] Rahman submits that the situation in this case is similar or analogous to that in *Deloitte*. In *Deloitte*, Staff obtained an order under s. 17 of the Act authorizing it to disclose to Philip Services Corporation ("Philip") and its officers (collectively, the "Philip Respondents"), documents and information obtained from Deloitte, Philip's auditor. Deloitte appealed on the basis that the information was private. Deloitte was successful at the Divisional Court, but the Ontario Court of Appeal overturned that decision and restored the Commission's order. The Supreme Court of Canada dismissed Deloitte's further appeal on the basis that the Commission's decision was reasonable and soundly based to allow the Philip Respondents to make full answer and defence, since there was a reasonable possibility that all of the disputed material would be relevant to the allegations.

[19] Rahman submits that the principle that Staff must disclose relevant information to enable the respondent to make full answer and defence was recently reaffirmed by the Commission in *Re Biovail*. At paragraph 15 of that decision, the Commission stated:

> Documents should not be withheld if there is a reasonable possibility that doing so would impair the right of the accused to make full answer and defence.

[20] Further, Rahman submits that a specific order restricting the use of the Disputed Hard Drive Images is unnecessary, as MDS's privacy interests are adequately protected by the implied undertaking rule. In *Re Melnyk* (2006), 29 O.S.C.B. 7875 ("*Re Melnyk*"), the Commission reaffirmed that the implied undertaking rule "is a recognized principle of law in Ontario and applies to Commission proceedings." (*Re Melnyk*, at para. 35, referring to *A. Co. v. Naster* (2001), 143 O.A.C. 356 (Ont. Div. Ct.))

[21] Rahman notes that Staff's Statement of Allegations alleges that Suman had access to information concerning the proposed acquisition of MDCC through his administration of and use of MDS's computers and email server, which have been forensically captured on the MDS Images, including the Disputed Hard Drive Images. Rahman submits that Staff intends to rely on the MDS Images, including the Disputed Hard Drive Images, to prove its allegations. Further, Staff intends to rely on the Rogers Report, which was based on Staff's unrestricted access to the MDS Images, including the Disputed Hard Drive Images. Rahman submits that the Respondents are entitled to have the same access as Staff.

[22] Rahman submits that the information on the Disputed Hard Drive Images is relevant to the Respondents' ability to make full answer and defence. She submits that imposing improper restrictions or undue burdens on the Respondents neither satisfies the disclosure obligations of Staff nor permits the Respondents to make full answer and defence.

B. Staff

[23] Staff recognizes that it has a broad duty to disclose all relevant information, subject to its discretion to withhold information that is clearly irrelevant, privileged, beyond its control or should not be disclosed on grounds of privacy, which discretion is open to review by the Commission. Staff submits that it has met its disclosure obligations.

[24] Staff submits that when the information of a third party is involved, Staff must consider the respondents' right to meet the case against them yet also be sensitive to the third party's privacy interests and expectations.

[25] Staff submits that dissemination of information contained in the Disputed Hard Drive Images could cause harm to MDS. For example, Staff submits that the Disputed Hard Drive Images contain information about potential acquisition targets, joint venture partners, research and development plans and product cost data.

[26] Staff submits that its position is consistent with practice in the criminal context. Staff relies on the Crown Policy Manual, published by the Ministry of the Attorney General, which addresses the situation where an accused is self-represented and the Crown's disclosure material contains information that is subject to privacy concerns. In that situation, the Crown Policy Manual states:

> An unrepresented accused is entitled to the same disclosure as the represented accused. However, if there are reasonable grounds for concern that leaving disclosure material with the unrepresented accused would jeopardize the safety, security, privacy interests, or result in the harassment of any person, Crown counsel may provide the disclosure by means of controlled and supervised, yet adequate and private, access to the disclosure materials. . . . Crown counsel shall inform the unrepresented accused in writing of the appropriate uses, and limits upon the use, of the disclosure materials.
>
> *Crown Policy Manual*, Ontario Ministry of the Attorney General, section D-1, para. 9(b).

[27] Staff submits that the above policy flows from the *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure and Resolution Discussions* (the "Martin Committee"). The Martin Committee's Recommendation 12(h) was as follows:

> where reasonably capable of reproduction, and where Crown counsel intends to introduce them into evidence, copies of documents, photographs, audio or video recordings of anything other than a statement by a person, and other materials should normally be supplied to the defence. The defence may be limited to a reasonable opportunity, in private, to view and listen to a copy of any audio or video recording where Crown Counsel has reasonable cause to believe that there exists a reasonable privacy or security interest of the victim(s) or witness(es), or any other reasonable public interest, which cannot be satisfied by an appropriate undertaking from defence counsel.
>
> *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure and Resolution Discussions* (Queen's Printer for Ontario, 1993), p. 234, para. 12(h)

[28] Further, Staff submits that this recommendation has received judicial approval in *R. v. Blencowe*, [1997] O.J. No. 3619 (Ont. Gen. Div.) ("*Blencowe*"), at paras. 56-57, *R. v. Schertzer*, [2004] O.J. No. 5879 (Ont. S.C.J.) ("*Schertzer*"), at paras. 5-7, and *R. v. Cassidy*, [2004] O.J. No. 39 (Ont. C.A.) ("*Cassidy*"), at paras. 9-13.

[29] Further, Staff submits that while the Respondents may prefer a different procedure for disclosure, Staff is obligated to provide a fair procedure, not a perfect procedure. Staff relies on the following statement by the Alberta Securities Commission:

> Disclosure must enable respondents to know and be in a position to answer the case against them. The disclosure obligation continues throughout the course of a hearing. However, disclosure need not be perfect. Nor is perfect disclosure a realistic expectation in complex cases involving large volumes of material.
>
> *Re Proprietary Industries Inc.*, 2005 ABASC 986, at para. 44.

[30] We note that another Panel of the Commission made a similar point in *Re Biovail*, at para. 47.

