The Ontario Securities Commission

OSC Bulletin

February 6, 2009

Volume 32, Issue 6

(2009), 32 OSCB

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

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Published under the authority of the Commission by:
Carswell, a Thomson Reuters business
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
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Subscriptions are available from Carswell at the price of $649 per year.

Subscription prices include first class postage to Canadian addresses. Outside Canada, these airmail postage charges apply on a current subscription:

U.S.	$175
Outside North America	$400

Single issues of the printed Bulletin are available at $20 per copy as long as supplies are available.

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ISSN 0226-9325
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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

FEBRUARY 6, 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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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 2:30 p.m.	**Gold-Quest International, Health and Harmoney, Iain Buchanan and Lisa Buchanan** s. 127 H. Craig in attendance for Staff Panel: WSW/MCH
February 10, 2009 4:30 p.m.	**Berkshire Capital Limited, GP Berkshire Capital Limited, Panama Opportunity Fund and Ernest Anderson** s. 127 E. Cole in attendance for Staff Panel: WSW/MCH
February 11, 2009 10:00 a.m.	**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
February 12, 2009 10:00 a.m.	**Rajeev Thakur** s. 127 M. Britton in attendance for Staff Panel: WSW/CSP

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: WSW/MCH
February 24 - March 11, 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 24, 2009 9:00 a.m.	**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
February 24, 2009 10:00 a.m.	**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
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 12, 2009 10:00 a.m.	**Hahn Investment Stewards & Co. Inc.** s. 21.7 Y. Chisholm in attendance for Staff Panel: TBA
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
April 28, 2009 2:30 p.m. April 29-30, 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
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	**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

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

1.1.2 CSA Staff Notice 11-312 National Numbering System

CSA STAFF NOTICE 11-312
NATIONAL NUMBERING SYSTEM

The Canadian Securities Administrators (CSA) follows a system in which securities regulatory instruments are assigned numbers that indicate the type and subject matter of the instrument.

The numbering system was designed so as to:

(i) convey as much information as possible about the particular instrument so that a user knows what type of instrument it is, whether the instrument is national or local and what subject matter it relates to;

(ii) permit all National Instruments, National Policies and CSA Notices to have the same numbers in all jurisdictions (as is currently the case); and

(iii) be flexible enough to permit Local Rules, Policies, Notices and implementing instruments of all jurisdictions to be numbered in accordance with the numbering system without affecting the numbering of National Instruments, National Policies and CSA Notices.

Under the numbering system, each instrument is assigned a five digit number, with a hyphen appearing between the second and third digit. There are four components to the number assigned to a document:

- The first digit represents the broad subject area.
- The second digit represents a sub-category of the broad subject area.
- The third digit represents the type of the document.
- The last two digits represent the number of the document within its document type in its sub-category (in sequential order starting at 01).

More specifically, these four components may be described as follows:

- The **first** digit relates to the subject matter category into which the instrument has been classified. The nine subject matter categories are:

  1. Procedures and Related Matters
  2. Certain Capital Market Participants (Self-Regulatory Organizations, Exchanges and Market Operations)
  3. Registration Requirements and Related Matters (Dealers, Advisers and other Registrants)
  4. Distribution Requirements (Prospectus Requirements and Prospectus Exemptions)
  5. Ongoing Requirements for Issuers and Insiders (Continuous Disclosure)
  6. Take-over Bids and Special Transactions
  7. Securities Transactions Outside the Jurisdiction
  8. Mutual Funds
  9. Derivatives

  For example, in the context of 54-101, the number “5” indicates that the instrument relates to Ongoing Requirements for Issuers and Insiders.

- The **second** digit relates to the sub-category of the subject matter category into which the instrument has been classified (see the “sub-category” column of the table below).

Using the 54-101 example, within the Ongoing Requirements for Issuers and Insiders category, a sub-category for instruments dealing with Proxy Solicitation is denoted by the number "4". Accordingly, all instruments dealing with this matter commence with the numbers "54".

- The **third** digit classifies the document as one of nine types of documents:

  1. National[1] Instrument/Multilateral Instrument and any related Companion Policy or Form(s)
  2. National Policy/Multilateral Policy
  3. CSA Notice
  4. CSA Concept Proposal
  5. Local Rule, Regulation or Blanket Order or Ruling and any related Companion Policy or Form(s), except an Implementing Instrument described below.
  6. Local Policy
  7. Local Notice
  8. Implementing Instrument[2]
  9. Miscellaneous

  Using the same example, the third digit in 54-101 indicates that the type of instrument is a National Instrument or Multilateral Instrument (or a related Companion Policy or Form).

- The **fourth** and **fifth** digits represent a number assigned to instruments of the same type in consecutive order from 01 to 99 within a particular sub-category.

  Again, using the example 54-101, the number "01" indicates that the instrument is the first document of its type in the sub-category "Proxy Solicitation".

A Companion Policy or Form that is related to an Instrument or Local Rule will have the same number as the Instrument or Local Rule to which it relates, followed by "CP" in the case of a Companion Policy or "F" in the case of a Form. If there is more than one Form related to a particular instrument, the Forms will be numbered consecutively (F1, F2, F3, etc.).

Category, Sub-Category and Document Type Numbers

Category (1st digit)	**Sub-Category** (2nd digit)	**Document Type** (3rd digit)
1 – Procedure and Related Matters	1 – General 2 – Applications 3 – Filings with Securities Regulatory Authority 4 – Definitions 5 – Hearings and Enforcement	1 – National or Multilateral Instrument (Rule) and any related Companion Policy and Form 2 – National or Multilateral Policy 3 – CSA Notice or CSA Staff Notice 4 – CSA Concept Proposal 5 – Local Rule, Regulation or Blanket Order or Ruling and any related Companion Policy or Form
2 – Certain Capital Market Participants	1 – Stock Exchanges 2 – Other Markets 3 – Trading Rules 4 – Clearing and Settlement	
3 – Registration and Related Matters	1 – Registration Requirements 2 – Registration Exemptions	

[1] A National Instrument or Policy is an instrument or policy that has been adopted by all CSA jurisdictions, whereas a Multilateral Instrument or Policy is an instrument or policy that has not been adopted by one or more CSA jurisdictions.

[2] For this purpose, an Implementing Instrument is a local rule making consequential changes relating to the implementation of a National Instrument/Multilateral Instrument.

Category (1st digit)	Sub-Category (2nd digit)	Document Type (3rd digit)
	3 – Ongoing Requirements Affecting Registrants 4 – Fitness for Registration 5 – Non-Resident Registrants	6 – Local Policy 7 – Local Notice 8 – Implementing Instrument (Local Rule that gives effect to a National or Multilateral Instrument) 9 – Miscellaneous item (e.g., a Form that does not relate to another Instrument or Policy)
4 – Distribution Requirements	1 – Prospectus Contents – Non-Financial Matters 2 – Prospectus Contents – Financial Matters 3 – Prospectus Filing Matters 4 – Alternative Forms of Prospectus 5 – Prospectus Exempt Distributions 6 – Requirements Affecting Distributions by Certain Issuers 7 – Advertising and Marketing 8 – Distribution Restrictions	
5 – Ongoing Requirements for Issuers and Insiders	1 – Disclosure – General 2 – Financial Disclosure 3 – Timely Disclosure 4 – Proxy Solicitation 5 – Insider Reporting 6 – Restricted Shares 7 – Cease Trading Orders 8 – Corporate Governance	
6 – Take-Over Bids and Special Transactions	1 – Special Transactions 2 – Take-over Bids	
7 – Securities Transactions Outside the Jurisdictions	1 – International Issuers 2 – Distributions Outside the Jurisdiction	
9 – Derivatives[3]	1 – Trades in Derivatives	

Ontario Securities Commission staff has reviewed OSC Staff Notice 11-724 *Numbering System for Policy Reformulation Project* (19 O.S.C.B. 4258) and has determined that it no longer serves a useful purpose in light of this notice. Accordingly, OSC Staff Notice 11-724 is withdrawn effective immediately.

February 6, 2009

[3] Please note that in Québec, derivatives regulations will be made under the *Derivatives Act* (Québec) and not the *Securities Act* (Québec).

1.2 Notices of Hearing

1.2.1 Research In Motion Limited 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
RESEARCH IN MOTION LIMITED,
JAMES BALSILLIE, MIKE LAZARIDIS,
DENNIS KAVELMAN, ANGELO LOBERTO,
KENDALL CORK, DOUGLAS WRIGHT,
JAMES ESTILL AND DOUGLAS FREGIN

NOTICE OF HEARING
(Sections 127 and 127.1)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "*Act*"), at the offices of the Commission, 20 Queen Street West, 17th Floor, Main Hearing Room, Toronto, Ontario, commencing on the 5th day of February 2009 at 9:00 a.m. or as soon thereafter as the hearing can be held;

TO CONSIDER whether it is in the public interest to approve the settlement of the proceeding entered into between Staff of the Commission ("Staff") and Research In Motion Limited, James Balsillie, Mike Lazaridis, Dennis Kavelman, Angelo Loberto, Kendall Cork, Douglas Wright, James Estill, and Douglas Fregin pursuant to sections 127 and 127.1 of the *Act*;

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

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by counsel at the hearing;

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

DATED at Toronto this 3rd day of February 2009.

"John Stevenson"
Secretary to the Commission

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

AND

IN THE MATTER OF
RESEARCH IN MOTION LIMITED,
JAMES BALSILLIE, MIKE LAZARIDIS,
DENNIS KAVELMAN, ANGELO LOBERTO,
KENDALL CORK, DOUGLAS WRIGHT,
JAMES ESTILL AND DOUGLAS FREGIN

STATEMENT OF ALLEGATIONS
OF STAFF OF THE
ONTARIO SECURITIES COMMISSION

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

The Parties

1. Research In Motion ("RIM") is a reporting issuer in Ontario and its shares are listed on both the Toronto Stock Exchange (the "TSX") and the Nasdaq Stock Market ("NASDAQ"). RIM carries on business with its head office located in Waterloo, Ontario.

2. James Balsillie ("Balsillie") is a chartered accountant. He has a Bachelor of Commerce degree from the University of Toronto, a Masters of Business Administration from the Harvard Business School and is a Fellow of the Institute of Chartered Accountants of Ontario. At all material times, he was co-Chief Executive Officer ("co-CEO") and Chairman of the Board of Directors of RIM. He was a member of the Compensation Committee of RIM from 1997 to 2000. He is no longer Chairman, but he remains co-CEO and a director of RIM.

3. Mike Lazaridis ("Lazaridis") is a founder of RIM. At all material times, he was co-CEO, President and a director of RIM, and he continues to hold all these positions. Lazaridis focused on research, product development, engineering and manufacturing of RIM's products.

4. Dennis Kavelman ("Kavelman") is a chartered accountant. He was Vice-President, Finance from February 1995 through 1997 and then Chief Financial Officer ("CFO") of RIM from 1997 to March 2007. He is now Chief Operating Officer, Administration and Operations.

5. Angelo Loberto ("Loberto") was Director of Finance at RIM from August 1997 and was Vice-President, Finance from September 2001 into 2007. He is now Vice-President, Corporate Operations.

6. Kendall Cork ("Cork") was a director of RIM from 1999 to 2007 and has been a Director Emeritus of RIM since 2007. He was a member of the Audit Committee from 1999 to 2007 and a member of the Compensation Committee from 2000 to 2007.

7. Douglas Wright ("Wright") was a director of RIM from 1995 to 2007 and has been a Director Emeritus of RIM since 2007. He was a member of the Audit Committee from 1996 to 2007 and its Chair from 1998 and a member of the Compensation Committee from 1998 to 2007 and its Chair from at least 2003.

8. James Estill ("Estill") has been a director of RIM since 1997 and was a member of the Audit Committee from 1998 until 2007.

9. Douglas Fregin ("Fregin") is a founder of RIM and was a director of RIM from 1985 to 2007. He was the Vice-President, Hardware Design and subsequently Vice-President, Operations at RIM, but is no longer connected with RIM.

Overview

10. The conduct at issue relates to stock options granting practices at RIM which, over a ten year period from December 1996 to July 2006 (the "Material Time"), were inconsistent with the terms of RIM's stock option plan and with RIM's public disclosure.

The Stock Option Plan

11. In advance of RIM becoming a reporting issuer in December, 1996, RIM's Board of Directors (the "Board") approved a new stock option plan (the "Plan") to govern the granting of stock options ("Options") for the RIM both before and after it became a reporting issuer. The Plan was subsequently amended by the Board but contained substantially the same requirements during the Material Time.

12. The Respondents should have taken reasonable steps to be and remain aware during the Material Time of the terms of the Plan. In respect of pricing, Options were to be priced "at the money", where the exercise price per share is equal to the closing market price of the shares on the last trading day immediately preceding the date of the grant. The Plan was to be administered by the Board or a Compensation Committee by delegation.

Incorrect Options Dating Practices

13. As described below, Balsillie, Lazaridis, Kavelman and Loberto engaged in the grant of Options, in which option backdating or option repricing occurred. The grant dates selected resulted in more favourable pricing for the Options or "in the money" grants. In many instances, the lowest share price in a period was chosen using hindsight in order to set the grant date and, therefore, the exercise price. These practices are collectively referred to as "Incorrect Dating Practices".

14. Approximately 1,400 of 3,200 Option grants made by RIM during the Material Time were made using Incorrect Dating Practices, many of which gave the recipient an undisclosed benefit that was not authorized or permitted by the Plan or the applicable rules of the TSX (the "TSX Rules").

15. The individual respondents (all the respondents apart from RIM, the "Individual Respondents") personally received an undisclosed benefit from grants of Options that were "in the money" at the time they were made, in breach of the Plan and the TSX Rules. They have, however, all since repaid any "in the money" benefits received, with interest, or have repriced unexercised Options.

16. The total "in the money" benefit resulting from the Incorrect Dating Practices for all employees was approximately $66 million, of which approximately $33 million has not been reimbursed or repaid to RIM or otherwise forfeited or cancelled.

17. The Incorrect Dating Practices at RIM and the Individual Respondents' participation in them were contrary to the public interest.

Misleading Disclosure

18. As a reporting issuer, RIM was obliged to make certain annual and periodic disclosure in accordance with the requirements of Part XVIII of the *Securities Act* (the "*Act*"), particularly sections 77 and 78. From July 1998 to August 2006, RIM repeatedly made statements in many of its filings, including prospectuses, financial statements, annual reports, and management information circulars, that contained the misleading or untrue statement that Options were priced at the fair market value of RIM's common shares at the date of the grant and were granted in accordance with the terms of the Plan. These statements were contrary to Ontario securities law and to the public interest.

19. Balsillie as Chairman of the Board and co-CEO, Lazaridis as President and co-CEO, Kavelman as CFO, and Estill, Cork, Wright and Fregin as directors failed to ensure the statements were accurate.

20. RIM made the above misleading disclosures, and the Individual Respondents authorized, acquiesced in, or permitted those statements to be made contrary to the Act and/or the public interest.

CEO and CFO Certificates

21. On March 30, 2004, RIM became subject to the requirement to file CEO and CFO certificates, pursuant to NI 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* ("NI 52-109").

22. Balsillie, Lazaridis and Kavelman, in their capacity as the certifying officers for RIM, failed to ensure the underlying Annual Information Forms, financial statements, and Management's Discussion & Analysis concerning RIM's Options granting practices were accurate.

Lack of Diligence by Directors and Senior Officers

23. The directors and officers of RIM owed a duty to RIM to provide proper oversight to ensure that its policies and procedures, and its disclosure obligations under the *Act* were complied with fully, accurately, and in a timely way.

24. The Individual Respondents did not take reasonable steps to provide proper oversight in relation to RIM's Options granting practices or to ensure that RIM's public disclosure reflected those practices during the Material Time, contrary to the *Act* and the public interest.

RIM's Costs

25. RIM has paid about $45 million to investigate and deal with Incorrect Dating Practices at RIM. Balsillie and Lazaridis have paid a total of $15 million ($7.5 million each) towards those costs, leaving $30 million outstanding.

Conduct Contrary to Ontario Securities Law and/or the Public Interest

26. By engaging in the conduct described above, the Respondents have breached Ontario securities law by contravening s. 122 of the *Act* and, additionally in respect of the Individual Respondents, pursuant to s. 129.2 of the *Act*, or have acted contrary to the public interest.

DATED at Toronto this 3rd day of February 2009.

1.4 Notices from the Office of the Secretary

1.4.1 Biovail Corporation et al.

FOR IMMEDIATE RELEASE
January 30, 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 hearing scheduled for February 2, 2009 at 10:00 a.m. in the above matter, is adjourned on consent of all parties to commence on February 9, 2009 at 10:00 a.m. and shall continue until July 24, 2009, or such other dates as may be agreed to by the parties and fixed by the Secretary to the Commission.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:	Wendy Dey Director, Communications & Public Affairs 416-593-8120
	Laurie Gillett Manager, Public Affairs 416-595-8913
	Carolyn Shaw-Rimmington Assistant Manager, Public Affairs 416-593-2361
For investor inquiries:	OSC Contact Centre 416-593-8314 1-877-785-1555 (Toll Free)

1.4.2 Norshield Asset Management (Canada) Ltd. et al.

FOR IMMEDIATE RELEASE
February 3, 2009

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

AND

IN THE MATTER OF
NORSHIELD ASSET MANAGEMENT (CANADA) LTD., OLYMPUS UNITED GROUP INC., JOHN XANTHOUDAKIS, DALE SMITH AND PETER KEFALAS

TORONTO – Following a hearing to consider a motion to stay the proceedings held on December 11, 2008 in the above noted matter, the Panel released its Reasons and Decision today.

A copy of the Reasons and Decision dated February 3, 2009 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.3 Research In Motion Limited et al.

FOR IMMEDIATE RELEASE
February 3, 2009

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

AND

IN THE MATTER OF
RESEARCH IN MOTION LIMITED, JAMES BALSILLIE, MIKE LAZARIDIS, DENNIS KAVELMAN, ANGELO LOBERTO, KENDALL CORK, DOUGLAS WRIGHT, JAMES ESTILL AND DOUGLAS FREGIN

TORONTO – The Office of the Secretary issued a Notice of Hearing today for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Research In Motion Limited, James Balsillie, Mike Lazaridis, Dennis Kavelman, Angelo Loberto, Kendall Cork, Douglas Wright, James Estill, and Douglas Fregin. The hearing will be held on February 5, 2009 at 9:00 a.m. in the Large Hearing Room on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated February 3, 2009 and Statement of Allegations of Staff of the Ontario Securities Commission dated February 3, 2009 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Pan Caribbean Minerals Inc. – 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 28, 2009

Pan Caribbean Minerals Inc.
5420 Canotek Road, Suite 103
Ottawa, Ontario
K1J 1E9

Dear Sirs/Mesdames:

Re: Pan Caribbean Minerals Inc. (the Applicant) - application for a decision under the securities legislation of Ontario and Alberta (the Jurisdictions) that the Applicant is not a reporting issuer

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

As the Applicant has represented to the Decision Makers that:

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

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

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

(d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

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

2.1.2 FirstService Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Confidentiality – application by an issuer for a decision that certain portions of a material contract previously filed and made public on SEDAR be held in confidence for an indefinite period by the Commission, to the extent permitted by law – contract contains intimate financial, personal and other sensitive information, the disclosure of which would be seriously prejudicial to the interests of the issuer and other persons affected – issuer subsequently filed and made public on SEDAR a redacted version of the contract in which the intimate financial, personal and other sensitive information has been omitted or marked to be unreadable – information redacted from the redacted version of the contract does not contain information that would be material to an investor – relief granted.

Applicable Ontario Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 140(1), 140(2).

Applicable Instruments

National Instrument 51-102 Continuous Disclosure Obligations, Part 12.

June 10, 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
FIRSTSERVICE CORPORATION
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") that, pursuant to the confidentiality provisions of the Legislation, a certain share purchase agreement (including the schedules appended thereto, the "**Purchase Agreement**") dated April 14, 2008 between the Filer and ADT Security Services Canada, Inc., filed by the Filer on April 22, 2008 (the "**Original Filed Agreement**") on the System for Electronic Document Analysis and Retrieval ("**SEDAR**") be held in confidence (and therefore not available to the public for inspection) for an indefinite period, to the extent permitted by law (the "**Exemption Sought**").

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

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

(b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in each of the following jurisdictions: British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the "**Non-Principal Passport 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 Filer:

1. The Filer is a corporation amalgamated under the *Business Corporations Act* (Ontario).

2. The Filer's head office is located in Toronto, Ontario.

3. The Filer is a reporting issuer (or the equivalent) in each of the provinces of Canada and is not in default of any requirement under the Legislation or the securities legislation of the Non-Principal Passport Jurisdictions. The Filer is also a foreign private issuer under applicable United States securities legislation.

4. The Subordinate Voting Shares of the Filer are listed and posted for trading in Canada on the Toronto Stock Exchange under the symbol "FSV" and in the United States on the Nasdaq Stock Market under the symbol "FSRV". The 7% Cumulative Preference Shares, Series 1 of the Filer are also listed for trading on the Toronto Stock Exchange under the symbol "FSV.PR.U".

5. On April 14, 2008, the Filer entered into the Purchase Agreement and disclosed the entering into of the Purchase Agreement via a press release issued and filed on SEDAR that day. A material change report was also filed by the Filer on SEDAR on April 14, 2008 in respect of the entering into of the Purchase Agreement. The

Purchase Agreement provides for the sale of the Filer's integrated security division, operated through a wholly-owned subsidiary of the Filer ("**Subco**"), to ADT Security Services Canada, Inc.

6. On April 22, 2008, the Filer filed on SEDAR the Original Filed Agreement pursuant to section 12.2 of National Instrument 51-102 *Continuous Disclosure Obligations* ("**NI 51-102**") within the time-frame provided for by Part 12 of NI 51-102.

7. Thereafter, it came to the Filer's attention that the disclosure schedules appended to the Original Filed Agreement contain certain confidential information (the "**Confidential Information**") that is intimate financial and personal information relating to certain employees and customers of the Filer (the "**Affected Persons**") and otherwise contain commercially sensitive operational and financial information concerning the Filer.

8. The Filer believes that continued public access to the Confidential Information would seriously prejudice the interests of the Affected Persons and the Filer for the following reasons:

   (i) the disclosure of the names and intimate details of employees, customers, landlords and suppliers of the Filer and Subco would violate confidentiality/non-disclosure obligations of the Filer and Subco to such persons and otherwise may violate applicable Canadian privacy legislation;

   (ii) the disclosure of details regarding litigation involving Subco (or direct and indirect subsidiaries of Subco) would allow other parties to such litigation to obtain a tactical advantage or otherwise alter the conduct, length or result of such litigation;

   (iii) maintaining the confidentiality of financial information, pricing information, proposed business plans, proposed capital expenditures and certain intellectual property information of the Filer and Subco is important with respect to the relations of the Filer and Subco and the ability of the Filer and Subco to negotiate contracts with potential customers, landlords and suppliers;

   (iv) bank account locations and numbers, historical insurance claims and amounts, health and group benefit plans and similar information is sensitive and intimate information in relation to the Filer and Subco and the parties providing or involved in such products or services; and

   in general, none of the Confidential Information, either individually or in aggregate, is necessary for understanding the impact of the Purchase Agreement on the business of the Filer.

9. The Filer further believes that: (i) the desirability of avoiding disclosure of the Confidential Information in the interests of the Affected Persons and the Filer outweighs the desirability of adhering to the principle that material filed with the Commission be available to the public for inspection; and (ii) the disclosure of the Confidential Information is not necessary in the public interest.

10. The Filer is permitted to file a redacted version of the Purchase Agreement pursuant to section 12.2 of NI 51-102.

11. Accordingly, on May 16, 2008, the Filer re-filed a copy of the Purchase Agreement (including the schedules appended thereto) on SEDAR with the Confidential Information omitted or marked so as to be unreadable (the "**Redacted Filed Agreement**").

12. The portions omitted or marked so as to be unreadable from the Purchase Agreement (to form the Redacted Filed Agreement) do not contain information in relation to the Filer or the securities of the Filer that would be material to an investor for purposes of making an investment decision.

13. As a result of the Original Filed Agreement being filed and made public on SEDAR, the Original Filed Agreement has also been disseminated to subscribers of the SEDAR-SCRIBE service. The Filer has requested that CDS Inc., the administrator of the SEDAR-SCRIBE service, send instructions to subscribers of the SEDAR-SCRIBE service to delete the Original Filed Agreement from their own files. The Filer has been advised by representatives of CDS Inc. that subscribers of the SEDAR-SCRIBE service are contractually bound to follow these instructions.

