The Ontario Securities Commission

OSC Bulletin

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

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1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

JANUARY 30, 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
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20 Queen Street West
Toronto, Ontario
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Patrick J. LeSage	—	PJL
Carol S. Perry	—	CSP
Suresh Thakrar, FIBC	—	ST
Wendell S. Wigle, Q.C.	—	WSW

SCHEDULED OSC HEARINGS

February 9-20; March 3-13; March 30-April 9, 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 20, 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
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

TBA

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: 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

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

1.3 News Releases

1.3.1 Tom Atkinson Appointed as New Director of Enforcement for the Ontario Securities Commission

FOR IMMEDIATE RELEASE
January 23, 2009

TOM ATKINSON APPOINTED
AS NEW DIRECTOR OF ENFORCEMENT FOR
THE ONTARIO SECURITIES COMMISSION

TORONTO – The Ontario Securities Commission (OSC) today announced the appointment of Tom Atkinson as its new Director of Enforcement. Tom joins the OSC after an extensive career in securities regulation, enforcement and litigation.

"When we commenced our search, we knew that we would be seeking an individual who is not only an experienced litigator, but also a strategic thinker. A person who has a demonstrated record of effecting change," said OSC Chair David Wilson. "Tom is that person. He possesses the attributes and experience necessary to lead the Enforcement Branch through the next stage of its evolution."

Tom Atkinson was the founding President & CEO of Market Regulation Services Inc. (RS). While at RS, he focused the organization's culture to be results-driven. Prior to joining RS, Tom held progressively senior positions at the Toronto Stock Exchange, including Vice-President, Regulation Services; Director, Investigations and Enforcement Division; Chief Counsel, Investigations and Enforcement Division; and Enforcement Counsel, Investigations and Enforcement Division. From 1993 to 1996, Tom was an Assistant Crown Attorney in Ontario and litigated numerous criminal matters. Tom has an LLB from the University of Windsor and a Masters in Public Policy and Public Administration from McMaster University. Tom was called to the Bar in 1993.

"We are pleased to have someone of Tom's calibre joining the OSC and its dynamic Enforcement team," said Executive Director Peggy Dowdall-Logie. "His considerable experience and knowledge will be tremendous assets not only to Enforcement, but to the OSC overall."

"I am really looking forward to working with the Enforcement team and accessing the talent pool in the Enforcement Branch," said Tom Atkinson. "The fast paced environment of enforcement definitely means that I will hit the ground running."

Tom Atkinson will join the Commission on February 9, 2009. He replaces Michael Watson who joined the RCMP Integrated Market Enforcement Program in September, 2008.

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1.4 Notices from the Office of the Secretary

1.4.1 Goldbridge Financial Inc. et al.

FOR IMMEDIATE RELEASE
January 22, 2009

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

AND

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

TORONTO – Following the hearing on January 19, 2009 the Commission issued an Order which provides that the Further Temporary Order is continued until the close of business on March 21, 2009, unless it is extended by the Commission, and this matter shall be adjourned to March 20, 2009, at 10:00 a.m.

A copy of the Order dated January 19, 2009 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.2 HudBay Minerals Inc.

FOR IMMEDIATE RELEASE
January 23, 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 – Following a hearing held on January 19 and 21, 2009 in connection with an Application from Jaguar Financial Corporation for a hearing in review of a decision of the TSX, today the Commission issued its Order and decision.

A copy of the Order and decision dated January 23, 2009 are available at **www.osc.gov.on.ca**.

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1.4.3 Biovail Corporation et al.

FOR IMMEDIATE RELEASE
January 26, 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 – The Commission will hold a hearing on Tuesday, January 27, 2009 at 2:00p.m., in the Large Hearing Room at 20 Queen Street West, to consider whether to approve a settlement agreement entered into by Staff of the Commission and Kenneth G. Howling.

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1.4.4 Biovail Corporation et al.

FOR IMMEDIATE RELEASE
January 26, 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 – The Commission will hold a hearing on Tuesday, January 27, 2009 at 2:00 p.m., in the Large Hearing Room at 20 Queen Street West, to consider whether to approve a settlement agreement entered into by Staff of the Commission and John R. Miszuk.

OFFICE OF THE SECRETARY
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1.4.5 Shane Suman and Monie Rahman

FOR IMMEDIATE RELEASE
January 27, 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 – Staff of the Ontario Securities Commission filed a Further Amended Statement of Allegations on January 23, 2009 in the above named matter

A copy of the Further Amended Statement of Allegations dated January 20, 2009 is available at **www.osc.gov.on.ca**.

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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

FURTHER AMENDED STATEMENT OF ALLEGATIONS
OF THE ONTARIO SECURITIES COMMISSION

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

The Respondents

1. Shane Suman is a resident of Ontario and is a former employee of MDS Sciex ("Sciex"), a division of MDS Inc. (MDS). MDS is listed on the Toronto Stock Exchange and the New York Stock Exchange.

2. Monie Rahman was resident in the United States and is Suman's spouse. Rahman has an on-line securities trading account at E*Trade Canada Inc. ("E*Trade Account"). Both Suman and Rahman have the E*Trade Account password and traded in securities using the account.

Overview

3. On January 29, 2007, MDS publicly announced that it would be acquiring Molecular Devices Corporation ("MDCC"), a United States corporation listed on the NASDAQ (the "Announcement"). The Announcement confirmed that MDS planned to create a new business unit combining the business of MDCC with the business of Sciex.

4. MDCC accepted MDS' bid on Sunday, January 21, 2007. Prior to the acceptance, MDS and MDCC were in negotiations and performing due diligence. That project was code-named "Project Monument".

5. The nature of the project was strictly confidential and was not communicated to any MDS or Sciex employees, other than those who were involved in the potential acquisition of MDCC and in due diligence sessions leading up to the Announcement. Suman was not a member of Project Monument.

6. Prior to the Announcement, the share price for MDCC (as at the close of January 26, 2007) was $23.88. At the close of business on January 29, 2007, the share price rose to $35.07, for an approximate increase in price of 46%. All amounts described herein, unless otherwise stated, are in US dollars.

7. The fact of the accepted MDS bid to acquire MDCC was a material fact as defined by the *Securities Act*.

8. Leading up to and at the time of the Announcement, Suman was an employee in the IT department of Sciex and had access to the confidential email traffic of individuals (at both MDS and Sciex) who were in a special relationship with MDS and he had access to material, non-public, information about the MDS bid and the Announcement.

9. Suman became aware of the MDS bid and the Announcement in the course of his employment, before there was a general public disclosure by MDS. He conveyed the substance of the material non-public information respecting the proposed acquisition, later described in the Announcement, to his wife, Rahman.

10. In the days immediately prior to the Announcement, 900 option contracts and 12,000 shares of MDCC were purchased by Suman and Rahman in the E*Trade account. Suman and Rahman had online/internet access to place trades in the Account via a shared password.

Knowledge of Suman of the Material Information

11. During the due diligence process, prior to the MDS decision described in the Announcement, MDS executives (and others within MDS and Sciex who were participating in the project's due diligence process) were given access to a secure electronic data room. This data room was an electronic repository for documents related to the due diligence activities of entities interested in acquiring MDCC. Any time information was added to the data room, an email notification was sent out to a predetermined email list, which included MDS and Sciex employees.

12. During the operation of the data room a significant number of notification emails were sent to the mailing list. Each notification email showed the sender to be Molecular Devices. In addition, the subject line for a number of the emails contained the words “Project Monument”.

13. Within the IT department at Sciex, Suman was responsible for overseeing the email (or “spam”) filter system (the “NT Filter”). In this capacity, Suman had access to a queue of emails entering the Sciex email system. This queue of emails included emails originating from the data room and emails containing Monument in the subject line and Molecular Devices in the sent line, which identifiers were visible to Suman. Suman had full access to the setting and deletion of rules with respect to the treatment of any incoming or outgoing email. Suman could have set a rule to isolate or delay any Project Monument email.

14. Suman also had direct access to information contained on the Blackberry of a member of the MDS due diligence team. Meeting requests for the due diligence exercise for Project Monument along with emails that the team member had received from the data room were viewable by Suman, including emails relating to MDS’ proposed bid price for MDCC.

15. Suman had set up one of his computers at his Sciex work-station to connect with the same MDS team member’s computer on September 15, 2006 through the Connected TLM laptop back-up system in use at MDS. This connection was ongoing, performing back-ups of the MDS team member’s computer onto Suman’s computer, throughout the due diligence phase up to the Announcement. On January 22, 2007, Suman received information from the Connected application on his computer relating to Project Monument belonging to the same MDS team member.

16. Suman also had administrator access to log into and have access to the email and calendars of every MDS employee, including Project Monument team members. Suman viewed calendar entries for Sciex’s president and its in-house counsel relating to Project Monument.

17. On January 23, 2007, Suman also became aware of a confidential draft communication being prepared for Sciex’s president respecting the Announcement, entitled “Andy monument message”, which related to the code-name “Project Monument”. Shortly thereafter, Suman conducted internet searches for “monument inc.” for the first time and 8 minutes later visited the website of Molecular for the first time.

Chronology of Key Events in Advance of the Subject Tipping and Trading

18. i) November, 2006

- MDS begins to consider a takeover of Molecular.
- Suman became a full-time employee at MDS/Sciex after working as a contract employee for approximately three years. His areas of responsibility included email administration and high-level help desk /support functions.

ii) Sunday, January 21, 2007

- After approximately one month of negotiations, an agreement is reached for MDS to acquire MDCC. The final bid letter to be sent by MDS was approved by the MDS board on January 19, 2007. That bid was accepted by MDCC on January 21, 2007 and a timetable to closing was delivered. The Announcement and the timeline for closing the transaction was set out in an email dated that day confirming the acquisition.

iii) Monday, January 22, 2007

- The Sciex Communications Officer began to draft a confidential public release relating to the Announcement.

iv) Tuesday, January 23, 2007

- The Sciex communications officer’s computer crashed, and the confidential press release relating to the Announcement was lost to her. The Officer sought assistance from Sciex IT staff to recover the document. Sometime late that morning, Suman attempted, unsuccessfully, to recover the letter. Suman was provided with the electronic file name, “andy monument message,” and told that, it was urgent the file be recovered. He was told that it was so sensitive that he could not view the document once it was recovered.

- Beginning at 1:57 pm Suman queried the stock symbol "mddc"[1] followed immediately by a query for "monument inc." At 2:00 pm Suman began searching on-line for information relating to Molecular. Suman visited the Molecular website for the first time at 2:05 pm. He viewed this information on-line until approximately 2:29 pm.

- At 6:57 Suman again called up stock market information on-line for Molecular and again searched for information on Monument Inc. At 7:29 he reviewed a 5-day stock chart for MDCC.

- Suman contacted his wife, Rahman, in Utah, at 7:40 pm and they spoke for approximately 100 minutes.

The Purchase of MDCC Call Option Contracts and Shares

19. At approximately 9:34 a.m. on Wednesday, January 24, 2007, Rahman and Suman began purchasing shares and options in MDCC.

20. On January 24, 2007 12,000 MDCC shares and 340 call option contracts were purchased online in the E*Trade Account. On January 25, 260 call option contracts were purchased online in the E*Trade Account. On January 26, a further 300 call option contracts were purchased online in the E*Trade Account.

21. The transactions in the Account were carried out using internet access. The trades made by Suman were made using a computer located at Sciex.

Post-Announcement Actions

22. On February 1, 2007, Staff first contacted Suman in relation to trading in MDCC securities, at which time Suman denied purchasing MDCC securities. Suman installed a data- deletion program called Window Washer on two of his MDS computers on Saturday, February 3, 2007 and subsequently deleted information.

Profit Made

23. The Respondent's personal assets and liabilities in their E*Trade brokerage accounts at the time immediately prior to making the trades was approximately $182,310 (USD) and $48,000 (CAN). They also had approximately $20,000 (CAN) in available cash.

24. The total cost of the option contracts purchased by the Respondents in the Account was $103,524. The total cost of the shares purchased by the Respondents was $287,759.

25. The MDCC securities in the account were liquidated by March 16, 2007, for a profit of $954,938.

Breach of Act and Conduct Contrary to the Public Interest

26. The Respondent Suman, as an employee of MDS was a person in a special relationship with MDS in accordance with s.76(5) of the Act at the time of MDS' bid and its acceptance, at the time of the subject trading, and at the time of the Announcement.

27. The Respondent Suman:

a) Traded in the securities of MDCC (a US issuer) with knowledge of material undisclosed information respecting it (being the proposed acquisition of MDCC by MDS), thereby acting contrary to the public interest;

b) Advised his wife, Rahman, of the proposed acquisition of MDCC by MDS, thereby breaching s.76(2) of the Act which prohibits the informing of another person (unless in the necessary course of business) of a material fact in respect of a reporting issuer before that material fact has been generally disclosed, and also thereby acted contrary to the public interest.

28. The Respondent Rahman traded in MDCC securities with the knowledge of a material undisclosed fact, being the proposed acquisition of MDCC by MDS, having acquired the knowledge from her husband (known by her to be an employee of MDS) and thereby acted contrary to the public interest.

29. Such additional allegations as Staff may advise and the Commission may permit.

DATED at Toronto this 20th day of January, 2009.

[1] "mddc" is not known to be a currently used stock symbol. However, "mdcc" *is* the stock-symbol for Molecular Devices.

1.4.6 Biovail Corporation et al.

FOR IMMEDIATE RELEASE
January 27, 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 John R. Miszuk.

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

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For investor inquiries: OSC Contact Centre
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1.4.7 Biovail Corporation et al.

FOR IMMEDIATE RELEASE
January 27, 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 Kenneth G. Howling.

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

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1.4.8 Berkshire Capital Limited et al.

FOR IMMEDIATE RELEASE
January 28, 2009

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

AND

IN THE MATTER
BERKSHIRE CAPITAL LIMITED,
GP BERKSHIRE CAPITAL LIMITED,
PANAMA OPPORTUNITY FUND AND
ERNEST ANDERSON

TORONTO – The Commission issued a Temporary Order on January 27, 2009 pursuant to subsections 127(1) and (5) of the Act in the above named matter.

A copy of the Temporary Order dated January 27, 2009 is available at **www.osc.gov.on.ca**.

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1.4.9 MRS Sciences Inc. (formerly Morningside Capital Corp.) et al.

FOR IMMEDIATE RELEASE
January 28, 2009

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

AND

IN THE MATTER OF
MRS SCIENCES INC.
(FORMERLY MORNINGSIDE CAPITAL CORP.),
AMERICO DEROSA, RONALD SHERMAN,
EDWARD EMMONS AND IVAN CAVRIC

TORONTO – The Commission issued an Order which provides that the Hearing on the Merits tentatively scheduled to commence on February 9, 2009 is adjourned and rescheduled to May 7, 8, 11, 13, 14 and 15, 2009 at 10:00 a.m. in the above matter.

A copy of the Order dated December 4, 2008 is available at **www.osc.gov.on.ca**.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 ATS Andlauer Income Fund – 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 22, 2009

ATS Andlauer Income Fund
Suite 600, 190 Attwell Drive
Etobicoke, Ontario
M9W 6H8

Dear Sirs/Mesdames:

Re: ATS Andlauer Income Fund (the Applicant) – application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Nunavut, Northwest Territories and Yukon (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

2.1.2 Burgundy Asset Management Ltd. et al.

Headnote

MI 11-102 – Relief allowing subscriptions and redemptions at the next weekly net asset value, even though daily net asset values are calculated – All securityholders are discretionary investment management account clients of the Manager – National Instrument 81-102 Mutual Funds.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, s. 9.3, 10.3.
National Instrument 81-106 Investment Fund Continuous Disclosure, s. 14.2(3).

January 23, 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
BURGUNDY ASSET MANAGEMENT LTD.
(the Manager)

AND

BURGUNDY AMERICAN EQUITY FUND,
BURGUNDY BALANCED INCOME FUND,
BURGUNDY CANADIAN EQUITY FUND,
BURGUNDY EUROPEAN EQUITY FUND,
BURGUNDY EUROPEAN FOUNDATION FUND,
BURGUNDY FOCUS CANADIAN EQUITY FUND,
BURGUNDY FOUNDATION TRUST FUND,
BURGUNDY PARTNERS' BALANCED RSP FUND,
BURGUNDY PARTNERS' EQUITY RSP FUND AND
BURGUNDY PARTNERS' GLOBAL FUND
(each a Fund and collectively the Funds)
(collectively, the Manager and the Funds are the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Manager on behalf of the Funds for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Funds and any other investment funds managed in the future by the Manager (collectively the **Burgundy Funds**) from:

(a) the requirement in section 9.3 of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) that the issue price of a security of a mutual fund to which a purchase order pertains shall be the net asset value per security of that class, or series of a class, next determined after the receipt by the mutual fund of the order; and

(b) the requirement in section 10.3 of NI 81-102 that the redemption price of a security of a mutual fund to which a redemption order pertains shall be the net asset value of a security of that class, or series of a class, next determined after the receipt by the mutual fund of the order.

(Items (a) and (b) are referred to as 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 on in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon (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:

(a) The Manager is a corporation incorporated under the laws of Ontario. The Manager is the manager, trustee and investment adviser of the Funds and will be the manager, trustee and investment adviser of any other Burgundy Fund.

(b) The Manager is registered under the securities legislation of Ontario as an adviser in the categories of investment counsel and portfolio manager.

(c) Each Fund is a mutual fund trust governed by a Master Declaration of Trust under the laws of Ontario.

(d) Each Fund is a reporting issuer in Ontario pursuant to a current simplified prospectus and annual information form dated July 31, 2008, as amended and restated on November 6, 2008 (the **Simplified Prospectus**) and is a reporting issuer in each of British Columbia, Alberta, Saskatche-

wan, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon as a result of having previously qualified its securities for distribution in these jurisdictions under a simplified prospectus.

(e) Units of the Funds and any other Burgundy Funds are only available to clients of the Manager who have executed a discretionary investment management account agreement with the Manager.

(f) The Manager manages its clients' assets by investing them in securities, which may include units of the Funds, all as appropriate for each client's investment objectives and risk tolerance.

(g) Each Fund has amended the Simplified Prospectus and has provided 60 days written notice to its unitholders of its intention to commence using specified derivatives.

(h) Paragraph 14.2(3) of National Instrument 81-106 *Investment Fund Continuous Disclosure* requires that the net asset value of an investment fund be calculated at least once every business day if the investment fund will use specified derivatives and at least once in each week if the investment fund will not use specified derivatives.

(i) Currently, all of the Manager's investment funds (except Burgundy Total Return Bond Fund) calculate their net asset value on a weekly basis, as none of them use specified derivatives.

(j) Once the Funds or any other Burgundy Fund commence using derivatives, such Burgundy Funds will be required to calculate its net asset value on a daily basis.

(k) The Manager proposes to calculate the net asset value for the Funds and any other Burgundy Funds that use derivatives on a daily basis in order to meet its obligations under NI 81-102 regarding the use of derivatives, including the obligation to daily mark-to-market the value of its derivatives.

(l) Sections 9.3 and 10.3 of NI 81-102 require that the purchase or redemption price of units of a fund be the net asset value per unit next determined after receipt, by the fund, of the purchase or redemption order. If a Fund moves to a daily net asset value calculation for the purposes of valuing its derivatives, it will be forced to accept purchases and redemptions on a daily basis.

(m) The Manager has structured its mutual fund operations so that it can consolidate all purchase and redemption orders by its managed accounts into one efficient weekly transaction (**Weekly Purchase/Redemption Date**). It has determined that effecting such purchases and redemptions on a weekly basis strikes the best balance between the needs of a client to invest or access its assets in a timely manner, and the need to minimize the impact of such transactions on other clients in its mutual funds.

(n) The Manager is concerned that more frequent flows of assets into, and out of, its mutual funds will impose greater transactional costs on its clients in the mutual funds by increasing brokerage charges associated with meeting the purchase and redemption orders.

(o) As the Manager has discretionary authority over all of the assets of its clients who invest in the Funds and as the Manager is also the portfolio manager of the Funds, any risks to its clients that are associated with a Fund's use of derivatives will be managed at the portfolio level of the Fund, rather than at the managed account level.

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:

(i) each Burgundy Fund that uses derivatives calculates its net asset value, and values its derivative positions, on a daily basis;

(ii) each Burgundy Fund to which a purchase or redemption order pertains, uses the net asset value per security, determined as of the next Weekly Purchase/Redemption Date, to calculate the issue and redemption price of its securities; and

(iii) the only investors in a Burgundy Fund are those that have signed a discretionary management agreement with the Manager.

"Darren McKall"
Darren McKall
Assistant Manager, Investment Funds Branch

2.1.3 Scotia Capital Inc. and E*TRADE Canada Securities Corporation – s. 127(2)(h) of the Regulation and s. 3.1 of the Rule

Decision pursuant to to section 3.1 of Rule 31-501 Registrant Relationships (the Rule) and subsection 127(2)(h) of the Regulation made under the Securities Act (Ontario) exempting salespersons of the applicants, which are affiliated companies, from certain of the dual registration restrictions out in the Rule, and exempting their salespersons from the provisions of subsection 127(1) of the Regulation, to the extent that those provisions would prohibit salespersons of one applicant from also being salespersons of the other applicant.

Statutes Cited

Regulation 1015 made under the Securities Act (Ontario), as am., ss.127(1), 127(2).

Rules Cited

Ontario Securities Commission Rule 31-501 Registrant Relationships, ss. 1(1), 3.1.

January 21, 2009

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHARTER 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
ONTARIO SECURITIES COMMISSION RULE 31-501
REGISTRANT RELATIONSHIPS
(the Rule)

AND

IN THE MATTER OF
SCOTIA CAPITAL INC. AND
E*TRADE CANADA SECURITIES CORPORATION

DECISION
(Section 127(2)(h) of the Regulation and
Section 3.1 of the Rule)

UPON the Director (as defined in the Act) having received an application (the **Application**) from Scotia Capital Inc. (**Scotia**) and E*TRADE Canada Securities Corporation (**E*TRADE Canada**) for a decision (or its equivalent) pursuant to section 3.1 of the Rule, exempting the current and future salespersons (the **Salespersons**) employed either by Scotia or by E*TRADE Canada (together, the **Registrants**) in the firm's electronic institutional Direct Market Access (**DMA**) business (the **DMA Business**) from the dual registration restrictions of subsection 1.1(1) of the Rule (the **Dual Registration Relief**) and that a determination be made under subsection 127(2)(h) of the Regulation that the Salespersons are carrying on activities which will not in the circumstances interfere with their duties and responsibilities as salespersons and that there are no conflicts of interest arising from the individuals' duties as salespersons and their outside activities so as to permit the registration of such Salespersons with both Registrants despite the fact that they are not employed full-time for either of the Registrants as required by subsection 127(1) of the Regulation (the **Full-Time Salesperson Determination**).