[31] Staff submits that its approach to disclosure in this matter is consistent with the Martin Committee procedure, which was approved by the Court, and strikes the appropriate balance between the Respondents' right to answer the case against them and the right of MDS to safeguard its confidential information – "especially in a case where the underlying allegation is one of abuse by the Respondents of the confidential information of the witness, namely, MDS."

[32] Staff notes that despite its offer on March 7, 2008 to allow the Respondents to inspect the Disputed Hard Drive Images privately at the offices of Staff, no effort to access the material has been made. Further, Staff notes that although Rahman retained counsel on the evening of July 14, 2008, the day when Staff suggested the Respondents retain counsel for the limited purpose of giving an undertaking, and although Staff provided Rahman's counsel with a draft undertaking, no such undertaking has been provided, and Suman continues to be self-represented.

[33] Staff also disputes Lo's affidavit evidence that he requires physical possession of the Disputed Hard Drive Images, relying on the reply affidavit of Colin McCann, who is Assistant Manager of the Technology and Evidence Control Unit of Staff

and the primary investigator in this matter ("McCann"), sworn July 25, 2008. In his affidavit, McCann states that there is no technical impediment to Lo performing his analysis at the offices of Staff, and that he would need much less than 4 to 6 days to review the Disputed Hard Drive Images.

[34] Staff does not accept that the implied undertaking rule adequately protects MDS's interests. Further, Staff submits that the existence of an implied undertaking does not preclude the Commission from including in its order express limitations on disclosure intended to protect the privacy of a third party, as it did in *Deloitte*.

[35] Staff submits that while child pornography, which was the focus of the criminal cases cited by Staff, engages perhaps the highest level of privacy interest, there is a full spectrum of privacy rights entitled to protection, including the commercial interests of MDS. (*R. v. Beauchamp*, [2008] O.J. No. 1347 (Ont. S.C.J.) at para. 53)

[36] Staff submits that there is no principle of fundamental justice that the Crown and the accused must enjoy precisely the same privileges and procedures, and even in the context of *Stinchcombe*, the right to disclosure is not unlimited; the Crown has discretion, reviewable by the trial judge, to withhold disclosure based on, for example, privilege. The real question is whether the disclosure procedure allows the accused to make full answer and defence. (*R. v. Mills*, [1999] 3 S.C.R. 668 (S.C.C.), at paras. 111-112)

[37] Finally, Staff objects to any process that allows Lo to consult with Suman. In Staff's submission, this would taint Lo's expert evidence because of Suman's inherent bias. As the motion is brought by Rahman, the issue is whether Rahman, her counsel and her expert have access to the Disputed Hard Drive Images.

III. ANALYSIS

[38] The Respondents are entitled to disclosure of relevant materials in order to make full answer and defence. In several decisions – most recently, *Re Berry* and *Re Biovail* – the Commission has accepted that given the serious consequences faced by a respondent in many Commission proceedings, such as this one, "principles of natural justice and fairness require a high standard of disclosure akin to that required in criminal trials", and accordingly, the Commission has accepted that "Staff has a broad duty of disclosure akin to the *Stinchcombe* standard". The *Stinchcombe* standard "requires the Crown to disclose all relevant information, whether inculpatory or exculpatory, subject to the discretion of the Crown, which discretion is reviewable by the Court." (*Re Berry*, at para. 66. See also *Re Biovail*, at para. 15)

[39] However, as Staff points out, the case law also recognizes that a respondent's right to disclosure from Staff is not absolute. In *Deloitte*, the Supreme Court of Canada recognized that the Commission's disclosure orders must balance the rights of respondents and third parties:

> . . . the OSC, in cases like this, is in an awkward position. A proceeding has been ordered against respondents who are entitled to disclosure of information involving a third party. The OSC must search for an approach that provides fair consideration for the respondents in jeopardy and enables them to meet the case against them yet also is sensitive to the third party's privacy interests and expectations. (*Deloitte*, at para. 28)

[40] As the Supreme Court of Canada said in *Deloitte*, "the OSC has a duty to parties like [MDS] to protect its privacy interests and confidences. That is to say that OSC is obligated to order disclosure only to the extent necessary to carry out its mandate under the Act." (*Deloitte*, at para. 29)

[41] In that case, the Court held that the Commission had "properly weighed the necessary disclosure and the interests of Deloitte," as could be seen from the operative parts of the order. The Commission's order required Staff to disclose the compelled evidence on the basis that the respondents and their counsel would not use it for any purpose other than making full answer and defence to the allegations in those proceedings and would maintain custody and control over the evidence, so that copies of it would not be improperly disseminated. The Court concluded that the Commission's order "properly balanced the interests of Deloitte and its own obligation to conduct hearings under the Act fairly and properly by restricting the disclosure to that which was necessary to pursue the OSC's mandate." (*Deloitte*, at para. 29-30)

[42] Staff has limited the Respondents' access to the Disputed Hard Drive Images on the basis that they were received from a third party, in the course of Staff's investigation, and that third party asserts that they contain confidential and otherwise sensitive information.

[43] We have been asked, by this motion, to make an order which requires us to balance the Respondents' right to disclosure of the Disputed Hard Disk Images without, in their words, "any unfair and unnecessary obstruction and restrictions", against the legitimate privacy concerns of MDS, a third party to this proceeding.

[44] At the hearing on the merits, Staff intends to rely on the Rogers Report, which was based on a forensic analysis of the MDS Images, including the Disputed Hard Drive Images, in support of its allegation that Suman had access to material non-public information about the proposed acquisition as an employee in the information technology department at MDS. Accordingly, there is no issue as to the relevance of these materials: they clearly are relevant.

[45] The Commission's order in *Deloitte* was intended to address Deloitte's submission that the compelled documents, if disclosed, could be used against it in civil proceedings. Notwithstanding section 17 of the Act and the implied undertaking rule, we find it appropriate in this case, as well, to include in our disclosure order an express order that the material disclosed to the Respondents shall not be used for any collateral or ulterior purpose and shall be governed by section 17.