14. The Filer acknowledges that marking the Original Filed Agreement private on SEDAR does not guarantee that the Original Filed Agreement is not available elsewhere in the public domain.

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.

"David L. Knight"
Commissioner

"Mary Condon"
Commissioner

2.1.3 CI Investments Inc. and KBSH Capital Management Inc.

Headnote

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

Multilateral Instruments Cited

Multilateral Instrument 11-102 Passport System.

National Instruments Cited

National Instrument 33-109 Registration Information.

January 29, 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
CI INVESTMENTS INC. (CII)
AND KBSH CAPITAL MANAGEMENT INC. (KBSH)
(the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of Ontario (the **Legislation**), for relief pursuant to section 7.1 of National Instrument 33-109 *Registration Information* (**NI 33-109**) to allow the bulk transfer of all of the registered individuals and all of the locations of each of the Filers to a new amalgamated entity, CI Investments Inc. (as described below) (the **Bulk Transfer**), on or about January 1, 2009 in accordance with section 3.1 of the companion policy to NI 33-109 (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

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

Interpretation

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

Representations

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

CII

1. CII is a wholly-owned subsidiary of Canadian International LP. The head office of CII is in Ontario.

2. CII is registered as an adviser in the categories of investment counsel and portfolio manager and as a dealer in the category of limited market dealer under the *Securities Act* (Ontario). CII is also registered as an adviser in the categories of commodity trading counsel and commodity trading manager under the *Commodity Futures Act* (Ontario).

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

KBSH

4. KBSH is a wholly-owned subsidiary of Rockwater Asset Management Ltd (**RAM**). The head office of KBSH is in Ontario.

5. KBSH is registered as an adviser in the categories of investment counsel and portfolio manager (or its equivalent) in all of the provinces of Canada. KBSH is also registered as a dealer in the category of limited market dealer in Ontario.

6. KBSH is not in default of the securities legislation in any of the Jurisdictions.

Integration / Amalgamation

7. The Filers have confirmed that the Filers, RAM and Lakeview Asset Management Inc. (**LAM**) amalgamated on January 1, 2009. The new amalgamated entity will be named CI Investments Inc. (**Amalco**).

8. RAM and LAM are not currently registered in any of the Jurisdictions.

9. Effective on January 1, 2009, all of the current registerable activities of CII and KBSH have become the responsibility of Amalco. Amalco has assumed all of the existing registrations and approvals for all of the registered individuals and all of the locations of the Filers. It is not anticipated that there will be any disruption in the ability of the Filers to advise and trade (where applicable) on behalf of their respective clients, and Amalco should be able to advise and trade (where applicable) on behalf of such clients immediately after the amalgamation.

10. Amalco continues, and will continue to be registered in the same categories of registration as CII was registered as in Ontario and as KBSH was registered as in each province, including being registered for exchange contracts in British Columbia, and will be subject to, and will comply with, all applicable securities laws. Amalco will maintain its limited market dealer category in Ontario only, and its commodity trading manager and commodity trading counsel category (or its equivalent) in Ontario and British Columbia only.

11. Amalco will carry on the same securities business of the Filers in substantially the same manner with essentially the same personnel.

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

13. Given the significant number of registered individuals of the Filers, it would be extremely difficult to transfer each individual to Amalco in accordance with the requirements of NI 33-109 if the Exemption Sought is not granted.

14. A press release was previously issued on or about December 1, 2008 advising the public of the amalgamation of the Filers. The clients of the Filers have also been contacted and advised of the amalgamation.

15. The head office of Amalco will be CII's current head office location, which is located at 2 Queen Street East, Twentieth Floor, Toronto, Ontario M5C 3G7 Telephone: (416) 364-1145 Fax: (416) 365-0501.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that the Filers make acceptable arrangements with CDS Inc. for the payment of the costs associated with the Bulk Transfer, and make such payment in advance of the Bulk Transfer.

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

2.1.4 Rosco SA and Arawak Energy Limited

Headnote

NP 11-203 – MI 61-101 – insider bid – multi-jurisdictional bid in UK and Canada – under UK rules, offeror required to proceed with the bid on pre-announced terms – MI 61-101 requires the offeror to obtain a valuation in order to make a bid – relief granted from requirement that valuation be sent with the takeover bid circular – valuation may follow separately but offer to remain open for 14 days thereafter to allow shareholders to review – other conditions and restrictions.

Applicable Legislative Provisions

MI 61-101 Protection of Minority Security Holders in Special Transactions.

January 29, 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
ROSCO SA (the "FILER") AND
ARAWAK ENERGY LIMITED ("ARAWAK")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the "**Legislation**") that the requirements contained in the Legislation to include a formal valuation (the "**Valuation Requirement**") of the Common Shares in the takeover bid circular to be prepared and mailed to shareholders of Arawak by the Filer (the "**Takeover Bid Circular**") shall not apply to the proposed offer by the Filer (the "**Offer**") to acquire all the issued and outstanding common shares of Arawak ("**Common Shares**") not already owned by the Filer and its affiliates.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

(b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in Québec.

Interpretation

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

Representations

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

The Parties

The Filer

1. The Filer is a corporation incorporated under the laws of Switzerland.

2. The Filer currently owns 67,315,812 Common Shares or approximately 36.86% of the outstanding Common Shares of Arawak. The Filer is an affiliate of Vitol B.V. because both are direct or indirect wholly-owned subsidiaries of Vitol Holding B.V. The Filer and its affiliates are referred to in this application as the "**Vitol Group**".

3. Vitol B.V. currently owns 8,352,587 Common Shares representing approximately 4.57% of the outstanding Common Shares of Arawak.

Arawak

4. Arawak is a corporation incorporated under the *Companies (Jersey) Law 1991*.

5. Arawak is a reporting issuer in Ontario, Alberta and British Columbia and the Common Shares are listed on The Toronto Stock Exchange (the "**TSX**") and the London Stock Exchange.

The Offer

6. On October 28, 2008 (the "**Announcement Date**"), the Filer announced the pre-conditional all-cash Offer for the remaining Common Shares that it and its affiliates do not already own. The Vitol Group currently owns 41.43% of the Common Shares and the acceptance condition set out in the Offer is such that the Filer will accept all Common Shares tendered to the Offer provided that it results in the Vitol Group owning more than 50% of the Common Shares.

7. The Offer by the Filer will be a premium all-cash offer and was originally to be priced at $0.90 per Common Share, representing a premium of 157% over the closing price of October 27, 2008 for the Common Shares on the TSX, the last trading day prior to the Announcement Date, and a 38% premium over the average closing price for the

one month period immediately preceding the Announcement Date.

8. The Offer by the Filer will constitute an "insider bid" pursuant to Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") and accordingly will require that a "formal valuation", as defined in MI 61-101 (a "**Formal Valuation**") be obtained by the Filer.

9. The Takeover Bid Circular was to have been mailed by the Filer once it had received:

   (a) anti-monopoly regulatory clearance from government authorities in the Russian Federation, unless the Filer decides to waive this as a pre-condition and proceed with the Offer; and

   (b) the Formal Valuation, unless the principal regulator has granted a waiver from such requirement.

10. The Common Shares of Arawak are listed on both the London Stock Exchange and the TSX, and the Offer is governed by the takeover provisions of both Canadian securities legislation and the City Code on Takeovers and Mergers (the "**UK Code**").

11. Under the UK Code, an announcement of a firm intention to make an offer generally requires the offeror to proceed with the offer on the announced offer terms. At the same time, pursuant to the Valuation Requirement, the offeror cannot make the Offer until the Formal Valuation has been obtained. The preparation of the Formal Valuation, therefore, has caused material delay in making the Offer which the Filer, under the UK Code, will now be required to make, and such delay has and will continue to cause prejudice to the Filer in respect of the Offer.

12. On December 23, 2008, the Filer made application to the Ontario Securities Commission for relief from the Valuation Requirement.

13. On January 19, 2009, the Filer received anti-monopoly regulatory clearance from governmental authorities in the Russian Federation.

14. On January 16, 2009, the Filer and Arawak entered into a support agreement (the "**Support Agreement**"), whereby, among other things:

   (a) the Filer agreed to increase the consideration to be offered to holders of Common Shares to $1.00 per Common Share (the "**Improved Offer**"); and

   (b) the board of directors of Arawak, based in part on receiving a fairness opinion from RBC Capital Markets, agreed to recommend that holders of Common Shares tender to the Improved Offer.

15. Directors of Arawak and another shareholder associated with one of the directors, holding in the aggregate 9,285,776 Common Shares, or approximately 5.1% of the outstanding Common Shares, have agreed to tender their Common Shares to the Improved Offer.

16. The Formal Valuation is being prepared on the basis of revised reserves reports with respect to Arawak's oil and gas properties as of December 31, 2008 and is not expected to be available until early in February, 2009.

17. Arawak is of the view that, absent unforeseen circumstances outside its control, the Formal Valuation will be available by February 16, 2009 and has agreed to use its commercially reasonable efforts to obtain the Formal Valuation in a timely manner and not later than February 10, 2009.

18. After reasonable inquiry, the Filer is of the view that, absent unforeseen circumstances, the Formal Valuation will be available by February 16, 2009.

19. The Filer has agreed that it will use commercially reasonable efforts to avoid taking any action (or omitting to take any action) that it is aware would reasonably be expected to delay or hinder the delivery of the Formal Valuation in a timely manner.

20. The Filer has requested (and Arawak supports such request) that the principal regulator permit the Improved Offer to be mailed to the holders of the Common Shares without complying with the Valuation Requirement, provided that the Formal Valuation (or a summary thereof), and the relevant disclosure required by MI 61-101 in connection therewith, be provided in an amendment to the Take-over Bid Circular when the Formal Valuation becomes available and that the deposit period for the Improved Offer not terminate, and that the Filer not take up any Common Shares deposited under the Offer, until holders of the Common Shares have had sufficient opportunity to receive and consider the Formal Valuation (or a summary thereof) and Directors' Circular Amendment (as defined below).

21. The Filer has agreed to send and file the amendment to the Take-over Bid Circular including the Formal Valuation (or a summary thereof) as soon as practicable but in any event within 7 days of receiving the Formal Valuation.

22. Arawak has agreed to send and file the Directors' Circular Amendment (as defined below) within 7 days of receiving a copy of the Formal Valuation.

23. The Support Agreement and other contractual arrangements between the Filer and Arawak do not preclude Arawak's board of directors from changing its recommendation of the Improved Offer to holders of the Common Shares as a result of its review and consideration of the Formal Valuation and do not require the payment of any break fee or any similar payment in respect of a change in recommendation resulting from such review and consideration.

Decision

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

The decision of the principal regulator under the Legislation is that the Filer may pursue the Offer without complying with the Valuation Requirement in the Legislation and without including the Formal Valuation or a summary thereof in the Takeover Bid Circular provided:

(a) the Offer and Takeover Bid Circular shall be mailed on or after January 29, 2009;

(b) Arawak shall use commercially reasonable efforts to obtain the Formal Valuation in a timely manner and not later than February 10, 2009;

(c) the Filer has agreed that it will use commercially reasonable efforts to avoid taking any action (or omitting to take any action) that it is aware would reasonably be expected to delay or hinder the delivery of the Formal Valuation in a timely manner;

(d) the Formal Valuation or a summary thereof will be included in an amendment (the "**Amendment**") to the Take-over Bid Circular and sent to holders of the Common Shares within 7 days of the date the Filer receives the Formal Valuation;

(e) the directors circular shall be amended by the board of directors of Arawak (the "**Directors' Circular Amendment**") to include any material information regarding the Formal Valuation, including its impact, if any, on the recommendation of Arawak's board of directors and the Directors' Circular Amendment shall be sent to holders of the Common Shares within 7 days of the date Arawak receives a copy of the Formal Valuation; and

(f) at least 14 days shall have elapsed between the later of (i) the date upon which the Filer has sent the Amendment to holders of Common Shares, and (ii) the date upon which Arawak has sent the Directors' Circular Amendment to holders of common Shares and the date upon which the Filer takes up any Common Shares pursuant to the Improved Offer.

"Naizam Kanji"
Manager, Corporate Finance (M&A)
Ontario Securities Commission

2.1.5 CDC Acquisition II Corp. – s. 1(10)

Headnote

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

Applicable Legislative Provisions

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

January 30, 2009

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

AND

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

AND

IN THE MATTER OF
CDC ACQUISITION II CORP. (the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision pursuant to the securities legislation of the Jurisdictions (the Legislation) that the Filer be deemed to have ceased to be a reporting issuer in the Jurisdictions (the Exemptive Relief Sought).

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

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

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

Interpretation

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

Representations

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

1. The Filer was incorporated on October 16, 2008 and is governed by the laws of the Province of Ontario.

2. The Filer's head office is located at 181 Bay Street, Suite 4400, Bay Wellington Tower, Toronto, Ontario M5J 2T3.

3. Pursuant to a plan of arrangement that closed on October 24, 2008 (the Closing Date), the Filer purchased all of the outstanding shares of Q9 Networks Inc. (Q9), which was a reporting issuer on the Closing Date. Of the 20,898,393 shares of Q9 outstanding at the Closing Date, all but 472,236 of such shares were purchased for a purchase price of Cdn $17.05 in cash. The remaining 472,236 shares were purchased from certain members of management in exchange for shares of the Filer (the Share Exchange).

4. As a result of the Share Exchange, the Filer became a reporting issuer pursuant to the definition of such term as contained in the Legislation of the Jurisdictions.

5. The outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions in Canada, except in Ontario, where there are 18 shareholders as of the date hereof, and fewer than 51 securityholders in Canada.

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

7. The Filer is unable to rely on CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* (CSA Staff Notice 12-307) since the 18 securityholders of the Filer in Ontario exceed by three the maximum number of securityholders permitted under the simplified procedure contemplated by CSA Staff Notice 12-307.

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

9. The Filer is applying for a decision that the Filer is not a reporting issuer in all the jurisdictions in Canada in which it is currently a reporting issuer.

10. Upon the grant of the Exemptive Relief Sought, the Filer will not be a reporting issuer or the equivalent in any jurisdiction in Canada.

11. The Filer is not in default of any of its obligations under the Legislation as a reporting issuer.

Decision

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

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

"Paulette L. Kennedy"
Commissioner
Ontario Securities Commission

"Margot C. Howard"
Commissioner
Ontario Securities Commission

2.1.6 Kingly Enterprises Inc. – s. 1(10)

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Issuer is not a reporting issuer under securities legislation.

Applicable Legislative Provisions

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

February 2, 2009

Kingly Enterprises Inc.
Suite 101, 333 West Broadway
Vancouver, BC V5Y 1P8

Dear Sirs/Mesdames:

Re: Kingly Enterprises Inc. (the Applicant) – application for a decision under the securities legislation of Ontario and Nova Scotia (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

2.1.7 Mackenzie Financial Corporation et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from multi-layering prohibition to permit mutual funds to invest in securities of mutual funds that invest more than 10% of the market value of their net assets in underlying funds – each underlying fund uses derivatives to obtain the returns of a related money market fund – each underlying fund is substantially similar to a money market fund – National Instrument 81-102 Mutual Funds.

Applicable Legislative Provisions

National Instrument 81-1012 Mutual Funds, ss. 2.5, 2.5(2)(b), 19.1.

January 29, 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
MACKENZIE FINANCIAL CORPORATION
("Mackenzie"),
SCOTIA SECURITIES INC. AND
NORTHWEST & ETHICAL INVESTMENTS L.P.
(the "Third Party Managers") (collectively, the "Filers")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers on behalf of the mutual funds they currently manage and other mutual funds that will be managed by a Filer or an affiliate of a Filer in the future for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "Legislation") granting an exemption from paragraph 2.5(2)(b) of National Instrument 81-102 *Mutual Funds* ("NI 81-102") that prohibits a mutual fund from investing in another mutual fund if the other mutual fund holds more than 10% of the market value of its net assets in securities of other mutual funds (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, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon.

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:

1. Mackenzie or an affiliate thereof is, or will be, the manager of mutual funds that offer, or will offer, securities under simplified prospectuses and annual information forms filed in some or all of the provinces and territories of Canada (the "Mackenzie Funds").

2. Each Third Party Manager or an affiliate thereof is, or will be, the manager of mutual funds that offer, or will offer, securities under simplified prospectuses and annual information forms filed in some or all of the provinces and territories of Canada (the "Third Party Funds", and together with the Mackenzie Funds, the "Funds").

3. The head office of each of the Filers is located in Ontario.

4. Mackenzie is the manager of mutual funds that consist of classes (the "CC Funds") of Mackenzie Financial Capital Corporation, a mutual fund corporation established under the laws of Ontario. Securities of the CC Funds are offered under simplified prospectuses and annual information forms filed in all the provinces and territories of Canada.

5. The Funds are, or will be, mutual funds that directly or indirectly invest primarily in securities of other mutual funds, including the CC Funds, to achieve their investment objectives.

6. Mackenzie is also the manager of Mackenzie Sentinel Canadian Managed Yield Pool and Mackenzie Sentinel U.S. Managed Yield Pool (together, the "MY Pools"). Series R shares of the MY Pools are offered under a simplified prospectus and annual information form filed in all the provinces and territories of Canada. However, investment in the MY Pools is only available to other mutual funds managed by Mackenzie, including the CC Funds.

7. The investment objective of the Mackenzie Sentinel Canadian Managed Yield Pool is to provide tax-efficient returns similar to those of a Canadian money market fund managed by Mackenzie. It will achieve this objective by investing in equity securities and selling those equity securities to a counterparty by use of a forward contract with the price being equal to the return on Mackenzie Sentinel Canadian Money Market Pool (the "Canadian Underlying Fund").

8. The investment objective of the Mackenzie Sentinel U.S. Managed Yield Pool is to provide tax-efficient returns similar to those of a U.S. money market fund managed by Mackenzie. It will achieve this objective by investing in equity securities and selling those equity securities to a counterparty by use of a forward contract with the price being equal to the return on Mackenzie Sentinel U.S. Money Market Pool (the "U.S. Underlying Fund", together with the Canadian Underlying Fund, the "Underlying Funds").

9. Each of the Underlying Funds is a "money market fund" as defined in section 1.1 of NI 81-102.

10. Because substantially all of the assets of each MY Pool are invested in units of its Underlying Fund through the use of forward contracts, each MY Pool is not a "money market fund" as defined in section 1.1 of NI 81-102.

11. The CC Funds regularly have cash balances, which may attract capital taxes in Ontario. If the CC Funds invest this cash in money market instruments, such investments would be subject to capital taxes, as would an investment in a trust, including a typical money market fund.

12. The CC Funds wish to invest their cash in the MY Pools to achieve tax savings for the benefit of their securityholders. Such investments will exceed 10% of the net assets of the CC Funds from time to time.

13. Absent the Exemption Sought, paragraph 2.5(2)(b) of NI 81-102 would prohibit the Funds from investing in a CC Fund if the CC Fund's investment in the MY Pools exceeds 10% of its net assets.

14. Any investment by the Funds in the CC Funds will be made in accordance with the provisions of section 2.5 of NI 81-102, except for the requirement in paragraph 2.5(2)(b) that a mutual fund not invest in another mutual fund if the other mutual fund holds more than 10% of the market value of its net assets in securities of other mutual funds.

15. An investment by each Fund in the CC Funds will represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Fund, and an investment by each CC Fund in the MY Pools will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the CC Fund.

16. Each of the MY Pools, the Underlying Funds, the CC Funds and the existing Funds is a reporting issuer in all of the provinces and territories of Canada and is not in default of any requirements of the securities legislation of those jurisdictions.

Decision

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

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

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

2.1.8 Aurion Capital Management Inc. et al.

Headnote

National Policy 11-203 – relief from mutual fund self-dealing prohibitions granted to permit pooled funds to continue to hold securities of issuers that will become substantial securityholders of the funds' management company and securities of an issuer that will be an issuer in which a substantial securityholder of the management company has a significant interest as a result of a change in control of the management company – investments in the relevant issuers made prior to change in control of the management company – Securities Act (Ontario).

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 111(3), 113.

June 27, 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
AURION CAPITAL MANAGEMENT INC.,
AURION CANADIAN EQUITY FUND AND
AURION II EQUITY FUND (the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the self dealing restrictions with respect to investments of mutual funds (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 Alberta and Quebec.

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:

1. Aurion Capital Management Inc. (**Aurion**) is registered as an investment counsel and portfolio manager in Ontario, Alberta, Nova Scotia and the Northwest Territories, and is registered as an adviser in Quebec. Aurion is also registered as a limited market dealer in Ontario.

2. The Aurion II Equity Fund (the **Aurion Fund**) and the Aurion Canadian Equity Fund (the **Shell Fund**) (together the **Funds**) are not reporting issuers but each is a "mutual fund in Ontario" as defined in the Legislation.

3. The Shell Fund is one of thirteen pooled funds operated by Aurion for pension and savings plans of Shell Canada Limited (collectively, the **Shell Pension Pools**). The units of the Shell Pension Pools may only be purchased by pension plans of Shell Canada Limited.

4. Aurion is the manager, investment adviser and principal distributor of the Funds. Its head office is located in Ontario.

5. The Filers are not in default of securities legislation in any jurisdiction.

6. On May 1, 2008 DundeeWealth Inc. (**DW**), a reporting issuer, Aurion and the shareholders of Aurion entered into a binding letter of intent pursuant to which DW agreed to acquire, and the shareholders agreed to sell, 60% of the outstanding shares of Aurion in exchange for cash and common shares of DW (the **Transaction**). Aurion employees would continue to own 40% of Aurion.

7. Dundee Corp. (**DC**) is a reporting issuer and owns, directly and indirectly, approximately 60% of the voting securities of DW. As a result, after the closing of the Transaction, both DW and DC will be substantial security holders of Aurion as defined in the Legislation.

8. Breakwater Resources Ltd. (**Breakwater**) is a reporting issuer in which DC has a significant interest as defined in the Legislation. DC holds, directly and indirectly, approximately 25.4% of the outstanding common shares of Breakwater.

9. The Shell Pension Pools are multi-manager funds. Aurion is the adviser for each Shell Pension Pool

but each of the Shell Pension Pools may also have one or more sub-advisers (the **Sub-Advisors**) who manage all or part of the portfolio of each Shell Pension Pool. In practice, no Sub-Adviser is hired or terminated by Aurion without the explicit approval of the Shell Canada pension management group. The Sub-Advisers function independently and Aurion does not have access to information concerning the intentions of Sub-Advisers with respect to individual investments.

10. Aurion is responsible for managing part of the portfolio of the Shell Fund, and in that capacity has invested assets of the fund in shares of DC, DW and Breakwater.

11. The Aurion Fund currently holds shares of DW. This investment represents approximately 1.73% of the net asset value of the Aurion Fund and approximately 0.05% of DW shares outstanding.

12. The Shell Fund currently holds (a) shares of DW representing approximately 1.37% of the net asset value of the Shell Fund and approximately 0.41% of DW shares outstanding, (b) shares of DC representing approximately 0.17% of the net asset value of the Shell Fund and approximately 0.09% of DC shares outstanding, and (c) shares of Breakwater representing approximately 0.28% of the net asset value of the Shell Fund and approximately 0.55% of Breakwater shares outstanding.

13. At the time Aurion invested assets of the Funds in shares of DW, DC and Breakwater (as applicable), none of the Filers was related to DW, DC or Breakwater. Following execution of the binding letter of intent on May 1, 2008, the Funds have not made any investment in DW, DC or Breakwater.

14. Aurion intends for the Funds to continue to hold some or all of their existing investments in DW, DC and Breakwater after the closing of the Transaction and for the foreseeable future. A forced disposition of such investments prior to the closing of the Transaction in order to comply with the Legislation could expose the Funds to potential losses and would not be in the best interests of the Funds.

15. Upon closing of the Transaction, the Funds will be invested in two companies (DW and DC) that are substantial security holders (as defined in the Legislation) of Aurion (which is the management company of the Funds), and one company (Breakwater) in which a substantial security holder of Aurion has a significant interest (as defined in the Legislation). Absent the Exemption Sought, the Legislation would require that the Funds dispose of these investments before the closing of the Transaction.