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

AND UPON the Registrants having represented to the Director that:

1. Scotia is a corporation incorporated under the laws of the Province of Ontario with its head office in the province of Ontario.

2. E*TRADE Canada is a corporation amalgamated under the laws of Nova Scotia with its head office in the province of Ontario.

3. Scotia acquired all of the issued and outstanding shares of the indirect parent of E*TRADE Canada in September 2008 and E*TRADE Canada is now an indirect wholly-owned subsidiary of Scotia. As such, the Registrants are related companies as defined by applicable securities legislation.

4. Scotia is registered as an investment dealer or its equivalent in each province and territory of Canada, is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**), and is a participating organization of The Toronto Stock Exchange (**TSX**).

5. E*TRADE Canada is registered as an investment dealer or its equivalent in each province of Canada, and is a member of IIROC and a participating organization of the TSX.

6. As members of IIROC and related companies, each of the Registrants will comply with the requirements respecting cross-guarantees in accordance with IIROC Rule 6.6.

7. Each of the Salespersons employed by Scotia (the **Scotia Salespersons**) is currently employed by Scotia within Scotia's DMA Business, offering services to "eligible clients" of Scotia as defined by the rules of the TSX. Each of Scotia's Sales-persons is duly registered as a firm representative in some or all of the provinces and territories of Canada.

8. Each of the Salespersons employed by E*TRADE Canada (the **E*TRADE Canada Salespersons**) is currently employed by E*TRADE Canada within E*TRADE Canada's DMA Business, offering services to "eligible clients" of E*TRADE Canada as defined by the rules of the TSX. Each of E*TRADE Canada's Salespersons is duly registered as a firm representative in some or all of the provinces of Canada.

9. It is Scotia's intention to amalgamate the Scotia DMA Business and the E*TRADE Canada DMA Business into a single business operation.

10. Pending the formal legal amalgamation of the businesses, Scotia has determined that during planning and transition, the DMA Businesses of the Registrants should be operated at one location and managed and supervised by coordinated teams of professionals employed by each of the Registrants. Scotia has also determined that, pending full integration of the businesses, it is essential to their effective management that the Salespersons be permitted to conduct their activities respecting the Scotia DMA Business while conducting equivalent activities respecting the E*TRADE Canada DMA Business. Engagement of the Salespersons in client and trade related activity on behalf of each of the Registrants would necessitate the dual registration of the Salespersons.

11. Scotia proposes to dually register certain Scotia Salespersons with E*TRADE Canada, and E*TRADE Canada proposes to dually register certain E*TRADE Canada Salespersons with Scotia, in each case to provide services and support to the respective Registrant's DMA Business clients.

12. During transition and pending the formal legal amalgamation of the businesses, the legal separation of the Registrants will be maintained.

13. The dual registration of the Salespersons will not be a source of any client confusion, and it is the opinion of the Registrants that no conflicts of interest will arise as a result of the dual registration of the Salespersons, because:

    (a) prior to conducting dealing activities on behalf of clients of the DMA Businesses, the Salespersons will notify such clients that E*TRADE Canada is an indirect wholly-owned subsidiary of Scotia that will be integrated with Scotia's operations, and will inform such clients of the dual registration of the Salespersons and their co-location at a single office location;

    (b) appropriate policies and procedures of the Registrants relating to their operations are currently in place and will continue in effect, with changes made to the extent required to address any potential conflicts of interest that may arise;

    (c) because the DMA Businesses involve routing and execution electronically, in a wholly automated manner, of self-directed orders initiated by sophisticated institutional clients, the Salespersons do not and will not trade directly with clients;

    (d) the Salespersons do not, and will not, give advice and all orders from DMA Business clients and received by the Salespersons will be unsolicited;

    (e) the Salespersons do not, and will not, trade on a proprietary basis for their respective firms;

    (f) the Salespersons do not, and will not be authorized to, accept trade instructions from a retail customer;

    (g) if any conflicts of interest for the Registrants were to arise, such conflicts will be promptly assessed by compliance and legal staff and would be addressed through disclosure and, where appropriate, consent;

    (h) the Registrants will continue to engage their own management teams and supervisory personnel until the formal and legal integration of the businesses has been completed;

    (i) pending the formal and legal integration of the businesses, the legal separation of the Registrants will be maintained, with separate broker numbers, account documentation, books and records, trading and monitoring terminals, phone lines, fax lines, email addresses, and compliance and supervisory personnel;

    (j) the Salespersons have met and will maintain all the proficiency requirements that apply to their roles in the businesses;

    (k) the Scotia Salespersons will remain under the supervision of Scotia's supervisory personnel in respect of their activities on behalf of Scotia, and will be under the supervision of E*TRADE Canada's supervisory personnel in respect of their activities on behalf of E*TRADE Canada;

    (l) the E*TRADE Canada Salespersons will remain under the supervision of E*TRADE Canada's supervisory person-

nel in respect of their activities on behalf of E*TRADE Canada, and will be under the supervision of Scotia's supervisory personnel in respect of their activities on behalf of Scotia;

(m) the Salespersons will be subject to Scotia's policies and procedures in respect of activity on behalf of Scotia and E*TRADE Canada's policies and procedures in respect of activity on behalf of E*TRADE Canada;

(n) the dual registration of the Salespersons will not hinder the Registrants in complying with the conditions of registration applicable to them;

(o) the dual registration of the Salespersons will not interfere with the Salespersons' duties and responsibilities;

(p) the Salespersons who act on behalf of clients of the DMA Businesses in respect of trades will comply with all requirements of applicable securities laws; and

(q) the Salespersons shall act in the best interest of both their clients of Scotia and their clients of E*TRADE Canada and will deal fairly, honestly and in good faith.

14. Section 127(1) of the Regulation provides that (subject to subsection (2) of such section) no individual may be registered as a salesperson unless he or she is employed full-time as a salesperson. Although not explicit, it may be implicit that such subsection is intended to require such full-time employment with one registrant.

15. Section 127(2) of the Regulation permits the Director to exempt a person from the full-time requirement under subsection 127(1) of the Regulation where the other activities of the subject salesperson will not interfere with his or her duties and responsibilities as a salesperson and there is no conflict of interest arising from his or her duties as a salesperson and his or her outside activity.

16. Section 1(1) of the Rule provides that no person registered as a salesperson of a registrant may act or be registered as a director, partner or officer of the registrant or as a salesperson, officer, partner or director of another registrant.

17. Section 3.1 of the Rule provides that the Director may grant an exemption from the Rule, in whole or in part.

18. Section 1.2 of the Companion Policy provides that the Director will not provide an exemption from the restrictions in section 2.1 of the Rule unless the Director is satisfied that the applicant or registrant has adopted or proposes to adopt policies and procedures to minimize the potential for conflicts of interest.

19. The IIROC Rules permit dual employment of registered representatives (being salespersons for purposes of the Act, the Regulation and the Rule) and trading officers of related registrants, provided that any potential conflicts of interest are addressed and the related registrants comply with the requirements respecting cross-guarantees in accordance with IIROC Rule 6.6.

AND UPON the Director being satisfied, based upon the representations set forth above, that registration of individuals as salespersons of both Registrants would not result in interference with their duties and responsibilities as salespersons to either Registrant and that there is no conflict of interest which would arise as a result of their dual registration;

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

IT IS THE DECISION of the Director pursuant to section 3.1 of Rule 31-501 and section 127(1)(h) of the Regulation that, for a period of twenty-one months, effective the date of the Decision:

(a) the Dual Registration Relief is granted, and

(b) the Full-Time Salesperson Determination is granted,

provided the Registrants comply with all requirements of IIROC from time to time for permitting such dual registration.

"Susan Silma"
Director, Compliance and Registrant Regulation
Ontario Securities Commission

2.1.4 Roth Capital Partners, LLC – s. 6.1(1) of NI 31-102 National Registration Database and s. 6.1 of OSC Rule 13-502 Fees

Applicant seeking registration as an international dealer is exempted from the electronic funds transfer requirement pursuant to subsection 6.1(1) of National Instrument 31-102 – National Registration Database and activity fee contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 – Fees is waived in respect of this discretionary relief, subject to certain conditions.

Rules Cited

National Instrument 31-102 National Registration Database (2007) 30 OSCB 5430, s. 6.1.
Ontario Securities Commission Rule 13-502 – Fees (2003) 26 OSCB 867, ss. 4.1 and 6.1.

January 29, 2009

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

AND

IN THE MATTER OF
ROTH CAPITAL PARTNERS, LLC

DECISION
(Subsection 6.1(1) of National Instrument 31-102 – *National Registration Database* and Section 6.1 of Ontario Securities Commission Rule 13-502 – *Fees*)

UPON the Director having received the application of Roth Capital Partners, LLC (the **Applicant**) for an order pursuant to subsection 6.1(1) of National Instrument 31-102 – *National Registration Database* (**NI 31-102**) granting the Applicant relief from the electronic funds transfer requirement contemplated under NI 31-102 and for relief from the activity fee requirement contemplated under section 4.1 of Ontario Securities Commission Rule 13-502 – *Fees* (**Rule 13-502**) in respect of this discretionary relief;

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

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

1. The Applicant is a limited liability company formed under the laws of the State of California in the United States of America. The head office of the Applicant is located in Newport Beach, California, United States of America.

2. The Applicant is registered as a broker-dealer with the Securities and Exchange Commission and is a member of the Financial Industry Regulatory Authority in the United States.

3. The Applicant is not registered in any capacity under the Act and is not a reporting issuer in any province or territory of Canada. However, the Applicant is in the process of applying to the Commission for registration under the Act as a dealer in the category of international dealer.

4. NI 31-102 requires that all registrants in Canada enrol with CDS Inc. (**CDS**) and use the national registration database (**NRD**) to complete certain registration filings. As part of the enrolment process, registrants are required to open an account with a member of the Canadian Payments Association from which fees may be paid with respect to NRD by electronic pre-authorized debit (the **electronic funds transfer requirement** or **EFT Requirement**).

5. The Applicant anticipates encountering difficulties in setting up a Canadian based bank account for purposes of fulfilling the EFT Requirement.

6. The Applicant confirms that it is not registered in, and does not intend to register in, another category to which the EFT Requirement applies and that Ontario is the only jurisdiction in which it is seeking registration.

7. Staff of the Canadian Securities Administrators has indicated that, with respect to applications from international dealers and international advisers (or applicants in equivalent categories of registration) for relief from the EFT Requirement, it is prepared to recommend waiving the fee normally required to accompany applications for discretionary relief (the **Application Fee**).

8. For Ontario registrants, the requirement for payment of the Application Fee is set out in section 4.1 of Rule 13-502.

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

IT IS THE DECISION of the Director, pursuant to subsection 6.1(1) of NI 31-102 that the Applicant is granted an exemption from the EFT Requirement for so long as the Applicant:

A. makes acceptable alternative arrangements with CDS for the payment of NRD fees and makes such payment within ten (10) business days of the date of the NRD filing or payment due date;

B. pays its participation fee under the Act to the Commission by cheque, draft, money order or other acceptable means at the time of filing its application for annual renewal, which shall be no later than the first day of December in each year;

C. pays any applicable activity fees, or other fees that the Act requires it to pay to the Commission, by cheque, draft, money order or other acceptable means at the appropriate time; and

D. is not registered in any other Canadian jurisdiction in another category to which the EFT Requirement applies, or has received an exemption from the EFT Requirement in each jurisdiction to which the EFT Requirement applies;

PROVIDED THAT the Applicant submits a similar application in any other Canadian jurisdiction where it becomes registered as an international dealer, international adviser or in an equivalent registration category;

AND IT IS THE FURTHER DECISION of the Director, pursuant to section 6.1 of Rule 13-502, that the Application Fee will be waived in respect of the application for this Decision.

"Donna Leitch"
Assistant Manager, Registrant Regulation
Ontario Securities Commission

2.1.5 McDonald's Restaurants of Canada Limited et al.

Headnote

NP 11-203 – Exemption from prospectus and dealer registration requirements for trades in securities to franchisees in connection with national and regional advertising programs of franchisor – Trades to more than 50 franchisees.

Applicable Legislative Provisions

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

January 23, 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
MCDONALD'S RESTAURANTS OF CANADA LIMITED
(MRCL), NATIONAL MARKETING FORUM INC.
FORUM DE MARKETING NATIONAL INC. (NMF) AND
REGIONAL MARKETING FORUM OF ONTARIO INC.
(RMF ONTARIO) (THE FILERS)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers (the **Application**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief from the prospectus requirement and dealer registration requirement in connection with certain distributions to Franchisees (as defined below) of NMF Class A Shares (as defined below) and RMF Ontario Class A Shares (as defined below) (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 each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova

Scotia, Prince Edward Island, Newfoundland and Labrador, the Yukon Territory and the Northwest Territories.

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.

"Franchisee" means franchisees of MRCL owning or operating one or more McDonald's restaurants in Canada and Ontario.

"Private Issuer Exemption" means the "private issuer" exemption contained in section 2.4 of National Instrument 45-106 *Prospectus and Registration Exemptions*.

Representations

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

1. NMF was incorporated under the federal laws of Canada on November 28, 2008. NMF's head office is located in Toronto, Ontario.

2. RMF Ontario was incorporated under the federal laws of Canada on November 28, 2008. RMF Ontario's head office is located in Toronto, Ontario.

3. The authorized capital of the NMF consists of an unlimited number of voting common shares (**NMF Common Shares**) and an unlimited number of voting Class A special shares (**NMF Class A Shares**). As at November 28, 2008, one (1) NMF Common Share and one (1) NMF Class A Share are issued and outstanding. The articles of incorporation of the NMF (**NMF Articles**) restrict the transfer of both the NMF Common Shares and the NMF Class A Shares. No NMF Common Shares may be transferred without the consent of 75% of the holders of the NMF Common Shares. No NMF Class A Shares may be transferred.

4. The authorized capital of RMF Ontario consists of an unlimited number of voting common shares (**RMF Ontario Common Shares**) and an unlimited number of voting Class A special shares (**RMF Ontario Class A Shares**). As at November 28, 2008, one (1) RMF Ontario Common Share and one (1) RMF Ontario Class A Share are issued and outstanding. The articles of incorporation of RMF Ontario (**RMF Ontario Articles**) restrict the transfer of both the RMF Ontario Common Shares and the RMF Ontario Class A Shares. No RMF Ontario Common Shares may be transferred without the consent of 75% of the holders of the RMF Ontario Common Shares. No RMF Ontario Class A Shares may be transferred.

5. Neither NMF nor RMF Ontario is a reporting issuer in any jurisdiction of Canada.

6. None of NMF, RMF Ontario or MRCL is in default of securities legislation in any jurisdiction of Canada.

7. The issued and outstanding NMF Common Share and RMF Ontario Common Share are held by MRCL.

8. The issued and outstanding NMF Class A Share and RMF Ontario Class A Share are each held by a Franchisee operating one or more McDonald's restaurants in Canada and Ontario, respectively.

9. As of November 28, 2008, NMF has two (2) security holders, consisting of MRCL and one (1) Franchisee.

10. As of November 28, 2008, RMF Ontario has two (2) security holders, consisting of MRCL and one (1) Franchisee.

11. The issued and outstanding shares of NMF and RMF Ontario as of November 28, 2008 were all issued in reliance upon the Private Issuer Exemption.

12. As of November 28, 2008, MRCL has a total of approximately two hundred and seventy (270) Franchisees, ninety-seven (97) of whom are Franchisees owning or operating MRCL restaurants in Ontario.

13. MRCL and each Franchisee contribute a specified percentage of their respective revenues from the restaurants they own or operate to (i) a national fund established for the purposes of advertising, marketing and promotion nationally in Canada to benefit McDonald's restaurants, and (ii) one or more of eight regional funds established for the purposes of advertising, marketing and promotion of McDonald's restaurants regionally in the province or territory wherein the restaurants are located. The specified percentage is set out in a pledge agreement (**Pledge Agreement**) which is signed by each holder of a NMF Common Share and NMF Class A Share and each holder of an RMF Ontario Common Share and RMF Ontario Class A Share, which contribution satisfies the obligations of the Franchisee to contribute a percentage of gross sales under the Franchisee's franchise agreement with MRCL.

14. NMF was established by MRCL and its Franchisees for the purpose of administering the funds contributed by Franchisees and MRCL for national advertising and promotion and the revenues of NMF are used primarily for national advertising and promotional purposes.

15. MRCL and its Franchisees have further established eight regional marketing funds (each, an **RMF** and collectively, the **RMFs**), of which RMF Ontario is one, and each RMF receives and administers funds contributed from MRCL and Franchisees in the respective region in which the MRCL and Franchisees' restaurants are located to be applied to regional advertising and promotion for the benefit of the McDonald's restaurants in the region.

16. RMF Ontario is the RMF for MRCL and Franchisees owning or operating MRCL restaurants in Ontario.

17. The by-laws of each of NMF and RMF Ontario provide that each Franchisee that executes a Pledge Agreement with respect to the contributions of funds that the Franchisee makes to the NMF and RMF Ontario, respectively, is entitled to become a holder of a NMF Class A Share and a RMF Ontario Class A Share, respectively. Only one (1) NMF Class A Share is issued to a Franchisee regardless of the number of restaurants owned or operated by the Franchisee. Similarly, only one (1) RMF Ontario Class A Share is issued to a Franchisee regardless of the number of restaurants owned or operated by the Franchisee in the Province of Ontario. Since the Pledge Agreement is only provided to MRCL and to Franchisees, and since entitlement to a NMF Class A Share and a RMF Ontario Class A Share respectively is only upon a Franchisee signing and delivering a Pledge Agreement, no NMF Class A Shares nor RMF Ontario Class A Shares respectively may be issued to non-Franchisees. The holders of NMF Class A Shares and RMF Ontario Class A Shares respectively are entitled to elect a majority of the members of the board of directors of the NMF and RMF Ontario respectively and it is these boards which administer the affairs of the NMF and RMF Ontario respectively, including the approval of their respective annual marketing plans, annual budgets and expenditures to be made by the NMF and RMF Ontario respectively within the approved respective annual budgets.

18. Each of the NMF Articles and RMF Ontario Articles contain restrictions on transfer of each issuer's common shares and prohibit the transfer of each issuer's Class A Shares (the **Share Restrictions**). In the event that Franchisees cease to be Franchisees, ownership of NMF Class A Shares and a RMF Ontario Class A Shares, respectively, will be redeemed by the NMF and RMF Ontario.

19. NMF and RMF Ontario wish to issue NMF Class A Shares and RMF Ontario Class A Shares, respectively, to additional Franchisees, such that the total number of security holders of each of NMF and RMF Ontario will, at some point, exceed fifty (50) persons.

20. Once the total number of security holders exceeds fifty (50) persons, neither NMF nor RMF Ontario will be able to rely upon the Private Issuer Exemption to effect such future distributions of the NMF Class A Shares and RMF Ontario Class A Shares, as the case may be, to Franchisees and such distributions will be subject to the prospectus requirement and dealer registration requirement in the Legislation.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

(a) at the time of a specific distribution of NMF Class A Shares or RMF Ontario Class A Shares, the NMF Articles and the RMF Ontario Articles respectively contain the Share Restrictions;

(b) at the time of a specific distribution of NMF Class A Shares or RMF Ontario Class A Shares, neither NMF nor RMF Ontario is a reporting issuer in any jurisdiction of Canada;

(c) any certificates respecting the NMF Common Shares, NMF Class A Shares, RMF Ontario Common Shares and RMF Ontario Class A Shares issued subsequent to the date of this decision shall have a legend describing the Share Restrictions;

(d) prior to any issuance of a NMF Class A Share or a RMF Ontario Class A Share, NMF and RMF Ontario shall deliver to each prospective purchaser:

(i) a copy of the NMF Articles or RMF Ontario Articles and by-laws of NMF and RMF Ontario, as applicable;

(ii) a copy of this decision document; and

(iii) a statement that as a result of this decision, certain protections, rights and remedies provided by the Legislation, including statutory rights of rescission or damages, will not be available to purchasers of such shares and that certain restric-

tions are imposed on the disposition of such shares;

and

(e) except for a trade to NMF (in the case of NMF Class A Shares) or RMF Ontario (in the case of RMF Ontario Class A Shares), the first trade in a NMF Class A Share or RMF Ontario Class A Share by a person who acquires such share under this decision in a jurisdiction is a distribution unless the conditions set out in subsection 2.6(3) of National Instrument 45-102 *Resale of Securities* are satisfied.

"Lawrence E. Ritchie"
Vice-Chair
Ontario Securities Commission

"Suresh Thakrar"
Commissioner
Ontario Securities Commission

2.1.6 Heritage Oil Corporation and Heritage Oil Limited – MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – issuer and indirect wholly-owned subsidiary request relief from the requirements of National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities (NI 51-101) – issuer and wholly-owned subsidiary have a *de minimis* securityholder presence in Canada – subsidiary would qualify for "exchangeable security issuer" exemption in section 8.2 of NI 51-101, except that bonds convertible into common shares of issuer remain outstanding – issuer and wholly-owned subsidiary exempt from the requirements of NI 51-101 provided that issuer is subject to and complies with the oil and gas disclosure requirements of the Financial Services Authority of the United Kingdom and the ongoing requirements of the London Stock Exchange and the issuer and wholly-owned subsidiary continue to have a *de minimis* securityholder presence in Canada.

Applicable Ontario Statutory Provisions

National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities, s. 8.1.

Citation: Heritage Oil Corporation, Heritage Oil Limited, Re, 2009 ABASC 23

January 26, 2009

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

AND

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

AND

IN THE MATTER OF
HERITAGE OIL CORPORATION AND
HERITAGE OIL LIMITED
(respectively, Heritage and Heritage Jersey and collectively, the Filers)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the Filers be exempted from the requirements of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (**NI 51-101**) (the **Requested Relief**).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

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

Interpretation

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

Representations

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

1. Heritage Jersey is a company incorporated under *The Companies (Jersey) Law 1991* (as amended). The corporate head office and registered office of Heritage Jersey is located in Jersey, Channel Islands.

2. Heritage Jersey is an oil and gas exploration and production company.

3. Substantially all of the assets and operations of Heritage Jersey are located outside of Canada.

4. The mind and management of Heritage Jersey is located outside of Canada.

5. The authorized capital of Heritage Jersey consists of an unlimited number of ordinary shares (the **Ordinary Shares**) and one special voting share (the **Special Voting Share**).

6. The Ordinary Shares are traded on the main market of the London Stock Exchange (the **LSE**) and are listed on the Official List of the United Kingdom Listing Authority.

7. Heritage Jersey is subject to the reporting requirements of the Financial Services Authority of the United Kingdom (the **FSA**) and the ongoing requirements of the LSE (collectively, the **UK Requirements**).