[46] As stated above, we agree that the interests of third parties need to be given thoughtful and considered attention when they become engaged by OSC investigations and subsequent Commission proceedings. OSC Staff needs the cooperation of third parties to effectively investigate possible improprieties and wrongdoing, and that cooperation ought not be discouraged or constrained by concerns that their legitimate privacy interests will be ignored. For this reason, we reaffirm the message reflected in *Deloitte* that this Commission will strive to accord Respondents with their rights to make full answer and defence, in a manner which minimizes intrusions into the privacy and confidences of third parties. In this case, Staff has also identified specific concerns raised by MDS with respect to the risk of improper use or dissemination of sensitive commercial information contained in the Disputed Hard Drive Images. We do not agree, however, that it is necessary to restrict Suman to merely having an opportunity to inspect the Disputed Hard Drive Images at Staff's offices. We are of the view that MDS's interests can be protected if our order requires that the Disputed Hard Drive Images be maintained in the custody and control of counsel for Rahman, counsel for Suman (if he retains counsel), or an expert retained by counsel for the Respondents.

[47] To further ensure against the improper use or dissemination of sensitive information, we order that the Disputed Hard Drive Images may not be viewed by anyone other than the Respondents, counsel for the Respondents or either of them or an expert retained by counsel. Further, we order that the Disputed Hard Drive Images may not be electronically copied, and may not be hard copied except for the purpose of enabling the Respondents to make full answer and defence. Further, the Disputed Hard Drive Images and all hard copies made by or on behalf of the Respondents are to be returned upon the completion of this proceeding and any appeal.

[48] We are of the view that our order achieves an appropriate balance, which permits the Respondents to have broader access to the MDS Images than Staff proposed, on the one hand, but also imposes certain conditions on disclosure to ensure the appropriate custody and limit the use of the sensitive commercial information.

IV. CONCLUSION

[49] For the above reasons, we made the following order on August 1, 2008:

a) The hearing on the merits, previously scheduled to commence on September 3, 2008, is adjourned to commence on October 20, 2008, or such other date as is agreed by the parties and determined by the Office of the Secretary, or otherwise ordered by the Commission;

b) Staff shall provide the Respondents or either of them with an opportunity for private inspection of the Disputed Hard Drive Images at Staff's offices, with or without the assistance of counsel for the Respondents or either of them ("Counsel"), and with or without the assistance of a computer forensic expert retained by Counsel ("Expert Retained by Counsel");

c) Staff shall provide Counsel with a copy of the Disputed Hard Drive Images;

d) Counsel may provide an Expert Retained by Counsel with the copy of the Disputed Hard Drive Images provided by Staff;

e) Except with the express consent of Staff or by order of the Commission, no one other than the Respondents, Counsel and/or an Expert Retained by Counsel shall view the Disputed Hard Drive Images;

f) The Disputed Hard Drive Images shall not be electronically copied;

g) The Disputed Hard Drive Images shall not be hard copied except for the purpose of enabling Rahman and Suman to make full answer and defence in this proceeding;

h) The Disputed Hard Drive Images shall be maintained in the custody and control of Counsel or an Expert Retained by Counsel;

i) Upon the completion of this proceeding and any appeal, Counsel shall return to Staff the copy of the Disputed Hard Drive Images provided by Staff and all hard copies made by or on behalf of the Respondents or either of them, Counsel or an Expert Retained by Counsel;

j) The Disputed Hard Drive Images and the information contained therein shall not be used or disseminated except for the purpose of making full answer and defence to the allegations made against the Respondents in this proceeding and any appeal, and shall not be used for any collateral or ulterior purpose; and

k) The Disputed Hard Drive Images, to the extent not filed and admitted in this proceeding, shall be governed by section 17 of the Act, as well as the implied undertaking rule, and shall not be used by Suman or Rahman in any other regulatory, criminal or civil proceeding.

DATED at Toronto this 12th day of January, 2009.

“Lawrence E. Ritchie”

“Carol S. Perry”