16. The investments in and holding of securities of DW, DC and Breakwater by the Funds are consistent with the investment objectives of the Funds and represent the business judgment of Aurion uninfluenced by considerations other than the best interests of the 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 Exemption Sought is granted for the Aurion Fund and the Shell Fund to continue to hold their respective investments in securities of DW, DC and Breakwater beyond the date of closing of the Transaction.

"Paulette Kennedy"
Commissioner
Ontario Securities Commission

"Paul Bates"
Commissioner
Ontario Securities Commission

2.1.9 Renasant Financial Partners Ltd. – s. 1(10)

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – application for an order that the issuer is not a reporting issuer.

Ontario Statutes

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

February 3, 2009

Mike Devereux
Stikeman Elliott LLP
5300 Commerce Court
199 Bay Street
Toronto, Ontario M5L 1B9

Dear Sirs/Mesdames:

Re: Renasant Financial Partners Ltd. (the "Applicant") – Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (collectively, 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.

"Erez Blumberger"
Manager, Corporate Finance
Ontario Securities Commission

2.1.10 Independent Nickel Corp. – s. 1(10)

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – application for an order that the issuer is not a reporting issuer.

Ontario Statutes

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

January 28, 2009

Independent Nickel Corp.
Suite 1802, 80 Richmond Street West
Toronto, Ontario M5H 2A4

Dear Sirs/Mesdames:

Re: Independent Nickel Corp. (the "Applicant") – Application for a decision under the securities legislation of Alberta and Ontario (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.

"Erez Blumberger"
Manager, Corporate Finance
Ontario Securities Commission

2.1.11 Insta-Rent Inc.

Headnote

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

Applicable Legislative Provisions

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

Citation: Insta-Rent Inc., Re, 2009 ABASC 33

February 2, 2009

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

AND

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

AND

IN THE MATTER OF
INSTA-RENT INC.
(the Filer)

DECISION

Background

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

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

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation existing under the *Business Corporations Act (*Ontario) with its head office located in Edmonton, Alberta.

2. On November 6, 2008, easyhome Ltd. (**easyhome**) acquired all of the issued and outstanding common shares of the Filer pursuant to a take-over bid.

3. The Filer is a reporting issuer or the equivalent in the provinces of Alberta and Ontario.

4. Other than the common shares held by easyhome, the Filer has no securities, including debt securities, outstanding.

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

6. The Filer's shares were delisted from the TSX Venture Exchange on November 7, 2008 and no securities of the Filer are listed or traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.

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

8. On November 10, 2008 the Filer filed a notice in British Columbia under BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* stating that it will cease to be a reporting issuer in British Columbia on November 20, 2008.

9. The Filer is not in default of any of its obligations under the Legislation as a reporting issuer, except for the obligation to file its interim financial statements for the period ended September 30, 2008, its Management Discussion and Analysis in respect of such financial statements as required under National Instrument 51-102 *Continuous Disclosure Obligations* and the related certification of such financial statements as required under Multilateral Instrument 52-109 *Certification of Disclosure in Filers' Annual and Interim Filings*, all of which became due on November 28, 2008.

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

Decision

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

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

"Blaine Young"
Associate Director, Corporate Finance

2.1.12 ING Investment Limited Partnership

Headnote

Relief requested under section 17.1 of NI 81-106 from requirements to file and deliver audited annual financial statements and interim financial statements under sections 2.1, 2.3 and 5.1(2) of NI 81-106 – Although partnership technically a "mutual fund in the jurisdiction" under NI 81-106, its only purpose is to pool the investment portfolios of Canadian regulated insurance companies from same corporate group whose audited annual financial statements will reflect their investment in securities of the partnership and are reviewed by their regulators.

Applicable Legislative Provisions

Sections 2.1, 2.3, 5.1(2) and 17.1 of NI 81-106.

January 27, 2009

IN THE MATTER OF
NATIONAL INSTRUMENT 81-106 –
INVESTMENT FUND CONTINUOUS DISCLOSURE
("NI 81-106")

AND

IN THE MATTER OF
ING INVESTMENT LIMITED PARTNERSHIP
(the "FILER")

DECISION

Background

The Ontario Securities Commission has received an application from the Filer for a decision pursuant to section 17.1 of NI 81-106 exempting the Filer from the requirements in sections 2.1 and 5.1(2) of NI 81-106 to file and deliver audited annual financial statements (the "**Audited Annual Financial Statement Requirement**") and in sections 2.3 and 5.1(2) of NI 81-106 to file and deliver interim financial statements (the "**Interim Financial Statement Requirement**").

Representations

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

1. The Filer is a limited partnership formed under the laws of Ontario.

2. ING Investment General Partner Inc. is the general partner of the Filer.

3. The existing limited partners of the Filer are as follows:

   - ING Insurance Company of Canada,
   - ING Novex Insurance Company of Canada,
   - The Nordic Insurance Company of Canada,
   - Trafalgar Insurance Company of Canada,

   (collectively, the "**Federal Insurance Companies**") and

   - Belair Insurance Company Inc.

   (together with the Federal Insurance Companies, the "**Existing Limited Partners**")

4. ING Investment Management, Inc. has been the investment adviser of the investment portfolios of the Existing Limited Partners and is the investment adviser of the Filer; it is registered as an adviser in Ontario, British Columbia and Quebec.

5. The Filer's general partner, investment adviser and Existing Limited Partners referred to above are all wholly owned subsidiaries of ING Canada Inc.

6. The Filer has been formed pursuant to a limited partnership agreement (the "**LP Agreement**") for the purpose of restructuring the manner in which the investments of the Existing Limited Partners are held and managed. This restructuring will involve each of the Existing Limited Partners contributing part of its investment portfolio to the Filer over time in exchange for securities of the Filer, each such security referred to as a "partnership interest" under the LP Agreement. The pooling of the investment portfolios of the Existing Limited Partners is expected to result in improved risk management, capital management and operating performance.

7. Pursuant to the LP Agreement, securities of the Filer are not transferable and the only parties that may become limited partners are other regulated insurance companies in Canada that are affiliated with ING Canada Inc. within the meaning of affiliate under the *Canada Business Corporations Act* (the "**Future Limited Partners**" and, together with the Existing Limited Partners, the "**Limited Partners**").

8. The Federal Insurance Companies are regulated by and have received approval from the Office of the Superintendent of Financial Institutions (Canada) ("**OSFI**"), and Belair Insurance Company Inc. is regulated by and has received approval from the Autorité des marchés financiers ("**AMF**"), to proceed with the restructuring described above.

9. The Filer is a "mutual fund in the jurisdiction" as that term is defined in NI 81-106.

10. The Filer is not, and does not intend to become, a reporting issuer, as such term is defined in the *Securities Act* (Ontario) and its securities will not be listed on any stock exchange.

11. The annual financial statements of each of the Existing Limited Partners are audited and the annual financial statements of any Future Limited Partner will be audited. As well, ING Canada Inc. prepares, files and delivers audited consolidated annual financial statements.

12. The audited annual financial statements of each of the Limited Partners will reflect its investment in securities of the Filer. The auditor of the Limited Partners will have access to the records of the Filer in conducting its audits of the Limited Partners. As part of the audit of the Limited Partners, the auditors will perform audit procedures on the net asset value of the Filer and on the existence and valuations of the investments held by the Filer.

13. OSFI reviews the audited annual financial statements of the Federal Insurance Companies and the AMF reviews the audited annual financial statements of Belair Insurance Company Inc. It is expected that any Future Limited Partner will be similarly regulated and that its audited annual financial statements will be similarly reviewed.

14. The Existing Limited Partners do not, and it is expected that any Future Limited Partner will not, require interim financial statements.

15. The LP Agreement requires the Filer to prepare annual financial statements but the LP Agreement does not require the annual financial statements to be audited. In the absence of an exemption from the Audited Annual Financial Statement Requirement, however, the Filer's annual financial statements would be required to be audited.

16. The LP Agreement does not require the Filer to prepare interim financial statements. In the absence of an exemption from the Interim Financial Statement Requirement, however, the Filer would be required to prepare interim financial statements.

17. The Existing Limited Partners are of the view that no additional benefit will be derived from separately auditing the annual financial statements of the Filer or from the Filer preparing interim financial statements. Consequently, they have determined that it is unnecessary to incur the expense of obtaining a separate auditor's report on the annual financial statements of the Filer and of preparing interim financial statements for the Filer.

Decision

The Director is satisfied that the decision meets the test set out in NI 81-106 for the Director to make the decision.

The decision of the Director under NI 81-106 is that the Filer is exempt from the Audited Annual Financial Statement Requirement and the Interim Financial Statement Requirement provided that the only limited partners of the Filer are the Limited Partners.

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

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Darren Delage – 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
DARREN DELAGE

HEARING HELD PURSUANT TO SECTIONS 127 AND 127.1 OF THE ACT

SETTLEMENT HEARING RE: DARREN DELAGE

HEARING:	Thursday, January 15, 2009		
PANEL:	Suresh Thakrar	–	Commissioner and Chair of the Panel
	Kevin J. Kelly	–	Commissioner
APPEARANCES:	Jane Waechter	–	for Staff of the Ontario Securities Commission
	Matthew Scott	–	for Darren Delage

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 Darren Delage ("Delage").

[2] We have read Staff's written submissions, and heard the oral submissions and 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 Delage 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 Delage for purposes of this settlement. In approving the Settlement Agreement, we relied on the facts in the agreement and those facts represented to us at the hearing today.

[4] Delage was employed from April 2004 to July 15, 2005 by Polar Securities Inc. ("Polar Securities"), which is a registered Investment Dealer and Futures Commission Merchant, whose business included management of hedge funds. Polar Securities also managed an offshore non-prospectus qualified hedge fund, Polaris Energy Offshore Master Fund (the "the Polaris Fund").

[5] Delage, as an employee of Polar Securities, advised and traded on behalf of the Polaris Fund. During his employment; he executed the majority of the trades for the Polaris Fund. At the time of this trading, Delage was not registered with the

Commission in any capacity. He is currently registered with the Commission as an Associate Advising Officer and Trading Officer with another registered firm.

[6] This proceeding concerns the role of Delage in the trading activity conducted late in the trading day on six days in the period between June 27, 2005 and July 12, 2005 in shares of Environmental Applied Research Technology House-Earth (Canada) Corporation ("EAR"), which traded on the Canadian Venture Exchange or CDNX under the stock symbol EAR. Specifically, this proceeding concerns trading practices used by Delage that he knew, or ought to have known, could contribute to a misleading price for shares of EAR.

[7] On June 23, 2005, the Polaris Fund participated in a private placement of EAR units. The Polaris Fund purchased approximately 2.75 million units of EAR at a cost of $0.10 per share. Each unit consisted of one common share and one share purchase warrant exercisable for one common share at a price of $0.13. Pursuant to Ontario securities law, there was a four month restriction on the resale of these shares.

[8] In the Settlement Agreement, Delage admits that between June 27 and July 12, 2005 he entered into numerous purchases of freely-tradable EAR shares, which are reported on the public markets via CDNX, when he knew, or ought to have known, that the trading could contribute to a misleading price of EAR shares.

[9] The specific details of this trading activity over this period are set out in paragraphs nine to 16 of the Settlement Agreement.

[10] As an example of this trading activity, on June 27, 2005, which is four days after the Polaris Fund participated in the private placement of EAR shares, Delage entered 11 purchase orders for a total of 210,000 EAR shares, starting at approximately 3:32 p.m. Trading on CDNX closes at 4:00 p.m. each week day and after hours trading is permitted until 5:00 p.m. at the closing price of the shares. These buy orders entered by Delage were also limit orders. The various fills for these orders resulted in 10 upticks, that is, the share purchases for each buy order are at a price higher than the last reported trade. The fills, on that day, also resulted in a new high for 2005 for EAR shares. During the time of Delage's trading, based on the last board lot traded prior to Delgae's first trade, the share price increased from $0.15 to $0.24.

[11] This kind of trading pattern or activity, with purchase orders entered late in the day just prior to closing; with limit orders and the resulting upticks, were repeated by Delage on June 28, June 29, June 30, July 11 and July 12, 2005.

[12] During the period June 27 to July 12, 2005, Delage entered over 25 purchase orders mostly with limit orders, for a total of approximately 490,000 EAR shares. The fills for the orders resulted in about 20 upticks.

[13] In addition, this trading affected the volume of trading of EAR shares. As stated in paragraph 16 of the Settlement Agreement:

> On June 27 and 28, 2005, Delage's trading dominated the volume of trading in EAR shares in the last 30 minutes of trading. On June 29 and 30, 2005 and July 12, 2005, Delage's trading represented 100 per cent of the volume of trading in EAR shares in the last 30 minutes of trading.

[14] On July 6, 2005, as a result of inquiries initiated by an employee, Polar Securities commenced an investigation into Delgage's trading activity in EAR shares at the end of June 2005. Delage's employment with Polar Securities was terminated, effective July 15, 2005.

[15] By facts agreed to in the Settlement Agreement, Delage admits that he traded EAR shares and that those trades included upticking the share prices late in the trading day. This contributed to a misleading appearance as to the market price of EAR shares and was contrary to the public interest.

[16] We also take note that in the Settlement Agreement, Delage admits at paragraph 26 that he:

> engaged in an intentional pattern of trading in EAR shares … in circumstances where he knew or ought to have known that the trading could contribute to a misleading price for EAR shares.

[17] Also, by entering into the Settlement Agreement, Delage has recognized the seriousness of his misconduct and admits that he engaged in conduct that was contrary to the public interest. Delage has accepted sanctions, including a suspension of his registration together with a contemporaneous cease trade, and subsequent supervision of his trading thereafter.

[18] 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.

[19] Further, in accordance with paragraph 2.1(2)(ii) of the Act, the Commission is guided by certain fundamental principles in pursuing the purposes of the Act, including the "restrictions on fraudulent and unfair market practices and procedures".

[20] The role of the Commission in exercising its public interest jurisdiction is set out in *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at pp. 1610-1611.

[21] Before we go to our order, we would like to briefly refer to the law as it applies to the consideration of the Settlement Agreement before the panel.

[22] 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 Staff referred us to in their submissions.

[23] In addition, appropriate sanctions need to take into account the specific circumstances of each case (*Re M.C.J.C. Holding and Michael Cowpland*, *supra* at pp. 1134-1135).

[24] In this case we took into account a number of mitigating factors as set out in the Settlement Agreement at paragraphs 19 to 25, such as Delage's limited work experience in the securities industry in Canada and that he has never been the subject of any prior disciplinary proceeding. In addition, Delage's admissions eliminate the need for a full hearing, which was scheduled for next month, and thus conserves the resources of the Commission.

[25] It was also established in *Re Sohan Singh Koonar et al.* (2002), 25 O.S.C.B. 2691, that 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. Instead, the Commission should ensure that the agreed sanctions in the settlement agreement are within acceptable parameters.

[26] This is what we as a Panel have done in approving this Settlement Agreement. In 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.

[27] Therefore, we order that:

(a) The Settlement Agreement is hereby approved;

(b) The registration granted to the Respondent under Ontario securities law is suspended for a period of 4 months commencing on the date of this order, and the following term and condition be imposed on the Respondent's registration thereafter: the Respondent shall be subject to supervision by a registered officer (advising and trading) in the category of investment counsel and portfolio manager for a period of 2 years;

(c) Trading in any securities by the Respondent shall cease for a period of 4 months commencing on the date of the Commission's order, except that the Respondent may trade in securities in one RRSP account wholly beneficially owned by the Respondent and held at a full service registered dealer (which account the Respondent will identify in writing to the Staff of the Ontario Securities Commission), if the securities are:

(i) securities referred to in clause 1 of subsection 35(2) of the Act;

(ii) in the case of securities other than those referred to in paragraph (i) above:

1. the securities are listed and posted for trading on The Toronto Stock Exchange or the New York Stock Exchange; and

2. the Respondent does not own directly or indirectly through another person or company or through any person or company acting on his behalf, more than one (1) percent of the outstanding securities of the class or series of the class in question;

(d) The Respondent is reprimanded;

(e) The Respondent shall complete the Conduct and Practices course of the Canadian Securities Institute within one year of the date of the Commission's order;

(f) The Respondent shall pay the costs of the Commission's investigation, in the amount of $7,000.00.

[28] We note that Delage has committed to initiating the Conduct and Practices course of the Canadian Securities Institute as soon as possible.

[29] We also note that, as stated in paragraph 31 of the Settlement Agreement, Delage undertakes to consent to a regulatory order made by any provincial or territorial securities authority in Canada containing any or all of the prohibitions set out under sub-paragraphs (b) and (c) of the Order pertaining to registration and trading.

[30] 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). The sanctions strike a balance between the mitigating factors present in this case and the need for an order which will serve the preventive and protective objectives of the Act.

[31] Specifically, there is a remedial aspect to the Settlement which provides that Delage shall be subject to supervision by a registered officer (advising and trading) in the category of investment counsel and portfolio manager for a period of 2 years and that Delage shall complete the Conduct and Practices course of the Canadian Securities Institute within one year of the date of the Commission's order. This will ensure that Delage has proper supervision, education and training and this will lead to responsible trading practices in the future.

[32] In Summary, the proposed sanctions: (a) reflect an appropriate outcome for Delage and deter any future misconduct of this nature; (b) encourages responsible trading practices in accordance with Ontario securities law; and (c) contribute to the fair and efficient operation of the capital markets.

[33] It is important in matters such as this, and as stated by the Alberta Securities Commission in *Re Podorieszach*, that:

> Investors must have confidence that they can trade in a marketplace in which the available information properly reflects genuine trading activity. Investors in the capital market base their behaviour and their investment decisions on posted trading prices. They are entitled to assume that the posted prices reflect bona fide transactions in a market operating free of improper influence. Their own transactions are then reflected in subsequent prices. If any investor makes an investment decision in reliance on a posted price that does not reflect genuine trading activity, that investor may be harmed. Subsequent transactions could also be materially affected by that single instance of a misleading posted price. The result could be harm to investors generally and the undermining of investor confidence in the marketplace. (Re *Podorieszach* [2004] A.S.C.D. No. 360 at para. 87)

[34] Though the regulatory sanctions agreed to in the Settlement Agreement may be below what we might have imposed after a hearing on the merits, we note this was not a hearing on the merits. There is no certainty as to the outcome of any such hearing. We also note that Delage should be given credit for cooperation with Staff and that by settling, Commission resources have been conserved. Therefore, we find that the sanctions are acceptable and fall within acceptable parameters.

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

Approved by the Chair of the Panel on January 29, 2009.

"Suresh Thakrar"

3.1.2 Thierry Gevaert and Hav-Loc Private Wealth Partners Inc. – s. 26(3)

IN THE MATTER OF
THE APPLICATION FOR REACTIVATIONOF REGISTRATION BY
THIERRY GEVAERT AS AN OFFICER OF
HAV-LOC PRIVATE WEALTH PARTNERS INC.

OPPORTUNITY TO BE HEARD BY THE DIRECTOR
SECTION 26(3) OF THE *SECURITIES ACT*

DATE OF DECISION: January 28, 2009

DIRECTOR: Marrianne Bridge, CA, Manager, Compliance,
Ontario Securities Commission (OSC)

VERBAL ARGUMENTS BY: Michael Denyszyn, Legal Counsel,
Registrant Legal Services for the staff of the OSC

Matthew C. Scott, Crawley Meredith Brush LLP for Thierry Gevaert (Gevaert)

Overview

1. In November 2008, OSC Registrant Regulation staff advised Gevaert that it had recommended to the Director that his application for reactivation of registration as an officer of Hav-Loc Private Wealth Partners Inc. (Hav-Loc) be refused.

2. Pursuant to section 26(3) of the *Securities Act* (Ontario) (Act), Gevaert is entitled to an opportunity to be heard before a decision is made by the Director. Gevaert requested a verbal opportunity to be heard (OTBH), which occurred on January 14, 2009. My decision is based on staff counsel's arguments, Gevaert's counsel's arguments, the testimony of Gevaert, and my reading of the documentary evidence referred to at the OTBH.

3. I have set out staff's recommendation first, analyzed each of staff's reasons for recommending refusal of reactivation of registration, set out the general requirements for registration and concluded with my decision and reasons.

Staff's recommendation to the Director

4. Gevaert was previously registered with the OSC as a mutual fund salesperson with Quadrus Investment Services Ltd. (Quadrus), a wholly owned subsidiary of London Life. He was employed by Quadrus from August 1997 to July 2003 and registered with the OSC during the same period. Gevaert resigned from Quadrus in 2003. Staff alleges that his resignation was for cause.

5. In February 2008, Gevaert filed an application for reactivation of registration as an officer of Hav-Loc, a newly formed limited market dealer (LMD).

6. In November 2008, staff advised Gevaert that it had recommended to the Director that his application for reactivation of registration as an officer of Hav-Loc be refused on the basis that he lacked the integrity required of a securities professional and he was therefore unsuitable for registration. Staff's recommendation was based on several factors:

   - Gevaert's prior involvement with The Institute For Financial Learning (IFFL) and his recent involvement with individuals previously associated with IFFL
   - Hav-Loc's unregistered trades of securities of "CV" Limited Partnership (CV) to six Ontario residents and
   - Gevaert's misrepresentations on both Item 11 *Previous Employment* and Item 12 *Resignations and Terminations* in his registration reactivation application

7. Other factors were also raised at the OTBH including a recent:

   - "warning letter" from the Mutual Fund Dealers Association (MFDA)
   - letter to the OSC from the Alberta Securities Commission (ASC) indicating that they are investigating Hav-Loc and that Gevaert is a potential respondent in that matter and

- letter from the Financial Planners Standards Council (FPSC) to the OSC regarding Gevaert's unauthorized use of "CFP marks"

Arguments

8. To the extent possible, I have set out staff's arguments and the applicant's response together and have indicated where their arguments agreed and where they differed. I have also set out my views on each argument raised. My views on the totality of the arguments are included with my decision below.

IFFL

9. The allegations with respect to Gevaert's prior association with IFFL (and its representatives) and the implications of that association on suitability for current reactivation of registration were some of the more serious allegations discussed during the OTBH. There were two primary issues I needed to address in making my decision. First, IFFL and certain of its representatives have a long and troubled regulatory history. Although Gevaert was not named in any of these proceedings, he was a "structuralist" and later a regional manager of IFFL. Is that association sufficient that my consideration of his reactivation of registration application should be negatively impacted? Second, should the recent involvement of individuals related to IFFL and to Hav-Loc in investments promoted by Hav-Loc to its clients impact Gevaert's application for reactivation of registration?

10. IFFL was founded in 2003 by Milowe Brost. Gevaert met Brost in 2002 through a predecessor company to IFFL (IFFL and its predecessor company are both referred to as IFFL in this decision). After attending some IFFL workshops, Gevaert joined IFFL as a member and later because a structuralist (2004). Gevaert was also later a regional manager of IFFL. A structuralist is an independent contractor that solicits members for IFFL. A structuralist also "services" the members solicited. Being a structuralist entitled Gevaert to higher and different levels of fees from IFFL operations. Gevaert testified that he told his regional manager about his IFFL involvement and that he didn't want to hear anything about it. He did not discuss his involvement with IFFL with anyone else at London Life or Quadrus until his resignation.

11. IFFL has a long and troubled regulatory history. The ASC found in 2007 that IFFL and certain named representatives of IFFL, among other things, made false and misleading statements in offering memoranda, traded in securities without registration, distributed a prospectus that hadn't been receipted by the ASC, acted as investment adviser without registration, and engaged in fraud. Significant sanctions were imposed. The State of Washington Department of Financial Institutions, Securities Division found in 2008 that IFFL and certain named representatives conducted registerable activity without being registered. Again, significant sanctions were imposed. The Saskatchewan Financial Services Commission also conducted a proceeding, made a finding of guilt and imposed sanctions.

12. According to a 2005 letter from IFFL to OSC staff, "The IFFL as an organization is not in the business of trading or selling Securities, we are however in the business of providing Workshops and disseminating information. This empowers a potential Member to understand and exploit many existing business opportunities for profit." I was also directed to an undated letter to IFFL members listing potential investments in listed entities, some of which were non-arm's length to IFFL. Staff's characterization of this letter is that IFFL was inducing members to purchase specific securities and that as a structuralist with IFFL, Gevaert was also inducing members to purchase specific securities. This, staff argues, is directly relevant to Gevaert's current registration reactivation application.