8. Heritage is a corporation existing under the *Business Corporations Act* (Alberta) and has its head office and registered office located in Calgary, Alberta.

9. Heritage is an oil and gas exploration and production company.

10. Substantially all of the assets and operations of Heritage are located outside of Canada.

11. The mind and management of Heritage is located outside of Canada.

12. The authorized capital of Heritage consists of an unlimited number of common shares (**Common Shares**) and an unlimited number of exchange-able shares (**Exchangeable Shares**).

13. Heritage Jersey is the indirect holder of all of the Common Shares.

14. The Exchangeable Shares were created to facilitate a reorganization (the **Reorganization**) of Heritage, which involved creating Heritage Jersey as the new parent company of Heritage and its subsidiaries.

15. Subject to the terms and conditions of the Exchangeable Shares, the Special Voting Share, and ancillary agreements, the Exchangeable Shares are exchangeable on a one-for-one basis into Ordinary Shares. This permitted residents of Canada to participate in the Reorganization on a tax efficient basis.

16. The effect of the Exchangeable Share structure is that holders of Exchangeable Shares have substantially similar rights, privileges, and restrictions as the holders of the Ordinary Shares.

17. The Exchangeable Shares are listed for trading on the Toronto Stock Exchange and the LSE.

18. Heritage has also issued and outstanding 8% Senior Unsecured Convertible Bonds (the **Bonds**), which are convertible into Ordinary Shares in accordance with the terms of the Bonds.

19. Heritage Jersey and Heritage are reporting issuers in the Jurisdictions.

20. Heritage Jersey files with the FSA disclosure about its oil and gas activities prepared in accordance with the UK Requirements (**Oil and Gas Disclosure**).

21. Residents of Canada do not directly or indirectly beneficially own more than 10% of the aggregate number of Ordinary Shares and Exchangeable Shares.

22. Residents of Canada do not directly or indirectly comprise more than 10% of the aggregate number of beneficial holders of Ordinary Shares and Exchangeable Shares.

23. Residents of Canada do not directly or indirectly beneficially own more than 10% of the aggregate number of Bonds.

24. Residents of Canada do not directly or indirectly comprise more than 10% of the aggregate number of beneficial holders of Bonds.

25. Other than the Exchangeable Shares, there is no market in Canada for the securities of the Filers and none is expected to develop. The Filers do not currently intend to list any additional securities on any exchange or marketplace in Canada.

26. The Filers are not in default of any of the requirements of the Legislation or the conditions of any and all exemptive relief orders that have been granted to the Filers.

Decision

Each of the Decision Makers is satisfied that the tests contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decisions described herein have been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted for so long as:

(a) residents of Canada do not directly or indirectly beneficially hold more than 10% of the aggregate outstanding Ordinary Shares and Exchangeable Shares;

(b) residents of Canada do not directly or indirectly comprise more than 10% of the aggregate number of beneficial holders of Ordinary Shares and Exchangeable Shares;

(c) residents of Canada do not directly or indirectly beneficially hold more than 10% of the aggregate outstanding Bonds;

(d) residents of Canada do not directly or indirectly comprise more than 10% of the aggregate number of beneficial holders of Bonds;

(e) residents of Canada do not directly or indirectly beneficially hold more than 10% of the aggregate outstanding number of any new class or series of securities issued by the Filers;

(f) residents of Canada do not directly or indirectly comprise more than 10% of the aggregate number of beneficial holders of any new class or series of securities issued by the Filers;

(g) Heritage Jersey issues in Canada, and files on SEDAR, a news release stating that it will comply with the UK Requirements in connection with its oil and gas activities rather than with NI 51-101;

(h) Heritage Jersey is subject to and complies with the UK Requirements in connection with its oil and gas activities; and

(i) Heritage Jersey files the Oil and Gas Disclosure with the Decision Maker as soon as practicable after the Oil and Gas Disclosure is filed pursuant to the UK Requirements.

"Blaine Young"
Associate Director, Corporate Finance

2.1.7 Front Street Capital 2004 et al.

Headnote

Approval of mutual fund mergers – mergers part of amalgamation of mutual fund corporations – approval required because mergers do not meet all the criteria for pre-approval outlined in section 5.6 of NI 81-102 – merging funds have different fee structures – current simplified prospectus and financial statements of continuing funds not delivered to shareholders of corresponding terminating funds, circular instead containing the relevant information – amalgamation may not technically constitute a wind-up of the Terminating Funds for the purposes of section 5.6(1)(c).

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(b), 5.6, 5.6(1)(a)(ii), 5.6(1)(f)(ii), 5.7(1)(b).

October 31, 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
FRONT STREET CAPITAL 2004 (the Manager),
FRONT STREET MUTUAL FUNDS LIMITED (MF)
and FRONT STREET OPPORTUNITY FUNDS LTD.
(FSOF) (collectively, the Filers)

AND

IN THE MATTER OF
FRONT STREET RESOURCE OPPORTUNITIES
FUND, FRONT STREET YIELD OPPORTUNITIES
FUND, FRONT STREET EQUITY OPPORTUNITIES
FUND, FRONT STREET CASH FUND AND
FRONT STREET SMALL CAP OPPORTUNITIES
FUND, EACH A CLASS OF SHARES OF FSOF
(the Terminating Funds)

AND

IN THE MATTER OF
FRONT STREET RESOURCE FUND CLASS,
FRONT STREET DIVERSIFIED INCOME FUND
CLASS, FRONT STREET CANADIAN EQUITY
FUND CLASS, FRONT STREET MONEY MARKET
FUND CLASS AND FRONT STREET SMALL CAP
FUND CLASS, EACH A CLASS OF SHARES OF MF
(the Continuing Funds)

(the Terminating Funds and the Continuing Funds,
collectively the Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers and the Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for approval of the proposed mergers of the Terminating Funds into the Continuing Funds to be effective November 1, 2008 (the **Mergers**) pursuant to clause 5.5(1)(b) of National Instrument 81-102 – *Mutual Funds* (**NI 81-102**) (the **Merger Approval**).

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, Northwest Territories, Yukon 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.

Representations

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

The Funds

1. The head office of each of the Filers is located at 33 Yonge Street, Suite 600, Toronto, Ontario. The Filers and the Funds are not in default of securities legislation in any jurisdiction.

2. FSOF and MF are mutual fund corporations (the **Corporations**) incorporated under the laws of Canada. FSOF and MF each currently offer multiple mutual fund classes. The principal advantage to investors of the multiple mutual fund class structure is the ability of taxable investors to switch their investments between different mutual fund classes within each Corporation on a tax-deferred basis.

3. Each Fund is an existing Fund with portfolio assets, except for Front Street Small Cap Fund Class, which is a new fund with no portfolio assets (the **New Fund**, the other Funds collectively, the **Existing Funds**). Each of the Existing Funds is, and the New Fund will be, a reporting issuer as defined in the securities legislation of each province and territory of Canada. Each of the Terminating Funds operates in accordance with National Instrument 81-104 – *Commodity Pools* (**NI 81-104**) and distributes its shares to the public pursuant to a prospectus. Each of the Continuing Funds operates or, in the case of the New Fund will operate, in accordance with NI 81-102 and distributes, or in the case of the New Fund will distribute, its shares to the public pursuant to a simplified prospectus (**SP**) and annual information form (**AIF**). Each Existing Fund currently has, and the New Fund will have, three series: Series A, Series B and Series F shares.

4. The New Fund will file a preliminary SP and AIF and a final SP and AIF in due course to qualify its shares for distribution to the public. The New Fund's preliminary and final SP and AIF will be combined with the other Continuing Funds' pro forma and final SP and AIF. The combined preliminary and pro forma SP and AIF and the final SP and AIF for the Continuing Funds will reflect that the Continuing Funds, after the Mergers, are classes of shares of New MF each having a new name the same as the old name less the word "Class".

5. Each Fund is a separate share class of MF or FSOF. Although each Existing Fund is generally a non-voting share class, each had the right to vote separately as a class in respect of the proposed Mergers.

The Amalgamation

6. On August 18, 2008, the Manager and the management of FSOF announced the proposal for the amalgamation of FSOF, MF and one other mutual fund corporation, Front Street Special Opportunities Canadian Fund Ltd. (**SOCdnF**) and the intention to continue the Corporations as one Corporation (**New MF**). The Manager has since that date decided it would not be in the best interests of shareholders of SOCdnF to proceed with the amalgamation relating to SOCdnF at this time. The Manager now intends that FSOF and MF will amalgamate to form New MF (the **Amalgamation**) and each Terminating Fund will merge into the Continuing Fund identified opposite its name below.

Terminating Fund (each a class of FSOF)	Continuing Fund (each a class of MF)
Front Street Resource Opportunities Fund	Front Street Resource Fund Class
Front Street Yield Opportunities Fund	Front Street Diversified Income Fund Class
Front Street Equity Opportunities Fund	Front Street Canadian Equity Fund Class
Front Street Cash Fund	Front Street Money Market Fund Class
Front Street Small Cap Opportunities Fund	Front Street Small Cap Fund Class

7. The Manager, a partnership established under the laws of Ontario, is the manager of FSOF. The Manager currently indirectly manages MF through its 100% ownership of the voting shares of MF and elects the directors of MF. All of the senior management and directors of MF, with the exception of the Chief Financial Officer, are members of the senior management of the Manager. The Manager will be the manager of New MF and of the Continuing Funds.

8. As a result of the Amalgamation, investors in the Continuing Funds will be provided with a broader choice of mutual funds into which they may switch their investments on a tax-deferred basis. The Amalgamation and Mergers may also benefit investors as a result of the increased economies of scale resulting from the consolidation of sales, marketing and management activities that are expected to reduce fund expenses.

9. A press release dated August 18, 2008, a material change report dated August 27, 2008 and an amendment to the prospectus for each of the Existing Funds dated September 26, 2008 were filed on SEDAR in connection with the Amalgamation and Mergers.

10. A notice of meeting and management information circular (the Circular) were mailed to shareholders of the Existing Funds in connection with the proposed Amalgamation and Mergers on or about September 8, 2008.

11. Each of the Corporations held special meetings of shareholders on October 15, 2008 and obtained the required approval of each class of shareholders for the Amalgamation and Mergers. Subject to necessary regulatory approval, the Filers intend to effect the Amalgamation and Mergers on or about November 1, 2008.

12. The Amalgamation will be effected pursuant to an amalgamation agreement (the **Amalgamation Agreement**) to be entered into between the Corporations as contemplated by section 182 of the *Canada Business Corporations Act* (the **CBCA**).

13. Pursuant to the Amalgamation Agreement, for each share of FSOF or MF that they hold as at the close of business on the day prior to the effective date of the Amalgamation and Mergers (the **Effective Date**), shareholders will receive one share of a corresponding class and series of New MF having the same value.

14. The Manager currently holds all of the voting shares of FSOF and MF. The Manager will receive one voting share of New MF for each voting share of FSOF or MF held, resulting in all voting shares of New MF being held by the Manager.

15. Shareholders of the Terminating Funds will continue to have the right to redeem securities of the Terminating Funds for cash at any time up to the close of business on the day prior to the Effective Date.

16. Shareholders of the Existing Funds are permitted to dissent from the Amalgamation pursuant to the provisions of the CBCA. A shareholder who dissents will be entitled, in the event the Amalgamation becomes effective, to be paid by New MF the fair value of the shares of a Fund held by such shareholder determined as at the close of business on the day before the resolution approving the Amalgamation was passed.

17. The Continuing Funds and the Terminating Funds have substantially similar fundamental investment objectives, investment strategies and valuation procedures. As stated in the Circular, as commodity pools operated in accordance with NI 81-104, the Terminating Funds are exempted from certain of the provisions of NI 81-102 that would otherwise apply. In particular, commodity pools are permitted a more liberal derivatives use than conventional mutual funds. Following the Mergers, none of the Funds will be a commodity pool and so will be restricted in their derivatives use by NI 81-102. However, the Manager does not believe that this will result in a material change to a Fund's portfolio or investment performance following the Merger.

18. The fee structures of the Terminating Funds are generally the same as the fee structures of the Continuing Funds but, in some cases, the management fees of the Continuing Funds are lower than those of the Terminating Funds and the

performance fees for the Continuing Funds are required to be calculated in relation to a benchmark in accordance with NI 81-102, while the performance fees for the Terminating Funds, which have operated in accordance with NI 81-104, are not.

19. The Amalgamation is a tax-deferred transaction under subsection 87(1) of the *Income Tax Act* (Canada).

20. The Circular included disclosure about the Amalgamation and Mergers and prospectus-like disclosure concerning New MF, the Continuing Funds and the shares to be issued under the Amalgamation Agreement, including information regarding fees, expenses, investment objective, investment strategy, valuation procedures, the manager, the investment manager, redemptions, income tax considerations, dividend policy and net asset value. The Circular also disclosed that shareholders can obtain the most recent financial statements that have been made public reflecting the portfolio assets of the Funds from the Manager upon request or on SEDAR at www.sedar.com and that investors in the Terminating Funds can also review the provisions of the current simplified prospectus and annual information form of MF, available from the Manager upon request or on SEDAR at www.sedar.com.

21. The Circular also described the tax implications of the Mergers, shareholders' right to redeem if they did not wish to participate in the Mergers, shareholders right to dissent to the Amalgamation and indicated that the Funds' IRC had concluded that submitting the proposed Mergers to shareholders for their consideration and approval achieved a fair and reasonable result for shareholders.

22. The costs of the Amalgamation and Mergers will be paid for by the Manager.

23. The Filers and the Funds require approval of the Mergers and cannot rely on section 5.6(1) of NI 81-102 for the following reasons:

    (i) The fee structure of the Continuing Funds is not substantially similar to that of the Terminating Funds, as some management fees of the Continuing Funds are lower than those of the Terminating Funds and the performance fees for the Continuing Funds are required to be calculated in relation to a benchmark in accordance with NI 81-102, while the performance fees for the Terminating Funds, which have operated in accordance with NI 81-104, are not;

    (ii) The materials sent to shareholders of the Funds did not include a copy of the current simplified prospectus of the Continuing Funds or a copy of the financial statements of the Continuing Funds; and

    (iii) A statutory amalgamation may not technically constitute a wind-up of the Terminating Funds.

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 Merger Approval is granted.

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

2.1.8 Front Street Capital 2004 et al.

Headnote

National Instrument 81-101 Mutual Fund Prospectus Disclosure, section 6.1 – exemption from requirement in section 2.1 and Item 5(b) of Form 81-101F1 to permit the Continuing Fund to disclose the start date of the Terminating Fund as its start date.

National Instrument 81-102 Mutual Funds, section 19.1 – exemption from sections 15.3(2), 15.6(a)(i), 15.6(b), 15.6(d), 15.8(2)(a), 15.8(3)(a) and 15.9(2)(d) to permit the Continuing Fund to use performance data of the Terminating Fund in sales communications and reports to securityholders.

National Instrument 81-106 Mutual Fund Continuous Disclosure, section 17.1 – exemption from requirements in Section 4.4 and Items 3.1(1), 3.1(2), 3.1(7), 3.1(8), 4.1(1) in respect of the requirement to comply with sections 15.3(2) and 15.9(2)(d) of NI 81-102, 4.1(2), 4.2(1), 4.2(2), 4.3(1)(a) and 4.3(2) of Part B and Items 3(1) and 4 of Part C of Form 81-106F1 to permit the Continuing Fund to include in its annual and interim management reports of fund performance the financial highlights and past performance of the Terminating Fund.

Continuing Fund effectively a continuation of Terminating Fund whose track record since its start date is significant information which can assist investors in determining whether to purchase or hold shares of Continuing Fund with merger and any significant differences between funds appropriately disclosed.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, s. 6.1.
National Instrument 81-102 Mutual Funds, s. 19.1.
National Instrument 81-106 Mutual Fund Continuous Disclosure, s. 17.1.

December 3, 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
FRONT STREET CAPITAL 2004
(the "Manager")

AND

IN THE MATTER OF
FRONT STREET MUTUAL FUNDS LIMITED ("MF"),
FRONT STREET OPPORTUNITY FUNDS LTD.
("FSOF"), AND THE ENTITY RESULTING FROM
THE AMALGAMATION OF MF AND FSOF NAMED
FRONT STREET MUTUAL FUNDS LIMITED
("New MF", together with the Manager, the "Filers")

AND

IN THE MATTER OF
FRONT STREET SMALL CAP OPPORTUNITIES
FUND CLASS OF SHARES OF FSOF
(the "Terminating Fund")

AND

IN THE MATTER OF
FRONT STREET SMALL CANADIAN CAP FUND
(to be renamed Front Street Small Cap Fund)
CLASS OF SHARES OF NEW MF
(the "Continuing Fund")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers on behalf of themselves and the Continuing Fund for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") granting an exemption from:

(a) Sections 15.3(2), 15.6(a)(i), 15.6(b), 15.6(d), 15.8(2)(a), 15.8(3)(a) and 15.9(2)(d) of National Instrument 81-102 – *Mutual Funds* ("**NI 81-102**") to permit the Continuing Fund to use performance data of the Terminating Fund in sales communications and reports to securityholders (collectively, the "**Fund Communications**");

(b) Section 2.1 of National Instrument 81-101 – *Mutual Fund Prospectus Disclosure* ("**NI 81-101**") for the purposes of the relief requested from Form 81-101F1 – *Contents of Simplified Prospectus* ("**Form 81-101F1**"); and

(c) Item 5(b) of Part B of Form 81-101F1 to permit the Continuing Fund to disclose the start date of the Terminating Fund as its start date

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

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

(a) the Ontario Securities Commission is the principal regulator for this application, 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, Northwest Territories, Yukon and Nunavut.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, NI 81-102 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 on behalf of themselves and the Continuing Fund:

The Filers

1. The head office of the Filers is located at 33 Yonge Street, Suite 600, Toronto, Ontario. The Filers are not in default of securities legislation in any jurisdiction.

2. Each of MF and FSOF was, and New MF is, a mutual fund corporation subsisting under the laws of Canada and offering mutual fund classes of shares.

3. The Manager was directly or indirectly the manager of MF and FSOF and is the manager of New MF.

The Amalgamation and Merger

4. On October 15, 2008, each of MF and FSOF obtained shareholder approval to amalgamate to form a single mutual fund corporation.

5. On November 1, 2008, MF and FSOF were amalgamated to form New MF (the "**Amalgamation**"). As part of the Amalgamation, the Terminating Fund merged with the Continuing Fund (the "**Merger**"). The Filers received regulatory approval for the Merger on October 31, 2008.

6. The Amalgamation is intended to benefit investors by giving them a broader choice of mutual funds between which they may switch their investments on a tax-deferred basis. The Amalgamation may also benefit investors as a result of increased economies of scale which result from the consolidation of sales, marketing and management activities that are expected to reduce fund expenses.

7. Upon the Merger, the portfolio assets of the Terminating Fund were transferred to the Continuing Fund. The portfolio assets of the Continuing Fund are maintained as a separate portfolio by New MF for the exclusive benefit of the shareholders of the Continuing Fund.

8. Upon the Merger, the portfolio assets referable to each series of shares of the Terminating Fund became referable to a corresponding series of shares of the Continuing Fund (each such series, a "**Replacement Series**"). The rights associated with each Replacement Series are identical in all respects to the rights formerly associated with the corresponding series of shares of the Terminating Fund. Upon the Merger, for each share they held of the Terminating Fund, shareholders received a share of the Replacement Series. The net asset value ("**NAV**") of each such share of the Replacement Series was equal to the NAV per share of the corresponding series of shares of the Terminating Fund.

9. Prior to the Merger, the Terminating Fund was operated in accordance with the requirements of National Instrument 81-104 – *Commodity Pools* ("**NI 81-104**"), distributed its shares to the public pursuant to a prospectus and had been a reporting issuer for at least 12 months.

10. The Continuing Fund is not a commodity pool, it is a conventional mutual fund governed by NI 81-102. New MF has filed with the securities regulatory authorities in all of the provinces and territories of Canada a preliminary simplified prospectus and annual information form and will file a final simplified prospectus and annual information form in due course to qualify the shares of the Continuing Fund for distribution to the public.

11. The Continuing Fund is a new fund and did not have any assets (other than a nominal amount to establish it) or liabilities and did not have its own performance data or information derived from financial statements (collectively, the "**Financial Data**") as at the effective date of the Merger. In order for the Merger to be as seamless as possible for investors in the Terminating Fund and the Continuing Fund:

    (a) Notwithstanding the Amalgamation and Merger, the Continuing Fund will be managed substantially similarly to the Terminating Fund. The Continuing Fund has substantially similar investment objectives and investment strategies, the same manager and portfolio investment manager, the same management fee and redemption fee structure as the Terminating Fund and, as at the effective date of the Amalgamation and Merger, the Continuing Fund held the same portfolio assets as the Terminating Fund;

    (b) The Filers propose that the Continuing Fund's Fund Communications include the performance data of the Terminating Fund;

    (c) The Filers propose that the Continuing Fund's simplified prospectus:

        i. incorporate by reference the following financial statements and management reports of fund performance ("MRFPs") of the Terminating Fund (collectively, the "**Terminating Fund Disclosure**"):

            1. the interim financial statements and MRFP for the six months ended April 30, 2008; and

            2. when available, the annual financial statements and MRFP for the year ended October 31, 2008

            until such Terminating Fund Disclosure is superseded by more current financial statements and MRFPs of the Continuing Fund; and

        ii. states that the start date for each Replacement Series of the Continuing Fund is based upon the start date of the corresponding series of the Terminating Fund.

12. The Merger effectively converts a commodity pool to a conventional mutual fund. Unlike conventional mutual funds governed by NI 81-102, commodity pools operated in accordance with NI 81-104 are less restricted in the use of derivatives and in the calculation of performance fees.

13. The Continuing Fund is more restricted in its derivatives use than the Terminating Fund was. However, the Terminating Fund made very little use of the additional derivatives flexibility provided in NI 81-104 and, as stated in the Management Proxy Circular accompanying the notice of meeting for the October 15, 2008 meeting at which the

Amalgamation and Merger received shareholder approval, the Manager does not believe that this will result in a material change in the Continuing Fund's portfolio or investment performance following the Merger.

14. The performance fee paid to the Manager in respect of the year ended October 31, 2008 differs from the performance fee that would have been payable had the Terminating Fund been subject to the performance fee calculation requirements of NI 81-102 during this period (such difference, the "**Performance Fee Differential**"). Accordingly, the actual returns of the Terminating Fund net of performance fees for that fiscal period differ from the returns net of performance fees that the Terminating Fund would have achieved had it been subject to the performance fee calculation requirements of NI 81-102.