“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
CIC Mining Resources Ltd.	12 Jan 09	23 Jan 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
Rutter Inc.	02 Dec 08	16 Dec 08	16 Dec 08	15 Jan 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
CoolBrands International Inc.	30 Nov 06	13 Dec 06	13 Dec 06		
Hip Interactive Corp.	04 July 05	15 July 05	15 July 05		
Toxin Alert Inc.	30 Oct 08	12 Nov 08	12 Nov 08		
Rutter Inc.	02 Dec 08	16 Dec 08	16 Dec 08	15 Jan 09	
CV Technologies Inc.	05 Jan 09	16 Jan 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	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
03/01/2008 to 11/01/2008	4	Aberdeen Canada - Emerging Markets Equity Fund - Units	49,002,593.19	425,352.96
06/20/2008 to 11/01/2008	2	Aberdeen Canada - Global Equity Fund - Units	47,476,799.67	498,261.34
01/01/2008 to 06/01/2008	2	Aberdeen Canada - Socially Responsible Global Fund - Units	34,977,792.44	331,380.23
12/19/2008	1	Abitibi Mining Corp. - Common Shares	16,900.00	260,000.00
12/17/2008	8	Airesurf Networks Holdings Inc. - Units	81,500.00	1,630,000.00
12/29/2008	6	Allen-Vanguard Corporation - Common Share Purchase Warrant	NA	27,092,367.00
12/09/2008	1	Amorfix Life Sciences Ltd. - Common Shares	89,565.00	254,551.00
12/24/2008	1	Apax France VIII-A FCPR - Common Shares	135,999,864.00	79,679,600.00
12/31/2008	3	Apollo Gold Corporation - Flow-Through Shares	900,000.00	3,000,000.00
12/18/2008	29	Arizona Acquisition Fund Inc. - Common Shares	746.30	7,463.00
12/18/2008	30	Arizona Capital Fund Inc. - Bonds	746,300.00	7,463.00
12/23/2008	10	Atlanta Gold Inc. - Units	1,632,400.00	16,324,000.00
12/15/2008	10	Avalon Ventures Ltd. - Common Shares	1,500,000.00	3,000,000.00
12/31/2008	5	Baymount Incorporated - Units	633,949.92	18,112,855.00
12/31/2008	9	Black Pearl Minerals Consolidated Inc. - Common Share Purchase Warrant	469,000.00	2,250,000.00
12/19/2008	18	British Columbia Ferry Services Inc. - Bonds	140,000,000.00	0.06
12/18/2008	21	Canadian Horizons First Mortgage Investment Corporation - Preferred Shares	531,224.00	531,224.00
12/18/2008	19	CareVest Blended Mortgage Investment Corporation - Preferred Shares	1,964,498.00	1,964,498.00
12/17/2008 to 12/29/2008	5	CMC Markets UK plc - Contracts for Differences	13,000.00	5.00
12/22/2008	2	Cobalt Energy Ltd. - Units	750,050.35	2,143,001.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
12/22/2008	6	Cogitore Resources Inc. - Flow-Through Shares	1,002,000.00	8,350,000.00
12/16/2008	1	Commonwealth Bank of Australia - Common Shares	31,855.24	1,479.00
12/16/2008	27	Crocotta Energy Inc. - Common Shares	9,000,000.00	4,000,000.00
12/22/2008	9	Cumberland Oil & Gas Ltd. - Common Shares	444,999.15	988,887.00
12/15/2008 to 12/22/2008	31	Cypress Development Corp. - Common Share Purchase Warrant	1,308,550.00	7,522,527.00
10/09/2008	1	Dorothy of OZ, LLC - Units	10,000.00	10,000.00
12/24/2008	8	Eastmain Resources Inc. - Flow-Through Shares	127,500.00	127,500.00
12/23/2008	3	Eloro Resources Ltd. - Units	500,000.00	5,000,000.00
12/09/2008 to 12/16/2008	61	Endurance Energy Ltd. - Common Shares	16,034,301.00	16,034,301.00
12/09/2008 to 12/16/2008	9	Endurance Energy Ltd. - Flow-Through Shares	1,000,000.00	1,000,000.00
12/22/2008	21	Exall Energy Corporation - Flow-Through Shares	2,503,725.00	7,153,500.00
12/17/2008	1	Explor Resources inc. - Common Shares	135,000.00	1,000,000.00
12/10/2008	2	Exploration Azimut Inc. - Common Shares	140,000.00	250,000.00
12/11/2008	1	First Leaside Elite Limited Partnership - Limited Partnership Interest	36,549.00	30,000.00
12/18/2008 to 12/23/2008	12	First Leaside Elite Limited Partnership - Limited Partnership Interest	1,073,903.71	876,520.00
12/18/2008	1	First Leaside Expansion Limited Partnership - Limited Partnership Interest	100,000.00	100,000.00
12/16/2008	1	First Leaside Fund - Trust Units	100,000.00	100,000.00
12/15/2008	1	First Leaside Fund - Trust Units	22,000.00	22,000.00
12/19/2008	4	First Leaside Fund - Trust Units	126,672.00	126,672.00
12/18/2008 to 12/23/2008	6	First Leaside Fund - Trust Units	430,163.00	430,163.00
12/12/2008 to 12/15/2008	4	First Leaside Investors Limited Partnership - Limited Partnership Interest	732,000.00	732,000.00
12/18/2008 to 12/23/2008	18	First Leaside Investors Limited Partnership - Limited Partnership Interest	1,605,001.00	1,605,001.00
12/23/2008	1	First Leaside Visions I Limited Partnership - Limited Partnership Interest	25,000.00	25,000.00
12/11/2008 to 12/15/2008	4	First Leaside Wealth Management Inc. - Preferred Shares	527,910.00	527,910.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
12/19/2008 to 12/23/2008	4	First Leaside Wealth Management Inc. - Preferred Shares	257,500.00	257,500.00
12/29/2008	2	Formation Capital Corporation - Common Shares	60,000.00	500,000.00
01/01/2008 to 08/01/2008	1	FrontPoint Offshore Financial Services Fund, Ltd. - Common Shares	5,093,956.52	5,000.00
02/01/2008 to 08/01/2008	1	FrontPoint Offshore Healthcare Fund, Ltd. - Common Shares	700,705.57	696.00
08/01/2008	1	FrontPoint Offshore Japan Fund, Ltd - Common Shares	379,370.45	370.00
08/01/2008	1	FrontPoint Offshore Multi-Strategy Fund Series A, Ltd. - Common Shares	247,103.46	241.00
01/01/2008 to 08/01/2008	1	FrontPoint Offshore Utility and Energy Fund, Ltd. - Common Shares	10,465,992.99	10,522.00
04/01/2008	1	FrontPoint Onshore Enhanced Alpha Fund I, Ltd. - Common Shares	513,505.19	500.00
12/19/2008	37	Full Metal Minerals Ltd. - Common Shares	1,510,199.85	10,317,999.00
12/31/2008	5	GeneNews Limited - Debentures	1,058,350.00	1,058,350.00
12/08/2008 to 12/19/2008	12	General Motors Acceptance Corporation of Canada, Limited - Notes	3,472,771.57	3,472,771.57
12/22/2008 to 12/24/2008	1	General Motors Acceptance Corporation of Canada, Limited - Notes	152,770.79	152,770.79
12/24/2008	4	Geodex Minerals Ltd. - Flow-Through Shares	1,000,000.00	5,000,000.00
12/18/2008	55	GMP Capital Trust - Units	40,000,350.00	6,153,900.00
12/30/2008	1	Goldeye Explorations Limited - Common Shares	100,000.00	3,333,333.00
12/18/2008	7	Great Plains Explorations Inc. - Common Shares	3,502,400.00	8,756,000.00
12/22/2008 to 12/31/2008	10	Greengate Power Corporation - Common Shares	202,000.00	202,000.00
12/22/2008 to 12/31/2008	18	Greengate Power Corporation - Flow-Through Shares	1,071,800.00	932,000.00
01/02/2008 to 02/01/2008	3	Groundlayer Capital Inc. - Units	1,550,000.00	4.17
01/02/2008 to 07/02/2008	4	Groundlayer Capital Inc. - Units	550,645.34	5,296.70
01/02/2008 to 11/03/2008	10	Groundlayer Capital Inc. - Units	6,666,693.00	28.10
12/05/2008	4	Hewlett-Packard Company - Notes	15,990,000.00	12,300,000.00
12/21/2006	26	Hinterland Metals Inc. - Flow-Through Shares	NA	2,149,999.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
12/05/2007	13	Hinterland Metals Inc. - Flow-Through Shares	NA	1,991,000.00
12/21/2006	3	Hinterland Metals Inc. - Units	NA	230,000.00
05/08/2007	8	Hinterland Metals Inc. - Units	NA	375,000.00
12/05/2007	4	Hinterland Metals Inc. - Units	NA	790,000.00
04/19/2007	36	Hinterland Metals Inc. - Units	NA	4,945,000.00
12/16/2008	1	Kensington Capital Partners Limited - Debenture	2,000,000.00	1.00
12/15/2008	2	Kingwest Avenue Portfolio - Units	270,000.00	13,515.81
12/12/2008	6	Longroad Capital Partners III, L.P. - Limited Partnership Interest	194,396,578.35	194,396,578.00
12/11/2008	37	Manulife Financial Corporation - Common Shares	1,125,500,001.60	58,015,464.00
12/17/2008	2	Merrex Gold Inc. - Common Shares	1,500,000.00	5,085,714.00
12/19/2008	7	Metanor Resources Inc. - Common Shares	2,529,640.05	5,488,089.00
12/30/2008	6	Millstream Mines Ltd. - Flow-Through Units	390,000.00	7,800,000.00
12/16/2008	3	Mitsubishi UFJ Financial Group, Inc. - Common Shares	90,020,709.00	15,850,000.00
12/18/2008 to 12/19/2008	5	Mooncor Oil & Gas Corp. - Flow-Through Units	289,999.98	3,782,222.00
12/19/2008	13	MRL Capital Trust - Trust Units	1,002,500.00	10,025.00
12/22/2008	49	New Guinea Gold Corporation - Debentures	2,438,000.00	2,438,000.00
12/12/2008 to 12/18/2008	6	Newport Canadian Equity Fund - Units	342,502.67	3,409.63
12/19/2008 to 12/24/2008	9	Newport Canadian Equity Fund - Units	197,000.00	1,982.30
12/12/2008 to 12/18/2008	147	Newport Fixed Income Fund - Units	10,082,015.02	100,350.40
12/19/2008 to 12/24/2008	85	Newport Fixed Income Fund - Units	4,425,265.57	44,004.45
12/12/2008 to 12/18/2008	3	Newport Global Equity Fund - Units	78,373.24	1,405.50
12/19/2008 to 12/22/2008	3	Newport Global Equity Fund - Units	14,900.00	267,940.00
12/12/2008 to 12/18/2008	53	Newport Yield Fund - Units	3,118,453.45	32,300.57
12/19/2008 to 12/30/2008	75	Newport Yield Fund - Units	2,552,843.24	26,444.31
12/15/2008	1	Niklas Group 1901 Limited Partnership - Units	210.00	21,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
12/11/2008	17	One Exploration Inc. - Common Shares	3,500,020.52	5,147,089.00
12/30/2008	2	Ontex Resources Limited - Flow-Through Shares	45,000.00	225,000.00
12/23/2008	1	Ontex Resources Limited - Flow-Through Shares	800,000.00	4,000,000.00
12/31/2008	1	Orezone Resources Inc. - Common Shares	19,999,999.88	71,428,571.00
12/30/2008	1	Pacific North West Capital Corp. - Common Shares	4,500.00	50,000.00
12/17/2008	29	Paramax Resources Ltd. - Common Shares	750,000.00	15,000,000.00
12/08/2008	35	PCAS Patient Care Automation Services Inc. - Common Shares	3,446,066.40	11,486,890.00
01/22/2008 to 07/02/2008	10	PCAS Patient Care Automation Services Inc. - Common Shares	700,499.92	5,361,666.00
12/19/2008	6	Pele Mountain Resources Inc. - Units	319,920.00	2,666,000.00
12/24/2008	15	Petrobank Energy and Resources Ltd. - Flow-Through Shares	9,431,235.00	284,295.00
12/30/2008	3	Platinex Inc. - Common Shares	47,552.50	445,525.00
12/30/2008	4	Platinex Inc. - Units	400,000.00	4,000,000.00
12/24/2008	1	Plato Gold Corp - Flow-Through Units	150,000.00	3,000,000.00
12/18/2008	1	Polyair Inter Pack Inc. - Debentures	5,000,000.00	5,000,000.00
12/18/2008	1	Premier Gold Mines Limited - Common Shares	1,000,000.00	500,000.00
12/16/2008	59	ProEx Energy Ltd. - Common Shares	30,062,500.00	1,850,000.00
11/01/2008	1	Pro*Act, LLC - Membership Interest	100,000.00	1.00
12/11/2008	13	PT Healthcare Solutions Corp. - Preferred Shares	990,000.00	42,440.00
12/31/2008	1	Rx Exploration Inc. - Flow-Through Units	15,000.00	50,000.00
12/31/2008	2	Rx Exploration Inc. - Non-Flow Through Units	60,000.00	300,000.00
12/31/2008	9	Rye Patch Gold Corp. - Units	270,500.04	2,254,167.00
12/31/2008	138	San Gold Corporation - Debentures	8,828,000.00	8,828,000.00
07/09/2008	1	Schroder Alternative Solutions Commodity Fund - Common Shares	3,535,000.00	17,114.08
12/18/2008	11	Seaview Energy Inc. - Common Shares	4,800,000.00	3,000,000.00
12/19/2008	13	Sheltered Oak Resources Corp. - Flow-Through Units	690,000.00	7,275,000.00
12/15/2008 to 12/18/2008	27	Skyline Apartment Real Estate Investment Trust - Units	1,083,347.42	98,486.13