13. Staff also directed me to extracts of Hav-Loc's website which had been reactivated within hours of the OTBH following several weeks of not being available including:

> "[Hav-Loc] is unique to our competition by being able to investigate and develop private equity investments in a variety of industries. Hav-Loc does not own these companies, so there will never be any opportunity for a conflict of interest to arise."

14. I was also directed towards several offering memoranda provided by Hav-Loc relating to investments that it promoted or was currently promoting. All of the entities appear to be currently or recently related in some way to individuals formerly associated with IFFL or currently or recently associated with Hav-Loc and thus staff is concerned that Hav-Loc is or has been promoting investments in related entities. None of the individuals named below as being associated with IFFL appears to have been involved in any way in the securities regulatory proceedings described in this decision.

15. The offering memorandum of "FQ" Limited Partnership discloses that "M" is the Director and President of the general partner of FQ. M was until quite recently the Director of Operations of Hav-Loc and was the designated compliance officer of Hav-Loc in its registration application. Gevaert testified that M resigned from his position in Hav-Loc before the FQ deal was put together so there is no conflict. Gevaert also testified that M has no current interest in Hav-Loc and neither Gevaert or Hav-Loc has an interest in FQ.

16. The offering memorandum of CV, a real estate limited partnership, discloses that "L" is the President of the General Partner of CV. His principal occupation is described as being Managing Partner of "L Inc.", and real estate is set out as his special expertise. L was referred to in The State of Washington Department of Financial Institutions, Securities Division decision above as an IFFL related business entity that assisted Washington residents in setting up a Canadian trade name through which to join IFFL. L is also the auditor in the Hav-Loc registration application (Hav-Loc has apparently since changed its auditor). In the offering memorandum of "PM", L is shown as being the President of PM.

17. Gevaert testified that L is not involved in Hav-Loc's operations in any way. With respect, I don't agree. L was the auditor in Hav-Loc's registration application and he's also involved in the promotion/facilitation of some of the investments sold by Hav-Loc. Lastly, Gevaert testified that L incorporated Hav-Loc (although, as below, according to the Hav-Loc incorporation documents "O" did this as agent).

18. In the offering memorandum of "GP" Limited Partnership, O is shown as being the President of the General Partner of GP. O is also a Director of CV and was Hav-Loc's agent on incorporation.

19. Despite the testimony of Gevaert that he regretted his involvement with IFFL, I found it troubling that he has recently been and continues to be associated with the same individuals that he was associated with or met through IFFL. Although Gevaert was not named in any of the completed regulatory proceedings against IFFL, he was a structuralist and a regional manager with IFFL. Gevaert's counsel argues that it is unfair and improper for me to deny registration solely [emphasis added] in reliance on the IFFL matters discussed here. I agree that it is not appropriate for me to rely solely on the IFFL matters in making my decision. The IFFL matters were not the only matters that resulted in the staff determination to deny registration. So while I would not deny Gevaert's application for registration solely on the IFFL matters discussed here, I find that his recent association with individuals formerly associated with IFFL (even if these individuals were not the individuals sanctioned by the securities regulators) does negatively impact his application for reactivation of registration as an officer of Hav-Loc.

20. Gevaert's counsel also argued that there is no evidence that Gevaert's conduct has been or is in breach of securities laws in Ontario or elsewhere. With respect, I disagree. My view is that Gevaert was not in compliance with MFDA Rule 1.2.1(d)(iii) relating to outside business activities of an Approved Person when he was employed by Quadrus and accepting varying types and levels of fees from IFFL.

Hav-Loc's unregistered trades

21. From April 2008 to June 2008, Hav-Loc sold securities of CV to six Ontario residents for total proceeds of $47,000. Hav-Loc was not and is not registered to sell securities to Ontario residents. There is no dispute on this issue. In July 2008, Gevaert sent a letter to all "senior associates" of Hav-Loc directing them to stop marketing to Ontario clients immediately until Hav-Loc obtained its LMD registration in Ontario.

22. An additional related issue that troubled me in connection with these unregistered trades was that Gevaert testified that he didn't know whether Hav-Loc had promoted securities of any other limited partnerships referred to in this OTBH to Ontario residents. As the 100% owner, President, Chief Executive Officer and Director of Hav-Loc, I would have expected him to be fully aware of whether further illegal distributions of securities were made to Ontario residents.

Gevaert's registration application misrepresentations

23. Item 11 of the registration application deals with previous employment. In Item 11, Gevaert disclosed that he was with London Life from March 1998 to January 2002. The information with respect to his employment at London Life is totally incorrect – both in terms of the name of his registrant-employer and his start and end dates with the registrant. Gevaert attributes these errors to law office errors. He also testified that his pay cheques came from London Life and thus it was reasonable for him to show his employer as London Life and not Quadrus. I concluded that the errors in Item 11 were a result of sloppiness in completion of the form and the review by Gevaert of the completed form, and likely not an intention to deceive.

24. Item 12 of the registration application deals with resignations and terminations. In question 1, Gevaert answers "no" to the question: "Have you ever resigned or been terminated following allegations made by a client, sponsoring firm, self-regulatory organization, securities regulatory authority or any other regulatory authority that you: (a) violated investment-related statutes, regulations, rules or industry standards of conduct?"

25. As part of his employment with Quadrus from 1997 to 2003, Gevaert was required to sign their code of business conduct. He testified that was generally aware of the contents of the code of business conduct. An extract from the code is set out below:

> "While sponsored by Quadrus, you are permitted to trade only in products and services offered or approved by Quadrus."

26. In July 2003, staff received a Notice of Termination for Cause of Gevaert from Quadrus. Further information was subsequently received from Quadrus and an affidavit was filed by Gevaert. The Notice of Termination states that Gevaert resigned for cause because he was engaging in unauthorized sales activities and because he was in violation of their code of conduct. Quadrus apparently became aware of Gevaert's activities following transfers of funds out of Quadrus or London Life accounts by Gevaert's customers.

27. Gevaert testified that he was not aware until documents were exchanged prior to this OTBH that Quadrus had filed documents with the OSC indicating that his resignation from Quadrus was for cause. He indicated that he resigned when the potential conflict relating to his involvement with IFFL was pointed out to him. With respect, I didn't find this testimony credible. Gevaert clearly acknowledged that he was aware that he was offside Quadrus' code of conduct, that he was told by Quadrus that he was in conflict with the code, and that he was provided time to sell his book of business and was therefore not asked to resign immediately. Counsel argued that Gevaert didn't have an opportunity to cross examine any of the witnesses that produced the documents filed by Quadrus with the OSC relating to the resignation for cause. He argues that Gevaert completed item 12 based on what he knew at the time he completed it – which, according to Gevaert's testimony, did not include the fact that his resignation was for cause. I don't accept the assertion that Gevaert was not aware that Quadrus had reported to the OSC – as required - his resignation as a resignation for cause.

28. Gevaert's counsel also argued that it was reasonable for Gevaert to answer no to Item 12 because staff counsel had not proven that Quadrus' code of conduct could reasonably be viewed as being the industry standard for conduct. I disagree. As above, my view is that Gevaert was not in compliance with MFDA Rule 1.2.1(d)(iii) relating to outside business activities of an Approved Person when he was employed by Quadrus and accepting varying types and levels of fees from IFFL. Thus with respect to an Approved Person engaging in outside business activities, I find that Quadrus' code of conduct could reasonably be viewed as being the industry standard of conduct. As a result, I think a reasonable interpretation of the question being asked in Item 11 would result in Gevaert disclosing his resignation for cause from Quadrus.

MFDA warning letter

29. By letter dated December 12, 2008, the MFDA advised Gevaert that certain alleged conduct was in breach of MFDA Rule 1.2.1(d)(iii) relating to outside business activities of an Approved Person. Staff also alleges that Gevaert made a false statement to them regarding certain business activities of Hav-Loc. These types of letters are commonly referred to as "warning" letters. While there is some question as to the particulars of the activities discussed in the warning letter, as above, I am satisfied that Gevaert contravened MFDA rules by conducting outside business activities with IFFL while being an Approved Person at Quadrus.

Alberta Securities Commission investigation

30. In a December 2008 letter, the ASC confirmed to the OSC that Gevaert is a potential respondent in a current investigation of Hav-Loc. No further details are provided in the letter and few details were provided at the OTBH. Further information with respect to certain client files is being provided to the ASC by Gevaert in late January.

31. It was difficult for me to determine what weight to put to this investigation in making my decision. A confirmed investigation by another securities regulator into the conduct of a market participant is a serious event that should generally be given considerable weight in my decision. On the other hand, very limited information is available regarding what the investigation relates to or what the timing of the investigation might be. Until the matters underlying the investigation by the ASC are complete, however, my view is that the existence of the investigation alone is a matter that must be given serious consideration in making my decision.

Financial Planners Standards Council

32. By letter dated October 9, 2008, the FPSC advised the OSC that Gevaert was not currently licenced to use "CFP Marks" (i.e. the designation CFP, the words "Certified Financial Planner" or the CFP flame logo trademarks). Gevaert testified that he didn't renew the CFP course and he therefore wasn't licensed. The CFP Marks were subsequently deleted from the Hav-Loc website. I was unable to attribute this conduct to just sloppiness. In my view, the inappropriate use of an accreditation is a serious issue.

Suitability for registration generally

33. Subsection 25(1) of the Act generally requires that any person or company that trades in securities or advises others in securities investments be registered in the relevant category. A registrant is in a position to provide valuable services to the public, both in the form of direct services to individual investors and as part of the larger system that provides the public with the benefits of fair and efficient capital markets. A registrant also has a corresponding capacity to do material harm to investors and to the public at large. Determining whether an applicant should be registered is thus an important component of the OSC's public interest mandate. As well, as noted in numerous decisions by the Commission, other securities commissions and the courts, registration is a privilege, not a right.

34. Subsection 26(1) of the Act states that unless it appears to the Director that a registrant is not suitable for registration or that a proposed registration is objectionable, the Director shall renew the applicant's registration. Therefore, the question for me to determine as Director in this matter is whether Gevaert, as applicant for officer of Hav-Loc, is suitable for reactivation of registration and/or whether Gevaert's reactivation of registration is objectionable.

35. The meanings of "suitable" and "objectionable" for the purposes of section 26 of the Act are not set out in securities law. However, the Commission has over time and in a number of previous Director's decisions, articulated three fundamental criteria for determining suitability for registration:

- **Integrity,** which includes honesty and good faith, particularly in dealings with clients, and compliance with Ontario securities laws
- **Competence,** which includes prescribed proficiency and knowledge of the requirements of Ontario securities laws and
- **Financial solvency,** which is considered relevant because it is an indicator of a firm's capacity to fulfill its obligations and can be an indicator of the risk that an individual will engage in self-interested activities at the expense of clients.

The criterion at issue here is integrity.

Objectionable

36. Subsection 26(1) draws a distinction between the Director's determination whether:

- an applicant is suitable for registration or
- it is objectionable to permit the applicant to be registered.

37. Staff argues that the determination that something is "objectionable" must be with reference to the public interest mandate of the Commission set out in section 1.1 of the Act:

- to provide protection to investors from unfair, improper or fraudulent practices and
- to foster fair and efficient capital markets and confidence in capital markets.

38. In most cases, the determination of whether conduct is objectionable will coincide with the determination of whether it is also suitable based on the criteria set out above. However, the Director has the power to determine that it is objectionable to approve a registration application on broader public interest grounds, regardless of the determination of suitability.

Relevance of past conduct

39. In the *Charko* case (*Re Charko* (1992), 15 OSCB 3989), the Commission said that "[in] assessing fitness for registration, the Director must necessarily place a strong reliance on an applicant's past behaviour". As well, it stated that "[s]uitability includes the totality of… [a Registrant's]… past and present".

40. In the *Mithras* case (*Re Mithras Management Ltd.*, (1990) 13 OSCB 1600), the Commission stated that "… the role of this Commission is to protect the public interest by removing from the capital markets… those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets… We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest by having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be…"

41. As indicated in *Charko* and *Mithras*, the Director must necessarily place a strong reliance on an applicant's past behaviour in assessing fitness for registration and must protect the public interest by removing from the capital markets those whose conduct in the past leads to the conclusion that their conduct in the future may well be detrimental to the integrity of the capital markets.

Registration objectionable

42. The Director also has the ability to determine whether a proposed reactivation of registration is objectionable on broader public interest grounds, regardless of the suitability determination.

Decision and reasons

43. After having heard the arguments of staff and Gevaert's counsel and the evidence of Gevaert, it is my decision that the reactivation of registration of Gevaert as an officer of Hav-Loc should be refused. The factors listed in paragraphs 6 and 7 of this OTBH when taken together provide a sufficient and reasonable basis to deny the reactivation of registration of Gevaert on the basis that his past behaviour demonstrates that he lacks the integrity required of a securities professional. He is therefore unsuitable for reactivation of registration. I also find that the totality of his past conduct makes his registration objectionable.

44. Gevaert's counsel argued that rather than denying reactivation of registration, I should impose terms and conditions. Staff counsel argues that terms and conditions cannot be used to shore up a fundamentally objectionable registration application. I agree with staff and find that it is not appropriate to reactivate the registration of Gevaert and then shore up what I consider to be a fundamentally objectionable registration application with terms and conditions.

45. Our 1991 Annual Report stated in part that "[the Registrant Regulation] section administers a registration system which is intended to ensure that all Applicants under the [Act]… meet appropriate standards of integrity, competence and financial soundness". As well, I refer to the Director's Decision in the matter of Leng Wilson Ng (Re Ng (2003), 25 OSCB 5485) which states that "[The] Director must only find that the applicant appears to be unsuitable and that is a different standard than section 127". As in the matter of Ng, I find that Gevaert appears to be unsuitable for reactivation of registration.

46. As Director, I have limited power under section 26 of the Act to grant, renew or impose terms and conditions on registration based on suitability of the applicant or whether the registration is objectionable. The Commission has much broader powers including the ability to review this decision and make such other decision as the Commission considers proper.

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

3.1.3 Norshield Asset Management (Canada) Ltd. et al. – Rule 6 of the OSC Rules of Practice (1997), 20 OSCB 1947

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

AND

IN THE MATTER OF
NORSHIELD ASSET MANAGEMENT (CANADA) LTD.,
OLYMPUS UNITED GROUP INC., JOHN XANTHOUDAKIS,
DALE SMITH AND PETER KEFALAS

REASONS AND DECISION REGARDING
A MOTION FOR A STAY OF THE PROCEEDING
(Rule 6 of the Ontario Securities Commission Rules of Practice
(1997), 20 O.S.C.B. 1947)

Hearing: December 11, 2008

Decision: February 3, 2009

Panel:	Wendell S. Wigle, Q.C.	–	Commissioner (Chair of the Panel)
	David L. Knight, FCA	–	Commissioner
	Margot C. Howard	–	Commissioner
Counsel:	Anne C. Sonnen Usman M. Sheikh	–	for Staff of the Ontario Securities Commission
	Alistair Crawley	–	for John Xanthoudakis and Dale Smith

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REASONS AND DECISION

I. BACKGROUND

[1] On December 11, 2008, we heard a motion for an order staying the proceeding against John Xanthoudakis ("Xanthoudakis"), and Dale Smith ("Smith") (collectively the "Moving Parties") before the Ontario Securities Commission (the "Commission"), commenced by a Notice of Hearing issued on October 11, 2006, in connection with a Statement of Allegations issued by Staff of the Commission ("Staff") on the same date (the "Proceeding").

[2] A Notice of Motion was filed with the Commission by the Moving Parties on December 8, 2008 ("Stay Motion"). Written submissions for the Stay Motion were filed by the Moving Parties and Staff. The Stay Motion is made on the grounds of a reasonable apprehension of bias on the part of this hearing panel ("Hearing Panel").

[3] The Moving Parties allege that a reasonable apprehension of bias arises from comments made by the Chair of the Commission (the "Chair"), as described later herein, on three grounds: the doctrine of systemic or structural bias, the doctrine of institutional impartiality, and the doctrine of corporate taint.

[4] The Moving Parties have not made an allegation that this Hearing Panel or any of its members, is actually biased or has done anything to give rise to a reasonable apprehension of bias.

[5] Staff and the Moving Parties appeared before us on December 8, 2008. Although the parties were scheduled to make their closing submissions for the hearing on the merits on that date, we agreed to hear the Stay Motion first, and scheduled the Stay Motion to be heard on December 11, 2008.

[6] Peter Kefalas ("Kefalas"), a respondent in the Proceeding, received notice of the Stay Motion, but did not appear. Counsel for the Moving Parties informed us that Kefalas' counsel advised him that Kefalas takes no position on the Moving Parties' motion.

[7] Staff requested that we reserve our decision on the Stay Motion before us, conclude the Proceeding, and then deliver a single decision determining the Stay Motion as well as the hearing on the merits. Staff submitted that proceeding in this fashion would be fair and convenient, and would not fragment the Proceeding. Staff also submitted that further delays would prejudice Kefalas, who is a respondent in the Proceeding but is not a party to the Stay Motion.

[8] Counsel for the Moving Parties opposed Staff's request, and submitted that we should decide the Stay Motion before continuing with the hearing on the merits because of the seriousness of the Moving Parties' argument. Counsel for the Moving Parties also pointed out that the Commission has adjourned proceedings in the past to hear and decide motions.

[9] At the hearing, we decided that it would be most appropriate to make our decision with respect to the Stay Motion first, and only then, if necessary, hear closing submissions by Staff and the Moving Parties in the hearing on the merits.

[10] Here is a brief summary of our findings:

(i) a reasonable apprehension of bias on the part of this Hearing Panel does not arise from the Chair's comments, when considering the doctrine of systemic or structural bias;

(ii) a reasonable apprehension of bias on the part of this Hearing Panel does not arise from the Chair's comments, when considering the doctrine of institutional impartiality; and

(iii) a reasonable apprehension of bias on the part of this Hearing Panel does not arise from the Chair's comments, when considering the doctrine of corporate taint.

[11] These are our reasons and decision on the Stay Motion.

A. The Proceeding on the Merits

[12] This Hearing Panel is currently hearing the Proceeding under sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990 c. S.5, as amended (the "Act") against the respondents Norshield Asset Management (Canada) Ltd. ("Norshield"), Olympus United Group Inc. ("Olympus United"), Xanthoudakis, Smith and Kefalas (the "Respondents"). This Stay Motion was brought by two of the respondents, Xanthoudakis and Smith, who are alleged to be the former senior officers and directing minds of Norshield and other affiliated corporations in the Proceeding.

[13] The Statement of Allegations issued by Staff, against Norshield, Olympus United, Xanthoudakis, Smith, and Kefalas, alleges that:

(i) Norshield, Olympus United, Xanthoudakis, and Smith failed to deal fairly, honestly, and in good faith with clients, contrary to sections 2.1(1) and 2.1(2) of OSC Rule 31-505;

(ii) Norshield and Olympus United failed to keep and/or maintain proper books and records in relation to the Norshield Investment Structure in contravention of section 19 of the [Act] and section 113 of Ontario Regulation 1015 of the Act;

(iii) the Offering Memorandum filed and distributed by Olympus United contained misleading or untrue information and/or failed to state facts which were required to be stated, in contravention of clause (b) of subsection 122(1) of the Act;

(iv) as a consequence of their positions of seniority and responsibility and in their positions as officers and directors of Norshield and/or Olympus United, Xanthoudakis and Smith authorized, permitted or acquiesced in the violations of the requirements of Ontario securities law and breaches of duty described in subparagraphs (i) – (iii) above;

(v) Xanthoudakis and Smith knowingly made statements and provided evidence and information to Staff that was materially misleading or untrue and/or failed to state facts which were required to be stated in an effort to hide the violations of Ontario securities laws and breaches of duty described in subparagraphs (i) – (iv) above; and

(vi) the course of conduct engaged in by Xanthoudakis, Smith and Kefalas compromised the integrity of Ontario's capital markets, was abusive to Ontario's capital markets and was contrary to the public interest.

[14] The hearing on the merits pursuant to sections 127 and 127.1 of the Act, took place on October 27-31, 2008, and on November 3-6, 10-13 and 17, 2008. Staff and the Respondents presented all their evidence, and we set December 8, 2008 to hear their closing arguments.

[15] On November 17, 2008, Staff withdrew some of the allegations it made against Kefalas in its Statement of Allegations. Staff is now seeking that the Commission make a finding that in failing to fulfill his duties as a designated compliance officer and registrant with the Commission, Kefalas' conduct compromised the integrity of, and was abusive to Ontario's capital markets, and was contrary to the public interest.

B. The Judicial Review Application at the Divisional Court

[16] On November 28, 2008, the Moving Parties filed an application for judicial review (the "Application") before the Divisional Court of the Ontario Superior Court of Justice ("Divisional Court") to permanently stay the Proceeding.

[17] In the Application before the Divisional Court on December 5, 2008, counsel for the Moving Parties argued that the statements made by David Wilson, the Chair, in a Canadian Broadcasting Corporation ("CBC") television interview, would cause a reasonable person who is informed of the facts to conclude that the Commission has prejudged the conduct of the Moving Parties and that they will not receive a fair hearing before the Commission. Counsel argued that, consequently, the Commission has lost its jurisdiction over the Proceeding.

[18] Counsel also sought an order from the Divisional Court temporarily staying the Proceeding against the Moving Parties pending the resolution of the Application.

[19] Staff opposed the Moving Parties' request that the Proceeding be temporarily stayed, as well as the Application asserting that the Commission has lost its jurisdiction over the Proceeding. Staff sought an order from the Divisional Court quashing the Moving Parties' Application, on the basis that it was premature.

[20] After hearing oral submissions on December 5, 2008, Mr. Justice Ferrier released his endorsement on that same date. Mr. Justice Ferrier dismissed Staff's motion to quash the Moving Parties' Application on the basis of prematurity. In doing so, Mr. Justice Ferrier stated that "[it] is not appropriate for a single judge to deprive a Divisional Court panel of the exercise of its discretion by determining the issue of prematurity on a motion prior to the hearing of the application". He also found that Staff was unable to provide the court with "any case in which [a] single judge has quashed an application for prematurity when the application is pending before a panel" (*Dale Smith v. Ontario Securities Commission* (5 December 2008), Toronto DC-08-00000589-00JR (Ont. Div. Ct.) ("*Dale Smith v. Ontario Securities Commission*") at para. 9).

[21] Mr. Justice Ferrier also dismissed the Moving Parties' request for a interim stay, pending the conclusion of their Application before the Divisional Court. He stated that:

> There is ample authority in this court to the effect that absent exceptional or extraordinary circumstances demonstrating that the application must be heard, this court should only consider issues arising from a tribunal's proceedings on a full record, including a decision by the tribunal on the very issue.
>
> [Emphasis in original]
>
> (*Dale Smith v. Ontario Securities Commission*, *supra* at para. 11)

[22] Mr. Justice Ferrier applied the test for a stay as set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paras. 41-43. He rejected the Moving Parties' argument that the damage to their reputation would be irreparable should the Proceeding continue to a conclusion against them, even if the Divisional Court were to overturn the result. He stated that the issue of bias, if decided against the Moving Parties by the Commission, could be fully and appropriately dealt with by the Divisional Court.

[23] Mr. Justice Ferrier also found that on the balance of convenience, the Divisional Court should reject a motion for an interim stay, absent exceptional or extraordinary circumstances demonstrating that the Moving Parties must be heard, which he did not find (*Ontario College of Art et al. v. Ontario (Human Rights Commission)* (1993), 11 O.R. (3d) 798, [1993] O.J. No. 61 (Ont. Div. Ct.)).

[24] The Application remains before the Divisional Court, but will presumably not be heard until the Moving Parties have exhausted all potential remedies in the Proceeding before the Commission.

II. THE STAY MOTION ON THE GROUNDS OF BIAS

A. Summary of Facts

[25] The Moving Parties rely on the following facts for making their Stay Motion.

[26] On Sunday November 23, 2008, the CBC broadcast an investigative report on the television program "CBC News: Sunday Night" entitled "Who is Guarding Your Money" on, among other things, the Commission's enforcement activities. Part of the report focused on Norshield and other related entities.

[27] The program was introduced by the host, Evan Solomon ("Solomon"), posing the question: "Are Canadian investors being ripped off because financial regulators aren't enforcing the law?"

[28] We were presented with a transcript of the television program which we have carefully reviewed.

[29] The Norshield matter was introduced by Solomon stating that, "[i]n fact, in 2005 Norshield collapsed under allegations of fraud and even criminal behaviour". The program then showed an excerpt from an interview with Chris Ouslis, an investor who explained that he had lost over a million dollars investing in Norshield.