15. Any significant differences between the Terminating Fund and the Continuing Fund, including the difference in the calculation of the performance fee, will be noted in any Fund Communications containing Financial Data of the Terminating Fund, and those communications will also note the effect on returns for the year ended prior to the Merger of the Performance Fee Differential.

16. The Financial Data of each series of the Terminating Fund is significant information which can assist investors in determining whether to purchase or hold shares of the corresponding Replacement Series.

17. The Filers have filed a separate application for exemptive relief from certain provisions of National Instrument 81-106 – *Investment Fund Continuous Disclosure* ("**NI 81-106**") to enable the Continuing Fund to include in its annual and interim MRFPs Financial Data presented in the Terminating Fund's annual MRFP for the year ended October 31, 2008, when available (the "**NI 81-106 Relief**").

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

(a) The Continuing Fund's Fund Communications include the performance data of the Terminating Fund prepared in accordance with Part 15 of NI 81-102, including section 15(1) of NI 81-102;

(b) The Continuing Fund's simplified prospectus:

(i) incorporates by reference the Terminating Fund Disclosure, until such Terminating Fund Disclosure is superseded by more current financial statements and MRFPs of the Continuing Fund;

(ii) states that the start date for each Replacement Series is the start date of the corresponding series of the Terminating Fund; and

(iii) discloses the Merger where the start date of each Replacement Series of the Continuing Fund is stated; and

(c) The Continuing Fund prepare its MRFPs in accordance with the NI 81-106 Relief.

"Rhonda Goldberg'
Manager, Investment Funds
Ontario Securities Commission

2.1.9 National Bank Securities Inc. et al. – MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief granted to existing mutual funds subject to NI 81-102 and future mutual funds subject to NI 81-102 for which bank-owned fund managers act as portfolio advisor and/or manager, to permit applicant funds to purchase long-term debt securities of a related entity under primary offerings of the related entity – Relief subject to conditions including IRC approval, pricing requirements and limits on the amount of the primary offering applicant funds can purchase.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 4.1(2), 19.1.
National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.2.

January 6, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
(the Legislation)
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 MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS
(MRRS)

AND

IN THE MATTER OF
NATIONAL BANK SECURITIES INC., TD ASSET MANAGEMENT INC., SCOTIA CASSELS INVESTMENT COUNSEL LIMITED, SCOTIA SECURITIES INC., SCOTIA CAPITAL INC., RBC ASSET MANAGEMENT INC., PHILLIPS, HAGER & NORTH INVESTMENT MANAGEMENT LTD., BMO HARRIS INVESTMENT MANAGEMENT INC., BMO NESBITT BURNS INC., GUARDIAN GROUP OF FUNDS LTD., BMO INVESTMENTS INC., JONES HEWARD INVESTMENT COUNSEL INC., CIBC ASSET MANAGEMENT INC. AND CIBC GLOBAL ASSET MANAGEMENT INC.
(the Applicants)

AND

IN THE MATTER OF THE MUTUAL FUNDS SUBJECT TO NATIONAL INSTRUMENT 81-102 – MUTUAL FUNDS (NI 81-102) FOR WHICH AN APPLICANT CURRENTLY ACTS AS PORTFOLIO ADVISER AND/OR MANAGER AND ANY MUTUAL FUNDS SUBJECT TO NI 81-102 THAT MAY BE ESTABLISHED IN THE FUTURE FOR WHICH THE APPLICANT ACTS AS PORTFOLIO ADVISOR AND/OR MANAGER
(the Applicant Funds)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (**Decision Maker**) in each of the Jurisdictions received an application (the **Application**) from the Applicants on behalf of each Applicant Fund under Section 19.1 of NI 81-102 for relief from the requirement in Section 4.1(2) of NI 81-102 (the **Requested Section 4.1(2) Relief**) which prevents a dealer manager mutual fund from investing in a class of securities of an issuer (a **Related Person**) of which a partner, director or officer of the dealer manager of the mutual fund, or a partner, director, officer or employee of an affiliate or associate of the dealer manager, is a partner, director or officer unless the partner, director, officer or employee

(a) does not participate in the formulation of investment decisions made on behalf of the dealer managed mutual fund;

(b) does not have access before implementation to information concerning investment decisions made on behalf of the dealer managed mutual fund; and

(c) does not influence, other than through research, statistical and other reports generally available to clients, the investment decisions made on behalf of the dealer managed mutual fund.

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

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

(ii) this MRRS decision document (**MRRS Decision**) represents the decision of each of the Decision Makers.

Interpretation

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 MRRS Decision Document unless they are otherwise defined in this Decision Document.

Representations

This decision is based on the following facts represented by an Applicant in respect of the Applicant and the Applicant Funds of the Applicant.

1. Each of the Applicants is or will be the portfolio adviser and/or the manager of the Applicant Funds of the Applicant.

2. Each of the Applicants and the Applicant Funds is or will be compliant with the requirements of NI 81-107. Accordingly, each Applicant Fund has or will have an independent review committee (**IRC**) established in accordance with NI 81-107.

3. The investment strategies of each of the Applicant Funds that relies on the Requested Section 4.1(2) Relief permit or will permit it to invest in the securities purchased.

4. Related Persons of the Applicants are significant issuers of securities.

5. Section 6.2 of NI 81-107 provides an exemption from the mutual fund conflict of interest investment restrictions for exchange-traded securities, such as common shares. It does not provide relief from Section 4.1(2) of NI 81-102 (**Section 4.1(2) Relief**) to permit an Applicant Fund to purchase non-exchange-traded securities issued by Related Persons. Some securities of Related Persons, such as debt securities, of the Applicants are not listed and traded.

6. Each of the Applicants, other than Phillips, Hager & North Investment Management Ltd. (**PH&N**), obtained Section 4.1(2) Relief to permit the Applicants on behalf of the Applicant Funds to purchase Related Person debt securities in the secondary market in an MRRS Decision Document dated May 15, 2008. PH&N received similar relief in a Passport Decision dated April 28, 2008.

7. Each of the Applicants, other than PH&N, is restricted from purchasing and holding non-exchange traded securities that are debt securities of Related Persons on behalf of the Applicant Funds in a primary distribution or treasury offering (a **Primary Offering**). PH&N received Section 4.1(2) Relief to purchase debt securities of Related Persons in a Primary Offering with a term to maturity of 365 days or more, and to purchase debt securities of Related Persons with a term to maturity of less than 365 days, on May 2, 2008. This relief expires on December 31, 2008.

8. Related Persons (in particular those that are Canadian banks) are issuers of highly rated commercial paper and other debt instruments. The Applicants consider that the Applicant 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 an Applicant Fund is limited with respect to investment opportunities.

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

9. Each Applicant is seeking the Requested Section 4.1(2) Relief to permit the Applicant Funds of the Applicant to purchase and hold non-exchange traded securities that are debt securities, other than asset backed commercial paper securities, with a term to maturity of 365 days or more, issued by a Related Person in a Primary Offering.

10. Each non-exchange traded security purchased by an Applicant Fund pursuant to the Requested Section 4.1(2) Relief will be a debt security, other than an asset backed commercial paper security, with a term to maturity of 365 days or more, 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.

11. Each non-exchange traded debt security purchased by an Applicant Fund pursuant to the Requested Section 4.1(2) 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

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

The decision of the Decision Makers is that the Requested Section 4.1(2) Relief is granted to permit the Applicants to purchase and hold non-exchange traded debt securities, other than asset backed commercial paper securities, with a term to maturity of 365 days or more, issued by a Related Person in a Primary Offering on behalf of the Applicant Funds on the conditions that:

(a) the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Applicant Fund;

(b) at the time of the purchase the IRC of the Applicant Fund has approved the transaction in accordance with Section 5.2(2) of NI 81-107;

(c) the manager of the Applicant Fund complies with section 5.1 of NI 81-107 and the manager and the IRC of the Applicant Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;

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

(e) at least 2 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;

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

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

(h) the price paid for the securities by an Applicant 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

(i) no later than the time the Applicant Fund files its annual financial statements, the Applicant files with the securities regulatory authority or regulator the particulars of any such investments.

This Decision will expire on the coming into force of any securities legislation relating to fund purchases of Related Person debt securities in a Primary Offering.

"Rhonda Goldberg"
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.10 Harrow Partners Ltd. – s. 3.3(4) of OSC Rule 31-502 Proficiency Requirements for Registrants

Headnote

Exemption pursuant to section 4.1 of OSC Rule 31-502 Proficiency Requirements for Registrants from requirements in subsection 3.3(4) whereby the designated registered representative, partner or officer shall be employed at the same location as the associate representative, partner or associate officer whose advice must be approved.

Rules Cited

Ontario Securities Commission Rule 31-502 Proficiency Requirements for Registrants.

January 27, 2009

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

AND

IN THE MATTER OF
HARROW PARTNERS LTD.

DECISION
(Subsection 3.3(4) of the Ontario Securities Commission Rule 31-502 Proficiency Requirements for Registrants)

UPON the Director having received the application of Harrow Partners Ltd. (the **Applicant**) for a decision pursuant to section 4.1 of Ontario Securities Commission Rule 31-502 *Proficiency Requirements for Registrants* (**Rule 31-502**) granting the Applicant relief from the provision in subsection 3.3(4) of Rule 31-502 requiring an associate advising officer to be supervised by an advising officer, partner or representative who is employed at the same location as the associate advising officer;

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

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

1. The Applicant is registered under the Act as an investment counsel and portfolio manager (extra-provincial). The Applicant's head office is located in Manitoba. However, the Applicant seeks to hire Michael Schachter as an associate advising representative.

2. Mr. Schachter has applied for registration as an associate advising officer with the Applicant. Mr. Schachter intends to work for the Applicant at its

Toronto office upon registration. The Applicant intends for Mr. Schachter to be supervised by David Holt, who is employed at the Applicant's head office.

3. Staff of the Commission have confirmed that Mr. Schachter meets the proficiency requirements for registration as an associate advising officer or has been granted an exemption therefrom.

4. Rule 31-502 requires that the registered advising officer, partner or representative be employed at the same location as the associate advising representative, partner or officer whose advice must be approved (the requirement for supervision from the same location).

5. The Applicant has provided a description of its policies and procedures which combine the use of modern technology and periodic in-person visits to facilitate adequate supervision of Mr. Schachter by Mr. Holt despite the physical distance between the primary working locations of Mr. Schachter and Mr. Holt.

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

IT IS THE DECISION of the Director, pursuant to section 4.1 of Rule 31-502, that the Applicant is granted an exemption from the requirement for supervision from the same location for so long as:

A. The Applicant continues to be registered in the category of investment counsel and portfolio manager in the province of Ontario; and

B. Mr. Schachter continues to be employed by the Applicant.

"Susan Silma"
Director, Compliance and Registrant Regulation

2.1.11 BMO Harris Private Banking Investment Management Inc. – s. 3.3(4) of OSC Rule 31-502 Proficiency Requirements for Registrants

Headnote

Exemption pursuant to section 4.1 of OSC Rule 31-502 Proficiency Requirements for Registrants from requirements in subsection 3.3(4) whereby the designated registered representative, partner or officer shall be employed at the same location as the associate representative, partner or associate officer whose advice must be approved.

Rules Cited

Ontario Securities Commission Rule 31-502 Proficiency Requirements for Registrants.

January 26, 2009

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

AND

IN THE MATTER OF
BMO HARRIS PRIVATE BANKING INVESTMENT MANAGEMENT INC.

DECISION
(Subsection 3.3(4) of
Ontario Securities Commission Rule 31-502
Proficiency Requirements for Registrants)

UPON the Director having received the application of BMO Harris Private Banking Investment Management Inc. (the **Applicant**) for a decision pursuant to section 4.1 of Ontario Securities Commission Rule 31-502 *Proficiency Requirements for Registrants* (**Rule 31-502**) granting the Applicant relief from the provision in subsection 3.3(4) of Rule 31-502 requiring an associate advising representative to be supervised by an advising officer, partner or representative who is employed at the same location as the associate advising representative;

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

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

1. The Applicant is registered under the Act in the categories of investment counsel and portfolio manager. The Applicant's head office is located in Toronto. The Applicant has branches in numerous cities, including the following in Ontario: London, Kingston, Peterborough and Ottawa. On or about January 30, 2009, the Applicant expects to open a branch in North York, Ontario (the **New Branch**).

2. Kevin Muir is registered as an associate advising representative with the Applicant. Mr. Muir is currently employed with the Applicant at its Toronto branch, where he is supervised by Richard Mason, a fully registered advising representative. However, the Applicant would like to transfer Mr. Muir to the New Branch.

3. The Applicant will have no registered advising officers or representatives located in the New Branch, and proposes that Mr. Muir continue to be supervised by Mr. Mason.

4. Staff of the Commission have reviewed the registration status of Mr. Mason and Mr. Muir and have confirmed that both are in good standing with the Ontario Securities Commission.

5. Rule 31-502 requires that the registered advising officer, partner or representative be employed at the same location as the associate advising representative, partner or officer whose advice must be approved (the **requirement for supervision from the same location**).

6. The Applicant has provided a description of its policies and procedures which combine the use of modern technology and frequent in-person visits to facilitate adequate supervision of Mr. Muir despite the physical distance between the primary working locations of Mr. Muir and Mr. Mason.

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

IT IS THE DECISION of the Director, pursuant to section 4.1 of Rule 31-502 that the Applicant is granted an exemption from the requirement for supervision from the same location for so long as:

A. The Applicant continues to be registered in the category of investment counsel and portfolio manager in the province of Ontario; and

B. Mr. Muir continues to be employed by the Applicant.

"Susan Silma"
Director, Compliance and Registrant Regulation

2.1.12 National Bank Securities Inc. et al. – MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief granted to existing mutual funds subject to NI 81-102 and future mutual funds subject to NI 81-102 for which bank-owned fund managers act as portfolio advisor and/or manager, to permit applicant funds to purchase long-term debt securities of a related entity under primary offerings of the related entity – relief subject to conditions including IRC approval, pricing requirements and limits on the amount of the primary offering applicant funds can purchase.

Applicable Legislative Provisions

Securities Act (Ontario), ss. 111(2)(a), 111(2)(c)(ii), 111(3), 113, 118(2)(a), 121.
National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.2.

December 23, 2008

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

AND

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

AND

IN THE MATTER OF
NATIONAL BANK SECURITIES INC., TD ASSET MANAGEMENT INC., SCOTIA CASSELS INVESTMENT COUNSEL LIMITED, SCOTIA SECURITIES INC., SCOTIA CAPITAL INC., RBC ASSET MANAGEMENT INC., PHILLIPS, HAGER & NORTH INVESTMENT MANAGEMENT LTD., BMO HARRIS INVESTMENT MANAGEMENT INC., BMO NESBITT BURNS INC., GUARDIAN GROUP OF FUNDS LTD., BMO INVESTMENTS INC., AND JONES HEWARD INVESTMENT COUNSEL INC., CIBC ASSET MANAGEMENT INC. AND CIBC GLOBAL ASSET MANAGEMENT INC.
(the Applicants)

AND

IN THE MATTER OF
EXISTING MUTUAL FUNDS subject to NI 81-102 – Mutual Funds (NI 81-102) for which an Applicant acts as portfolio advisor and/or manager and any mutual funds subject to NI 81-102 that may be established in the future for which an Applicant acts as portfolio advisor and/or manager (the Applicant Funds)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (**Decision Maker**) in each of the Jurisdictions received an application (the **Application**) from the Applicants on behalf of each Applicant Fund for relief from:

(a) 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**);

(b) 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**); and

(c) 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.

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

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

(ii) this MRRS decision document (**MRRS Decision**) represents the decision of each of the Decision Makers.

Interpretation

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 MRRS Decision Document unless they are otherwise defined in this Decision Document.

In this Decision Document 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

This decision is based on the following facts represented by an Applicant in respect of the Applicant and the Applicant Funds of the Applicant.

1. Each of the Applicants is or will be the portfolio adviser and/or the manager of the Applicant Funds of the Applicant.

2. Each of the Applicants and the Applicant Funds is or will be compliant with the requirements of NI 81-107. Accordingly, each Applicant Fund has or will have an independent review committee (**IRC**) established in accordance with NI 81-107.

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

4. Related Persons of the Applicants are significant issuers of securities.

5. Each of the Applicants, other than Phillips, Hager & North Investment Management Ltd. (**PH&N**), previously obtained Related Shareholder Relief, Related Party Relief and Related Issuer Relief so that an Applicant Fund of the Applicant could invest in common shares of Related Persons of the Applicant.

6. TD Asset Management Inc., CIBC Asset Management Inc. (**CIBC**) and certain affiliates of CIBC also had Existing Related Person Relief that applied to "securities" of the relevant Related Persons.

7. Pursuant to section 7.2 of NI 81-107, the relief referred to in paragraphs 5 and 6 above expired on November 1, 2007.

8. Section 6.2 of NI 81-107 provides an exemption from the prohibitions comprising the Requested Related Person Securities Relief for exchange-traded securities, such as common shares. It does not permit an Applicant Fund, or an Applicant on behalf of an Applicant Fund, to purchase non-exchange-traded securities issued by Related Persons. Some securities of Related Persons, such as debt securities, of the Applicants are not listed and traded.

9. Each of the Applicants, other than PH&N, obtained Related Shareholder Relief, Related Party Relief and Related Issuer Relief to permit the Applicants on behalf of the Applicant Funds to purchase Related Person debt securities in the secondary market in an MRRS Decision Document dated May 22, 2008. PH&N received similar relief in a Passport Decision dated April 28, 2008.

10. Each of the Applicants, other than PH&N, is restricted from purchasing and holding non-exchange traded securities that are debt securities of Related Persons on behalf of the Applicant Funds in a primary distribution or treasury offering (a **Primary Offering**). PH&N received relief to purchase debt securities of Related Persons with a term to maturity of 365 days or more, and to purchase debt securities of Related Persons with a term to maturity of less than 365 days, on behalf of Applicant Funds of PH&N in a Primary Offering in a Passport Decision dated May 2, 2008. This relief expires on December 31, 2008.

11. Related Persons (in particular those that are Canadian banks) are issuers of highly rated commercial paper and other debt instruments. The Applicants consider that the Applicant 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 an Applicant Fund is limited with respect to investment opportunities.

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

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

13. Each non-exchange traded security purchased by an Applicant Fund pursuant to the Requested Related Person Purchase Relief will be a debt security, other than an asset backed commercial paper security, with a term to maturity of 365 days or more, 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.

14. Each non-exchange traded debt security purchased by an Applicant 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

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

The decision of the Decision Makers is that the Requested Related Person Securities Relief is granted to permit the Applicants to purchase and hold non-exchange traded debt securities, other than asset backed commercial paper securities, with a term to maturity of 365 days or more, issued by a Related Person in a Primary Offering on behalf of the Applicant Funds on the conditions that:

(a) the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Applicant Fund;

(b) at the time of the purchase the IRC of the Applicant Fund has approved the transaction in accordance with Section 5.2(2) of NI 81-107;

(c) the manager of the Applicant Fund complies with section 5.1 of NI 81-107 and the manager and the IRC of the Applicant Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;

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

(e) at least 2 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;

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

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

(h) the price paid for the securities by an Applicant 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

(i) no later than the time the Applicant Fund files its annual financial statements, the Applicant files with the securities regulatory authority or regulator the particulars of any such investments.

This Decision will expire on the coming into force of any securities legislation relating to fund purchases of Related Person debt securities in a Primary Offering.

"James E.A. Turner"
Vice-Chair
Ontario Securities Commission

"Margot C. Howard"
Commissioner
Ontario Securities Commission

2.2 Orders

2.2.1 Goldbridge Financial Inc. et al. – s. 127(1)

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

AND

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

ORDER
(Subsection 127(1))

WHEREAS on October 10, 2008 the Commission issued a temporary order pursuant to section 127(5) of the Act that all trading in securities by Goldbridge Financial Inc. ("Goldbridge"), Wesley Wayne Weber ("Weber") and Shawn C. Lesperance ("Lesperance") shall cease, and that the exemptions contained in Ontario securities law do not apply to Goldbridge, Weber and Lesperance (the "Temporary Order");

AND WHEREAS the Temporary Order expired on the fifteenth day after its making unless extended by the Commission;

AND WHEREAS on October 28, 2008, the Commission granted a further order pursuant to clause 2 of subsection 127(1) of the Act that all trading in securities by Goldbridge, Weber and Lesperance shall cease, subject to certain exceptions (the "Further Temporary Order");

AND WHEREAS on October 28, 2008, the Commission ordered that the Further Temporary Order be extended to January 20, 2009 and that the hearing of the matter be adjourned to January 19, 2009;

AND WHEREAS on January 19, 2009, the Commission held a hearing at which Staff sought an Order extending the Further Temporary Order pursuant to subsection 127(1) of the Act to permit further investigation by Staff;

AND WHEREAS Staff of the Commission and Weber and Lesperance, appearing on behalf of themselves and Goldbridge, made submissions at the hearing;

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

IT IS ORDERED that the Further Temporary Order is continued and shall expire at the close of business on March 21, 2009, unless it is extended by the Commission;

IT IS FURTHER ORDERED that the hearing of this matter shall be adjourned to March 20, 2009, at 10:00 a.m.

Dated at Toronto this 19th day of January, 2009.

"Lawrence Ritchie"

2.2.2 HudBay Minerals Inc. – ss. 8(3), 21.7

**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**

**ORDER
(Sections 21.7 and 8(3) of the Act)**

WHEREAS on November 21, 2008, HudBay Minerals Inc. ("HudBay") and Lundin Mining Corporation ("Lundin") announced in a joint press release that they had entered into an arrangement agreement pursuant to which HudBay would acquire all of the outstanding common shares of Lundin on the basis of 0.3919 HudBay common shares for each Lundin common share (the "Transaction");

AND WHEREAS by letter dated November 26, 2008, HudBay gave notice of the Transaction to the Toronto Stock Exchange (the "TSX") pursuant to subsection 602(a) of the TSX Company Manual and requested the approval by the TSX of the listing of an aggregate of 157,596,192 additional common shares of HudBay (the "Additional Common Shares") in connection with the Transaction;

AND WHEREAS pursuant to section 603 of the TSX Company Manual, the TSX has the discretion to impose conditions on a transaction, such as by requiring shareholder approval;

AND WHEREAS the TSX received written complaints from Jaguar Financial Inc. ("Jaguar") and other shareholders of HudBay including a request that the TSX exercise its discretion under section 603 of the TSX Company Manual to require that HudBay obtain shareholder approval of the Transaction;

AND WHEREAS on December 10, 2008, the TSX decided that it would not require that the Transaction be approved by the shareholders of HudBay as a condition to the listing of the Additional Common Shares (the "TSX Decision");

AND WHEREAS on January 6, 2009, Jaguar brought an application, being the Fresh as Amended Request for Hearing and Review (the "Application"), to the Ontario Securities Commission (the "Commission") pursuant to sections 8(3) and 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") for a hearing and review of the TSX Decision;

AND WHEREAS by order made January 12, 2009, Lundin and the TSX were granted full intervenor status in this matter;

AND WHEREAS a hearing was held on January 19 and 21, 2009, to consider the Application;

AND UPON HAVING CONSIDERED the evidence filed and the written and oral submissions made by Jaguar, HudBay, Lundin, the TSX and Staff of the Commission;

IT IS ORDERED THAT:

1. pursuant to subsection 8(3) and section 21.7 of the Act, the TSX Decision is set aside;

2. pursuant to subsection 8(3) of the Act and section 603 of the TSX Company Manual, HudBay shareholder approval of the Transaction is required as a condition to the listing of the Additional Common Shares; and

3. pursuant to subsection 8(3) of the Act, HudBay is prohibited from issuing any securities in connection with the Transaction unless it shall have first obtained the approval of the Transaction by a simple majority of the votes cast by HudBay shareholders entitled to vote on the Transaction at a duly convened special meeting of its shareholders.