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
12/15/2008	1	Special Notes Limited Partnership - Limited Partnership Interest	258,794.00	258,794.00
12/22/2008 to 12/23/2008	2	Special Notes Limited Partnership - Limited Partnership Interest	370,000.00	370,000.00
12/30/2008	2	Spider Resources Inc. - Flow-Through Units	60,000.00	1,200,000.00
12/23/2008	7	SQI Diagnostics Inc. - Common Shares	3,000,000.00	2,400,000.00
12/18/2008	1	St Andrew Goldfields Ltd - Debentures	2,800,000.00	2,800,000.00
08/01/2008	1	Stadia Capital Limited - Common Shares	102,532.55	100.00
12/18/2008	16	Stage Capital Inc. - Units	145,470.00	1,322,454.00
12/15/2008	14	St. Andrew Goldfields Ltd. - Flow-Through Units	1,453,110.80	6,576,640.00
12/15/2008	2	TD Capital Global Private Equity Investors (Canada) IV, LP - Limited Partnership Units	6,311,553.00	525.00
12/23/2008	1	TenXc Wireless Inc. - Debentures	1,132,334.82	930,737.15
12/23/2008	2	TenXc Wireless (Delaware) Inc. - Debentures	1,132,334.81	930,737.15
12/15/2008	6	Terra Firma Capital Corporation - Common Shares	1,300,000.00	3,250,000.00
12/31/2008	3	Thundermin Resources Inc. - Units	500,000.00	6,250,000.00
12/18/2008	22	Tristar Oil & Gas Ltd. - Flow-Through Shares	15,067,500.00	1,025,000.00
12/19/2008	10	Triton Energy Corp. - Common Shares	2,946,187.50	7,856,500.00
12/18/2008	12	Twin Butte Energy Ltd. - Common Shares	5,000,400.00	3,704,000.00
01/04/2008 to 03/14/2008	3	T.I.P. Opportunities Fund - Units	565,000.00	47,870.00
12/19/2008	2	Unor Inc. - Flow-Through Units	150,000.06	2,500,001.00
12/30/2008 to 12/31/2008	4	Ursa Major Minerals Incorporated - Flow-Through Shares	409,824.00	5,854,628.00
11/30/2008	16	Vertex Fund - Trust Units	1,110,238.58	72,452.81
12/18/2008	27	Victoria Gold Corp. - Units	4,258,800.00	21,594,000.00
12/17/2008	24	Walton AZ Sawtooth Investment Corporation - Common Shares	742,520.00	74,252.00
12/19/2008	12	Walton Brant County Land Limited Partnership 3 - Limited Partnership Units	348,300.00	34,830.00
12/09/2008	24	Walton GA Arcade Meadows 1 Investment Corporation - Common Shares	845,440.00	84,544.00
12/17/2008	28	Walton GA Arcade Meadows 1 Investment Corporation - Common Shares	722,350.00	72,235.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
12/17/2008	3	Walton GA Arcade Meadows Limited Partnership 1 - Units	848,280.05	67,819.00
12/10/2008	155	Walton TX Garland Heights 1 Investment Corporation - Common Shares	2,799,220.00	279,922.00
12/09/2008	33	Walton TX South Grayson Investment Corporation - Common Shares	520,590.00	52,059.00
12/23/2008	19	White Pine Resources Inc. - Flow-Through Units	1,068,750.00	4,275,000.00
12/12/2008 to 12/16/2008	3	Wimberly Apartments Limited Partnership - Limited Partnership Interest	339,725.79	394,138.00
12/22/2008	2	Wimberly Apartments Limited Partnership - Limited Partnership Interest	120,162.54	139,562.00
12/17/2008	13	Yukon-Nevada Gold Corp. - Units	3,940,000.00	78,800,000.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Agnico-Eagle Mines Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated January 13, 2009
NP 11-202 Receipt dated January 13, 2009
Offering Price and Description:
US $500,000,000.00
Debt Securities
Common Shares
Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1365332