[30] Solomon proceeded to state the following:

> Having lost so much money, Chris [Ouslis] asked a simple question, who is watching over the financial system and protecting the hard-earned money of investors? Chris [Ouslis] discovered something that the rest of the world is [only] just now finding out, that the watchdogs, not only in the United States, but especially right here in Canada are doing very little to protect Canadian investors.
>
> (Solomon, E. (2008, November 23), Who is Guarding Your Money [Television transcript], *CBC News: Sunday Night*. Available: Cision Canada Inc.) ("CBC News Transcript") at p. 16)

[31] Solomon referred to the Commission as the "cop on the beat of Bay Street" who is "supposed to enforce the laws for the stock market", and introduced David Wilson as the current Chair of the Commission. In a previously recorded interview, Solomon challenged the Chair about the record of Canada in convicting corporate criminals compared with the United States. The program then refocused on Norshield:

> EVAN SOLOMON (HOST):
>
> Chris Ouslis learned about Canada's lack of financial enforcement practices the hard way. In 2005, Norshield, the fund where Ouslis parked his life savings, collapsed under controversial circumstances. As it turned out, the Rizutto crime family had invested $5-million in Norshield and the CEO of the fund, John Xanthoudakis, was even beaten up by these Rizutto enforcers. All told $132-million of investor's money simply vanished, including money belonging to Chris Ouslis.
>
> …
>
> In fact, [w]hile CEO John Xanthoudakis has been charged with breaking security laws, nearly four years since Norshield collapsed, no criminal case has begun, no one has gone to jail and the investors still have no idea where their money went. So who's the bad guy in this, who is the person, the villain behind bars that you and your wife can point to and say at least they got their just desserts.
>
> CHRIS OUSLIS (INVESTOR FRAUD VICTIM):
>
> Nobody.
>
> EVAN SOLOMON (HOST):
>
> [Ouslis] says when he turned to the Ontario Securities Commission for help, he was seriously disappointed by their response.
>
> CHRIS OUSLIS (INVESTOR FRAUD VICTIM):
>
> It felt as if they were very much against us. We didn't feel they were really helping us out. They really again tried to dissuade us, tried to distract us, and the question is who is watching over all this. We thought that it would be the OSC.
>
> EVAN SOLOMON (HOST):
>
> So Ouslis asked us to ask the head of the OSC David Wilson how did Norshield get by the enforcement officers at the OSC.
>
> (CBC News Transcript at pp. 19 – 21)

[32] An excerpt of the interview with the Chair indicated that he responded as follows:

> The OSC wants to allow people to do business. So we clear prospectus[es] so people can pursue earning a living by managing other people's money in the capital market, and 99% of the time they're good people that aren't fraudulent people. Norshield was run by people who were not honest. That's what happened in Norshield.
>
> (CBC News Transcript at p. 21)

[33] The interview continued as follows:

> EVAN SOLOMON (HOST):
>
> He asks, then, what's your purpose? Aren't you supposed to prevent this kind of thing from happening if you don't prevent it from happening, what does the OSC do?
>
> DAVID WILSON (CHAIRMAN OF THE OSC):
>
> Is there a litmus test for honesty or dishonesty before you give a receipt for a prospectus … Life isn't that simple.
>
> EVAN SOLOMON (HOST):
>
> Not being able to determine who is honest and is dishonest may be the one reason that regulatory bodies like the OSC have been unable to prevent a laundry list of corporate catastrophes, from Bre-X, Norbourg, YBM Magnex, Conrad Black, Nortel, and many others. In fact, one study suggests that over a million Canadians have lost money due to corporate fraud.
>
> (CBC News Transcript at p. 21)

B. Allegation of Bias and Overview of the Moving Parties' Submissions

[34] The Moving Parties argue that the Chair's statements were an unequivocal expression of opinion with respect to the conduct of the people who ran Norshield and that he posited the dishonesty of those people as being the problem with Norshield.

[35] The Moving Parties further submit that they are clearly identified in the Notice of Hearing and Statement of Allegations as the "people who ran Norshield". Further, Xanthoudakis was identified in the program by Solomon as the CEO of Norshield, and it was said that he was facing charges of breaching securities laws.

[36] The Moving Parties submit that in considering whether or not to grant the Stay Motion, this Hearing Panel should apply the objective reasonable apprehension of bias test.

[37] The Moving Parties stress that they are not asserting that members of this Hearing Panel are actually biased, but rather that the statements made by the Chair would cause a reasonable and informed person to conclude that the Commission has prejudged the conduct of the Moving Parties and consequently, that they will not receive a fair hearing before this Hearing Panel.

[38] Indeed, counsel for the Moving Parties expressly states on the record that there is no suggestion that members of this Hearing Panel are actually biased:

> This is a public record and the term that's being used, "bias motion", I'd just like to make it clear, as I think it will be clear when it's argued on Thursday, that the legal concept that's being invoked in the motion is one of a reasonable apprehension of bias or prejudgment, and it's an objective test based on what a reasonable person informed of the facts would conclude and, therefore, it's not an argument that the members of this Hearing Panel are actually biased.
>
> *So I just want that to be clear in case anyone listening in on this gets the wrong idea. The events that have triggered this motion are completely outside the control of this Hearing Panel …*
>
> [Emphasis added]
>
> (Hearing Transcript dated December 8, 2008, at pp. 11-12)

[39] Counsel for the Moving Parties reiterated his position on the day of the hearing of the Stay Motion:

> In my submission, it illustrates the interconnectedness of the issues that we are dealing with in this case and which, on this particular motion, invokes the interconnectedness with the perception that a reasonable observer would have of the comments made by the Chair in the CBC interview and how those comments might effect the institution of the Ontario Securities Commission and effect this hearing panel, *even though this hearing panel had absolutely nothing to do with that interview and the statement made.*

> *I'm not here before you today because of anything that this hearing panel has done. It's completely extraneous.*
>
> [Emphasis added]
>
> (Hearing Transcript dated December 11, 2008, at p. 43)

[40] The Moving Parties submit that the statements made by the Chair were intended to defend the Commission from the express or implied criticism leveled by the CBC that the Commission was not doing a very good job of protecting investors in general, and in relation to Norshield in particular, because it was misled or deceived by people who were dishonest. In the Moving Parties' view, the Chair's comments imply that the public should blame the dishonest people who ran Norshield, not the Commission.

[41] Another inference to draw from the Chair's comments, according to the Moving Parties, is that the public should take comfort from the fact that the Commission has concluded that the Respondents are dishonest and that they will be dealt with accordingly.

[42] The Moving Parties argue that there is nothing to suggest that the Chair was speaking in any capacity other than in his role as the Chair of the Commission, or that he was expressing anything other than the position of the Commission and, moreover, that the Chair's statements have tied the reputation of the Commission to the accuracy of the position that the people who ran Norshield are dishonest.

[43] The Moving Parties submit that, although the Chair is not one of the members on this Hearing Panel, a reasonable person informed of the facts would conclude that the views of the Chair are shared by the other members of the Commission, including the members of this Hearing Panel.

[44] The Moving Parties also contend that, at the very least, a reasonable person informed of the facts would expect that the other members of the Commission would be influenced by the unequivocal opinion expressed by the Chair.

[45] We were referred to the following excerpt of Mr. Justice Dubin's decision from the Ontario Court of Appeal in *E.A. Manning Ltd. v. Ontario Securities Commission* (1995), 23 O.R. (3d) 257 (C.A.), leave to appeal to S.C.C. refused ("*E.A. Manning*") at p. 269, as support for the Moving Parties' contention that there may be circumstances where the conduct of the Chair could lead to a reasonable apprehension of bias on the part of this Hearing Panel:

> Although there may be circumstances where the conduct of a tribunal, or its members, could constitute institutional bias and preclude a tribunal from proceeding further, this is not such a case. This is not a case where the Commission has already passed judgment upon the very matters which are to be considered in the pending hearings by the new Commissioners …

[46] Counsel for the Moving Parties submits that the reasonable apprehension of bias test must be applied on a case-by-case basis, and that the value of other case law is limited. Counsel submits that while it may be the case that bias applications based on the comments of a single member of an institution have generally been unsuccessful, it cannot be a rule of law that an institution can never be disqualified as a result of such conduct. Counsel argues that there "has to be a line somewhere". He argues that the case at hand is exceptional given the level of publicity, and the fact that the Chair referred directly to a key allegation in the Proceeding.

[47] The Moving Parties submit that the potential consequences of the Proceeding on them are serious. They point out that since April 2003, the Commission has had the power to order an administrative monetary penalty against a respondent of up to $1 million for each breach of the Act. Further, they point out that section 151 of the Act provides that a decision made by the Commission filed with the Ontario Superior Court of Justice is enforceable as an order of the Ontario Superior Court of Justice. Accordingly, the Commission has the power to order large administrative monetary penalties that are enforceable by legal process.

[48] Amongst other sanctions sought in the Proceeding, the Notice of Hearing states that: "the purpose of the hearing is to consider whether it is in the public interest for the Commission to make an order that: … (e) … Xanthoudakis, Smith … pay an administrative monetary penalty of not more than $1 million for each failure to comply with Ontario *Securities Law* …".

[49] The Moving Parties argue that the seriousness of the consequences to them requires a commensurate adherence to the requirements of fairness and natural justice, and to the public perception of the adherence to those principles. This argument is discussed more fully below in our analysis of the theory of institutional impartiality.

[50] In making their argument that there is a reasonable apprehension of bias on the part of this Hearing Panel, the Moving Parties refer us to the conclusions reached by four separate expert reports which considered the adjudicative function of the Commission, in support of their contention that this Hearing Panel is not sufficiently independent from the Chair.

[51] Before considering the Moving Parties' submissions, we must determine the appropriate legal test for assessing whether a reasonable apprehension of bias exists.

III. THE APPROPRIATE LEGAL TEST

[52] The Moving Parties and Staff presented us with a series of cases dealing with the appropriate legal test for assessing whether a reasonable apprehension of bias exists.

[53] The reasonable apprehension of bias test has been considered by the Supreme Court of Canada on numerous occasions. It is well established that because of the difficulty in determining actual bias, courts and administrative tribunals should concern themselves with the question of whether or not a reasonable apprehension of bias exists, and not whether actual bias exists.

[54] Lord Hewart C.J. famously expressed another reason why the test of a reasonable apprehension of bias is preferred:

> [it] is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.
>
> (*R. v. Sussex Justices, Ex parte McCarthy* (1923), [1924] 1 K.B. 256 (K.B.) at p. 259)

[55] The manner in which the test should be applied was set out by Mr. Justice de Grandpré in dissent in *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369 at p. 394 ("*Committee for Justice and Liberty*"), and has been referenced with approval by the Supreme Court of Canada on numerous occasions:

> … the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information … [The] test is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly".

[56] The Supreme Court of Canada had another opportunity to elaborate upon and apply the reasonable apprehension of bias test in *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623 ("*Newfoundland Telephone*") and *R. v. R.D.S.*, [1997] 3 S.C.R. 484 ("*R.D.S.*"); as well as in other cases.

[57] In *Newfoundland Telephone*, *supra* at para. 22, Mr. Justice Cory stated that procedural fairness:

> … cannot exist if an adjudicator is biased. It is, of course, impossible to determine the precise state of mind of an adjudicator who has made an administrative board decision. As a result, the courts have taken the position that an unbiased appearance is, in itself, an essential component of procedural fairness. To ensure fairness the conduct of members of administrative tribunals has been measured against a standard of reasonable apprehension of bias. The test is whether a reasonably informed bystander could reasonably perceive bias on the part of an adjudicator.

[58] Further, Mr. Justice Cory pointed out that the conduct of members of administrative boards which are primarily adjudicative in nature, must be such that there can be no reasonable apprehension of bias with regard to their decision, similar to the standard applicable to the courts (see *Newfoundland Telephone*, *supra* at para. 27).

[59] Both the Moving Parties and Staff submit that proceedings before the Commission are primarily adjudicative in nature, and should hence attract the more stringent application of the reasonable apprehension of bias test. We agree with their submissions on this point.

[60] We also take note that Mr. Justice Cory, in *R.D.S.*, *supra* at para. 111, commented on the test for finding a reasonable apprehension of bias in *Committee for Justice and Liberty*. In discussing the test set out by Mr. Justice de Grandpré as set out above, Mr. Justice Cory added the following:

> This test has been adopted and applied for the past two decades. It contains a two-fold objective element: the person considering the alleged bias must be reasonable, and the apprehension of bias itself must also be reasonable in the circumstances of the case. See *Bertram*, *supra*, at pp. 54-55; *Gushman*, *supra*, at para. 31. Further the reasonable person must be an informed person, with

> knowledge of all the relevant circumstances, including "the traditions of integrity and impartiality that form a part of the background and apprised also of the fact that impartiality is one of the duties the judges swear to uphold": *R. v. Elrick*, [1983] O.J. No. 515 (H.C.), at para. 14. See also *Stark*, *supra*, at para. 74; *R. v. Lin*, [1995] B.C.J. No. 982 (S.C.), at para. 34.
>
> [Emphasis in original]

[61] Mr. Justice Cory also found that the onus is on the applicant to prove that a reasonable apprehension of bias exists (see *R.D.S.*, *supra* at para. 114).

[62] Furthermore, the threshold for finding real or perceived bias is high, because such a finding calls into question an element of judicial integrity:

> Indeed an allegation of reasonable apprehension of bias calls into question not simply the personal integrity of the judge, but the integrity of the entire administration of justice.
>
> (*R.D.S.*, *supra* at para. 113)

[63] Mr. Justice Cory also noted that an additional reason why the threshold for finding a reasonable apprehension of bias is high, is because there is a presumption that judges will carry out their oath of office (see R.D.S., supra at para. 117).

[64] Similarly, there is a presumption that Commissioners will act fairly and impartially in discharging their adjudicative responsibilities. In E.A. Manning, supra at p. 267, the Ontario Court of Appeal held, in the context of a bias application brought against the Commission, that the presumption of fairness and impartiality applies directly to Commissioners:

> Securities Commissions, by their very nature, are expert tribunals, the members of which are expected to have special knowledge of matters within their jurisdiction. They may have repeated dealings with the same parties in carrying out their statutory duties and obligations. *It must be presumed, in the absence of any evidence to the contrary, that the Commissioners will act fairly and impartially in discharging their adjudicative responsibilities and will consider the particular facts and circumstances of each case.*
>
> [Emphasis added]

[65] Also in *R. v. R.D.S.*, *supra* at para. 36, Justices L'Heureux-Dubé and McLachlin stated that the reasonable person for the purposes of the test is "not a 'very sensitive or scrupulous' person, but rather a right-minded person familiar with the circumstances of the case".

[66] In applying the test set out by Mr. Justice de Grandpré in *Committee for Justice and Liberty*, the Supreme Court of Canada in *R. v. Lippé*, [1991] 2 S.C.R. 114 ("*Lippé*"), decided that an informed person must be presumed to have knowledge of any safeguards in place.

[67] When considering the mind of a fully informed person under the test for institutional impartiality in *Lippé*, *supra* at p. 144, Mr. Chief Justice Lamer wrote:

> At this point in the analysis, one must consider what safeguards are in place to minimize the prejudicial effects and whether they are sufficient to meet the guarantee of institutional impartiality under s. 11(d) of the Canadian *Charter*. Again, the test is whether the court system will give rise to a reasonable apprehension of bias in the mind of a fully informed person in a substantial number of cases. *It is important to remember that the fully informed person at this stage of the analysis must be presumed to have knowledge of any safeguards in place.* If these safeguards have rectified the partiality problems in the substantial number of cases, the tribunal meets the requirements of institutional impartiality under s. 11(d) of the Canadian *Charter*. Beyond that, if there is still a reasonable apprehension of bias in any given situation, that challenge must be brought on a case-by-case basis.
>
> [Emphasis (italics) added]

[68] Consequently, in light of the jurisprudence above, we find that when assessing whether a reasonable apprehension of bias exists, the test is that of a reasonable person informed of all the relevant circumstances; that is, a person who is fully informed of any safeguards in place at the Commission.

IV. ANALYSIS

A. Overview

[69] The Moving Parties submit that:

> [in] making statements that disparaged the honesty and integrity of the [Moving Parties], the Chair of the OSC raised a reasonable apprehension of bias that the Commission generally, and the members of the hearing panel specifically, are biased. That is a reasonably well informed member of the public would ascertain that there is a real likelihood of bias on the part of the Commission members on the panel.
>
> (Factum of the Moving Parties, at para. 39)

[70] In the course of their oral arguments, the Moving Parties refer to three doctrines in support of their position that a reasonable person would view the Chair's comments as raising a reasonable apprehension of bias. They are: (1) systemic and structural bias; (2) institutional impartiality; and (3) corporate taint.

[71] Staff contends: that this Hearing Panel is independent; that this Hearing Panel benefits from a presumption of fairness and impartiality; and that the fully informed person is presumed to have knowledge of any safeguards in place at the Commission.

[72] Consequently, Staff submits that the Moving Parties' position that a reasonable person as defined by the jurisprudence under either the doctrine of systemic or structural bias, institutional impartiality, or corporate taint would conclude, based on the Chair's comments, that this Hearing Panel has prejudged the matter, cannot succeed.

[73] We set out below the submissions of the Moving Parties and Staff, and our analysis of the law under each of these doctrines.

B. Is there a reasonable apprehension of bias on the part of this Hearing Panel arising from the Chair's comments, when considering the doctrine of systemic or structural bias?

1. Submissions

a. The Moving Parties' Submissions

[74] The Moving Parties argue that a reasonable person informed of the facts would find that there is a prejudgment on the part of the Commission, as a result of the statements made by the Chair of the Commission on the CBC television program.

[75] The Moving Parties argue that, when making our determination as to whether there is a reasonable apprehension of bias on the part of this Hearing Panel arising from the Chair's comments, we should consider whether the current structure of the Commission and the separation of its adjudicative function is sufficient to ensure that hearing panels adjudicate matters in an impartial and independent manner. The Moving Parties further submit that the increased sanctioning powers of the Commission raise the standard of procedural fairness the Commission must meet, and that the current structure may not be sufficient in that regard.

[76] Counsel for the Moving Parties refers us to the conclusion reached in four separate reports; that there should be a separate adjudicative tribunal composed of Commissioners who do not participate in any other function within the Commission.

[77] The Moving Parties refer us to the "Report of the Fairness Committee to David A. Brown, Q.C., Chair of the Ontario Securities Commission" by the Honourable Coulter A. Osborne, Q.C., David J. Mullan and Bryan Finlay, Q.C., dated March 5, 2004 (the "Osborne Report"). The mandate of the report is stated as follows, at p. 1:

> … to review and provide advice on the Commission's current structure and, in particular, its adjudicative function in light of the increased sanctioning powers (fines up to $1 million and disgorgement orders) given to the Commission by Bill 198. In fulfilling our mandate, we proceed on the basis that, absent clear and convincing evidence, we would not recommend structural change.

[78] The Moving Parties note that the Osborne Report considered a publicly released letter dated November, 2002 to the then Chair of the Commission from three former Chairs (James C. Baillie, Stanley M. Beck and Edward J. Waitzer), which urged the Commission to consider structural change in light of its overlapping functions and increased powers under Bill 198. The report states that the "former Chairs contended that without change, the Commission's institutional credibility would erode".

[79] Further, the Moving Parties refer us to the Osborne Report's recommendation that the Commission take steps to separate its adjudicative function from the Commission.

[80] After noting that the implementation of their recommendations would take time, the authors of the Osborne Report state the following at p. 34:

> We are also confident that, in the meantime, the Commission will do nothing to exacerbate or contribute further to the problems on which we base our recommendations for change.

[81] The Moving Parties submit that the Chair's statements are "exactly what the Fairness Committee was warning against, conduct which will exacerbate or contribute to the underlying concern about the impartiality of hearings before this Commission" (Hearing Transcript dated December 8, 2008, at p. 51).

[82] The Moving Parties also bring to our attention a report prepared by the law firm Stikeman Elliott LLP for the Trinidad and Tobago Securities and Exchange Commission entitled: "Review and Revision of the Trinidad and Tobago Securities Industry Act, 1995 and Related By-Laws and Associated Legislation: Background" (30 November, 2004) (the "Stikeman Elliott Report"). After reviewing the findings of the Osborne Report, the Stikeman Elliott Report states that the "Standing Committee on Finance and Economic Affairs of the Ontario Legislature endorsed the recommendations in the Osborne Report and the Ontario Government announced in November 2004 that it will implement the recommendations of the Osborne Report" (at p. 93). The Moving Parties assert that it is an important contextual factor that the Legislature has expressed its intention to adopt the recommendations (see Hearing Transcript dated December 11, 2008, at p. 53).

[83] The Moving Parties also refer us to a report by the Honourable Peter Cory and Marilyn L. Pilkington entitled "Canada Steps Up: Critical Issues in Enforcement" (September, 2006), which was commissioned by a task force of the Investment Dealers Association of Canada ("IDA Task Force") focused on modernizing securities legislation in Canada (the "Canada Steps Up Report"). The Moving Parties refer us to the following excerpt of the report at pp. 226-227:

> In our view, the integration of adjudication with the other functions of securities regulators is inappropriate in that it gives rise to a reasonable apprehension of bias even when those within the commission exercise their best efforts to maintain separate spheres of activity and authority.
>
> It is understandably difficult for commissioners to separate their adjudicative role from their commitment to the work of the commission.
>
> …
>
> The attempt to ensure adjudicative independence by (1) protecting the flow of information, (2) involving only the chair of the commission in the review of investigation and (3) excluding the chair from adjudication, is a tacit recognition of the problems inherent in the current integrated structure. This approach does not, however, provide adequate protection for adjudicative independence. Moreover, it appears to create an artificial and potentially dysfunctional organizational structure.
>
> In our view, the independence of adjudication should be protected by the structure itself, and should not depend on the ability of commissioners and staff to keep their various functions separate and distinct. This is essential in light of the expansion in the powers and penalties available to regulators. The need for an independent adjudication process has become an urgent priority. The public, and those who are regulated, must be confident in the independence and fairness of the adjudication process.

[84] The Moving Parties suggest that in determining whether or not a reasonable apprehension of bias arises as a result of the Chair's comments, we should consider the perception of systemic or structural bias described in these reports.

[85] Indeed, the Moving Parties argue that in an ordinary case, there can be a perception of bias in the public's mind as a result of the fact that the investigation and the enforcement of a particular matter is brought forward by Staff before a hearing panel of the Commission. In the ordinary case, the Moving Parties argue, that could give rise to an apprehension that the process may not be entirely fair to a respondent.

[86] Further, they argue that we should consider the unique circumstances of this case, where the Chair has spoken in very direct terms about the conduct and the honesty of respondents subject to a proceeding. According to counsel for the Moving Parties, these circumstances bring the robustness of the structure of the Commission into sharp relief.

[87] The Moving Parties argue that a further question arising from the test for determining whether there is a reasonable apprehension of bias is to decide whether the reasonable person is presumed to appreciate internal distinctions and functions

between the Chair of the Commission and the other Commissioners. The Moving Parties submit that this issue is an important one, which explains why there needs to be structural measures in place to provide a sufficient level of independence to preserve the presumption of impartiality.

[88] The Moving Parties further argue that in deciding the Stay Motion we should consider the issue surrounding the structural independence of the tribunal in light of the Commission's increased sanctioning powers. We review this argument fully in our analysis regarding the doctrine of institutional impartiality below.

b. Staff's Submissions

[89] Staff submits that the only question before us is whether a reasonable person as defined by the case law would conclude that this Hearing Panel is unable to render an impartial decision based on the evidence before it in the Proceeding.

[90] Staff argues that the Commissioners who sit on hearing panels are presumed to act impartially and that a reasonable person, would not find a reasonable apprehension of bias under the circumstances set out in the Stay Motion.

[91] In response to the Moving Parties' arguments that there is a perception of systemic or structural bias that is the subject of several reports, which should be considered as background when deciding the Stay Motion, Staff submits that these reports, research papers and other materials commenting on the Commission and its structure, have not been adopted as law, and that they do not have the force of law.

[92] Further, Staff points out that the Osborne Report was actually both commissioned and tabled by the Commission before the Finance Committee that oversees it. Furthermore, Staff submits that the recommendation of separating the adjudicative function from the other functions exercised by securities regulators across the country has been superseded by discussions of establishing a single national regulator, and that the question of whether the current structure of the Commission should be modified or not is ultimately a matter for the Legislature to decide. In the circumstances, Staff stresses that it is the Act, the Commission's practices and guidelines and the relevant case law that must govern the issue before us.