DATED at Toronto this 23rd day of January, 2009.

"James E. A. Turner"

"Suresh Thakrar"

"Paulette L. Kennedy"

2.2.3 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, Eugene N. Melnyk , Brian H. Crombie, John R. Miszuk ("Miszuk") and Kenneth G. Howling;

AND WHEREAS Miszuk has entered into a settlement agreement with Staff of the Commission dated January 26, 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 Miszuk 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. Miszuk is reprimanded.

3. Miszuk is prohibited from becoming or acting as a director or officer of a reporting issuer for a period of three years from the date of this Order.

4. Miszuk shall successfully complete the Financial Literacy Program of the Institute of Corporate Directors before becoming or acting as a financial officer of a reporting issuer.

5. Miszuk shall cooperate with the Commission and Staff in this matter and shall appear and give truthful and accurate testimony at the hearing in this matter if requested by Staff ; and

6. Miszuk shall pay $30,000.00 in respect of a portion of the costs of the investigation and hearing in relation to this matter.

Dated at Toronto this 27th day of January, 2009.

"Suresh Thakrar"

"Margot C. Howard"

2.2.4 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, Eugene N. Melnyk , Brian H. Crombie, John R. Miszuk and Kenneth G. Howling ("Howling");

AND WHEREAS Howling has entered into a settlement agreement with Staff of the Commission dated January 26, 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 Howling 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. Howling is reprimanded.

3. Howling is prohibited from becoming or acting as a director or officer of a reporting issuer for a period of two years from the date of this Order.

4. Howling shall cooperate with the Commission and Staff in this matter and shall appear and testify at the hearing in this matter if requested by Staff; and

5. Howling shall pay $20,000.00 in respect of a portion of the costs of the investigation and hearing in relation to this matter.

Dated at Toronto this 27th day of January, 2009.

"Suresh Thakrar"

"Margot C. Howard"

2.2.5 Berkshire Capital Limited et al. – s. 127

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

AND

**IN THE MATTER OF
BERKSHIRE CAPITAL LIMITED,
GP BERKSHIRE CAPITAL LIMITED,
PANAMA OPPORTUNITY FUND AND
ERNEST ANDERSON**

**TEMPORARY ORDER
Section 127**

WHEREAS it appears to the Ontario Securities Commission that:

1. Berkshire Capital Limited, GP Berkshire Capital Limited, Panama Opportunity Fund (collectively, the Berkshire Entities) are not registered with the Commission and neither a preliminary prospectus not a prospectus has been receipted by the Director for the distribution of securities of the Panama Opportunity Fund;

2. Anderson is the directing mind of the Berkshire Entities;

3. Anderson is not registered with the Commission;

4. It appears that the Berkshire Entities and Anderson are acting in furtherance of a trade in the sale of the Panama Opportunity Fund;

5. the Commission is of the opinion that it is in the public interest to make this Order; and

6. the Commission is of the opinion that the length of time required to conclude a hearing in this matter could be prejudicial to the public interest;

AND WHEREAS by Commission Order dated April 1, 2008 pursuant to section 3.5(3) of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the "Act"), any one of W. David Wilson, James E. A. Turner, Lawrence E. Ritchie, Paul K. Bates or David L. Knight, acting alone, is authorized to make orders pursuant to section 127 of the Act;

IT IS ORDERED that:

1. pursuant to clause 2 of section 127(1) and section 127(5) of the Act, trading in securities of and by the Berkshire Entities and Anderson shall cease;

2. pursuant to clause 3 of section 127(1) and section 127(5) of the Act, any exemptions contained in Ontario securities law not do not apply to any of the Berkshire Entities and Anderson.

IT IS FURTHER ORDERED that pursuant to section 127(6) of the Act, this Order shall take effect immediately and shall expire on the 15th day after its making unless extended by the Commission.

DATED at Toronto this 27th day of January, 2009.

"David Wilson"

2.2.6 iShares Conservative Core Portfolio Builder Fund et al. – s. 1.1 of OSC Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions

Headnote

Certain mutual funds designated as exchange-traded funds for the purposes of OSC Rule 48-501.

Rules Cited

Ontario Securities Commission Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions, s. 1.1.

IN THE MATTER OF
ONTARIO SECURITIES COMMISSION RULE 48-501 – TRADING DURING DISTRIBUTIONS, FORMAL BIDS AND SHARE EXCHANGE TRANSACTIONS (Rule)

AND

IN THE MATTER OF

iSHARES CONSERVATIVE CORE PORTFOLIO BUILDER FUND
iSHARES GROWTH CORE PORTFOLIO BUILDER FUND
iSHARES GLOBAL COMPLETION PORTFOLIO BUILDER FUND
AND
iSHARES ALTERNATIVES COMPLETION PORTFOLIO BUILDER FUND
(collectively, the Funds)

DESIGNATION ORDER
Section 1.1

WHEREAS each of the Funds is listed on the Toronto Stock Exchange;

AND WHEREAS the Investment Industry Regulatory Organization of Canada has designated, or intends to designate, each of the Funds as an Exchange-traded Fund for the purposes of the Universal Market Integrity Rules (UMIR);

AND WHEREAS the definition of "exchange-traded fund" in the Rule is substantially similar to the definition of Exchange-traded Fund in UMIR;

THE DIRECTOR HEREBY DESIGNATES each of the Funds as an exchange-traded fund for the purposes of the Rule.

Dated January 27, 2009

"Brigitte J. Geisler"
Director, Market Regulation
Ontario Securities Commission

2.2.7 MRS Sciences Inc. (formerly Morningside Capital Corp.) et al. – s. 127(1)

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

AND

**IN THE MATTER OF
MRS SCIENCES INC.
(FORMERLY MORNINGSIDE CAPITAL CORP.),
AMERICO DEROSA, RONALD SHERMAN,
EDWARD EMMONS AND IVAN CAVRIC**

**ORDER
Subsection 127(1)**

WHEREAS a Notice of Hearing was issued on November 30, 2007 and a Statement of Allegations was filed on November 29, 2007 against MRS Sciences Inc., Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric;

WHEREAS in December 2007, Staff served MRS Sciences Inc., Americo DeRosa, Edward Emmons and Ivan Cavric in December 2007;

AND WHEREAS on December 21, 2007, counsel for Ivan Cavric advised that he also appeared as agent for MRS Sciences Inc., Americo DeRosa, and Edward Emmons;

AND WHEREAS on December 21, 2007, Staff and counsel for Ivan Cavric and agent for MRS Sciences Inc., Americo DeRosa and Edward Emmons consented to and the Commission ordered an adjournment of this matter to January 31, 2008 at 10:00 a.m.;

AND WHEREAS in January 2008, five volumes of Staff's disclosure were couriered to counsel for Ivan Cavric and to counsel for Edward Emmons and Americo DeRosa;

AND WHEREAS on January 16, 2008, counsel for Ivan Cavric confirmed that he was also acting as counsel for Edward Emmons and Americo DeRosa;

AND WHEREAS on January 30, 2008, Staff and counsel for Ivan Cavric, Edward Emmons and Americo DeRosa consented to and the Commission ordered the matter adjourned to February 26, 2008 to permit Staff to effect service on Ronald Sherman;

AND WHEREAS on February 20, 2008, Staff served the Notice of Hearing and Statement of Allegations dated November 29, 2007 and the Commission orders dated December 28, 2007 and January 30, 2008 on Ronald Sherman;

AND WHEREAS on February 26, 2008, the agent for Ronald Sherman agreed to accept delivery of Staff's disclosure on behalf of Ronald Sherman;

AND WHEREAS on February 26, 2008, counsel for Ivan Cavric, Edward Emmons and Americo DeRosa requested a short adjournment to consider whether his clients will bring any pre-hearing motions;

AND WHEREAS on February 26, 2008, the Commission adjourned this matter to March 25, 2008 at 9:30 a.m.;

AND WHEREAS Staff have filed an Amended Statement of Allegations dated March 25, 2008 which amends the previous title of proceeding on the Statement of Allegations dated November 29, 2007;

AND WHEREAS counsel for Ivan Cavric, Edward Emmons and Americo DeRosa confirmed that he was also acting on behalf of Ronald Sherman but not, at this time, on behalf of MRS Sciences Inc;

AND WHEREAS on March 25, 2008, Staff of the Commission requested that Hearing dates be scheduled and counsel for Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric opposed the setting of hearing dates on the basis that counsel may bring pre-hearing motions;

AND WHEREAS on March 25, 2008, the Commission ordered: (i) the Hearing to commence on October 8, 2008 and continue on October 9, 10, and 15, 16 (if necessary); (ii) a pre-hearing conference to be held before mid-August, 2008; and (iii) any adjournment motion to be brought before September 10, 2008;

AND WHEREAS Staff provided additional disclosure to the respondents counsel on July 18, September 12, 15 and 19, October 1 and November 20, 2008 and provided Staff's hearing briefs on September 26, 2008, and intend to provide further disclosure to counsel for the respondents;

AND WHEREAS on October 1, 2008, counsel for the respondents requested an adjournment and advised that one or more of the respondents was unavailable on October 8 and 9, 2008 due to a religious holiday and that counsel was still reviewing the new disclosure;

AND WHEREAS on October 1, 2008, the Commission ordered that: (i) the hearing scheduled to commence on October 8, 2008 be adjourned to the tentative dates of February 9, 10, 11, 12 and 13, 2009; and (ii) the parties attend a second pre-hearing conference scheduled for November 4, 2008;

AND WHEREAS Staff requested that the second pre-hearing conference be adjourned to December 4, 2008 due to a scheduling conflict;

AND WHEREAS at a second pre-hearing conference on December 4, 2008, Staff advised that additional Staff disclosure would be made and that Staff may amend its Statement of Allegations;

AND WHEREAS on December 4, 2008, Staff and counsel for Americo DeRosa, Ronald Sherman, Edwards Emmons and Ivan Cavric agreed that the hearing on the merits should be adjourned and a further pre-hearing conference be scheduled, no one appearing for MRS Sciences Inc.;

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

IT IS ORDERED that the Hearing on the merits tentatively scheduled to commence on February 9, 2009 is adjourned and rescheduled to May 7, 8, 11, 13, 14, and 15, 2009 at 10:00 a.m.; and

IT IS ORDERED that a further pre-hearing conference is scheduled for February 9, 2009 at 9:00 a.m. or at such other time as arranged by the Office of the Secretary.

Dated at Toronto this 4th day of December, 2008

"David L. Knight"

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 HudBay Minerals Inc.

DECISION OF THE ONTARIO SECURITIES COMMISSION

IN THE MATTER OF
HUDBAY MINERALS INC.

AND

IN THE MATTER OF
A DECISION OF THE TORONTO STOCK EXCHANGE

[1] This is the decision of the Ontario Securities Commission (the "Commission") in connection with the application brought by Jaguar Financial Corporation ("Jaguar") related to the transaction under which HudBay Minerals Inc. ("HudBay") proposes to acquire all of the outstanding common shares of Lundin Mining Corporation ("Lundin").

[2] The issue of this decision is a matter of some urgency given that the transaction at issue in this matter will be voted on by Lundin shareholders on January 26, 2009 and, if approved, the Transaction will be completed on January 28, 2009. Accordingly, we are issuing this decision now on an expedited basis with full reasons to follow. We will set out briefly in this document the approach we have taken to this matter and the issues we have considered. This is an important matter for participants in our capital markets.

[3] This document does not constitute the Commission's reasons for our decision in this matter. Full reasons will follow in due course for purposes of subsection 9(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act").

A. The Application

[4] This matter arises out of an application, the Fresh as Amended Request for Hearing and Review, dated January 6, 2009 (the "Application") made to the Commission by Jaguar pursuant to sections 8(3) and 21.7 of the Act.

[5] The Application is a request by Jaguar for the Commission to review a decision of the Toronto Stock Exchange (the "TSX") made on December 10, 2008. The decision of the TSX approved the listing of the additional common shares of HudBay to be issued in connection with the acquisition of the common shares of Lundin pursuant to the plan of arrangement between HudBay and Lundin (the "Transaction"). The TSX did not impose a condition requiring that the Transaction be approved by HudBay shareholders. The foregoing decision of the TSX is referred to as the "TSX Decision".

[6] Jaguar seeks an order of the Commission setting aside the TSX Decision and requiring, as a condition of the TSX's approval of the listing of the additional HudBay common shares, that HudBay obtain shareholder approval of the Transaction.

[7] Pursuant to sections 603 and 604 of the TSX Company Manual (the "TSX Manual"), the TSX has the discretion to impose conditions on a transaction, including requiring a vote of the shareholders of the listed issuer.

[8] On January 19 and 21, 2009, a hearing of the Commission was held with respect to the Application at which we considered the evidence submitted and the submissions made by Jaguar, HudBay, Lundin, the TSX and the Staff of the Commission ("Staff").

B. The Transaction

[9] On November 21, 2008, HudBay and Lundin announced the Transaction in a joint news release (the "Joint Release"). Pursuant to the Transaction, HudBay would acquire all of the outstanding common shares of Lundin on the basis of 0.3919 HudBay common shares for each Lundin common share. As a result, HudBay would issue an aggregate of 157,596,192 common shares to Lundin shareholders. As of November 14, 2008, there were 153,020,124 common shares of HudBay outstanding.

[10] The number of HudBay shares to be issued in connection with the Transaction will result in the existing shareholders of HudBay being diluted by just over 100%. Upon completion of the Transaction, existing shareholders of HudBay and Lundin will (as a group) each hold approximately 50% of the common shares of the merged entity.

[11] The imputed price that HudBay agreed to pay pursuant to the Transaction was $2.05 for each Lundin common share, which represents a 103% premium to Lundin's closing price of $1.01 on the day before the Transaction was publicly announced (November 20, 2008) and a 32% premium based on the 30-day volume weighted average trading prices on the TSX of the shares of Lundin and HudBay prior to November 21, 2008.

[12] Following the public announcement of the Transaction on November 21, 2008, HudBay's share price on the TSX dropped by approximately 40%, while the price of the Lundin common shares remained approximately the same.

[13] The Transaction will be put to a vote of Lundin shareholders at a special meeting of shareholders scheduled to be held on January 26, 2009.

[14] The Joint Release stated that the Transaction was expected to close prior to May 30, 2009. Subsequently, Lundin announced in a news release dated December 22, 2008, that the Transaction is scheduled to close on January 28, 2009.

[15] On December 11, 2008, HudBay subscribed for and acquired pursuant to a private placement, 96,997,492 Lundin common shares, representing approximately 19.9% of the outstanding common shares of Lundin after giving effect to the transaction. HudBay paid $1.40 for each Lundin common share, for aggregate gross proceeds to Lundin of approximately $135.8 million.

C. The Relief Sought by Jaguar

[16] Jaguar submits that the TSX Decision should be set aside and that HudBay shareholder approval should be required in connection with the Transaction because: (i) the public interest and, in particular, protection of the quality and integrity of the marketplace and investor confidence requires such a vote, (ii) the TSX erred in failing to require that a vote be held, (iii) the TSX overlooked material evidence, and (iv) there is new and compelling evidence before the Commission.

[17] Jaguar also submitted that the Transaction will have a material effect on the control of HudBay.

[18] Jaguar requests that the Commission issue:

1. an order pursuant to subsection 8(3) and section 21.7 of the Act setting aside the TSX Decision;

2. an order pursuant to subsection 8(3) of the Act requiring HudBay to call and hold a meeting of its shareholders to obtain their approval of the Transaction;

3. an order prohibiting HudBay from closing the Transaction without the approval by a simple majority of the votes cast by HudBay shareholders entitled to vote at a duly convened special meeting of its shareholders;

4. an order pursuant to subsection 8(4) of the Act staying the TSX Decision pending final disposition of this matter by the Commission and by any Court to which an appeal of a decision made by the Commission may be taken; and

5. such other relief as counsel may advise and the Commission may deem just.

D. Analysis and Decision

[19] This matter involves the interpretation of the TSX Company Manual (the "TSX Manual").

[20] Section 604 of the TSX Manual requires security holder approval of a transaction if, among other things, in the opinion of the TSX the transaction materially affects the control of the listed issuer.

[21] Section 603 of the TSX Manual gives the TSX discretion to impose conditions on a transaction, such as shareholder approval of the transaction.

[22] In this case, the TSX concluded under section 604 of the TSX Manual that the completion of the Transaction would not materially affect the control of HudBay, and the TSX did not exercise its discretion under section 603 to require HudBay shareholder approval of the Transaction.

[23] The Commission generally defers to the judgment of the TSX, particularly in the areas of the TSX's expertise. We recognize the important role that the TSX plays within our regulatory framework. The Commission's authority under subsection 8(3) and section 21.7 of the Act should not be used as a means to second-guess decisions made on a reasonable basis by the TSX. The Commission will not substitute its own view for that of the TSX simply because the Commission might have reached a different decision in the circumstances. Only in very rare circumstances will the Commission do so.

[24] In this case, the TSX concluded under section 604 of the TSX Manual that the completion of the Transaction would not materially affect the control of HudBay. Based on the materials before us, that conclusion is reasonable. We have also concluded that in making the TSX Decision the TSX understood that it had the discretion under section 603 of the TSX Manual to require HudBay shareholder approval as a condition of its approval of the listing of the additional common shares of HudBay.

[25] That is not, however, the end of the analysis. Section 603 of the TSX Manual requires the TSX in exercising its discretion under that section to consider the effect that the Transaction may have on the "quality of the marketplace".

[26] In our view, the "quality of the marketplace" is a broad concept of market integrity that requires a careful consideration of all the relevant factors in the particular circumstances. Among those factors (that are particularly relevant to this matter) are the issuer's corporate governance practices and the size of the transaction relative to the liquidity of the issuer. The factors the TSX must consider in exercising its discretion include, but are not limited to, the factors set out in section 603. In our view, the factors to be considered in this matter should include, in particular, the fair treatment of the shareholders of HudBay.

[27] Section 603 of the TSX Manual requires the TSX to exercise a discretion. Accordingly, as a matter of principle, there must be circumstances that can arise in which the TSX would, in exercising that discretion, impose a requirement for shareholder approval. Otherwise, section 603 of the TSX Manual would be meaningless.

[28] In considering the TSX Decision, we have taken that decision to include the minutes of the Listing Committee meeting held on December 10, 2008 which conclude that "in this circumstance the rules would not require the transaction to be approved by HudBay shareholders".

[29] The decision of the TSX under section 603 provides no guidance as to the factors or circumstances the TSX considered in reviewing and assessing the effect that the Transaction may have on the quality of the marketplace or why the TSX came to the decision it did. We do not need extensive reasons or analysis for the TSX Decision. However, in the circumstances we have no basis upon which to determine whether the TSX's conclusion not to require HudBay shareholder approval was within a range of reasonableness and whether it is appropriate for us to defer to the TSX's judgment. The TSX did not provide any affidavit evidence to assist us in establishing the basis for its decision.

[30] Accordingly, in the circumstances, we have concluded that we cannot defer to the decision of the TSX under section 603. We must determine on the Application whether the completion of the Transaction without HudBay shareholder approval would adversely affect the quality of the marketplace or be contrary to the public interest. In doing so, we have an obligation to consider the provisions of the TSX Manual and any other relevant factors.

[31] Pursuant to subsections 21.7(2) and 8(3) of the Act, the Commission exercises original jurisdiction. We are entitled to consider not only the information and documents before the TSX in making its decision but also the additional information and evidence before us on the Application. It is important to recognize that we have before us in this matter more extensive documents, information and evidence with respect to HudBay, Lundin and the Transaction than the TSX had before it in making the TSX Decision.

[32] In considering this matter, we recognize, as submitted by HudBay and Lundin, the importance of "deal certainty" to the parties to a merger transaction (such as the Transaction). There is nothing wrong with the parties to a merger transaction attempting, to the extent possible, to obtain certainty that the transaction will be completed. We also recognize that this issue may be the subject of significant negotiation and can affect the willingness of a party to agree to a transaction. We note, however, that the exercise of discretion is an inherent part of section 603 of the TSX Manual and we cannot read that discretion out of the section simply because the parties to a merger transaction want certainty. Our assessment of the effect of the Transaction on the quality of the marketplace and the public interest must govern the exercise of our discretion under that section.

[33] We emphasize that we are interpreting and applying section 603, an existing provision contained in the TSX Manual. We are not rewriting or changing the provisions of the TSX Manual. The TSX is currently considering, as part of a policy review, whether there should be a specified maximum dilution above which shareholder approval would automatically be required. The fact that policy review is underway should not affect our interpretation of section 603, other than to cause us to recognize that a specific level of dilution is not determinative in applying section 603.

[34] We note that the central issue before us (whether the TSX should have required HudBay shareholder approval under section 603 of the TSX Manual) is a matter of first instance for the Commission in terms of the policy considerations that should be applied.

[35] HudBay and Lundin are highly sophisticated parties who must be taken to have known the regulatory context in which the Transaction is taking place. In fact, section 6.2(f) of the arrangement agreement entered into by HudBay and Lundin contemplates the possibility that HudBay shareholder approval of the Transaction could be required by regulatory authorities.

[36] The interpretation and application of the provisions of the TSX Manual are not just matters affecting the relevant issuer and the TSX. Those provisions form part of the fabric of securities regulation and involve broader market integrity, investor protection and public interest considerations.

[37] It is not the role of the TSX or the Commission to assess the relative business or financial merits of the Transaction. Clearly, there are shareholders of HudBay who are adamantly opposed to the Transaction and who have raised troubling concerns. At the same time, HudBay and its board of directors have concluded that the Transaction is in the best interests of HudBay. It was not the role of the TSX in its original review, or the role of the Commission now, to assess the business merits of the Transaction or to resolve these conflicting positions. In the matter before us, these are not issues for determination by the Commission and, in any event, they cannot be resolved in an expedited administrative hearing based on limited affidavit evidence.