Issuer Name:
Denison Mines Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 9, 2009
NP 11-202 Receipt dated January 9, 2009
Offering Price and Description:
$41,250,000.00 - 25,000,000 Common Shares
Price - $1.65 per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
GMP Securities L.P.
CIBC World Markets Inc.
Raymond James Ltd.
Scotia Capital Inc.
Dundee Securities Corporation
Promoter(s):
-
Project #1364626

Issuer Name:
High Rider Capital Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated January 8, 2009
NP 11-202 Receipt dated January 8, 2009
Offering Price and Description:
$150,000.00 - 1,000,000 Common Shares
Price - $0.15 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1364359

Issuer Name:
O'Leary Global Income Opportunities Fund
Principal Regulator - Quebec
Type and Date:
Preliminary Long Form Prospectus dated January 7, 2009
NP 11-202 Receipt dated January 8, 2009
Offering Price and Description:
$ * - * Units
Price: $12.00 per Unit
Minimum Purchase: 100 Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
National Bank Financial Inc.
Blackmont Capital Inc.
Wellington West Capital Markets Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Promoter(s):
Gencap Funds LP
Project #1364288

Issuer Name:
TD Capital Trust IV
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 7, 2009
NP 11-202 Receipt dated January 7, 2009
Offering Price and Description:
TD CaTS IV - Series 1
and
TD CaTS IV - Series 2
Price: Per $1,000 principal amount of TD CaTS IV Notes
Underwriter(s) or Distributor(s):
TD Securities Inc.
Promoter(s):
-
Project #1363975

Issuer Name:
The Toronto-Dominion Bank
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 7, 2009
NP 11-202 Receipt dated January 7, 2009
Offering Price and Description:
TD CaTS IV - Series 1
and
TD CaTS IV - Series 2
Price: Per $1,000 principal amount of TD CaTS IV Notes
Underwriter(s) or Distributor(s):
TD Securities Inc.
Promoter(s):
-
Project #1363977

Issuer Name:
AGF Dollar Cost Averaging Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated January 9, 2009
NP 11-202 Receipt dated January 9, 2009
Offering Price and Description:
Mutual Fund Series and Series D units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1346776