[93] Finally, Staff submits that there is significant case law in analogous circumstances where a senior decision-maker or senior decision-maker of an administrative body has made comments about a matter before a tribunal, which have not been attributed to the entire tribunal.

2. Analysis and the Law

a. Presumption of Fairness and Impartiality

[94] It is well established that judges and members of administrative tribunals have a duty of impartiality that requires them to approach all cases with an open mind. The Supreme Court of Canada has held that there is a presumption that judges will act fairly and impartially.

[95] As was discussed (at paragraph 64 of these reasons), the Ontario Court of Appeal has held that there is a presumption that Commissioners will act fairly and impartially in discharging their adjudicative responsibilities.

[96] In *Gaudet v. Ontario Securities Commission* (1990), 13 O.S.C.B. 1405 ("*Gaudet*") at 1410-1411, aff'd (1990), 13 O.S.C.B. 4799 (Ont. Div. Ct.) ("*Gaudet Divisional Court*"), the Commission rejected a motion brought by certain respondents for a publication ban in relation to the terms of a settlement agreement with other respondents. It was alleged that the settlement agreements with co-respondents and the approval of those settlement agreements were prejudicial to them in obtaining a fair hearing both before the Commission and in related criminal proceedings. The Commission rejected the application and held:

> Judges often have to deal with far more potentially damaging inadmissible evidence than the type of evidence that is in question here; a judge, for example, will continue to hear a case even though he or she has excluded an involuntary confession.
>
> The same considerations are true for commissioners of the Ontario Securities Commission who through reading the financial press and in other ways will often be aware of allegations and of other proceedings but, like judges, should be able to approach a hearing in an objective manner. Moreover, commissioners should be fully aware that they are to hear and determine a matter based on the evidence placed before them.

[97] The Divisional Court affirmed *Gaudet*, emphasizing that Commissioners are not only aware of the necessity of trying matters on the evidence before them but "invariably demonstrate their ability to do so" (see *Gaudet Divisional Court*, *supra* at p. 4799).

[98] It is well established that Commissioners benefit from a presumption of fairness and impartiality when exercising their adjudicative function. Accordingly, we now turn to the conclusions that courts have reached with respect to the Commission's integrated agency model.

b. The Integrated Agency Model with Multiple Functions Upheld by the Law

[99] The Commission's statutory responsibilities are exercised through the Commission's rule and policy-making functions as well as its adjudicative function. While these functions are distinct, the Commission's powers are exercised in furtherance of investor protection and in aid of fostering fair and efficient capital markets.

[100] In its policy and rule-making function, the Commission makes rules that have the force of law and adopts policies that influence the activities of market participants. In its adjudicative role, members of the Commission serve as independent adjudicators on hearing panels presiding over enforcement matters and regulatory policy issues. Hearing panels render decisions independently of the Commission as a whole.

[101] In that regard, it is important to note that matters before Commission hearing panels are governed by the Act, the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (the "SPPA"), the Commission's *Rules of Practice* (1997) 20 O.S.C.B. 1947 ("Rules of Practice"), principles of administrative law, and the common law.

[102] The fact that members of the Commission perform different functions is not a new or novel concept to administrative law and has been expressly endorsed by the Supreme Court of Canada in *Brosseau v. Alberta (Securities Commission)*, [1989] 1 S.C.R. 301 ("*Brosseau*") and by the Ontario Court of Appeal in *E.A. Manning*.

[103] The Supreme Court of Canada in *Brosseau*, *supra* at paras. 31-37 stated:

> Securities commissions, by their nature, undertake several different functions. They are involved in overseeing the filing of prospectuses, regulating the trade in securities, registering persons and companies who trade in securities, carrying out investigations and enforcing the provisions of the Act. By their nature, they will have repeated dealings with the same parties. The dealings could be in an administrative or adjudicative capacity. When a party is subjected to the enforcement proceedings contemplated by the s. 165 or s. 166 of the Act, that party is given an opportunity to present its case in a hearing before the Commission, as was done in this case. The Commission both orders the hearing and decides the matter. Given the circumstances, it is not enough for the appellant to merely claim bias because the Commission, in undertaking this preliminary internal review, did not act like a court. It is clear from its empowering legislation that, in such circumstances, the Commission is not meant to act like a court, and that certain activities which might otherwise be considered "biased" form an integral part of its operations …
>
> Securities acts in general can be said to be aimed at regulating the market and protecting the general public. This role was recognized by this Court in *Gregory & Co. v. Quebec Securities Commission*, [1961] S.C.R. 584, where Fauteux J. observed at p. 588:
>
> > The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by persons therein carrying on such a business.
>
> This protective role, common to all securities commissions, gives a special character to such bodies which must be recognized when assessing the way in which their functions are carried out under their Acts.
>
> The special circumstances of the tribunal in this case are substantially the same as those in the case of *Re W. D. Latimer Co. and Attorney-General for Ontario*, *supra*. In the Supreme Court of Ontario, Wright J. made the following observation at p. 404:
>
> > What fair play is in particular circumstances, and whether and how the power of the Courts to enforce it should be exercised are what the Court must decide. It must on the one hand see that the citizen is not unfairly dealt with or put in a position of potential unjustified peril at the hands of some person or body exercising jurisdiction. It must on the other hand see that such persons or bodies seeking to perform their public duty are not unduly hampered in their work and that the purpose of the Legislature, if it be the source of their jurisdiction, is respected and realized as it has been expressed.

> The particular structure and responsibilities of the Commission must be considered in assessing allegations of bias. Upon the appeal of Latimer to the Ontario Court of Appeal, Dubin J.A., for a unanimous Court, dismissed the complaint of bias. He acknowledged that the Commission had a responsibility both to the public and to its registrants. He wrote at p. 135:
>
> > … I view the obligation of the Commission towards its registrants as analogous to a professional body dealing in disciplinary matters with its members. The duty imposed upon the Commission of protecting members of the public from the misconduct of its registrants is, of course, a principal object of the statute, but the obligation of the Commission to deal fairly with those whose livelihood is in its hands is also by statute clearly placed upon it, and nothing is to be gained, in my opinion, by placing a priority upon one of its functions over the other.
>
> *Dubin J.A. found that the structure of the Act whereby commissioners could be involved in both the investigatory and adjudicatory functions did not, by itself, give rise to a reasonable apprehension of bias.*
>
> *I am in agreement with this proposition. So long as the Chairman did not act outside of his statutory authority, and so long as there is no evidence to show involvement above and beyond the mere fact of the Chairman's fulfilling his statutory duties, a "reasonable apprehension of bias" affecting the Commission as a whole cannot be said to exist.*
>
> [Emphasis added]

[104] In light of this decision, the combination of the enforcement and adjudicative functions, to the extent that it is authorized by the Act, cannot form the grounds of a challenge of a reasonable apprehension of bias or a lack of independence.

c. The Various Reports

[105] Although the structure of the Commission was upheld by the Supreme Court of Canada in *Brosseau*, even before new safeguards were adopted and implemented by the Legislature and the Commission, the Moving Parties refer us to several reports that have since recommended that the adjudicative process be separated from the other functions of the Commission. These reports are: (1) the Osborne Report; (2) the Canada Steps Up Report; (3) the Stikeman Elliott Report; and (4) a report by the Crawford Panel on a Single Canadian Securities Regulator entitled: "Blueprint for a Canadian Securities Commission" (7 June 2006) (the "Crawford Report").

[106] The main issue in these reports is whether adjudication by a multifunctional Commission raises concerns with respect to independence and impartiality; two aspects of natural justice.

[107] In response to the Moving Parties' arguments that there is a pre-existing perception of systemic or structural bias towards Commission hearing panels, Staff refers us to the fact that this issue has been debated in a number of reports, commissions, research papers and other materials including those referred to by the Moving Parties, but that none of these reports has been adopted as law.

[108] The Osborne Report was commissioned by the Commission to provide a review of the Commission's structure, and in particular its adjudicative function in light of its increased sanctioning powers; that is, the increased powers of the Commission to order the payment of an administrative monetary penalty of up to $1 million for each breach of the Act and to make disgorgement orders. Although the authors proceeded on the basis that except clear and convincing evidence they would not recommend structural change, they strongly advised the Commission to take steps to separate its adjudicative function from the Commission. However, the Osborne Report, *supra* at p. 34, states:

> We recognize that the structural change which we have advised the Commission to undertake will require authorizing legislation and will thus take time. *In the meantime, we see no impediment to the Commission discharging its adjudicative responsibilities and functions on a business as usual basis.* Subject to certain reservations expressed in Appendix I, our concerns with the current regime are based primarily on a policy, not a legal, analysis.
>
> [Emphasis added]

[109] Moreover, in response to the argument made by the Moving Parties that the Osborne Report should have some weight, Staff points out that Appendix "I" of the report, which sets out the legal analysis which informs the report, states that:

> However it is also well-accepted that the common law principles which condemn bias and lack of independence can be excluded by statute unless there are constitutional grounds on which the statutory regime is fallible. *Provided the statutory authorization of what would otherwise be a biased structure or one lacking independence is explicit or clear, absent a constitutional standard, there will be no basis for judicial review.*
>
> …
>
> The objective in this section of our Report is to evaluate whether the Commission, as currently structured under statute and operating in practice, might encounter legal difficulties of the kind just identified.
>
> …
>
> Be that as it may, statutory authorization still remains a potent justification for fulfilling overlapping obligations in relation to the same matter. Indeed, the Ontario courts continue to reaffirm the authority of both *Brosseau* and *Latimer and Bray* in both securities regulation and other integrated regimes. *Thus, to the extent that the structure of the Ontario Securities Act remains as it was at the time of Latimer and Bray, the integration of functions will survive any common law scrutiny.*
>
> [Emphasis added]
>
> (The Osborne Report, *supra* at p. 44-47)

[110] The Osborne Report, *supra* at p. 48, then refers to the enhanced safeguards that have been adopted and implemented under the legislative framework; one of them, most importantly, being subsection 3.5(4) of the Act which statutorily divides the investigative role from the adjudicative role: "[i]n effect, the Commission has moved voluntarily to the functional separation of roles that the litigants in both *Brosseau* and *Latimer and Bray* were concerned about."

[111] The Supreme Court of Canada in *Brosseau*, and the Ontario Court of Appeal in *Re W. D. Latimer Co. and Bray* (1974), 6 O.R. (2d) 129 (C.A.) ("*Latimer and Bray*") both considered the case of a Commissioner who was involved in the investigation and adjudication of a matter. Both of the courts authorized the dual role of the Commissioners because it was statutorily mandated. That dual role, as stated in Appendix "I" to the Osborne Report, *supra* at pp. 48-49, has since been altered by the Legislature:

> Thus, today, because of section 3.5(4) and the internal practices of the Commission, the Chair would never both order and direct an investigation and then sit in an adjudicative capacity in relation to that matter.
>
> *… In so doing, [the Commission] has provided itself with even greater assurance that its operations do not come into collision with the standards which the courts have applied to this point in the case of integrated tribunals and agencies.*
>
> [Emphasis added]

[112] Further, we note that Appendix "I" to the Osborne Report, *supra* at pp. 69-71, under "Conclusions", states:

> It seems unlikely that there are legal problems either under common law or on any constitutional basis with the present structure of the Commission. Of the potential bias or lack of independence arguments that might be made against the way in which the Commission operates currently, the only realistic possibility seems to be one based on section 11(d) of the *Charter* and its requirement of an "independent and impartial tribunal" for the trial of persons "charged with an offence".
>
> …
>
> *Moreover, even if this provision triggers section 11, we also believe, with one possible exception, that it is likely that the way the Commission operates in practice will save it from attack, even though the Act still contemplates a significant overlapping of functions.* First, the Act now contains a prohibition on Commissioners acting in both investigatory and adjudicative capacities in connection with the same proceedings. Secondly, the Commission has created very effective walls between its

> investigation and enforcement branches and the Commissioners acting in their adjudicative capacities, though, as noted, this may create other kinds of legal difficulties if it leads to Commissioners defaulting in their responsibilities as corporate directors to supervise the conduct of Enforcement. Thirdly, we see no basis in existing law for the proposition that integrated agencies are in and of themselves compromised. The mere fact that a particular agency carries out a full range of regulatory functions does not automatically lead to the conclusion that the adjudicative arm of that agency lacks independence and impartiality. It will all depend on how that agency operates in practice.
>
> [Emphasis added]

[113] Finally, the Moving Parties refer us to the final report of the IDA Task Force entitled "Canada Steps Up: Final Report" (October, 2006). Recommendation #50 of the Final Report, incorporates the conclusions reached by the Canada Steps Up Report, discussed at paragraph 83 of these reasons, and states that the IDA Task Force recommends that the adjudicative function of the Commission be transferred to an independent tribunal or tribunals. The Moving Parties submit that this recommendation was formulated on the assumption that a reasonable and informed observer may conclude that the Commission is biased if it adjudicates matters that have been investigated by Staff, authorized for hearing by Staff, or in some jurisdictions by the chair of the respective commission and prosecuted by counsel employed or retained by the that commission. Further, the Canada Steps Up Report, *supra* at p. 227 states:

> In our view, the independence of adjudication should be protected by the structure itself, and should not depend on the ability of commissioners and staff to keep their various functions separate and distinct.

[114] In response to the Moving Parties' argument, Staff points out that some authors have expressed a different view. In particular, Staff refers us to a paper by Philip Anisman that addresses the structure of the Commission, which in many regards, provides a response to the bifurcation arguments set out in the reports cited above (Philip Anisman, "The Ontario Securities Commission as Regulator: Adjudication, Fairness and Accountability" in Anita I. Anand and William F. Flanagan, eds., *Conflicts of Interest in Capital Market Structures* (Papers Presented at the 10th Queen's Annual Business Law Symposium 2003, 2004)). The author states at p. 106:

> In fact, the exercise of multiple functions by an agency will not alone result in disqualification of an adjudicator who has not participated in other functions with respect to the case before him. This follows from the fact that impartiality is an individual, not an institutional quality. If an agency adequately separates its investigative and prosecutorial functions from its adjudication so that no individual performs overlapping functions, a reasonable apprehension of bias will not be found.

[115] In addition, we note that while the Crawford Report nevertheless recommends the separation of the Commission's adjudicative functions from its other functions, it recognizes, at p. 27, that:

> Currently, most provincial and territorial securities regulators are responsible for making policy, conducting investigations and sitting as adjudicative tribunals. The Supreme Court of Canada has held that a multi-functional agency cannot be attacked on the grounds of reasonable apprehension of bias if its structure is statutorily authorized.

[116] We now move to the analysis of the safeguards which have been put in place to separate the Commission's adjudicative function from its other functions, since the Supreme Court of Canada's landmark decision in *Brosseau*.

d. Independence of Panel Members and the Multi-Functional Roles of the Commission

[117] Hearing panels of the Commission are mandated by statute, common law and the governing provisions of the Commission to decide matters independently on the evidence before them. Proceedings before hearing panels are governed by the Act, the SPPA, the Commission's *Rules of Practice*, principles of administrative law, and the common law.

[118] Further, the Act, the *Ontario Securities Commission 2007-2008 Statement of Governance Practices* (the "Commission's Statement of Governance Practices"), the Commission's *Charter of Governance Roles and Responsibilities* (the "Charter of Governance"), and the Commission's *Guidelines for Members and Employees Engaging in Adjudication* (the "Guidelines") all provide for a separation of the Commission's adjudicative function from the Chair of the Commission, who oversees decisions made by Staff of the Enforcement Branch. All of these documents are available on the Commission's website.

(i) Independence of Panel Members

[119] Commissioners who serve on hearing panels are deemed to exercise their adjudicative role impartially and independently. The Ontario Court of Appeal has held that Commissioners are to be afforded the same presumption as judges that they will act fairly and impartially in discharging their adjudicative responsibilities and will consider the particular facts and circumstances of each case (see *E.A. Manning*).

[120] The principle of independence stems primarily from the fact that Commissioners who serve on hearing panels of the Commission are appointed under the Act by the Lieutenant Governor in Council for such term of office as the Lieutenant Governor in Council determines.

[121] Further, subsection 3(7) of the Act provides that "the Chair is the chief executive officer of the Commission and shall devote his or her full time to the work of the Commission".

[122] In addition, the Act provides for an operational separation of the Commission's enforcement function and its adjudicative function in a particular case. Subsection 3.5(4) of the Act expressly provides that "[n]o member who exercises a power or performs a duty of the Commission under part VI [being the investigatory roles] … shall sit on a hearing by the Commission that deals with the matter, except with the written consent of the parties to the proceeding".

[123] The operation of this requirement under the Act of segregating the adjudicator role from that of the Chair is also reflected in the practices of the Commission. That is, the Chair oversees operational decisions of Enforcement Staff and does not sit on hearing panels.

[124] That practice is also reflected in the Commission's 2008 Annual Report.

(ii) The Commission's 2008 Annual Report

[125] In their adjudicative role, the Commissioners act as independent adjudicators. Further, the principle of the separation of the Chair of the Commission who oversees operational decisions related to the Enforcement Branch from Commission hearing panels is reflected in the Commission's 2008 Annual Report. The 2008 Annual Report is available to the public on the Commission's website. When describing its various roles as a securities regulator, the Commission's 2008 Annual Report states at pp. 5-6:

> As a securities regulator, the Commission performs both a policy and rule-making function and an adjudicative function.
>
> …
>
> In their adjudicative role, the Commissioners act as independent adjudicators on panels presiding over proceedings on enforcement matters and regulatory policy issues, reviews of adjudicative decisions of self-regulatory organizations and reviews of decisions made by OSC staff. The Chair of the Commission oversees operational decisions related to enforcement and does not sit on adjudicative panels. The Commission, through its Adjudicative Committee, oversees adjudicative policies, procedures and practices to ensure they are independent, effective and fair.
>
> …
>
> In addition, on April 1, 2008, *the Commission approved adjudicative guidelines that provide guidance to Members on the standards expected of them in the exercise of their adjudicative responsibilities. The purpose of the guidelines is to ensure that the adjudicative process is, and is seen to be, conducted with impartiality, integrity and effectiveness.*
>
> [Emphasis added]

(iii) The Ontario Securities Commission 2007-2008 Statement of Governance Practices

[126] The Commission's Statement of Governance Practices also describes the Commission's governance structure, including the separation of the Commission's adjudicative function.

[127] The Commission's Statement of Governance Practices states the following:

> Members, acting independently of the Commission as a whole, also perform an adjudicative function by serving individually, as required, on panels that preside over administrative

> proceedings. The Members, acting as a whole, however, have a responsibility to oversee the Commission's adjudicative policies, practices and procedures generally, to promote the fair, independent, transparent and expeditious disposition of all adjudicative matters. *To assist it in the discharge of this responsibility, the Commission established an Adjudicative Committee to oversee the Commission's adjudicative policies, procedures and practices to ensure they are independent, effective and fair.*
>
> [Emphasis added]

(iv) The Commission Charter of Governance Roles and Responsibilities

[128] Further, in April 2006, the Commission adopted a Charter of Governance to:

> … more clearly delineate the Members' two principal governance roles and responsibilities as both regulators and administrators of the Act and as the Board of Directors, *and to ensure greater transparency in and understanding of the Commission's governance structure.*
>
> (Commission's Statement of Governance Practices at p. 1)
>
> [Emphasis added]

[129] With respect to the adjudicative function, the Charter of Governance, *supra* at p. 4 states:

> *Members perform their adjudicative function by individually serving on adjudicative panels that conduct hearings and render decisions independently of the Commission as a whole.* Nonetheless, the Commission, as a whole, has a responsibility to oversee the Commission's adjudicative processes and procedures generally.
>
> ***Conducting hearings***
>
> Adjudicative panels of the Commission, usually composed of two or more Members, conduct hearings on proceedings brought before the Commission. In these hearings, the panel may be asked, for example, to issue an order imposing a sanction in the public interest, to issue an order freezing assets, to review a decision made by Commission staff, or to review a decision of an SRO. *The way in which these proceedings are conducted is governed by the Statutory Powers Procedures Act (Ontario), the Commission's Rules of Practice and principles of administrative law. The Act provides for appeal of final decisions of the Commission to the Divisional Court.*
>
> [Emphasis added]

(v) The Guidelines for Members and Employees Engaging in Adjudication

[130] On March 17, 2008, the Commission adopted the Guidelines, which are intended to provide additional guidance to Commission members "in the exercise of their adjudicative responsibilities to ensure that all proceedings before the Commission's adjudicative panels are, and are seen to be, conducted with integrity, competence, effectiveness, independence and impartiality" (Guidelines, *supra* at p. 1). Pursuant to subsection 1.3(1) of the Guidelines, the Guidelines apply to all Members, and to all employees of the Commission, when involved in the adjudicative process.

[131] The Guidelines clearly contemplate that a party to a proceeding may make a motion to the hearing panel on issues related to bias and require, if such a motion is made during the course of a proceeding, the members to invite all parties to the proceeding to make submissions on the continued participation of any of the members prior to the continuation of the proceeding. The hearing panel is directed by the Guidelines to provide written reasons at the request of any party following the panel's decision on such a motion.

[132] Section 2 of the Guidelines, states that:

> … the test for determining whether the Member should recuse himself or herself is whether the facts give rise to reasonable apprehension of bias or a lack of adjudicative independence in the mind of a reasonable and informed person. Any assessment of a Member's actual or perceived bias in the exercise of his or her adjudicative duties in connection with a Proceeding should include a consideration of all relationships or activities that could reasonably be apprehended as being incompatible with the exercise of that Member's adjudicative responsibilities.

[133] The Guidelines require that all panel members reach their decisions based on the relevant law, the evidence presented to them and the submissions made in the course of the proceeding. Subsection 3.6(1) of the Guidelines explicitly states that "Members should conduct their deliberations and make their decisions independently of other Members of the Commission who are not on the Panel" and that "the prospect of disapproval from any person, institution, or group, including other Members, should not deter a Member from making the decision that he or she believes is fair and just".

[134] Subsection 3.6(3) of the Guidelines establishes limits on consultations and states that a Commissioner may, on an informal basis, have consultations with another Member who is not a panel Member, "other than the Chair of the Commission and any Member who would have an actual or perceived conflict of interest".

[135] Section 5.1 of the Guidelines addresses the participation of members in policy making functions generally, and indicates: "Members should endeavour to independently perform their adjudicative roles and functions in accordance with these Guidelines".

3. Finding

[136] The Commission's integrated agency model is a legislatively mandated structure, and was upheld by the Supreme Court of Canada in the landmark case of *Brosseau*. Under the current Commission structure, the Chair is the head of the Commission and is ultimately responsible for the work of the Enforcement Branch. Since *Brosseau*, steps have been taken by both the Legislature and the Commission to enhance safeguards which are designed to separate the Commission's adjudicative function from the Commission's enforcement function as well as the Chair. Some of these steps are reflected in the Commission's guidelines, policies, and other materials, all of which are available on the Commission's website.

[137] While we have considered the comments and recommendations made in the reports brought to our attention by the Moving Parties, we are mindful that they do not reflect the state of the law. The comments and recommendations made in the reports were made to encourage debate on possible policy changes in the future. For instance, we note that the Osborne Report states that it is "unlikely that there are legal problems either under common law or on any constitutional basis with the present structure of the Commission" (Osborne Report, *supra* at p. 69), and instead formulates its recommendations on a policy basis.

[138] Accordingly, we find that a reasonable apprehension of bias on the part of this Hearing Panel does not arise from the Chair's comments, when considering the doctrine of systemic or structural bias.

C. Is there a reasonable apprehension of bias on the part of this Hearing Panel arising from the Chair's comments, when considering the doctrine of institutional impartiality?

[139] Along with arguments regarding systemic or structural bias, counsel for the Moving Parties also stress the importance of considering the effect of the increased sanctioning powers enacted in 2003, and their potentially serious impact on the Moving Parties.

[140] Counsel for the Moving Parties submits that a higher degree of institutional impartiality and independence is required in order for the Commission to exercise these increased sanctioning powers. Counsel for the Moving Parties further submits that the combination of the Commission's current structure and multiple functions and increased sanctioning powers may breach section 11(d) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the "*Charter*"), and that although he is not making a constitutional challenge, this is something that this Hearing Panel should consider.