[38] Our decision in this matter should not be taken to suggest that the TSX has any obligation to conduct an investigation or carry out due diligence when it is considering the exercise of its discretion under section 603 of the TSX Manual. The TSX was entitled in this matter to exercise its discretion under that section based on the documents, information and representations that were before it. The process followed by the TSX in responding to HudBay's listing application and the complaints from Jaguar and other shareholders of HudBay was appropriate.

[39] In our view, the principal considerations in the exercise of our discretion under section 603 of the TSX Manual are discussed below. There are additional related issues and concerns that we will fully discuss in our reasons for decision, to be issued in due course.

(i) The Impact of the Transaction on Shareholders of HudBay

[40] The Transaction has clearly had an enormous impact on the rights and economic interests of the shareholders of HudBay. There is clear evidence before us that the Transaction was viewed by insiders of HudBay as transformational in business terms. While it is not our role to assess the business merits of the Transaction, we must not be blind to the obvious impact of the Transaction on HudBay and its shareholders. It is common ground that the share price of HudBay fell by approximately 40% immediately following the public announcement of the Transaction. That far exceeds the market reaction one would expect to the announcement of a merger transaction such as the Transaction.

(ii) Dilution

[41] The Transaction will result in the issue of additional HudBay common shares representing just over 100% of the number of HudBay shares currently outstanding. That means that the former shareholders of Lundin will own approximately 50% of the shares of the merged entity following completion of the Transaction. That level of dilution is extreme. It is at the very outer end of the range of dilutions in prior transactions before the TSX (where the TSX has not required shareholder approval). While the level of dilution is not determinative, it is an extremely important consideration. The level of dilution inherent in the Transaction leads us to conclude that the Transaction is a "merger of equals", not an acquisition by HudBay of Lundin. One must fairly ask, if the Transaction is a merger of equals, why are the shareholders of one party (Lundin) entitled to a vote when the shareholders of the other party (HudBay) are not.

[42] In this case dilution is also relevant because it fundamentally changes the shareholder voting, distribution and residual rights of the current HudBay shareholders.

(iii) Board of Merged Entity

[43] It appears that, upon the completion of the Transaction, five of the nine directors of the merged entity will be former directors of Lundin. HudBay argues that two of those individuals are already directors of HudBay. We note, however, that those two directors were appointed relatively recently to the HudBay board, in April and August, 2008, respectively. In any event, it is clear that the board of HudBay will be substantially reconfigured as a result of the Transaction. The right of shareholders to vote on and determine the make-up of the board is a fundamental governance right. The shareholders of HudBay are being subjected to a radical change in the composition of the board without their consent or concurrence. We recognize that not every change in the composition of a board requires shareholder approval; such a fundamental change, in these circumstances, does. The proposed reconfiguration of the board further underscores that the Transaction constitutes, in effect, a merger of equals.

(iv) Timing of Shareholder Votes

[44] In the Joint Release, HudBay and Lundin initially indicated that a shareholder proxy circular for the special meeting of Lundin shareholders to vote on the Transaction would be mailed during the first quarter of 2009 and that the Transaction was expected to close prior to May 30, 2009. For whatever reason, the Lundin shareholders' meeting was accelerated by the mailing of its proxy circular on or about December 22, 2008 for a meeting to be held on January 26, 2009. That is uncommon haste, over the holiday season, that must be attributed at least in part to the controversy over the Transaction. The HudBay shareholders meeting requisitioned for the purpose of removing the HudBay board was scheduled by HudBay to be held on March 31, 2009. These decisions as to the scheduling of the two shareholder meetings were made at approximately the same time. On December 22, 2008, Lundin announced the date of its shareholders meeting. On December 30, 2008, HudBay announced the date of the requisitioned shareholders meeting. While HudBay and Lundin may have the legal right to make these decisions, they appear to us to be actions taken for the purpose of frustrating the legitimate exercise by HudBay shareholders of their right to require a shareholders meeting to consider the replacement of the HudBay board. If the Transaction is completed before the requisitioned shareholders meeting, the purpose of the HudBay shareholders meeting will be frustrated. That is fundamentally unfair to the shareholders of HudBay.

[45] It appears that the TSX knew, when it made its decision, that a shareholder of HudBay had filed a requisition for a meeting of HudBay shareholders to remove the board. The TSX may well have concluded that there was sufficient time before the completion of the Transaction in order to permit the holding of the requisitioned HudBay shareholders meeting. We do not know whether that was the case. We do know that the change to the date of the Lundin shareholders meeting occurred after the TSX Decision, as did the fixing of the date of the requisitioned HudBay shareholders meeting.

[46] These considerations raise serious concerns as to the appropriateness of HudBay's governance practices and the fair treatment of HudBay shareholders.

E. Conclusion

[47] The economic consequences of the Transaction on the shareholders of HudBay are extreme. The considerations discussed above raise serious concerns as to the appropriateness of HudBay's governance practices and the fair treatment of HudBay shareholders. In this case, fair treatment of shareholders is fundamentally more important than any consideration as to "deal certainty" in assessing the impact of the Transaction on the quality of the market place. We are satisfied that the public interest in ensuring the fair treatment of HudBay shareholders far outweighs any possible prejudice to HudBay or Lundin of requiring HudBay shareholder approval of the Transaction.

[48] We have concluded, based on the cumulative effect of the foregoing considerations, that the quality of the marketplace (within the meaning of section 603 of the TSX Manual) would be significantly undermined by permitting the Transaction to proceed without the approval of the shareholders of HudBay. Fair treatment of shareholders is a key consideration going to the integrity and quality of our capital markets. We have also concluded that permitting the Transaction to proceed without the approval of the shareholders of HudBay would be contrary to the public interest. We have given effect to this decision through the issue of our Order dated January 23, 2008.

F. Additional Comment: HudBay Voting of Lundin Common Shares

[49] As an additional comment, we note that HudBay has agreed to vote the 19.9% of the common shares of Lundin acquired by it pursuant to the private placement, in favour of the Transaction. In our view, HudBay has a different, and potentially conflicting, interest in the outcome of that vote, relative to the other Lundin shareholders. In our view, having acquired those shares as part of a private placement connected to the Transaction, HudBay should not, as a matter of principle, be permitted to vote them in favour of the Transaction.

[50] We recognize in expressing this view that it is probably a foregone conclusion that the Lundin shareholders will approve the Transaction regardless of whether HudBay votes those shares. This issue was not raised in the Application and, accordingly, was not addressed by any of the parties in their submissions. We are not making any order or determination based on this matter; we are simply expressing our view.

January 23, 2009.

3.1.2 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. MELYK,
BRIAN H. CROMBIE, JOHN R. MISZUK AND
KENNETH G. HOWLING

HEARING HELD PURSUANT TO SECTIONS 127 and 127.1 OF THE ACT

SETTLEMENT HEARING RE: BIOVAIL CORPORATION

HEARING:	Friday, January 9, 2009		
PANEL:	Suresh Thakrar	–	Commissioner and Chair of the Panel
	Paul K. Bates	–	Commissioner
	Margot C. Howard	–	Commissioner
APPEARANCES:	Johanna Superina Alexandra Clark Caitlin Sainsbury	–	for Staff of the Ontario Securities Commission
	Larry Lowenstein Alex Cobb	–	for Biovail Corporation

ORAL RULING AND REASONS

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

Chair:

[1] This was a hearing under sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, (the "Act") for the Ontario Securities Commission (the "Commission") to consider whether it is in the public interest to approve a proposed Settlement Agreement between Staff of the Commission ("Staff") and the respondent Biovail Corporation ("Biovail"). Biovail is a reporting issuer in the province of Ontario and is Canada's largest publicly traded pharmaceutical company. The common shares of Biovail are listed and posted for trading on the Toronto Stock Exchange and the New York Stock Exchange.

[2] We, as a panel, have decided to approve the Settlement Agreement as being in the public interest. These are our oral reasons in this matter which will be published in the Bulletin.

[3] The facts and circumstances agreed to by Staff and Biovail are set out in the Settlement Agreement. These facts are not findings of fact by this Panel, rather, they are facts agreed to by Staff and Biovail for purposes of this settlement. In approving the Settlement Agreement, we relied solely on the facts set out in that agreement and those facts represented to us at today's hearing (see: *Re Rankin* (2008), 31 O.S.C.B. 3303 at para. 5).

[4] The conduct at issue involves inaccurate and false public disclosure that had a material impact on Biovail's financial statements for the relevant periods.

[5] As a reporting issuer in Ontario, Biovail has continuous disclosure obligations pursuant to Part XVIII of 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 Canadian Generally Accepted Accounting Principles ("Canadian GAAP"). 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.

[6] Specifically, this settlement hearing is concerned with conduct relating 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 the conduct concerning Biovail's disclosure during that time and the provision of misleading information to Staff.

[7] As set out in the Settlement Agreement at paragraph 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.

[8] The conduct of Biovail in the Settlement Agreement falls into five general categories, the following is a brief description of these categories.

[9] The first category relates to Biovail's failure to disclose the establishment of and arrangements with Pharmaceutical Technologies Corporation ("PTC"), a research and development vehicle, and this failure was in public disclosure documents filed with the Commission, including Annual Information Forms and an annual and interim Management Discussion & Analysis, Shelf Prospectus and two Prospectus Supplements.

[10] To summarize, as discussed in paragraphs 15 to 27 of the Settlement Agreement, the transfer of the development of some 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 and/or results of operations and was therefore a material fact.

[11] Biovail failed to disclose in its public disclosure during the relevant period 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.

[12] The second category of conduct relates to the Biovail's improper recognition in its interim financial statements for Q2 of 2003 of revenue relating to a sale of a drug called Wellbutrin XL (see paragraphs 30 to 53 of the Settlement Agreement).

[13] Biovail did not meet its required reporting obligations. For example, 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 tablets to GlaxoSmithKline that was purportedly carried out on a "bill and hold" basis. Inclusion of this amount in the revenue for the quarter increased Biovail's operating income by approximately U.S. $4.4 million.

[14] 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.

[15] Also, when Biovail was questioned by its auditors about the sale of the Wellbutrin tablets, Biovail did not inform its auditors at the time that the sale was conducted on a "bill and hold" basis. However, such information should have been disclosed because "bill and hold" transactions must meet very specific accounting requirements.

[16] Canadian GAAP provides that in most cases, revenue should not be recognized until delivery has occurred. Delivery is generally 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.

[17] Accordingly, Biovail should not have recognized revenue in its Q2 2003 Financial Statements from the sale of Wellbutrin XL pills pursuant to the purported "bill and hold" arrangement. Further, in its Q2 2003 Press Release and Q2 2003 Analyst Call, Biovail disseminated the financial results, which incorporated this improperly recognized revenue. Both of these activities on the part of Biovail's conduct were a violation of securities law and were contrary to the public interest.

[18] The third category of conduct relates to Biovail's failure to correct and disclose, on a timely basis, a material error in its 2003 financial statement (see paragraphs 54 to 60 of the Settlement Agreement). Biovail failed to account properly for an obligation denominated in Canadian dollars in its Q1, Q2 and Q3 2003 Financial Statements.

[19] Canadian GAAP requires that any outstanding balance of a foreign currency denominated obligation that is a monetary item be revalued using the current exchange rates at each balance sheet date. However, Biovail used the December 31, 2002 exchange rate for its 2003 Q1, Q2 and Q3 interim financial statements, and therefore the statements for these three quarters did not accurately reflect any unrealized exchange losses or gains and the outstanding balance of its obligations. This resulted in a material effect on the reported income. Biovail's net income was overstated by U.S. $5.4 million for Q1 2003, $3.9 million for Q2 2003, and it was understated by $3.1 million for Q3 2003.

[20] In early July 2003, the error in the exchange rates was raised with Biovail by its subsidiary BLI. Biovail represents that no immediate steps were taken to analyze the issue and confirm whether the appropriate accounting treatment was being used. Biovail's conduct in this regard was contrary to Ontario securities law and the public interest.

[21] The fourth category of conduct relates to Biovail's dissemination of incorrect statements in four press releases issued in October 2003 and March 2004, as well as in an analyst conference call held on October 3, 2003, and also in a series of investor meetings held in October 2003. Biovail made statements that, in a material respect, inaccurately disclosed the implications, for Biovail, of a truck accident that occurred on October 1, 2003 (see paragraphs 61 to 82 of the Settlement Agreement).

[22] These press releases concerned Biovail's disclosure that its preliminary financial results for its third quarter of 2003 would be below previously issued guidance.

[23] 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, as mentioned earlier, Biovail disseminated information in its statement that the revenue associated with the Wellbutrin XL 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 various investor meetings.

[24] Regardless of the truck accident, Biovail, under Canadian GAAP, would not have been able to recognize the associated revenue until its fourth quarter. Further, Biovail's statement that the value of the Wellbutrin XL 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 that the "actual revenue loss" from the shipment on the truck was U.S. $5 million.

[25] 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 original October 3, 2003 Press Release and Biovail failed to correct the incorrect information previously provided to the investing public.

[26] 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.

[27] Biovail should have clearly disclosed, at the earliest opportunity, that the statements suggesting the truck accident was one of the reasons for the Q3 earnings missing the guidance and that the revenue associated with the product in the truck was $10 to $20 million, were incorrect. By failing to do so, Biovail violated Ontario securities law and engaged in conduct contrary to the public interest.

[28] The final category of conduct relates to Biovail's provision of materially inaccurate information to Staff during a continuous disclosure review conducted in 2003 and 2004 with respect to several issues, including the formation of 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.

[30] These five categories of conduct just discussed form the crux of the facts agreed to between Staff and Biovail and form the basis of Biovail's Settlement Agreement with Staff.

[31] By entering into the Settlement Agreement, Biovail has recognized that its conduct was contrary to the public interest, and we find that it is appropriate to impose sanctions including a reprimand, a substantial administrative penalty, a substantial payment of costs and the retention of a consultant by Biovail to report on Biovail's training of its personnel concerning compliance with the financial and other reporting requirements of Ontario securities law.

[32] The Commission's mandate in upholding the purposes of the Act, as set of in section 1.1 of the Act, is:

(a) to provide protection to investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in the capital markets.

[33] In pursuing the purposes of the Act, section 2.1 provides that the Commission shall have regard to certain fundamental principles. Relevant to this case, paragraph 2 states that the primary means for achieving the purposes of the Act are: (i) requirements for timely, accurate and efficient disclosure of information, (ii) restrictions on fraudulent and unfair market practices

and procedures, and (iii) requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[34] These requirements articulated in section 2.1 dealing with the timely, accurate and efficient disclosure of information form the cornerstone principle of securities regulation (*Re Phillip Services Corp.* (2006), 29 O.S.C.B. 3971). Sections 77 and 78 of the Act reflect this. The Act's focus on public disclosure of information is meaningless without a requirement that such disclosure be accurate and complete and accessible to investors. Pursuant to these important disclosure requirements under the Act, Biovail was required to disclose, among other things, any event occurring during the reporting period that was reasonably expected to have material effect on Biovail's business, financial condition or results of its operations.

[35] It is clear from the facts in the Settlement Agreement that Biovail's filings during the material period were problematic and contained falsehoods. Biovail acknowledged in the Settlement Agreement that it failed to disclose in its public disclosures the establishment of and nature of its arrangements with PTC and disseminated incorrect statements in certain press releases in October 2003 and March 2004, in an analyst conference call held on October 3, 2003 and investor meetings held in October 2003 relating to a truck accident.

[36] Biovail also admits in the Settlement Agreement that it provided certain misleading information to Staff during a continuous disclosure review conducted in 2003 and 2004.

[37] By entering into the Settlement Agreement, Biovail has recognized the seriousness of this misconduct relating to disclosure practices. It is a recognition that this is a serious violation of securities law, and it undermines the primary goals of the Commission to achieve investor protection and fostering of fair and efficient capital markets. Disclosing false information into the marketplace sends the wrong signal to investors and misleads the market as a whole and this endangers the efficiency of the capital markets and damages investor confidence.

[38] Before stating our order, we would first like to briefly refer to the law as it applies to the consideration of settlement agreements before the Commission.

[39] With respect to sanctions, we are guided by the sanctioning factors listed in *Re M.C.J.C. Holding and Michael Cowpland* (2002), 25 O.S.C.B. 1133 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743, which were referred to us by Staff in their submissions. In doing this, the Commission takes into account circumstances that are appropriate to the particular respondents. This requires us to be satisfied that the proposed sanctions are proportionately appropriate with respect to the circumstances facing the particular respondent. (*Re M.C.J.C. Holdings and Michael Cowpland* (2002), O.S.C.B. 1133 at 1134.)

[40] With respect to reviewing the Settlement Agreement, as established in *Re Sohan Singh Koonar et al.* (2002), 25 O.S.C.B. 2691, the role of the Commission Panel in reviewing a settlement agreement is not to substitute its own sanctions for what is proposed in the settlement agreement. The Commission should ensure that the agreed sanctions in the settlement agreement are within acceptable parameters. Specifically, the Commission's role is to decide whether to approve the Settlement Agreement, as a whole, on the terms presented to us (see: *Re Melnyk* (2007), 30 O.S.C.B. 5232 at para. 15).

[41] In addition, consideration should be given to the agreement reached between adversarial parties, as a balancing of factors and interests, which would have taken place between Staff and Biovail in reaching this Settlement Agreement.

[42] This is what we as a Panel have done in approving this Settlement Agreement. Considering the respondent's position as stated in the Settlement Agreement, we are of the view that the sanctions set out in the Settlement Agreement are within the acceptable parameters.

[43] We also took into account the following mitigating factors:

1. the avoidance of additional costs and expenses associated with proceeding with a contested hearing in respect of Biovail;

2. Biovail's agreement to retain a consultant to report on Biovail's training of its personnel concerning compliance with the financial and other reporting requirements of Ontario securities law; and

3. Biovail's cooperation with respect to the ongoing proceeding.

[44] By entering into the Settlement Agreement, Biovail has recognized and concedes that errors were made that its conduct was contrary to the public interest.

[45] In moving forward, Biovail has recognized it must deal fairly with the past. We also take comfort in the submissions this morning that Biovail has new executive and senior management and specifically hired appropriately qualified senior management staff. We also were informed that Biovail has substantially strengthened and renewed its corporate governance

oversight. In this regard in the past year, it almost totally reviewed and renewed its board and audit committee memberships. The company has affirmed it has and will continue to develop and maintain an appropriate and robust reporting and compliance infrastructure.

[46] We therefore find it appropriate to order 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"; and

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.

[47] In conclusion, we find that together, all the sanctions imposed in this matter provide adequate specific and general deterrence, which the Supreme Court has established is an important regulatory objective for securities commissions (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672).

[48] Biovail is a prominent and widely-held reporting issuer and is Canada's largest publicly traded pharmaceutical company, and in our view, the administrative penalty, combined with the scope of the remediation undertaking engaged in at Biovail has an impact on Biovail, both reputational and financial, and sends a message of deterrence to both Biovail and the marketplace.

[49] The public reprimand provides strong censure of Biovail's past conduct.

[50] In our view, the imposition of an administrative penalty in the amount of CAN$5,000,000.00 is appropriate. We note that the administrative penalty is a relatively new power of the Commission that came into force in 2003, and we do not have many precedents. In this matter of Biovail there are multiple breaches of the Act, including misrepresentations made to Staff. The imposition of an administrative penalty of this magnitude sends a message that:

> [t]he purpose of an administrative penalty is to deter the particular respondents from engaging in the same or similar conduct in the future and [sends] a clear deterrent message to other market participants that the conduct in question will not be tolerated in Ontario capital markets. (*Re Limelight Entertainment Inc.* (2008), 31 OSCB 12030 at para. 67)

[51] The substantial amount of CAN$1,500,000.00 ordered in costs will also enable the Commission to recover a substantial portion of its costs conducting the investigation and the hearing in this matter, and as a result ensures that the costs will not be borne by other participants in the marketplace.

[52] Further, the sanctions require Biovail to hire a consultant to assist with the company's continued remediation efforts. Therefore, it takes into account Biovail's commitment to identify and remedy its previous wrongdoings. This will also ensure that Biovail will have in place the appropriate policies and procedures to meet its continuing disclosure obligations and best practices.

[53] Therefore, we approve the Settlement Agreement as being in the public interest.

Approved by the Chair of the Panel on January 26, 2009.

"Suresh Thakrar"

3.1.3 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
JOHN R. MISZUK

PART 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, Brian H. Crombie, John R. Miszuk ("Miszuk") and Kenneth G. Howling as described in the Notice of Hearing.

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding initiated in respect of Miszuk by the Notice of Hearing in accordance with the terms and conditions set out below. Miszuk 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".

PART III – ACKNOWLEDGEMENT

3. Miszuk admits the facts set out in Part IV of this Settlement Agreement solely for the purposes of this Settlement Agreement. The Settlement Agreement and the facts and admissions set out herein are without prejudice to Miszuk in any other proceeding including, without limitation, any civil, administrative, quasi-criminal or criminal actions or proceedings currently pending or which may be brought by any other person or agency. No other person or agency may raise or rely upon the terms of this Settlement Agreement or any agreement to the facts stated herein whether or not this Settlement Agreement is approved by the Commission. Without limiting the generality of the foregoing, Miszuk expressly denies that this Settlement Agreement is intended to be an admission of civil or criminal liability and expressly denies any such admission of civil or criminal liability.

PART IV – FACTS

Background

4. Biovail Corporation ("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.

5. Miszuk began working at Biovail in 1990 as a Controller, reporting to Biovail's Chief Financial Officer ("CFO"). Miszuk was the Vice-President, Controller and Assistant Secretary of Biovail until 2008. Miszuk held the positions of Vice-President and Controller from November of 1997, and the position of Assistant Secretary from June of 2000.

6. Each of the controllers of Biovail's eight operating entities reported to Miszuk as did the Manager of Biovail's Corporate Technical and Legal Accounting Group, who is a chartered accountant. As Controller, Miszuk was responsible for overseeing the preparation of consolidated financial statements for Biovail.

7. Miszuk does not hold any post secondary degrees, licenses or certification and is not a chartered accountant. Miszuk studied business and accounting on a part-time basis at college and also took some courses in a registered industrial accounting program but did not receive a degree.

8. At the time of the events described herein, Biovail was experiencing significant growth as a consequence of completing numerous significant business transactions. Miszuk spent considerable time dealing with these significant transactions as well as numerous business operating issues.

The Wellbutrin XL Bill and Hold Arrangement

9. 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").

10. 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 Biovail has represented was 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.

(a) The Wellbutrin XL Agreement

11. 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.

12. 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.

13. 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.

14. At the time of entering into the Agreement, WXL had not been approved by the FDA, and thus could not be sold to the public.