Issuer Name:
ATS Automation Tooling Systems Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated January 7, 2009
NP 11-202 Receipt dated January 7, 2009
Offering Price and Description:
$50,000,000.00
10,000,000 Common Shares
Price: $5.00 per Common Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Cormark Securities Inc.
Paradigm Capital Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #1361159

Issuer Name:
Bissett Focus Balanced Corporate Class
Bissett Focus Balanced Fund
Franklin Templeton Global Blend Corporate Class
Franklin Templeton Global Blend Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated January 6, 2009
NP 11-202 Receipt dated January 7, 2009
Offering Price and Description:
Series A, F, I, O, T and T-USD Units/Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
Franklin Templeton Investments Corp.
Franklin Templeton Investments Corp.
Promoter(s):
-
Project #1351487

Issuer Name:
Brigata Canadian Balanced Fund
Brigata Canadian Equity Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated January 9, 2009
NP 11-202 Receipt dated January 13, 2009
Offering Price and Description:
Mutual fund trust units at net asset value
Underwriter(s) or Distributor(s):
Independent Planning Group Inc.
Promoter(s):
-
Project #1354018

Issuer Name:
Brookfield Asset Management Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Base Shelf Prospectus dated January 12, 2009
NP 11-202 Receipt dated January 13, 2009
Offering Price and Description:
US$1,000,000,000.00
Debt Securities
Class A Preference Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1362586

Issuer Name:
CC&L Aggressive Equity Portfolio
CC&L Balanced Growth Portfolio
CC&L Balanced Income Portfolio
CC&L Balanced Portfolio
CC&L Money Market Fund
CC&L Growth Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated January 8, 2009
NP 11-202 Receipt dated January 12, 2009
Offering Price and Description:
Series A, Series F, Series I, Series O, Series R5 and Series R7
and Verdant Series of Units of
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1356432

Issuer Name:
Counsel All Equity Portfolio
Counsel Balanced Portfolio
Counsel Canadian Dividend
Counsel Canadian Growth
Counsel Canadian Value
Counsel Conservative Portfolio
Counsel Fixed Income
Counsel Global Real Estate
Counsel Growth Portfolio
Counsel Income Managed Portfolio
Counsel International Growth
Counsel International Value
Counsel Managed Portfolio
Counsel Money Market
Counsel Regular Pay Portfolio
Counsel Select America
Counsel Select Canada
Counsel Select International
Counsel Global Small Cap
Counsel U.S. Value
Counsel U.S. Growth
Counsel World Managed Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated January 7, 2009
NP 11-202 Receipt dated January 13, 2009
Offering Price and Description:
Series A, D, E, F, I and P Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Counsel Group of Funds Inc.
Project #1349722

Issuer Name:
Dynamic Venture Opportunities Fund Ltd.
Type and Date:
Final Long Form Prospectus dated January 9, 2009
Receipted on January 13, 2009
Offering Price and Description:
Investment fund shares at net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1356918

Issuer Name:
Mavrix Small Companies Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated January 6, 2009 to Final Simplified Prospectus and Annual Information Form dated July 7, 2008
NP 11-202 Receipt dated January 12, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Mavrix Fund Management Inc.
Project #1275502

Issuer Name:
Upper Canada Explorations Limited
Principal Jurisdiction - Ontario
Type and Date:
Preliminary Prospectus dated May 28, 2008
Withdrawn on January 8, 2009
Offering Price and Description:
$750,000.00 - 2,500,000 Common Shares
Price - $0.30 per Common Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Promoter(s):
Nick Tsimidis
Project #1274233

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: UBS Global Asset Management (Canada) Co. To: UBS Global Asset Management (Canada) Inc.	Limited Market Dealer & Investment Counsel & Portfolio Manager & Commodity Trading Manager	January 1, 2009
New Registration	Numeric Investors LLC	International Adviser (Investment Counsel and Portfolio Manager)	January 7, 2009
New Registration	RedRock Capital Partners Investment Management Ltd.	Limited Market Dealer	January 7, 2009
Voluntary Surrender of Registration	Datile Securities Inc.	Limited Market Dealer	January 8, 2009
New Registration	Northroad Capital Management LLC	Limited Market Dealer International Adviser (Investment Counsel and Portfolio Manager)	January 8, 2009
Name Change	From: American Technology Research, Inc. To: Broadpoint Amtech, Inc.	International Dealer	January 1, 2009
New Registration	PTP Securities LLC	International Dealer	January 9, 2009
New Registration	The Laurel Hill Advisory Group Company	Limited Market Dealer	January 12, 2009
Name Change	From: Aon Securities Corporation To: Aon Benfield Securities, Inc.	International Dealer	December 16, 2008

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 MFDA Sets Date for the Michele and Jeffrey Longchamps Hearing

NEWS RELEASE
For immediate release

MFDA SETS DATE FOR THE
MICHELE AND JEFFREY LONGCHAMPS HEARING

January 9, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of Michele and Jeffrey Longchamps by Notice of Hearing dated October 22, 2008.

As specified in the Notice of Hearing, the first appearance in this proceeding took place today at 10:00 a.m. (Eastern) before a three-member hearing panel of the MFDA Central Regional Council ("Hearing Panel").

The commencement of the hearing of this matter on its merits has been scheduled to take place before the Hearing Panel on Thursday, March 5, 2009 at 10:00 a.m. (Eastern) in the hearing room located at the offices of the MFDA at 121 King Street West, Suite 1000, Toronto, Ontario, or as soon thereafter as the hearing can be held.

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 Hearing is available on the MFDA web site at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers. The MFDA regulates the operations, standards of practice and business conduct of its 153 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Yvette MacDougall
Hearings Coordinator
416-943-4606 or ymacdougall@mfda.ca

13.1.2 Technical Amendments to CDS Procedures – Fixed Income Netting Service (FINet®) – Notice of Effective Date

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

FIXED INCOME NETTING SERVICE (FINET®)

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE CDS PROCEDURE AMENDMENT

Background

On December 12, 2008, a Notice and Request for Comments in respect of proposed Material amendments to the CDS Participant Rules was published. The proposed amendments related to the replacement of CDS's DetNet® service with its successor service, FINet®. Consequential amendments to CDS's Participant Procedures are, therefore, required to implement the proposed Material Rule amendments.