[141] Below is our analysis of the arguments and relevant cases provided by the Moving Parties and Staff on that point.

1. Submissions

a. The Moving Parties' Submissions

[142] In addition to the written submissions and authorities previously filed by the Moving Parties, on the eve of the hearing of the Stay Motion, counsel for the Moving Parties filed a supplementary book of authorities which deal in part, with the doctrine of institutional impartiality. The cases filed by counsel for the Moving Parties in his supplementary book of authorities relating to institutional impartiality and independence are: (1) *Lippé*, *supra*; (2) *Ruffo v. Conseil de la magistrature*, [1995] S.C.J. No. 100; (3) and *Hannam v. Bradford City Council*, [1970] 2 All ER 690.

[143] Counsel for the Moving Parties refers us to *Lippé*, in support of his contention that a doctrine of institutional impartiality exists in Canada and should be considered when assessing whether the Chair's comments give rise to a reasonable apprehension of bias on the part of this Hearing Panel. As set out by the Supreme Court of Canada, impartiality also has an institutional component. In *Lippé*, *supra* at para. 50, the Supreme Court of Canada stated:

> *Notwithstanding judicial independence, there may also exist a reasonable apprehension of bias on an institutional or structural level.* Although the concept of institutional impartiality has never before been recognized by this Court, the constitutional guarantee of an "independent and impartial tribunal" has to be broad enough to encompass this. Just as the requirement of judicial independence has both an individual and institutional aspect (Valente, supra, at p. 687), so too must the requirement of judicial impartiality. I cannot interpret the Canadian Charter as guaranteeing one on an institutional level and the other only on a case-by-case basis.
>
> [Emphasis added]

[144] Counsel for the Moving Parties submits that the doctrine of institutional impartiality is relevant to our deliberations by way of background and context. At the hearing, counsel for the Moving Parties argued the following:

> Of course, the application of these principles changes when one is dealing with administrative tribunals and in particular when we move into a statutory context where an administrative tribunal is set up with multiple functions, and I know you are familiar with the Supreme Court of Canada decision in the *Brosseau* case and other cases of that nature, where it's accepted that the simple fact a Securities Commission will perform tripartite functions does not mean that when it's time to exercise the adjudicative function that that gives rise to a reasonable apprehension of bias, and even if it might, I think the decisions will indicate well, that's what the statute has laid out. *So unless we have constitutional issues invoked the issue of adjudicative process is going to be upheld by the courts.*
>
> *The additional layer of complexity of that is in what circumstances the constitutional issues become invoked and I'm probably going to do discredit to the law here, but in a nutshell it boils down to, in the case of an administrative tribunal, if we reach a point where the sanctions that can be handed out are considered penal sanctions under the standards set out in the Crown and Wigglesworth, if we reach that point, then the right to a trial before a fair and independent tribunal under Sub-section 11(d) of the Charter is invoked.* So in those circumstances, if that occurred the fact that a tribunal's been set up a particular way by statute wouldn't survive constitutional review.
>
> That's not what we are here to do today. *I'm giving that by way of background in terms of the context in which we have to review these issues.*
>
> [Emphasis added]
>
> (Hearing Transcript dated December 11, 2008, at pp. 37-39)

[145] Counsel for the Moving Parties also submits that proceedings before the Commission operate at the most judicial end of the spectrum of administrative adjudicative bodies, and hence attract a more stringent application of the reasonable apprehension of bias test. As mentioned earlier, we agree with that submission.

b. Staff's Submissions

[146] Staff submits that the doctrine of institutional impartiality is relevant in two contexts: (1) where an administrative board has a formalized consultative process designed to give consistency to decisions, which overrides the adjudicators' independence; and (2) where there is a *Charter* challenge to the legislation governing the administrative tribunal.

[147] With respect to the first argument, Staff refers us to the Supreme Court of Canada's decision in *Consolidated-Bathurst Packaging Ltd. v. International Woodworkers of America, Local 2-69*, 68 D.L.R. (4th) 524 ("*Consolidated-Bathurst*"). In that case, the Court found that a formalized consultative process, as it was setup at the Ontario Labour Relations Board, did not give rise to a reasonable apprehension of bias. We note that the Commission has no such process, as described in our discussion of the several safeguards that have been adopted and implemented to ensure that Commissioners making adjudicative decisions do so according to their own conscience and opinion. While Commissioners can consult amongst themselves about particular issues, they adjudicate independently and do not consult in a formalized manner about their decisions.

[148] Further, Staff brought our attention to the following excerpt of Justice Gonthier's decision for the majority of the court in *Consolidated-Bathurst*, *supra* at pp. 562-563:

> However, in my opinion and for the reasons which follow, *the danger that full board meetings may fetter the judicial independence of panel members is not sufficiently present to give rise to a reasonable apprehension of bias* or lack of independence within the meaning of the test stated by this Court in *Committee for Justice and Liberty v. National Energy Board* …

> A full board meeting set up in accordance with the procedure described by Chairman Adams is not imposed: it is called at the request of the hearing panel or any of its members. It is carefully designed to foster discussion without trying to verify whether a consensus has been reached: no minutes are kept, no votes are taken, attendance is voluntary and presence at the full board meeting is not recorded. The decision is left entirely to the hearing panel. It cannot be said that this practice is meant to convey to panel members the message that the opinion of the majority of the Board members present has to be followed. On the other hand, it is true that a consensus can be measured without a vote and that this institutionalization of the consultation process carries with it a potential for greater influence on the panel members. *However, the criteria for independence are not absence of influence but rather the freedom to decide according to one's own conscience and opinions.* In fact, the record shows that each panel member held to his own opinion since Mr. Wightman dissented and Mr. Lee only concurred in part with Chairman Adams. It is my opinion, in agreement with the Court of Appeal, that the full board meeting was an important element of a legitimate consultation process and not a participation in the decision of persons who had not heard the parties. The Board's practice of holding full board meetings or the full board meeting held on September 23, 1983 would not be perceived by an informed person viewing the matter realistically and practically -- and having thought the matter through -- as having breached his right to a decision reached by an independent tribunal thereby infringing this principle of natural justice.
>
> [Emphasis added]

[149] With respect to the second argument, Staff submits that the Moving Parties chose not to argue that subsection 11(d) of the *Charter* is applicable to proceedings before the Commission, and accordingly this Hearing Panel should not entertain their argument.

2. Analysis and the Law

[150] The Moving Parties argue that a higher level of institutional impartiality and independence is required of Commission hearing panels, in order for them to exercise the Commission's increased sanctioning powers. We note that the doctrine of institutional impartiality, as recognized by the Supreme Court of Canada in *Lippé*, is based on the constitutional guarantee of an "independent and impartial tribunal". To this day, we note that, there is no case law to establish that subsection 11(d) of the Charter is applicable to proceedings before the Commission.

[151] Further, counsel for the Moving Parties chose not to argue that subsection 11(d) of the *Charter* is applicable to proceedings before the Commission, by applying the penal sanctions test set out by the Supreme Court of Canada in *R. v. Wigglesworth* [1987] 2 S.C.R. 541. Rather, Counsel for the Moving Parties concedes that the tripartite functions of the Commission do not give rise to a reasonable apprehension of bias, as established by the Supreme Court of Canada in *Brosseau*, and that in any event the structure of the Commission is authorized by statute and can only be challenged by way of a constitutional argument. At the hearing, counsel for the Moving Parties stated the following:

> That's not what we are here to do today. I'm giving that by way of background in terms of the context in which we have to review these issues.
>
> (Hearing Transcript dated December 11, 2008, at p. 39)

and later on

> In my submission, we're getting awfully close to a penal process – awfully close to it – and some might argue we're there, but that's not an argument for our purposes today.
>
> (Hearing Transcript dated December 11, 2008, at p. 45)

[152] In his reply, counsel for the Moving Parties stated that "it has not been our submission that this case should be stayed based on the structural institutional bias as a result of the overlapping functions of the Securities Commission. I think my friend pointed out quite correctly, if that was our argument, that's one we should have brought at an earlier stage, but it isn't" (Hearing Transcript dated December 11, 2008, at p. 138).

[153] Consequently it is our understanding that the Moving Parties' reference to the doctrine of institutional impartiality was only to provide context and background to his submissions, and to the circumstances in which this allegation arises.

[154] While we agree that the Commission exercises its adjudicative function at the most judicial end of the spectrum of administrative bodies, our application of the reasonable apprehension of bias test is conducted in the context of a statutorily

mandated structure which has been endorsed by the Supreme Court of Canada. Further, as set out above, the Commission has adopted further safeguards to separate the Commission's adjudicative function from its investigatory and rule-making functions.

[155] As set out above, the Legislature expressly provided the Commission with broader sanctioning powers in 2003. The Moving Parties have chosen not to argue that as a result of these increased sanctioning powers, subsection 11(d) of the Charter applies to Commission proceedings. The Supreme Court of Canada in *Re Cartaway Resources Corp.* (2004), 238 D.L.R. (4th) 193 (SCC) at para. 60 affirmed that the Commission may properly impose sanctions which are a general deterrent, stating "… it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative".

[156] Finally, we note that the Commission does not have a formalized consultative process, and hence we do not have to conduct the same type of analysis the Supreme Court of Canada did in *Consolidated-Bathurst*. As noted in our discussion of the Commission's adjudicative function, there is a clear separation of the Commissioners' adjudicative role from their other roles and responsibilities.

3. Finding

[157] The argument of counsel for the Moving Parties that the robustness of the Commission structure is at issue in light of the increased sanctioning powers that came into effect in 2003, does not affect the conclusions reached by the Supreme Court of Canada in *Brosseau*.

[158] Accordingly, we find that a reasonable apprehension of bias on the part of this Hearing Panel does not arise from the Chair's comments, when considering the doctrine of institutional impartiality.

D. Is there a reasonable apprehension of bias on the part of this Hearing Panel arising from the Chair's comments, when considering the doctrine of corporate taint?

[159] In addition to the arguments addressing systemic or structural bias, we also heard arguments involving the doctrine of corporate taint. Our review of the parties' submissions follows.

1. Submissions

a. The Moving Parties' Submissions

[160] Though counsel for the Moving Parties did not describe his submissions on this point as advancing the doctrine of corporate taint, he submits that the nature of the comments made by the Chair are such that the entire Commission should be disqualified based on a reasonable apprehension of bias. Given the content of his submissions, it is difficult not to conclude that he is indeed arguing, in substance, the doctrine of corporate taint. We note that, in his oral submissions, counsel for the Moving Parties stated the following:

> So the concept of institutional bias, which, on occasion, I think is unfortunately referred to as corporate taint, in my submission that is a legitimate and important legal doctrine and one that needs to be considered in this case, so I'm going to cover that topic as well.
>
> (Hearing Transcript dated December 11, 2008, at p. 7)

[161] In his oral submissions, counsel for the Moving Parties stated that "a reasonable-minded, informed observer is going to have a very difficult time accepting that the strong views expressed by the Chair would not have an impact on other [Commissioners], and the context in which the statements were made, in my submission, only exaggerate that particular viewpoint, in that the context in which the statement was made appears to have been one in which the Chair was defending the OSC" (Hearing Transcript dated December 11, 2008 at p. 66).

[162] Counsel for the Moving Parties submits that the statements made by the Chair were very public and widespread, and that viewers were meant to take comfort from the fact that the Commission recognizes that the Moving Parties are "not honest" and is proceeding to act on that recognition. Counsel further submits that given the public manner in which the comments were made, a reasonable person would perceive this Hearing Panel to have a vested interest in making a finding consistent with the comments made by the Chair. This Hearing Panel would, counsel contends, face harsh public scrutiny if it were to find that Staff's allegations against the Moving Parties are not substantiated, as a result of the Chair's statements. Thus, counsel for the Moving Parties argues that a reasonable person would believe that this Hearing Panel is inclined consciously or subconsciously to find that the Respondents acted dishonestly both to protect the reputation of the Commission, and to avoid publicly disagreeing with the Chair.

[163] Counsel for the Moving Parties states that "these circumstances are unique", and that "it cannot be a rule of law that in no circumstances can an institution ever be disqualified from adjudicating a case as a result of comments or conduct of a member of that institution … one cannot elevate those fact specific cases to a general proposition of law that no [finding of reasonable apprehension of bias] could ever be made in the appropriate circumstances…" (Hearing Transcript dated December 11, 2008 at pp. 141-144).

[164] We note that counsel for the Moving Parties argues in his factum, under the heading of 'institutional taint', that while the court in *E.A. Manning* found that no corporate taint existed at the Commission, that case is factually distinguishable from the case at hand.

[165] Counsel for the Moving Parties submits that, in that case, the comments made by the then Chair of the Commission, Edward Waitzer, which formed the facts from which the case arose, were not directly germane to the issues in the hearing and did not refer to the applicants E.A. Manning Ltd. directly. Counsel for the Moving Parties submits that in this case, the Chair referred specifically to the Moving Parties and to the very conduct that is in issue in the Proceeding. Staff has alleged in the Statement of Allegations that Xanthoudakis and Smith "failed to deal fairly, honestly, and in good faith" and "knowingly made statements and provided evidence and information to Staff that was materially misleading or untrue and/or failed to state facts which were required to be stated in an effort to hide the violations of Ontario securities laws". Counsel for the Moving Parties submits that the Chair's statements "carry no other meaning other than the plain one: that the Applicants are dishonest and have broken securities laws".

[166] Counsel for the Moving Parties contends that the Ontario Court of Appeal in E.A. Manning, left open the possibility that the conduct of a tribunal or its members could constitute institutional bias, and refers us to the following part of the Court's decision at p. 269:

> Although there may be circumstances where the conduct of a tribunal, or its members, *could constitute institutional bias and preclude a tribunal from proceeding further*, this is not such a case. This is not a case where the Commission has already passed judgment upon the very matters which are to be considered in the pending hearings by the new Commissioners …
>
> [Emphasis added]

[167] According to counsel for the Moving Parties, a line should be drawn somewhere, and although there is no case law supporting his argument, he would like us to find that this Hearing Panel is "tainted" by the Chair's comments, resulting in a reasonable apprehension of bias.

b. Staff's Submissions

[168] Staff submits that the Moving Parties' argument on this point is an allegation that the circumstances of this case give rise to corporate taint, and that the doctrine of corporate taint has been expressly rejected by Canadian courts, and that bias is an attitude of mind unique to an individual.

[169] Staff argues that while a reasonable apprehension of bias could be attributed to the Chair, the jurisprudence does not support the Moving Parties' submission that the Chair's comments taint the rest of the Commission, including the Commissioners on this Hearing Panel.

[170] In making its submission, Staff referred us to a number of cases, all of which rejected the doctrine of corporate taint and are considered in detail in our analysis below.

2. Analysis and the Law

[171] As discussed in the appropriate legal test section above, there is a presumption that Commissioners will act impartially when exercising adjudicative functions. Comments or actions by individuals who are related to but are not the decision-makers, do not on their own rebut the presumption that decision-makers will act impartially. Staff refers us to the following passage from *Judicial Review of Administrative Action in Canada* by Donald J.M. Brown, Q.C. and John M. Evans:

> *There must be some causal connection between the comments indicating prejudgment and the decision-maker in question. Accordingly, disqualification will generally not result from instances where the conduct of the decision-maker is not directly involved.* Thus, extensive pre-hearing publicity has been held to be insufficient to disqualify a decision-maker. Indeed, statements by employees and officials connected with an agency, but without any decision-making responsibility, will not normally lead to disqualification of the persons who are to make the decision in question. For example, such statements by a Police Commissioner, *the chair and staff of the Ontario*

> *Securities Commission*, the chair of the Labour Board involving another dispute, an agency's prosecuting staff, counsel to the board, and others employed by the administrative agency in question did not lead to disqualification of the actual decision-makers.
>
> [Emphasis added]
>
> (Donald J.M. Brown, Q.C. & John M. Evans, *Judicial Review of Administrative Action in Canada*, looseleaf (Toronto: Canvasback Publishing, 2008) at s. 11:4512)

[172] While in *E.A. Manning*, the Ontario Court of Appeal left open the possibility that in some circumstances the conduct of a tribunal or its members could constitute institutional bias, it also found that even if the statements by the Chair in that case had been directed against E.A. Manning Ltd. specifically, that in itself would not have disqualified the other Commissioners from conducting the hearings (see *E.A. Manning*, *supra* at p. 272). The Court stated the following at pp. 271-272 of its decision:

> Mr. Waitzer's comments did not in any way relate to the subject matter of the complaints made against the appellants in the pending proceedings, nor should they be viewed as a veiled threat against the appellants, as was contended.
>
> However, *even if statements by a regulator relate to the very matters which he or she is considering, that, in itself, is not a basis for concluding that the regulator has prejudged the matter.*
>
> In *Newfoundland Telephone*, *supra*, Cory J. stated:
>
> > Further, a member of a board which performs a policy formation function should not be susceptible to a charge of bias simply because of the expression of strong opinions prior to the hearing. This does not of course mean that there are no limits to the conduct of board members. It is simply a confirmation of the principle that the courts must take a flexible approach to the problem so that the standard which is applied varies with the role and function of the Board which is being considered. In the end, however, commissioners must base their decision on the evidence which is before them. Although they may draw upon their relevant expertise and their background of knowledge and understanding, this must be applied to the evidence which has been adduced before the board.
>
> *Even if it could be said that the statements of the Chair exhibited some bias against the appellants that, in itself, would not disqualify the other Commissioners from conducting the hearings.*
>
> In *Van Rassel v. Royal Canadian Mounted Police*, [1987] 1 F.C. 473, 7 F.T.R. 187 (T.D.), it was alleged that the commissioner of the R.C.M.P. made a public comment strongly critical of the R.C.M.P. officer who faced a trial before the R.C.M.P. service tribunal. Joyal J. held that even if such a statement were made, it could not lead to a reasonable apprehension of bias against the whole tribunal, at p. 487:
>
> > Assuming for the moment that the document is authentic and that the words were directed to the applicant, it would not on that basis constitute the kind of ground to justify my intervention at this time. The Commissioner of the RCM Police is not the tribunal. It is true that he has appointed the tribunal but once appointed, the tribunal is as independent and as seemingly impartial as any tribunal dealing with a service-related offence. One cannot reasonably conclude that the bias of the Commissioner, if bias there is, is the bias of the tribunal and that as a result the applicant would not get a fair trial.
>
> [Emphasis added.]

[173] Further, this type of bias allegation was expressly rejected by the British Columbia Court of Appeal in *Bennett v. British Columbia (Securities Commission)* (1992), 94 D.L.R. (4th) 339 (B.C.C.A.). The Court stated the following:

> Bias is an attitude of mind unique to an individual. An allegation of bias must be directed against a particular individual alleged, because of the circumstances, to be unable to bring an impartial mind to bear. No individual is identified here. Rather, the effect of the submissions is that all of the members of the Commission appointed pursuant to section 4 of the *Securities Act*, regardless of who they may be, are so tainted by staff conduct that none will be able to be an impartial judge. Counsel were unable to refer us to a single reported case where an entire tribunal of unidentified members had been disqualified from carrying out statutory responsibilities by reason of real or

> apprehended bias. We think that not to be surprising. The very proposition is so unlikely that it does not warrant serious consideration. (at p. 349)

[174] Similarly in *Hamilton Street Railway Co. v. (Ontario) Human Rights Commission*, [2006] O.J. No. 4662 (Ont. Div. Ct.) at para. 19, the Ontario Divisional Court rejected the doctrine of corporate taint where an allegation of bias was made against the entire Human Rights Commission, based on a statement made by the Chief Commissioner in the press.

[175] *Zündel v. Citron*, [2000] 189 D.L.R. (4th) 131 (F.C.A.) at paras. 49-50; application for leave to appeal dismissed, [2000] S.C.C.A. No. 322, rejected attempts by the Applicants to apply the doctrine of corporate taint against the Human Rights Commission. The Court found that statements made by the Chief Commissioner praising a Court ruling against Zündel, did not result in a reasonable apprehension of bias against the whole Commission though the Commission later considered the same fact scenario which gave rise to the court proceedings.

[176] In *Telus Communications Inc. v. Telecommunications Workers Union* (2005), 257 D.L.R. (4th) 19 (F.C.A.), bias was alleged against the entire Canadian Industrial Relations Board, as a result of alleged comments by the Chair. The Federal Court of Appeal again found that the doctrine of corporate taint did not apply, because it would undermine the presumption of impartiality:

> Neither the doctrine of corporate taint nor the subjection of the entire Board to a reasonable apprehension of bias as a result of the Chairperson's alleged comments, applies here. Painting the entire Board with bias as a result of the one board member's alleged comments undermines the presumption of impartiality and fairness that is attributed to each member and compromises the integrity of the entire Board. (at para. 41)

3. Finding

[177] The argument that a reasonable apprehension of bias exists on the part of this Hearing Panel based on the remarks of other members of an institution, even its Chair, has been repeatedly rejected by the courts in Canada. Bias is an attitude of mind unique to the individual. Further, counsel for the Moving Parties did not refer us to any authority which would support the view that, even in circumstances where a reasonable apprehension of bias is found against one individual, bias ought to be attributed to independent adjudicators who were not party to the action giving rise to the apprehension of bias.

[178] Accordingly, we find that a reasonable apprehension of bias on the part of this Hearing Panel does not arise from the Chair's comments, when considering the doctrine of corporate taint.

V. CONCLUSION

[179] There is no allegation by the Moving Parties that this Hearing Panel, or any of its members, is actually biased or that they have done anything to give rise to a reasonable apprehension of bias.

[180] While the reports cited by the Moving Parties recommend that the Commission's adjudicative function be separated from the Commission's investigative and rule-making functions, their recommendations are primarily based on policy concerns. In contrast, the Supreme Court of Canada upheld the Commission's integrated agency model in *Brosseau*, and found no lack of institutional independence or impartiality. Moreover, since the decision in *Brosseau*, several safeguards have been adopted and implemented by both the Legislature and the Commission to separate the Commission's adjudicative function from its other functions.

[181] While the Commission's integrated agency model might concern an individual uninformed of the safeguards at the Commission, a reasonable person fully informed of the Commission's safeguards would not conclude that this Hearing Panel might have prejudged the Proceeding against the Moving Parties.

[182] As the head of the Commission, the Chair ostensibly endorses all of Staff's enforcement activities; however, the Commissioners who are assigned to hearing panels routinely make fair and impartial decisions free of any improper influence. The Chair does not sit on hearing panels, and does not discuss ongoing enforcement matters with panel members. Whether the Chair or the Enforcement Branch's views are highly publicized or not, a hearing panel has the same onus to act independently and impartially. This is evidenced by the statutory structure and the safeguards discussed above.

[183] Hence, we find that there is no reasonable apprehension of bias on the part of this Hearing Panel arising from the Chair's comments made during the interview conducted on the CBC television program.

[184] For all these reasons, the Stay Motion is hereby dismissed.

DATED at Toronto this 3rd day of February, 2009.

"Wendell S. Wigle"
Wendell S. Wigle

"David L. Knight"
David L. Knight

"Margot C. Howard"
Margot C. Howard

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
Hip Interactive Corp.	20 Jan 09	30 Jan 09	30 Jan 09	
Silverbirch Inc.	30 Jan 09	11 Feb 09		
Sniper Resources Ltd.	04 Feb 09	17 Feb 09		
Ignition Point Technologies Corp.	04 Feb 09	17 Feb 09		
McLaren Resources Inc.	04 Feb 09	17 Feb 09		
Onsino Capital Corporation	11 Sept 09	21 Sept 09	21 Sept 09	04 Feb 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
.					

THERE ARE NO ITEMS FOR THIS WEEK.