15. The FDA approved WXL on August 28, 2003. This included approving the form of packaging and labelling for WXL.

(b) GSK's Purchase Orders

16. 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.

17. During 2002, Biovail and GSK representatives met to discuss the pre-launch manufacture of WXL.

18. 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.

19. 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.

20. 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

21. 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 Bill-And-Hold Arrangement

22. The June Invoices identified by lot number the specific WXL tablets that it encompassed (the "Specified Tablets"). Miszuk states that he understood that, subsequent to June 30, 2003, Biovail 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.

23. 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, if not all, of those Specified Tablets with new WXL tablets (the "Pill Switch").

24. Biovail ultimately issued credit memos for 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.

25. 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.

26. "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.

27. Miszuk states that he did not participate in the discussions between GSK and Biovail regarding the pre-launch manufacture of WXL. He was made aware of the terms of the arrangement by members of Biovail's senior management and, at all times, relied on the information provided by senior management. Miszuk states that at all times he acted in good faith in considering the terms of the transaction and the recognition of revenue.

28. Miszuk acknowledges that he ought to have been more careful in considering the recognition of revenue for the sale of the Specified Tablets. Specifically, he ought to have made further inquiries or sought further guidance from a qualified accounting professional concerning this arrangement. His failure to do so constituted conduct contrary to the public interest.

The Foreign Exchange Error

29. 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").

30. 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").

31. 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").

32. 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.

33. In early July 2003, the issue of whether the remaining loan balance required an adjustment to the FX Rate being applied was raised with Biovail by BLI. Miszuk states that he directed that steps be 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.

34. 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.

35. Miszuk states that he at all times acted in good faith. However, Miszuk acknowledges that he ought to have been more careful in determining whether the unrealized foreign exchange losses and gains issue was analysed and correctly accounted for prior to the completion of Biovail's Q1, Q2 and Q3 quarterly financial statements. Specifically, when the issue was first identified in July 2003, he ought to have followed up to ensure that an analysis of the issue was prepared and considered. His failure to do so constituted conduct contrary to the public interest.

PART V – TERMS OF SETTLEMENT

36. Miszuk agrees to the terms of settlement listed below.

37. 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) Miszuk be reprimanded;

    (c) Miszuk be prohibited from becoming or acting as an officer or director of a reporting issuer for a period of three years from the date of approval of the Settlement Agreement; and

    (d) Miszuk be required to successfully complete the Financial Literacy Program of the Institute of Corporate Directors before becoming or acting as a financial officer of a reporting issuer;

    (e) Miszuk will cooperate with the Commission and Staff in this matter and will appear and testify at the hearing in this matter if requested by Staff ; and

    (f) Miszuk will pay the sum of $30,000.00 in respect of the costs of the investigation and hearing in this matter.

PART VI – STAFF COMMITMENT

38. If the Commission approves this Settlement Agreement, Staff will not commence any proceedings against Miszuk under Ontario securities law in relation to the facts alleged in the Notice of Hearing.

39. If the Commission approves this Settlement Agreement and Miszuk fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against Miszuk. 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.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

40. 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.

41. Staff and Miszuk 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.

42. If the Commission approves this Settlement Agreement, Miszuk agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

43. If the Commission approves this Settlement Agreement, Miszuk will not make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing provided, however, that Miszuk shall not be prohibited from making any statement or argument in the proceeding issued by the United States Securities and Exchange Commission involving similar issues to those raised in this proceeding.

44. Whether or not the Commission approves this Settlement Agreement, Miszuk 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.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

45. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

    i. this Settlement Agreement and all discussions and negotiations between Staff and Miszuk before the settlement hearing takes place will be without prejudice to Staff and Miszuk; and

    ii. Staff and Miszuk will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

46. 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.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

47. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

48. A fax copy of any signature will be treated as an original signature.

Dated this day of January, 2009

"John Miszuk"
John Miszuk

"Wendy Berman"
Witness

Dated this 26th day of January, 2009

"Peggy Dowdall-Logie"
Peggy Dowdall-Logie
Executive Director
Ontario Securities Commission

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, Eugene N. Melnyk , Brian H. Crombie, John R. Miszuk ("Miszuk") and Kenneth G. Howling;

AND WHEREAS Miszuk has entered into a settlement agreement with Staff of the Commission dated January , 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 Miszuk 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. Miszuk is reprimanded.

3. Miszuk is prohibited from becoming or acting as a director or officer of a reporting issuer for a period of three years from the date of this Order.

4. Miszuk shall successfully complete the Financial Literacy Program of the Institute of Corporate Directors before becoming or acting as a financial officer of a reporting issuer.

5. Miszuk shall cooperate with the Commission and Staff in this matter and shall appear and give truthful and accurate testimony at the hearing in this matter if requested by Staff ; and

6. Miszuk shall pay $30,000.00 in respect of a portion of the costs of the investigation and hearing in relation to this matter.

Dated at Toronto this day of January, 2009.

_____

_____ _____

3.1.4 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 OF
KENNETH G. HOWLING

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 sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), it is in the public interest for the Commission to make certain orders against Biovail Corporation ("Biovail"), Eugene N. Melnyk ("Melnyk"), Brian H. Crombie ("Crombie"), John R. Miszuk and Kenneth G. Howling ("Howling").

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding initiated in respect of Howling by the Notice of Hearing in accordance with the terms and conditions set out below. Howling agrees to the settlement on the basis of the facts set out in Part IV and consents to the making of an Order in the form attached as Schedule "A".

III. ACKNOWLEDGEMENT

3. Howling 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 as set out herein are without prejudice to Howling in any other proceeding including, without limitation, any civil, administrative, quasi-criminal or criminal actions or proceedings currently pending or that may be brought by any person or agency, whether or not this Settlement Agreement is approved by the Commission. No other person or agency may raise or rely upon the terms of this Settlement Agreement or any agreement or the facts stated herein whether or not this Settlement Agreement is approved by the Commission. Without limiting the generality of the foregoing, Howling expressly denies that this Settlement Agreement is intended to be an admission of civil or criminal liability and expressly denies any such admission of civil or criminal liability.

IV. FACTS

Background

4. Biovail Corporation ("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. Biovail is a fully integrated pharmaceutical company.

5. During the period April 2003 to October 2004, Howling was Biovail's head of Investor Relations with the title "Vice-President, Finance". Howling is no longer employed by Biovail.

6. As head of Investor Relations, Howling, assisted by several Biovail employees, managed Biovail's corporate communications, including liaising with senior management of Biovail regarding the company's press releases and other public disclosures. Typically, Howling and his staff would prepare financial press releases for review and approval by senior management, including Melnyk, Biovail's Chief Executive Officer, and Crombie, its Chief Financial Officer. The information included in press releases was obtained from those persons in the company with relevant knowledge.

7. Howling had no authority to issue press releases on Biovail's behalf. Howling had no financial reporting or accounting responsibilities nor any operational responsibilities.

Biovail's Statements in Press Releases – the Truck Accident

8. Biovail has admitted in a Settlement Agreement entered into with Staff dated January 7, 2009 (the "Biovail Settlement Agreement") that 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.

9. The press releases concerned Biovail's disclosure that its preliminary financial results for its third quarter of 2003 would be below previously issued guidance. Full particulars are contained in the Biovail Settlement Agreement. A description of the statements is outlined below.

(a) Biovail's Revenue and Earnings Expectations

10. 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.

11. 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

12. 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".

13. 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.

14. The contractual delivery term between Biovail and GSK was "F.O.B., GSK's facilities in the U.S.A. (freight collect)."

15. The truck carrying the WXL shipment was scheduled to reach GSK's facility after September 30, 2003.

16. On October 1, 2003, the truck carrying the WXL shipment was involved in an accident.

17. 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". 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

18. 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

19. 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

20. 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".

(f) October 3, 2003 Analyst Call

21. Biovail held a conference call with analysts and a webcast 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.

22. 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.

(g) October 2003 Investor Meetings

23. 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.

24. 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".

25. In its Settlement Agreement with Staff dated January 7, 2009, Biovail admitted that it had disseminated incorrect statements in the Press Releases of October 3, 8 and 30, 2003 and March 3, 2004, in the Analyst Call held on October 3, 2003, and in Investor Meetings held in October 2003 relating to the truck accident. Biovail further admitted that it 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 2003.

Howling's Role in Relation to Press Releases and Statements in Issue

26. Howling's role as head of Investor Relations at Biovail was to receive information from both internal and external sources, participate in the drafting of press releases and company communications, inform the senior executives of issues brought to his attention that required clarification, finalize the press releases and other company communications in consultation with the senior executives, obtain authorization for their release, and liaise with investors and analysts.

27. Howling is a former Certified Public Accountant and was the former Chief Financial Officer of Biovail. As such, and in his role as the head of Investor Relations, he had an understanding of the informational needs of the investing public. He should have taken greater care to ensure that correct information was disseminated to the investing public. His failure to take greater care constitutes conduct contrary to the public interest.

Mitigating Factors

28. Howling states that he relied, at all times, on information he received from his superiors and others when drafting disclosures and responding to investor inquiries regarding the truck accident's impact on Biovail's earnings. Howling communicated to the senior executives of Biovail information he received and issues brought to his attention regarding the terms of the GSK contract and questions regarding the value of the goods on the truck.

29. Further, Howling states that he relied on the fact that senior management directly reviewed and authorized the subject disclosures.

30. Howling states that he acted at all times in good faith.

V. TERMS OF SETTLEMENT

31. Howling agrees to the terms of settlement listed below. 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) Howling be reprimanded;

(c) Howling be prohibited from becoming or acting as an officer or director of a reporting issuer for a period of two years from the date of approval of the Settlement Agreement;

(d) Howling will cooperate with the Commission and Staff in this matter and will appear and testify at the hearing in this matter if requested by Staff; and

(e) Howling will pay the sum of $20,000.00 in respect of the costs of the investigation and hearing in this matter.

VI. STAFF COMMITMENT

32. If the Commission approves this Settlement Agreement, Staff will not commence any proceedings against Howling under Ontario securities law in relation to the facts alleged in the Notice of Hearing.

33. If the Commission approves this Settlement Agreement and Howling fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against Howling. 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

34. 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.

35. Staff and Howling 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.

36. If the Commission approves this Settlement Agreement, Howling agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

37. If the Commission approves this Settlement Agreement, Howling will not make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing provided however, that Howling shall not be prohibited from making any statement or argument in the proceeding issued by the United States Securities and Exchange Commission involving similar issues to those raised in this proceeding.

38. Whether or not the Commission approves this Settlement Agreement, Howling 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.

VII. DISCLOSURE OF SETTLEMENT AGREEMENT

39. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

i. this Settlement Agreement and all discussions and negotiations between Staff and Howling before the settlement hearing takes place will be without prejudice to Staff and Howling; and

ii. Staff and Howling will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

40. 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

41. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

42. A fax copy of any signature will be treated as an original signature.

Dated this 26th day of January, 2009

"Joel Wiesenfeld"
Witness

"Kenneth G. Howling"
Kenneth G. Howling

Dated this 26th day of January, 2009

"Peggy Dowdall-Logie"
Staff of the Ontario Securities Commission
Per: Peggy Dowdall-Logie
Executive Director

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, Eugene N. Melnyk , Brian H. Crombie, John R. Miszuk and Kenneth G. Howling ("Howling");

AND WHEREAS Howling has entered into a settlement agreement with Staff of the Commission dated January 26, 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 Howling 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. Howling is reprimanded.

3. Howling is prohibited from becoming or acting as a director or officer of a reporting issuer for a period of two years from the date of this Order.

4. Howling shall cooperate with the Commission and Staff in this matter and shall appear and testify at the hearing in this matter if requested by Staff ; and

5. Howling shall pay $20,000.00 in respect of a portion of the costs of the investigation and hearing in relation to this matter.

Dated at Toronto this day of January, 2009.

_____

_____ _____

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
Name Inc.	27 Jan 09	06 Feb 09		
CIC Mining Resources Ltd.	12 Jan 09	23 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
Brainhunter Inc.	28 Jan 09	10 Feb 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		
Brainhunter Inc.	28 Jan 09	10 Feb 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
01/01/2008 to 11/01/2008	3	Adaly Opportunity Fund - Units	1,868,587.00	NA
12/31/2008	2	Apella Resources Inc. - Common Share Purchase Warrant	40,000.00	400,000.00
12/31/2008	9	Black Pearl Minerals Consolidated Inc. - Common Share Purchase Warrant	469,000.00	12,275,000.00
12/30/2008	9	Black Pearl Minerals Consolidated Inc. - Common Share Purchase Warrant	469,000.00	5,300,000.00
01/04/2009	18	Blue Parrot Energy Inc. - Units	380,000.00	3,800,000.00
01/12/2009	5	BridgePoint Financial Services Inc. - Common Shares	450,000.00	450,000.00
12/31/2008	5	Cadillac Ventures Inc. - Flow-Through Shares	155,000.00	620,000.00
01/01/2008 to 12/31/2008	1	Canadian Dollar Liquidity Fund - Units	863,919,638.00	863,919,638.00
01/05/2009	4	Capital Direct I Income Trust - Trust Units	765,720.00	76,572.00
01/09/2009	1	CenterPoint Energy Houston Electric, LLC - Bond	2,380,000.00	1.00
12/22/2008	7	Clifton Star Resources Inc. - Common Shares	1,655,380.00	1,324,304.00
01/09/2009 to 01/18/2009	10	CMC Markets UK plc - Contracts for Differences	32,000.00	16.00
12/03/2008	10	Curvature Fund LP - Limited Partnership Units	862,000.00	8,620.00
12/30/2008	5	Dumont Nickel Inc. - Common Shares	78,500.00	1,180,000.00
12/30/2008	3	Dumont Nickel Inc. - Flow-Through Shares	59,000.00	12,570,000.00
12/30/2008	8	Dumont Nickel Inc. - Units	137,500.00	1,180,000.00
12/31/2008	10	Endeavour Silver Corp. - Special Warrants	3,005,002.00	2,311,540.00
12/31/2008	3	ExxonMobil Canada Ltd. Master Trust - Units	42,427,359.18	3,222,219.32
01/07/2009 to 01/17/2009	22	Forum Uranium Corporation - Flow-Through Shares	574,000.00	11,480,000.00
12/23/2008 to 12/30/2008	8	Freewest Resources Canada Inc. - Common Share Purchase Warrant	2,300,000.00	17,250,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
01/02/2009 to 01/09/2009	13	General Motors Acceptance Corporation of Canada, Limited - Notes	4,090,983.08	4,090,983.08
12/29/2008 to 12/31/2008	8	General Motors Acceptance Corporation of Canada, Limited - Notes	3,862,858.56	3,862,858.56
12/17/2008	1	Golden Dawn Minerals Inc. - Common Shares	2,500.00	50,000.00
12/30/2008	111	Golden Share Mining Corporation - Common Shares	1,050,000.00	9,177,000.00
01/06/2009	1	Great Lakes Hydro Income fund - Trust Units	10,040,000.00	627,500.00
12/30/2008	3	GWR Resources Inc. - Flow-Through Units	500,000.00	2,941,175.00
12/19/2008	1	Halo Resources Ltd. - Flow-Through Shares	25,000.00	500,000.00
12/16/2007 to 12/15/2008	74	Heathbridge Checkmark Equity Pooled Fund - Units	7,425,835.20	938,014.92
12/31/2008	5	Houston Lake Mining Inc. - Flow-Through Shares	755,200.00	2,500,666.00
01/09/2008 to 10/02/2008	5	HSBC Short Term Investment Fund - Trust Units	75,969,990.00	7,580,781.37
12/31/2008 to 01/05/2009	22	IGW Real Estate Investment Trust - Trust Units	900,072.29	807,571.42
01/01/2009 to 01/05/2009	21	Ironwood III Limited Partnership - Limited Partnership Units	4,209,000.00	42.00
04/01/2008	1	Jemekk Long/Short Fund L.P. - Units	1,000,000.00	1,063.00
12/23/2008	12	JNR Resources Inc. - Common Shares	1,266,000.00	6,330,000.00
01/15/2009	1	Kirkland Lake Gold Inc. - Common Shares	62,500.00	15,586.00
12/31/2008	3	KWG Resources Inc. - Units	369,500.00	18,475,000.00
01/09/2009	9	Look Communications Inc. - Common Shares	135,258.99	540,599.00
01/15/2009	14	Mala Noche Resources Corp. - Common Shares	369,250.00	3,692,500.00
01/12/2009	2	Mantis Mineral Corp. - Common Shares	20,000.00	80,000.00
01/01/2008 to 12/31/2008	22	Mavrix Strategic Small Cap Fund - Units	329,309.81	69,815.81
12/31/2008	7	Medallion Resources Ltd. - Common Shares	357,882.00	2,385,885.00
11/28/2008	3	Menova Energy Inc. - Common Shares	45,000.00	9,999.00
12/31/2008	195	MineralFields 2008-IX Super Flow-Through Limited Partnership - Limited Partnership Units	6,562,000.00	65,620.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
12/31/2008	297	MineralFields 2008-V Super Flow-Through Limited Partnership - Limited Partnership Units	11,468,000.00	114,680.00
12/31/2008	320	MineralFields 2008-VI Super Flow-Through Limited Partnership - Limited Partnership Units	11,696,000.00	116,960.00
12/31/2008	25	MineralFields 2008-VII Super Flow-Through Limited Partnership - Limited Partnership Units	1,115,000.00	11,150.00
12/31/2008	13	MineralFields 2008-VIII Super Flow-Through Limited Partnership - Limited Partnership Units	935,000.00	9,350.00
12/23/2008 to 12/30/2008	19	Murgor Resources Inc. - Common Share Purchase Warrant	730,000.00	10,950,000.00
12/31/2008	3	Nanika Resources Inc. - Flow-Through Units	286,000.00	14,300,000.00
01/16/2009	22	Nelson Financial Group Ltd. - Notes	815,500.00	NA
01/09/2009	1	New Solutions Financial (II) Corporation - Debenture	25,000.00	1.00
01/05/2009 to 01/08/2009	15	Newport Canadian Equity Fund - Units	495,597.30	4,612.62
01/05/2009 to 01/13/2009	94	Newport Fixed Income Fund - Units	5,562,235.27	55,223.20
01/06/2009 to 01/08/2009	41	Newport Global Equity Fund - Units	25,000.00	437.04
12/31/2008	35	Newport Strategic Yield Fund - Units	2,411,385.65	219,183.00
01/05/2009 to 01/13/2009	50	Newport Yield Fund - Units	1,474,905.17	14,891.19
01/13/2009	1	Nordic American Tanker Shipping Limited - Common Shares	7,967,050.00	200,000.00
01/06/2009	17	Northern Continental Resources Inc. - Units	305,500.00	3,076,000.00
12/17/2008	6	Northern Precious Metals 2008 Limited Partnership - Units	523,750.00	523.75
12/31/2008	8	Opawica Explorations Inc. - Units	570,000.00	5,700,000.00
08/07/2008	2	Paramount Gold and Silver Corp. - Units	1,500,000.00	1,071,429.00
07/01/2008	1	Q-BLK ARS III - Institutional, Ltd. - Common Shares	1,012,900.00	1,000.00
04/09/2008	1	Red Mile Resources Fund No. 5 Limited Partnership - Limited Partnership Units	15,795,000.00	13,500.00
05/09/2008	5	Red Mile Resources Fund No. 5 Limited Partnership - Limited Partnership Units	1,732,770.00	1,481.00
12/30/2008 to 12/31/2008	10	Redux Duncan City Centre Limited Partnership - Limited Partnership Units	473,000.00	473,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
12/31/2008	6	Remington Resources Inc. - Units	118,000.00	1,180,000.00
12/23/2008 to 12/31/2008	9	Result Energy Inc. - Flow-Through Shares	2,573,869.00	12,869,345.00
12/31/2008	2	Rocmec Mining Inc. - Flow-Through Shares	20,000.00	200,000.00
12/31/2008	8	Rocmec Mining Inc. - Flow-Through Units	330,000.00	3,300,000.00
01/07/2009	1	Royal Nickel Corporation - Options	10.00	2,400.00
12/31/2008	19	Santoy Resources Ltd. - Units	1,100,000.00	10,160,000.00
01/01/2008 to 12/31/2008	9	SD Baker & Associates Inc - Limited Partnership Units	2,080,000.00	60,789.00
01/24/2008 to 07/23/2008	2	SEAMARK Pooled Balanced Fund - Units	644,229.79	44,021.00
08/21/2008 to 10/16/2008	1	SEAMARK Pooled Money Market Fund - Units	1,715,000.00	171,500.00
12/31/2008	2	Shear Minerals Ltd. - Units	500,000.00	7,142,857.00
12/31/2008	113	Signalta Resources Limited - Common Shares	63,675,000.00	NA
01/05/2009	12	Skyharbour Resources Ltd. - Units	96,500.00	1,930,000.00
12/31/2008	11	Slam Exploration Ltd. - Limited Partnership Units	487,250.03	13,921,429.00
12/31/2008	37	Solutions 21 Whitby Limited Partnership - Limited Partnership Units	2,000,000.00	2,000.00
12/19/2008	2	Spartan BioScience Inc. - Common Shares	100,000.00	142,858.00
12/31/2008	1	Sprott Foundation Unit Trust - Units	253,777.24	4,240.70
01/01/2009	4	Stacey Muirhead Limited Partnership - Limited Partnership Units	972,870.00	30,422.82
01/01/2009	1	Stacey Muirhead RSP Fund - Trust Units	2,400.00	265.45
01/01/2008 to 10/01/2008	122	Stellation Capital Fund Ltd. - Common Shares	19,402,012.00	19,704.00
01/01/2008 to 11/01/2008	14	Sterling Diversified Fund - Limited Partnership Units	2,089,800.00	2,089,800.00
01/01/2008 to 11/01/2008	19	Sterling Diversified Trust - Limited Partnership Units	1,302,600.00	1,302,600.00
01/01/2008 to 12/31/2008	21	Sterling Growth Fund - Limited Partnership Units	3,496,570.49	3,393,870.49
01/06/2008 to 12/01/2008	31	Sterling Growth Trust - Limited Partnership Units	1,268,410.25	1,268,410.25
12/30/2008	111	STG Markets Limited Partnership - Limited Partnership Units	1,110,000.00	111.00
01/14/2009	5	Stina Resources Ltd. - Common Shares	132,300.00	661,500.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
11/27/2008	22	Stone 2008-WCP Flow-Through Limited Partnership - Limited Partnership Units	995,000.00	39,800.00
12/31/2008	17	Stratabound Minerals Corp. - Units	401,950.00	2,679,733.00
12/31/2008	2	Strike Minerals Inc. - Common Shares	300,000.00	600,000.00
01/31/2008 to 03/31/2008	3	Successful Investor American Fund - Trust Units	378,724.80	14,252.44
01/31/2008 to 12/31/2008	11	Successful Investor Canadian Fund - Trust Units	1,338,348.65	78,757.51
03/31/2008 to 11/28/2008	11	Successful Investor Growth & Income Fund - Trust Units	1,362,950.88	30,493.83
01/31/2008 to 12/31/2008	12	Successful Investor Stock Picker Fund - Trust Units	1,635,068.31	46,530.70
01/01/2008 to 07/23/2008	2	TD Balanced Income Fund - Units	6,981,470.92	598,884.00
01/18/2008 to 07/23/2008	3	TD Canadian Equity Fund - Units	43,495,176.57	3,961,910.21
01/01/2008 to 07/23/2008	1	TD Canadian Money Market Fund - Units	5,754,458.36	575,445.84
11/14/2008 to 12/31/2008	1	TD Income Advantage Portfolio - Units	828,292.26	84,737.43
12/31/2008	323	Terra 2008 Mining & Energy Flow-Through Limited Partnership - Limited Partnership Units	12,197,000.00	121,970.00
12/31/2008	3	The McElvaine Investment Trust - Trust Units	17,637.38	1,990.13
01/01/2009	1	The Toronto United Church Council - Notes	50,000.00	50,000.00
12/30/2008	4	Trade Winds Ventures Inc. - Flow-Through Units	307,500.00	10,150,000.00
12/31/2008	5	Tres-or Resources Ltd. - Units	610,000.00	8,113,332.00
01/04/2009	2	Turkiye Cumhuriyeti - Note	11,031,300.00	1.00
12/31/2008	4	Tyhee Development Corp. - Common Shares	471,000.00	2,242,856.00
12/12/2008	5	Valhalla Executive Centre - Debentures	600,000.00	600,000.00
12/31/2008	1	Value Partners Investments Inc. - Common Shares	15,600.00	4,000.00
12/31/2008	21	Vertex Fund - Trust Units	4,371,957.34	191,748.88
12/31/2008	13	Vertex Managed Value Portfolio - Trust Units	4,181,592.02	372,162.92
12/29/2008	6	Waddington Resources Ltd. - Units	450,000.00	45.00
01/09/2009	1	WALLBRIDGE MINING COMPANY LIMITED - Common Shares	20,000.00	400,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
12/31/2008	4	WALLBRIDGE MINING COMPANY LIMITED - Units	71,800.00	897,500.00
12/30/2008	9	Walton AZ Picacho View Limited Partnership 3 - Limited Partnership Units	149,560.51	12,242.00
12/29/2008	13	Walton AZ Silver Reef 2 Investment Corporation - Common Shares	189,870.00	18,987.00
12/29/2008	12	Walton AZ Silver Reef Limited Partnership 2 - Limited Partnership Units	540,381.54	44,138.00
12/30/2008	7	Walton TX Cottonwood Limited Partnership - Limited Partnership Units	320,036.53	26,196.00
01/15/2009	12	Web World Holdings Ltd. - Common Shares	293,783.75	58,175.00
12/15/2008	25	WFR Finance Inc. - Bonds	678,300.00	6,783.00
01/05/2009	1	Yankee Hat Minerals Ltd. - Common Shares	66,666.00	66,666.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Canadian Pacific Railway Limited
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated January 27, 2009
NP 11-202 Receipt dated January 27, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1368863