CDS proposes to replace its current fixed income netting and central counterparty ("CCP") function, currently known as DetNet, with the new function named FINet in response to various DetNet-specific and marketplace developments since DetNet's introduction in 2001.

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

The proposed amendments to CDS Procedures outline the operation of the FINet Function. They describe FINet as a Function for netting and novating fixed income eligible Trades and clarify that FINet will apply automatically to eligible Trades. They describe the daily mark-to-market calculations that will be applied to outstanding FINet obligations.

Generally, the proposed amendments consist of the replacement of references to DetNet with references to FINet and amendments ensuring the internal consistency of CDS Participant Procedures and the cross-references within the Procedures.

More specifically, the following CDS Procedure and User Guides will be impacted by the proposed consequential amendments:

CDS User Guide - Participating in CDS Services:
- the addition of Section 6.10 – FINet
- the addition of Chapter 17 – FINet Participant Fund

CDS User Guide - Trade and Settlement Procedures:
- the addition of Sections 10.1.2 & 10.1.3 related to the FINet fails-to-receive interest mark
- the addition of Chapter 5 – FINet

CDS User Guide - CDS Reporting Procedures:
- the addition of Section 12 – FINet reports
- the addition of Sections 20.1, 20.3, 20.4, and 20.5 related to Risk reports

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 December 18, 2008.

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed pursuant to this Notice are considered technical amendments as they are consequential amendments intended to implement a material rule that has been published for comment pursuant to this protocol which only contain material aspects already contained in the material rule or disclosed in the notice accompanying the material rule.

C. EFFECTIVE DATE OF THE CDS PROCEDURE AMENDMENT

Material amendments to CDS rules related to the FINet Function were published on December 12, 2008 for a thirty calendar day comment period. These technical amendments will be considered approved upon approval of the material amendments to the CDS rules.

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:

Legal Department
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

Fax: 416-365-1984
e-mail: attention@cds.ca

13.1.3 MFDA Issues Notice of Hearing Regarding Hill and Crawford Investment Management Group Ltd. and Albert Rodney Hill

NEWS RELEASE
For immediate release

MFDA ISSUES NOTICE OF HEARING REGARDING
HILL AND CRAWFORD INVESTMENT MANAGEMENT GROUP LTD.
AND ALBERT RODNEY HILL

January 13, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") today announced that it has commenced disciplinary proceedings against Hill and Crawford Investment Management Group Ltd. and Albert Rodney Hill (the "Respondents").

MFDA staff alleges in its Notice of Hearing that the Respondents engaged in the following conduct contrary to the By-laws, Rules or Policies of the MFDA:

Allegation 1:

(a) (i) In January 2005 Hill & Crawford made payments to Hill without obtaining the prior written consent of MFDA Staff, contrary to the terms of a subordinated loan agreement ("SLA") between Hill & Crawford and Hill and the MFDA;

(ii) Between April and October 2005, Hill & Crawford, while designated in early warning pursuant to MFDA Rule 3.4.2, made payments to Hill and Hill's spouse without obtaining the prior written consent of MFDA Staff, contrary to the terms of a SLA between Hill & Crawford and Hill and the MFDA and contrary to MFDA Rule 3.4.2(b)(iv) [Early Warning Requirements];

(b) In August and September 2006 and in August and September 2007, while designated in early warning pursuant to MFDA Rule 3.4.2 and subject to additional early warning restrictions imposed by MFDA Staff pursuant to MFDA Rule 3.4.3, Hill & Crawford opened 3 new client accounts and hired 2 new Approved Persons, contrary to MFDA Rule 3.4.3 [Early Warning Restrictions];

(c) Between February 2007 and December 2008, Hill & Crawford failed to consistently maintain minimum capital of $50,000 as required for a Level II dealer and risk adjusted capital greater than zero, contrary to MFDA Rule 3.1.1.

Allegation 2: Between August 2006 and March 2007, Hill & Crawford failed to comply with the terms of an Agreement and Undertaking, dated October 25, 2005, to resolve compliance deficiencies identified during an MFDA compliance examination, thereby engaging the jurisdiction of the Hearing Panel to impose a penalty on Hill & Crawford for failing to carry out an agreement with the MFDA, pursuant to section 24.1.2(i) of MFDA By-Law No. 1.

Allegation 3: In April 2007, Hill & Crawford was found to be in possession of eight blank pre-signed forms in respect of six client accounts, contrary to MFDA Rule 2.1.1.

Allegation 4: Between October 2005 and March 2007, Hill, in his capacity as President, Chief Compliance Officer and sole shareholder of Hill & Crawford, engaged in conduct contrary to MFDA Rule 2.1.1(b) and (c) by failing to ensure that Hill & Crawford:

(a) complied with the terms of the Agreement and Undertaking, dated October 25, 2005; and

(b) complied with the financial and operational requirements of MFDA Rules 3.1.1, 3.4.2 and 3.4.3.

The first appearance in this matter will take place by teleconference before a Hearing Panel of the MFDA Central Regional Council in the Hearing Room located at the offices of the MFDA, 121 King Street West, Suite 1000, Toronto, Ontario on Friday, February 27, 2009 at 10:00 a.m. (Eastern) or as soon thereafter as can be held.

The purpose of the first appearance is to schedule the date for the commencement of the hearing on its merits and to address any other procedural matters.

The first appearance is open to the public, except as may be required for the protection of confidential matters. Members of the public attending the first appearance will be able to listen to the proceeding by teleconference.

A copy of the Notice of Hearing is available on the MFDA website at www.mfda.ca.

The Mutual Fund Dealers Association of Canada is the self-regulatory organization for Canadian mutual fund dealers. The MFDA regulates the operations, standards of practice and business conduct of its 153 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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