Issuer Name:
Red Back Mining Inc.
Type and Date:
Preliminary Short Form Prospectus dated January 27, 2009
Received on January 27, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1368859

Issuer Name:
Allen-Vanguard Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 26, 2009
NP 11-202 Receipt dated January 26, 2009
Offering Price and Description:
$* - Offering of * Rights to Subscribe for up to * Subscription Receipts each Right entitles the Holder thereof to Acquire * Subscription Receipts at a Price of * per Subscription Receipt each whole Subscription Receipt representing the right to receive one Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1368424

Issuer Name:
ARC Energy Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated January 23, 2009
NP 11-202 Receipt dated January 23, 2009
Offering Price and Description:
$220,005,600.00 - 13,456,000 Trust Units Price: $16.35 per Trust Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
Firstenergy Capital Corp.
National Bank Financial Inc.
Canacord Capital Corporation
Peters & Co. Limited
Raymond Jamies Ltd.
Thomas Weisel Partners Canada Inc.
Tristone Capital Inc.
Promoter(s):
-
Project #1368109

Issuer Name:
Axiom All Equity Portfolio
Axiom Balanced Growth Portfolio
Axiom Balanced Income Portfolio
Axiom Canadian Growth Portfolio
Axiom Foreign Growth Portfolio
Axiom Global Growth Portfolio
Axiom Long-Term Growth Portfolio
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated January 26, 2009
NP 11-202 Receipt dated January 27, 2009
Offering Price and Description:
Class T4, Class T6, Class T8, Select-T4 Class, Select-T6 Class, Select-T8 Class, Elite-T4 Class, Elite-T6 Class and Elite-T8 Class Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
CIBC Asset Management Inc.
Project #1368423

Issuer Name:
Canada Dominion Resources 2009 Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 26, 2009
NP 11-202 Receipt dated January 26, 2009
Offering Price and Description:
$75,000,000.00 (maximum) - 3,000,000 Limited Partnership Units Price per Unit - $25.00
Minimum Subscription - $5,000 (200 Units)
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Promoter(s):
Canada Dominion Resources 2009 Corporation
Goodman & Company, Investment Counsel Ltd.
Project #1368368

Issuer Name:
CARS and PARS Programme
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated January 23, 2009
NP 11-202 Receipt dated January 23, 2009
Offering Price and Description:
Coupons And ResidualS (“CARS”™)
and
Par Adjusted Rate Securities™ (“PARS”™) Programme
(“CARS and PARS Programme”)

Strip Coupons, Strip Residuals and Strip Packages (including packages of Strip Coupons and PARS)
derived by
RBC Dominion Securities Inc., BMO Nesbitt Burns Inc., CIBC World Markets Inc., National Bank Financial Inc., Scotia Capital Inc. and TD Securities Inc.
from
up to Cdn $5,000,000,000 of
Debt Obligations of Various Canadian Corporations, Trusts and Partnerships
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
RBC Dominion Securites Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Project #1366429

Issuer Name:
Centamin Egypt Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 26, 2009
NP 11-202 Receipt dated January 26, 2009
Offering Price and Description:
$60,000,200.00 - 92,308,000 Offered Shares Price: $0.65 per Offered Shares
Underwriter(s) or Distributor(s):
Thomas Weisel Partners Canada Inc.
Cormark Securities Inc.
Promoter(s):
-
Project #1368272

Issuer Name:
CMP 2009 II Resource Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 26, 2009
NP 11-202 Receipt dated January 26, 2009
Offering Price and Description:
$100,000,000.00 (maximum) - 100,000 Limited Partnership Units Price per Unit - $1,000
Minimum Subscription - $5,000 (Five Units)
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
Promoter(s):
CMP 2009 II Corporation
Goodman & Company, Investment Counsel Ltd.
Project #1368316

Issuer Name:
Discovery 2009 Flow-Through Limited Partnership
Type and Date:
Preliminary Long Form Prospectus dated January 27, 2009
Receipted on January 27, 2009
Offering Price and Description:
$ * - * Units Price: $25.00 per Unit MINIMUM SUBSCRIPTION: $2,500 (One Hundred Units)
Underwriter(s) or Distributor(s):
Middlefield Capital Corporation
Promoter(s):
Middlefield Fund Management Limited
Middlefield Group Limited
Project #1368837

Issuer Name:
Dynamic Strategic Yield Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated January 23, 2009
NP 11-202 Receipt dated January 26, 2009
Offering Price and Description:
Series A, F, I and O Units
Underwriter(s) or Distributor(s):
Goodman & Company, Investment Counsel Ltd.
Promoter(s):
Goodman & Company, Investment Counsel Ltd.
Project #1368076

Issuer Name:
First Leaside Properties Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 16, 2009
NP 11-202 Receipt dated January 21, 2009
Offering Price and Description:
Minimum: $1,000,000.00 (1,000,000 Units); Maximum: $10,000,000.00 (10,000,000 Units)
Designated as Class A Units, Class B Units and Class C Units, each issuable in series Price: US$1.00 per Class A Unit and $1.00 per Class B and C Units
Minimum Subscription: 5,000 Units
Underwriter(s) or Distributor(s):
First Leaside Securities Inc.
Promoter(s):
FL Masater Sherman, Ltd.
Project #1366516

Issuer Name:
FL Master Sherman, Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Non-Offering Prospectus dated January 16, 2009
NP 11-202 Receipt dated January 21, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1367234

Issuer Name:
Kinross Gold Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 20, 2009
NP 11-202 Receipt dated January 21, 2009
Offering Price and Description:
$ * - * Common Shares Price - $ * per Common Shares
Underwriter(s) or Distributor(s):
UBS Securities Canada Inc.
Promoter(s):
-
Project #1367196

Issuer Name:
Kinross Gold Corporation
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Short Form dated January 21, 2009
NP 11-202 Receipt dated January 22, 2009
Offering Price and Description:
$360,525,000.00 - 20,900,000 COMMON SHARES Price: $17.25 per Common Share
Underwriter(s) or Distributor(s):
UBS Securities Canada Inc.
Promoter(s):
-
Project #1367196

Issuer Name:
MRF 2009 Resource Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 20, 2009
NP 11-202 Receipt dated January 21, 2009
Offering Price and Description:
$100,000,000.00 (maximum) (maximum – 4,000,000 Units); $5,000,000.00 (minimum)
(minimum – 200,000 Units)
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Manulife Securities Incorporated
Raymond James Ltd.
Blackmont Capital Inc.
Middlefield Capital Corporation
Richardson Partners Financial Limited
Wellington West Capital Markets Inc.
Burgeonvest Securities Limited
Promoter(s):
Middlefield Fund Management Limited
Middlefield Group Limited
Project #1367188

Issuer Name:
MSP 2009 Resource Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 20, 2009
NP 11-202 Receipt dated January 21, 2009
Offering Price and Description:
Maximum: $50,000,000.00 (2,000,000 Units); Minimum: $10,000,000.00 (400,000 Units)
$25.00 per Unit.. Minimum Purchase: $5,000.00 (200 Units)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
HSBC Securities (Canada) Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
Raymond James Ltd.
Manulife Securities Incorporated
Wellington West Capital Markets Inc.
Blackmont Capital Inc.
Desjardins Securities Inc.
GMP Securities L.P.
M Partners Inc.
Richardson Partners Financial Limited
Promoter(s):
MSP 2009 GP Inc.
Mackenzie Financial Corporation
Project #1367288

Issuer Name:
ONE Financial Real Property Development Trust (2008-1)
ONE Financial Real Property Income Fund (2008-1)
Principal Regulator - Ontario
Type and Date:
Second Amended and Restated Preliminary Long Form Prospectus dated January 26, 2009
Offering Price and Description:
Minimum: $2,500,000.00 (100,000 Combined Units); Maximum: $75,000,000.00 (3,000,000 Combined Units)
Price:$15.00 per Development Trust Unit and $10.00 per Income Fund Unit Minimum Subscription: $2,500 (100 Combined Units)
Underwriter(s) or Distributor(s):
Research Capital Corp.
Blackmont Capital Inc.
Canaccord Capital Corporation
Raymond James Ltd
Industrial Alliance Securities Inc.
Laurentian Bank Securities Inc.
Burgeonvest Securities Limited
Integral Wealth Securities Limited
MGI Securities Inc.
Promoter(s):
ONE Financial Corporation
Project #13069091306913

Issuer Name:
Precision Drilling Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Base Shelf Prospectus dated January 21, 2009
NP 11-202 Receipt dated January 22, 2009
Offering Price and Description:
$800,000,000.00:
Trust Units
Debt Securities
Warrants
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1367502

Issuer Name:
Royal Gold, Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary MJDS Prospectus dated January 20, 2009
Mutual Reliance Review System Receipt dated January 22, 2009
Offering Price and Description:
Debt Securities
Preferred Stock
Common Stock
Warrants
Depository Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1367612

Issuer Name:
Sentry Select Energy Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated January 22, 2009
NP 11-202 Receipt dated January 23, 2009
Offering Price and Description:
Series A, F and I Units
Underwriter(s) or Distributor(s):
Sentry Select Capital Inc.
Sentry Select Capital Inc.
Promoter(s):
Sentry Select Capital Inc.
Project #1367726

Issuer Name:
Creststreet Resource Class
(Series A Shares, Series B Shares, Series F Shares and 2009 Series Shares)
Creststreet Managed Equity Index Class
(Series A Shares, Series B Shares and Series F Shares)
Creststreet Alternative Energy Class
(Series A Shares, Series B Shares and Series F Shares)
(Classes of Shares of Creststreet Mutual Funds Limited)
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectuses and Annual Information Form dated January 16, 2009 (the amended prospectus) amending and restating the Simplified Prospectuses and Annual Information Form Issuers dated September 25, 2008
NP 11-202 Receipt dated January 22, 2009
Offering Price and Description:
Series A Shares, Series B Shares, Series F Shares and 2009 Series Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
Creststreet Asset Management Limited
Promoter(s):
-
Project #1313607

Issuer Name:
Doorway Capital Corp.
Principal Regulator - Ontario
Type and Date:
Amended And Restated Prospectus Dated January 21, 2009 Amending And Restating the Prospectus of the above Issuer Dated August 19, 2008 as Amended by Amendment NO. 1 dated NOVEMBER 14, 2008
NP 11-202 Receipt dated January 26, 2009
Offering Price and Description:
Minimum Offering - $200,000.00 or 1,000,000 common shares; Maximum Offering - $400,000.00 or 2,000,000 common shares Price - $0.20 per common share
Underwriter(s) or Distributor(s):
Leede Financial Markets Inc.
Promoter(s):
Peter Clausi
Project #1290990

Issuer Name:
Horizons Advantaged Equity Fund Inc.
Type and Date:
Final Long Form Prospectus dated January 21, 2009
Receipted on January 26, 2009
Offering Price and Description:
Class A Shares, Series III @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1362342

Issuer Name:
Horizons BetaPro COMEX® Gold Bullion Bear Plus ETF
Horizons BetaPro COMEX® Gold Bullion Bull Plus ETF
Horizons BetaPro DJ-AIGSM Agricultural Grains Bear Plus ETF
Horizons BetaPro DJ-AIGSM Agricultural Grains Bull Plus ETF
Horizons BetaPro NYMEX® Crude Oil Bear Plus ETF
Horizons BetaPro NYMEX® Crude Oil Bull Plus ETF
Horizons BetaPro NYMEX® Natural Gas Bear Plus ETF
Horizons BetaPro NYMEX® Natural Gas Bull Plus ETF
Horizons BetaPro S&P/TSX 60® Bear Plus ETF
Horizons BetaPro S&P/TSX 60® Bull Plus ETF
Horizons BetaPro S&P/TSX® Global Mining Bear Plus ETF
Horizons BetaPro S&P/TSX® Global Mining Bull Plus ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 20, 2009
NP 11-202 Receipt dated January 22, 2009
Offering Price and Description:
Mutual fund securities at net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1357188

Issuer Name:
Series A, F, I and O Securities (unless otherwise indicated) of:
Mackenzie Focus Canada Class of Mackenzie Financial Capital Corporation (also offering Series T6 and T8 Shares)
Mackenzie Focus Canada Fund (also offering Series M Units)
Mackenzie Focus Class of Mackenzie Financial Capital Corporation (also offering Series T6 and T8 Shares)
Mackenzie Focus Fund (also offering Series E and J Units)
Mackenzie Focus International Class of Mackenzie Financial Capital Corporation (also offering Series T8 Shares)
Mackenzie Ivy American Class of Mackenzie Financial Capital Corporation
Mackenzie Ivy Canadian Class of Mackenzie Financial Capital Corporation (also offering Series T6 and T8 Shares)
Mackenzie Ivy Canadian Fund (Hedged Class & Unhedged Class) (also offering Series F8, G, T6 and T8 Units in the Unhedged Class)
Mackenzie Ivy Foreign Equity Class of Mackenzie Financial Capital Corporation (Hedged Class & Unhedged Class)
(also offering Series T6 and T8 Shares in the Hedged Class and Series F8, T6 and T8 Shares in the Unhedged Class)
Mackenzie Ivy Foreign Equity Fund (also offering Series E, E6, E8, F8, G, J, J6, J8, T6 and T8 Units)
Mackenzie Ivy Global Balanced Fund (also offering Series F8, G, T6 and T8 Units)
Mackenzie Ivy Growth & Income Fund (also offering Series E, E6, E8, F8, G, J, J6, J8, T6 and T8 Units)
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated January 19, 2009 to the Annual Information Forms dated November 19, 2008
NP 11-202 Receipt dated January 27, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Quadrus Investment Services Ltd.
Promoter(s):
Mackenzie Financial Corporation
Project #1331186

Issuer Name:
Mercator Minerals Ltd.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated January 22, 2009
NP 11-202 Receipt dated January 22, 2009
Offering Price and Description:
$20,299,650.00 - 28,999,500 Units Price: $0.70 per Unit
Underwriter(s) or Distributor(s):
Blackmont Capital Inc.
Acumen Capital Finance Partners Limited
Jennings Capital Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #1366117

Issuer Name:
Migenix Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated January 21, 2009
NP 11-202 Receipt dated January 21, 2009
Offering Price and Description:
$2,361,595.00 - Two Rights to purchase one Unit at a purchase price of $0.05 per Unit
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1362399

Issuer Name:
NAV CANADA
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated January 22, 2009
NP 11-202 Receipt dated January 22, 2009
Offering Price and Description:
$1,000,000,000.00 - General Obligation Notes
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1366093

Issuer Name:
NCE Diversified Flow-Through (09) Limited Partnership
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 20, 2009
NP 11-202 Receipt dated January 22, 2009
Offering Price and Description:
$100,000,000.00 (Maximum Offering) - $5,000,000.00 (Minimum Offering) A maximum of 4,000,000 and a minimum of 200,000 Limited Partnership Units Subscription Price: $25 per Unit Minimum Subscription: 200 Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
TD Securities Inc.
Scotia Capital Inc.
Canaccord Capital Corporation
HSBC Securities Corporation
Raymond James Ltd.
Dundee Securities Corporation
Blackmont Capital Inc.
Manulife Securities Incorporated
Wellington West Capital Markets Inc.
Burgeonvest Securities Limited
Desjardins Securities Inc.
GMP Securities L.P.
Industrial Alliance Securities Inc.
Jory Capital Inc.
Laurentian Bank Services Inc.
M Partners Inc.
Research Capital Corporation
Promoter(s):
Petro Assets Inc.
Project #1357031

Issuer Name:
RBC Target 2010 Education Fund
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated January 19, 2009 to the Simplified Prospectus and Annual Information Form dated June 27, 2008
NP 11-202 Receipt dated January 22, 2009
Offering Price and Description:
Series A Units @ Net Asset Value
Underwriter(s) or Distributor(s):
RBC Direct Investing Inc.
Royal Mutual Funds Inc.
Royal Mutual Funds Inc.
RBC Asset Management Inc.
RBC Dominion Securities Inc.
Royal Mutual Funds Inc./RBD Direct Investing Inc.
Royal Mutual Funds Inc./RBC Direct Investing Inc.
Promoter(s):
RBC Asset Management Inc.
Project #1273078

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender of Registration	Phillips, Hager & North Investment Management Limited Partnership	Investment Counsel and Portfolio Manager	January 21, 2009
Voluntary Surrender of Registration	Paul van Eeden Inc.	Securities Adviser	January 22, 2009
New Registration	FWM Securities Inc.	Commodity Trading Manager and Limited Market Dealer	January 26, 2009
Name Change	From: Bioscience Managers Limited To: Rosetta Capital Limited	Non-Canadian Adviser (Investment Counsel & Portfolio Manager)	November 19, 2008

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 MFDA Announces Location of Wayne Larson Hearing

NEWS RELEASE
For immediate release

MFDA ANNOUNCES LOCATION OF WAYNE LARSON HEARING

January 22, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of Wayne Larson by Notice of Hearing dated July 2, 2008.

The hearing of this matter on its merits will take place before a Hearing Panel of the Prairie Regional Council on Tuesday, March 24, 2009 at 10:00 a.m. (Mountain), or as soon thereafter as the hearing can be held, in the Hearing Room located at the Fairmont Hotel MacDonald, 10065-100th Street, Edmonton, Alberta.

The hearing is 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 website 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 MFDA Sets Date for Melvin Robert Penney Hearing in Moncton, New Brunswick

NEWS RELEASE
For immediate release

MFDA SETS DATE FOR MELVIN ROBERT PENNEY
HEARING IN MONCTON, NEW BRUNSWICK

January 22, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of Melvin Penney by Notice of Hearing dated November 12, 2008.

As specified in the Notice of Hearing, the first appearance in this proceeding took place today before a three-member Hearing Panel of the MFDA Atlantic Regional Council.

The hearing of this matter on its merits has been scheduled to take place before the Hearing Panel on April 15-16, 2009 commencing at 10:00 a.m. (Atlantic) in Moncton, New Brunswick, or as soon thereafter as the hearing can be held. The location of hearing will be announced at a later date.

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

13.1.3 MFDA Adjourns Ronald Brown Hearing to a Date to be Determined

NEWS RELEASE
For immediate release

MFDA ADJOURNS RONALD BROWN HEARING
TO A DATE TO BE DETERMINED

January 22, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of Ronald Lindsay Brown and Dylan Brown by Notice of Hearing dated May 14, 2008.

A Hearing Panel of the Central Regional Council approved a settlement agreement between Dylan Brown and staff of the MFDA on November 18, 2008 and, in respect of Ronald Brown, ordered that January 26, 2009 be reserved for the hearing of any motions and that the hearing of the matter on its merits will take place on February 5-6 and 11-13, 2009.

On the consent of Ronald Brown and staff of the MFDA, the Hearing Panel adjourned all appearances in the Ronald Brown matter to dates to be determined. Notice will be given when the matter has been scheduled to recommence.

A copy of the Hearing Panel's Order dated January 15, 2009 is available on the MFDA website 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:
Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

13.1.4 MFDA Hearing Panel Reserves Judgment in the Matter of Professional Investments (Kingston) Inc.

NEWS RELEASE
For immediate release

MFDA HEARING PANEL RESERVES JUDGMENT
IN THE MATTER OF
PROFESSIONAL INVESTMENTS (KINGSTON) INC.

January 23, 2009 (Toronto, Ontario) – A Settlement Hearing in the matter of Professional Investments (Kingston) Inc. was commenced today before a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA").

Following consideration of the proposed settlement agreement between staff of the MFDA and Professional Investments (Kingston) Inc., and after hearing the submissions of the parties, the Hearing Panel reserved its judgment.

A copy of the Notice of Settlement Hearing is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers. 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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