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
01/16/2009	55	20/20 Diversified Income Trust - Units	939,980.00	1,132.00
12/18/2008	51	32 Degrees Capital Fund V Limited Partnership - Limited Partnership Units	8,925,000.00	1,785.00
01/14/2009	20	Afri-Can Marine Minerals Corporation - Bonds	NA	1,379,519.00
01/14/2009	27	Afri-Can Marine Minerals Corporation - Bonds	NA	4,509,923.00
01/14/2009	53	Afri-Can, Societie de Minerauz Marins - Bonds	NA	8,818,333.00
01/01/2008	1	Agilith North American Diversified Fund L.P. - Limited Partnership Units	50,000.00	50.00
01/12/2009	18	Alix Resources Corp. - Units	176,000.00	3,520,000.00
12/29/2008	38	AMADOR GOLD CORP. - Common Shares	977,400.00	16,290,000.00
01/15/2009	5	AnyWare Group Inc. - Debentures	2,250,000.00	15.00
01/31/2008 to 11/30/2008	44	Aquilon Power Silverhill Fund L.P. - Units	18,757,809.30	11,111.64
01/12/2009	30	Avion Resources Corp. - Units	2,999,980.00	37,500,000.00
12/31/2008 to 01/05/2009	5	Barker Minerals Ltd. - Flow-Through Units	82,000.00	820,000.00
12/31/2008 to 01/05/2009	32	Barker Minerals Ltd. - Units	500,000.00	25,000,000.00
06/01/2008	6	Blackstone Emerging Markets Fund I L.P. - Capital Commitment	4,000,000.00	6.00
12/30/2008	24	Bodnar Canadian Equity Fund - Units	666,248.98	12,609.11
12/30/2008	22	Bodnar Fixed Income Fund - Units	1,075,633.27	19,599.21
01/30/2008 to 12/30/2008	7	Bodnar Money Market Fund - Units	559,655.65	1,965.57
01/12/2009	7	Brett Resources Inc. - Common Shares	18,800.00	40,000.00
05/30/2008 to 06/30/2008	3	Capital Growth Fund Limited Partnership - Limited Partnership Units	310,000.00	191.63
01/08/2009	7	CareVest Blended Mortgage Investment Corporation - Preferred Shares	154,379.00	154,379.00
01/08/2009	11	CareVest First Mortgage Investment Corporation - Preferred Shares	466,372.00	466,372.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
12/23/2008	5	Chalice Diamond Corp. - Common Shares	303,500.00	6,744,444.00
01/01/2008 to 12/31/2008	1	Commonfund Capital International Partners, IV, L.P. - Common Shares	2,449,200.00	2,449,200.00
01/01/2008 to 12/31/2008	8	Commonfund Capital Natural Resources VIII, L.P. - Common Shares	63,801,660.00	63,801,660.00
01/01/2008 to 12/31/2008	113	Commonfund Global Distressed Investor LLC - Common Shares	280,528,918.80	280,528,918.80
01/01/2008 to 12/31/2008	87	Commonfund Multi-Strategy Global Hedged Partners LLC - Common Shares	119,694,942.00	119,729,142.00
11/04/2008	203	Cymbria Corporation - Common Shares	91,824,610.00	9,182,461.00
11/03/2008 to 11/18/2008	14	Dynex Capital Limited Partnership - Units	67,000.00	67.00
12/04/2008	35	Eagleridge Minerals Ltd. - Common Shares	33,147.00	276,223.00
01/15/2009	6	Empower Technologies Corporation - Debentures	160,000.00	160,000.00
12/31/2008	42	EnergyFields 2008 Special Flow-Through Limited Partnership - Flow-Through Units	770,000.00	770,000.00
01/31/2008 to 12/31/2008	51	ETF Capital Management - Units	4,111,705.00	411,705.00
11/20/2008	1	FarmTech Energy Corporation - Debentures	1,000,000.00	1,000,000.00
12/30/2008	2	FI Capital SRI Enhanced Income Fund - Units	7,360.26	896.05
01/07/2009 to 01/13/2009	3	First Leaside Fund - Trust Units	665,312.00	665,312.00
01/06/2009	1	First Leaside Fund - Trust Units	25,000.00	25,000.00
01/08/2009	1	First Leaside Fund - Trust Units	2,431.10	2,045.00
01/15/2009	2	Fresenius US Finance II, Inc. - Notes	5,050,000.00	5,050,000.00
01/12/2009 to 01/16/2009	9	General Motors Acceptance Corporation of Canada, Limited - Notes	1,708,020.49	1,708,020.49
01/05/2009	40	Geodex Minerals Ltd. - Units	541,850.00	5,418,500.00
12/23/2008	5	Golden Chalice Resources Inc. - Common Shares	750,000.00	9,375,000.00
11/25/2008 to 12/30/2008	14	Golden Chalice Resources Inc. - Flow-Through Units	615,000.00	6,150,000.00
01/23/2009	82	Great Panther Resources Limited - Common Shares	1,025,000.00	5,125,000.00
06/01/2008	4	Grey2O Offshore Fund, Ltd. - Common Shares	2,750,000.00	2,750.00
01/08/2009 to 01/14/2009	23	IGW Real Estate Investment Trust - Trust Units	348,392.55	360,939.67

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/01/2008 to 07/01/2008	29	Jemekk Total Return Fund L.P. - Limited Partnership Units	8,917,381.00	8,917.38
01/29/2008 to 12/19/2008	210	Jov Prosperity Canadian Equity Fund - Trust Units	8,357,335.91	808,565.19
01/29/2008 to 12/19/2008	332	Jov Prosperity Fixed Income Fund - Trust Units	22,797,846.71	2,271,583.07
01/29/2008 to 12/19/2008	240	Jov Prosperity International Equity Fund - Trust Units	9,148,721.95	976,006.39
12/31/2008	5	M'Ore Exploration Services Ltd. - Units	117,000.00	1,800,000.00
01/15/2009	52	Magma Energy Corp. - Common Shares	26,431,250.00	21,145,000.00
12/31/2008	2	Matamec Explorations Inc. - Flow-Through Shares	32,000.00	320,000.00
01/07/2008 to 12/11/2008	10	Miralta Capital L.P. - Units	12,121,667.01	12,122.00
01/21/2009	1	Newport Canadian Equity Fund - Units	200,000.00	1,931.19
01/15/2009 to 01/21/2009	38	Newport Fixed Income Fund - Units	2,490,100.00	24,617.28
01/14/2009 to 01/21/2009	28	Newport Yield Fund - Units	520,000.00	5,289.43
01/15/2009	8	Northern Nanotechnologies Inc. - Debentures	500,000.00	2,000,000.00
04/30/2008 to 05/28/2008	53	Nova Bancorp Energy Ventures Limited Partnership - Limited Partnership Units	6,235,000.00	249,400.00
01/01/2009	1	OCP Debt Opportunity International Ltd. - Common Shares	1,830,000.00	1,500.00
12/30/2008	1	OneChip Photonics Inc. - Warrants	97,499.93	342,105.00
12/01/2008	15	Panorama Private Client Fund - Units	2,902,425.00	290,242.50
11/30/2008	4	Prestigious RRSP Investment A Inc. - Common Shares	135.00	900.00
10/29/2008 to 12/11/2008	92	Priviti Energy Limited Partnership 2008 - Units	11,640,000.00	2,328.00
01/29/2008 to 12/19/2008	256	Prosperity US Equity Fund - Trust Units	10,622,864.56	1,360,086.40
01/15/2009	1	Queenston Mining Inc. - Common Shares	62,500.00	29,621.00
06/01/2008 to 08/01/2008	2	Rayne Capital Limited Partnership - Units	300,000.00	279.65
12/09/2008	20	Red Mile Resources Fund No. 5 Limited Partnership - Limited Partnership Units	10,739,655.00	9,063.00
12/22/2008	74	Red Mile Resources Fund No. 5 Limited Partnership - Limited Partnership Units	20,051,385.00	16,921.00
01/08/2009 to 01/14/2009	4	Redux Duncan City Centre Limited Partnership - Limited Partnership Units	167,000.00	167,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
01/01/2008 to 12/31/2008	426	Resolute Performance Fund - Trust Units	71,882,630.20	4,458,594.00
07/29/2008 to 12/28/2008	66	Rhone 2008 Oil & Gas Strategic Limited Partnership - Limited Partnership Units	7,602,500.00	304,100.00
12/24/2008	98	Rogers Oil & Gas Inc. - Flow-Through Shares	1,647,000.00	1,647,000.00
01/23/2009	22	Royal Bank of Canada - Notes	1,380,000.00	1,380.00
01/13/2009	2	Sampling Technologies Incorporated - Debentures	2,000,000.00	2,000,000.00
01/19/2009	7	San Gold Corporation - Debentures	1,116,000.00	1,116,000.00
01/22/2009	40	Sarbit Total Performance Trust - Units	1,370,905.94	1,370,905.94
01/01/2008 to 12/31/2008	3	Sentry Select Market Neutral L.P. - Limited Partnership Units	1,550,000.00	2,000.00
02/01/2008 to 03/01/2008	3	Shelldrake L.P. - Limited Partnership Units	1,357,687.00	1,387,545.00
01/07/2009	1	Sombrio Capital Corp. - Common Shares	5,950.00	5,000,000.00
01/13/2009	17	Sonic Technology Solutions Inc. - Units	540,000.00	10,800,000.00
01/14/2009	1	Southern Silver Exploration Corp. - Common Shares	5,250.00	75,000.00
07/31/2008 to 10/31/2008	4	The Black Creek Focus Fund - Units	10,925,000.00	133,820.00
01/01/2008 to 12/01/2008	67	The Blair Franklin MultiStrategy Fund L.P. - Units	73,137,472.35	73,525.72
01/14/2009	30	The Canadian Professionals Services Trust - Trust Units	41,011.88	82,023.75
09/24/2008	1	The Group I Balanced Fund - Limited Partnership Units	150,000.00	12,995.23
01/15/2009	1	The Hotel Communication Network Inc. - Common Shares	4,500,000.00	4,500,000.00
01/19/2009	16	Trivello Energy Corp. - Units	150,500.00	3,010,000.00
01/01/2008 to 01/02/2008	9	Venator Catalyst Fund - Units	4,851,820.00	483,768.45
01/01/2008 to 01/11/2008	8	Venator Founders Fund - Units	4,192,456.00	280,105.01
01/08/2008 to 01/11/2008	6	Venator Income Fund - Trust Units	7,460,000.00	745,796.20
01/01/2008 to 01/11/2008	95	Venator Investment Trust - Trust Units	1,577,266.24	324,966.89
07/02/2008 to 09/15/2008	34	Vision Opportunity Fund Limited Partnership - Limited Partnership Units	16,114,064.00	16,114,034.00
07/02/2008 to 09/09/2008	15	Vision Opportunity Fund Trust - Trust Units	6,855,875.00	6,855,875.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
01/08/2009	16	Walton AZ Sawtooth Investment Corporation - Common Shares	720,330.00	72,033.00
01/08/2009	3	Walton AZ Vista Del Monte Limited Partnership 1 - Limited Partnership Units	309,088.00	309,088.00
01/08/2009	32	Walton GA Arcade Meadows 1 Investment Corporation - Common Shares	907,110.00	90,711.00
01/08/2009	10	Walton GA Arcade Meadows Limited Partnership 1 - Limited Partnership Units	1,359,758.75	114,506.00
01/09/2009	1128	Walton TX Amble Way Investment Corporation - Units	3,847,570.00	384,757.00
01/09/2009	27	Walton TX Amble Way Limited Partnership - Limited Partnership Units	4,687,102.03	394,504.00
01/01/2008 to 12/31/2008	1	Waterfall Tipping Point L.P. - Limited Partnership Units	100,000.00	1,000.00
01/01/2008 to 12/31/2008	1	Waterfall Vanilla L.P. - Limited Partnership Units	300,000.00	1,000.00
12/29/2008	4	Western Potash Corp. - Flow-Through Shares	2,809,900.50	8,514,850.00
01/14/2009	3	xkoto Inc. - Special Shares	1,523,350.15	521,418.00
01/14/2009	2	Xkoto (U.S.) Inc. - Special Shares	6.46	521,418.00
01/22/2009	4	Yankee Hat Minerals Ltd. - Common Shares	52,500.00	1,050,000.00
06/01/2008	1	Zweig-DiMenna International Limited - Common Shares	4,508,547.00	4,508,547.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
ALAMOS GOLD INC
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 30, 2009
NP 11-202 Receipt dated January 30, 2009
Offering Price and Description:
$75,200,000.00 - 9.400.000 Common Shares Price: $8.00 per Common Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
GMP Securities L.P.
RBC Dominion Securities Inc.
Macquarie Capital Markets Canada Ltd.
TD Securities Inc.
CIBC World Markets Inc.
UBS Securities Canada Inc.
Fraser Mackenzie Limited
Genuity Capital Markets
Haywood Securities Inc.
Paradigm Capital Inc.
Salman Partners Inc.
Promoter(s):
-
Project #1370835

Issuer Name:
Anatolia Minerals Development Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 29, 2009
NP 11-202 Receipt dated January 29, 2009
Offering Price and Description:
$51,800,000.00 - 28,000,000 Common Shares Price: $1.85 per Share
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Wellington West Capital Markets Inc.
National Bank Financial Inc.
Dundee Securities Corporation
Haywood Securities Inc.
Paradigm Capital Inc.
Raymond James Ltd.
Promoter(s):
-
Project #1370139

Issuer Name:
Canadian Pacific Railway Limited
Principal Regulator - Alberta
Type and Date:
Amended and Restated Preliminary Prospectus dated January 27, 2009
NP 11-202 Receipt dated January 28, 2009
Offering Price and Description:
$463,050,000.00 - 12,600,000 Common Shares Price per Common Share $36.75
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
RBC Dominion Securities Inc.
Morgan Stanley Canada Limited
CIBC World Markets Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
Merrill Lynch Canada Inc.
National Bank Financial Inc.
Promoter(s):
-
Project #1368863

Issuer Name:
CI Financial Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated January 29, 2009
NP 11-202 Receipt dated January 30, 2009
Offering Price and Description:
$1,000,000,000.00 - Debt Securities (subordinated indebtedness) Subscription Receipts common Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1370510

Issuer Name:
Eagle Credit Card Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated January 29, 2009
NP 11-202 Receipt dated January 29, 2009
Offering Price and Description:
Up to $1,500,000,000.00 of Credit Card Receivables-Backed Notes
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Promoter(s):
President's Choice Bank
Project #1370021

Issuer Name:
ECU Silver Mining Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated February 2, 2009
NP 11-202 Receipt dated February 2, 2009
Offering Price and Description:
$17,500,000.00 - 25,000,000 Subscription Receipts Price - $0.70 per Subscription Receipt
Underwriter(s) or Distributor(s):
Blackmont Securities
TD Securities Inc.
Promoter(s):
-
Project #1371295

Issuer Name:
Endeavour Silver Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated January 27, 2009
NP 11-202 Receipt dated January 28, 2009
Offering Price and Description:
$3,005,002.00 - 2,311,540 Units to be issued upon the exercise of 2,311,540 previously issued Special Warrants Price: $1.30 per Special Warrant
Underwriter(s) or Distributor(s):
Salman Partners Inc.
Promoter(s):
-
Project #1369376

Issuer Name:
Ford Auto Securitization Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated February 2, 2009
NP 11-202 Receipt dated February 2, 2009
Offering Price and Description:
Up to $2,000,000,000.00 of Asset-Backed Notes Ford Credit Canada Limited Promoter, Seller, Servicer and Financial Services Agent
Underwriter(s) or Distributor(s):
-
Promoter(s):
Ford Credit Canada Limited
Project #1371241

Issuer Name:
Horizons AlphaPro Gartman Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 30, 2009
NP 11-202 Receipt dated February 2, 2009
Offering Price and Description:
$ * - * Class A and F Units Price: $10.00 per Class A Unit and $10.00 per Class F Unit Minimum Purchase: 100 Class A Units or 100 Class F Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
HSBC Securities (Canada) Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
Blackmont Capital Inc.
MGI Securities Inc.
Raymond James Ltd.
Wellington Capital Markets Inc.
Desjardins Securities Inc.
Promoter(s):
AlphaPro Management Inc.
Project #1370981

Issuer Name:
Interactive Capital Partners Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated January 29, 2009
NP 11-202 Receipt dated January 29, 2009
Offering Price and Description:
Offering - $500,000.00 or 5,000,000 Common Shares Price - $0.10 per Common Share
Underwriter(s) or Distributor(s):
Investpro Securities Inc.
Promoter(s):
Mark Maheu
Project #1370153

Issuer Name:
Newmont Mining Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary MJDS Prospectus dated January 28, 2009
Mutual Reliance Review System Receipt dated January 28, 2009
Offering Price and Description:
debt securities
common stock
preferred stock
guarantees
warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1369156

Issuer Name:
Nitinat Minerals Corporation
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated January 30, 2009
NP 11-202 Receipt dated February 2, 2009
Offering Price and Description:
(1) Up to 5,000,000 Units (maximum offering) Price: $0.40 per Unit; (2) Up to 3,333,334 Flow Through Common Shares (maximum offering) Price: $0.60 per Flow Though Common Share; (3) 3,101,427 Common Shares and 3,101,427 Series B Common Share Purchase Warrants Issuable, for No Additional Consideration, Upon Exercise of 3,101,427 Special Warrants Price: Series B Warrant exercisable at $0.50 per Common Share; (4) 13,367,904 Common Shares Issuable, for No Additional Consideration, Upon Exercise of 13,367,904 Special Warrants
Underwriter(s) or Distributor(s):
First Canada Capital Partners Inc.
Promoter(s):
Vernon Briggs
Project #1328230

Issuer Name:
Pathway Quebec Mining 2009 Flow-Through Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 30, 2009
NP 11-202 Receipt dated February 2, 2009
Offering Price and Description:
$10,000,000.00 (Maximum Offering) -$2,500,000.00 (Minimum Offering) A Maximum of 1,000,000 and a Minimum of 250,000 Limited Partnership Units Minimum Subscription - 250 Limited Partnership Units Subscription Price - $10.00 per Limited Partnership Unit
Underwriter(s) or Distributor(s):
Wellington West Capital Inc.
HSBC Securities (Canada) Inc.
Desjardins Securities Inc.
Canaccord Capital Corporation
Laurnetian Bank Securities Inc.
Industrial Alliance Securities Inc.
Dundee Securities Corporation
Promoter(s):
Pathway Quebec Mining 2009 Inc.
Project #1371292

Issuer Name:
Scarlet Resources Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated January 29, 2009
NP 11-202 Receipt dated January 30, 2009
Offering Price and Description:
$400,000.00 - 2,666,666 Common Shares Price: $0.15 per Common Share
Underwriter(s) or Distributor(s):
Jordan Capital Markets Inc.
Promoter(s):
Robert Bick
Project #1370964

Issuer Name:
Silver Wheaton Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated January 30, 2009
NP 11-202 Receipt dated January 30, 2009
Offering Price and Description:
$250,000,000.00 - 31,250,000 Common Shares Price: $8.00 per Common Share
Underwriter(s) or Distributor(s):
Genuity Capital Markets
GMP Securities L.P.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
UBS Securities Canada Inc.
Canaccord Capital Corporation
Macquarie Capital Markets Canada Ltd.
Raymond James Ltd.
RBC Dominion Securities Inc.
Salman Partners Inc.
Promoter(s):
-
Project #1370936

Issuer Name:
Sprott Gold Bullion Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated January 28, 2009
NP 11-202 Receipt dated January 29, 2009
Offering Price and Description:
Series A, F and I Units
Underwriter(s) or Distributor(s):
Sprott Asset Management Inc.
Promoter(s):
Sprott Asset Management Inc.
Project #1369472

Issuer Name:
Acuity Pure Canadian Equity Fund
Acuity Global Equity Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated January 26, 2009 to the Simplified Prospectuses dated August 22, 2008
NP 11-202 Receipt dated February 2, 2009
Offering Price and Description:
Class A and F Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Acuity Funds Ltd.
Project #1308139

Issuer Name:
ARC Energy Trust
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated January 30, 2009
NP 11-202 Receipt dated January 30, 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:
BluMont Canadian Fund
BluMont North American Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated January 29, 2009
NP 11-202 Receipt dated January 30, 2009
Offering Price and Description:
Mutual fund units at net asset value
Underwriter(s) or Distributor(s):
BluMont Capital Corporation
Promoter(s):
-
Project #1356166

Issuer Name:
Canadian Pacific Railway Limited
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated February 3, 2009
NP 11-202 Receipt dated February 3, 2009
Offering Price and Description:
C$463,050,000.00 - 12,600,000 Common Share at $36.75 per Common Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
RBC Dominion Securities Inc.
Morgan Stanley Canada Limited
CIBC World Markets Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
Merrill Lynch Canada Inc.
National Bank Financial Inc.
Promoter(s):
-
Project #1368863

Issuer Name:
Centamin Egypt Limited
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 2, 2009
NP 11-202 Receipt dated February 2, 2009
Offering Price and Description:
C$60,000,200.00 - 92,308,000 Ordinary Shares Price: C$0.65 per Offered Share
Underwriter(s) or Distributor(s):
Thomas Weisel Partners Canada Inc.
Cormark Securities Inc.
Promoter(s):
-
Project #1368272

Issuer Name:
Claymore 1-5 Yr Laddered Corporate Bond ETF
Claymore 1-5 Yr Laddered Government Bond ETF
Claymore Global Agriculture ETF
Claymore Natural Gas Commodity ETF
Claymore Premium Money Market ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated January 23, 2009 to the Long Form Prospectus dated November 24, 2008
NP 11-202 Receipt dated February 2, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Claymore Investments, Inc.
Promoter(s):
Claymore Investments, Inc.
Project #1337768

Issuer Name:
Claymore Canadian Fundamental Index ETF
Claymore US Fundamental Index ETF C$ hedged
Claymore International Fundamental Index ETF
Claymore Japan Fundamental Index ETF C$ hedged
Claymore Europe Fundamental Index ETF
Claymore CDN Dividend & Income Achievers ETF
Claymore Global Monthly Advantaged Dividend ETF
Claymore S&P/TSX CDN Preferred Share ETF
Claymore Oil Sands Sector ETF
Claymore S&P/TSX Global Mining ETF
Claymore S&P Global Water ETF
Claymore BRIC ETF
Claymore Global Balanced Income ETF
Claymore Global Balanced Growth ETF
Claymore Global All Equity ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated January 23, 2009 to the Long Form Prospectus dated April 25, 2008
NP 11-202 Receipt dated February 2, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Claymore Investments, Inc.
Promoter(s):
-
Project #1230227

Issuer Name:
Claymore Canadian Financial Monthly Income ETF
Claymore Equal Weight Banc & Lifeco ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 29, 2009
NP 11-202 Receipt dated January 29, 2009
Offering Price and Description:
Common units and Advisor Class Units
Underwriter(s) or Distributor(s):
Claymore Investments, Inc.
Promoter(s):
-
Project #1367952

Issuer Name:
Chrysos Capital Corporation
Principal Regulator – Nova Scotia
Type and Date:
Final CPC Prospectus dated January 23, 2009
NP 11-202 Receipt dated January 26, 2009
Offering Price and Description:
$400,000.00 - 4,000,000 Common Shares Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Citadel Securities Inc.
Promoter(s):
-
Project #1334704

Issuer Name:
Centamin Egypt Limited
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 2, 2009
NP 11-202 Receipt dated February 2, 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:
Claymore Broad Emerging Markets ETF (formerly, Claymore Frontier Markets ETF)
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated January 23, 2009 to the Long Form Prospectus dated July 15, 2008
NP 11-202 Receipt dated February 2, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Claymore Investments, Inc.
Promoter(s):
-
Project #1284020

Issuer Name:
CMP 2009 Resource Limited Partnership
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 29, 2009
NP 11-202 Receipt dated January 30, 2009
Offering Price and Description:
Limited Partnership Units
Price per Unit: $1,000
Maximum Offering: $15,000,000.00 (15,000 Units);
Minimum Offering: $100,000,000.00 (100,000 Units)
Minimum Subscription: $5,000 (5 Units)
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Capital Corporation
Blackmont Capital Inc.
GMP Securities L.P.
Macquarie Capital Markets Canada Ltd.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Promoter(s):
CMP 2009 Corporation
Goodman & Company, Investment Counsel Ltd.
Project #1359658

Issuer Name:
Endeavour Financial Corporation
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated January 28, 2009
NP 11-202 Receipt dated January 28, 2009
Offering Price and Description:
$100,005,000.00 - 56,500,000 Units Price: $1.77 per Unit
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Canaccord Capital Corporation
Promoter(s):
-
Project #1358266

Issuer Name:
Enterprise Capital Corporation
Principal Regulator - Alberta
Type and Date:
Final Long Form Prospectus dated January 28, 2009
NP 11-202 Receipt dated January 30, 2009
Offering Price and Description:
$300,000.00 - 1,500,000 COMMON SHARES Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Richardson Financial Partners Limited
Promoter(s):
Randall W. Yatscoff
Project #1359543

Issuer Name:
Flaherty & Crumrine Investment Grade Fixed Income Fund
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated January 29, 2009
NP 11-202 Receipt dated January 30, 2009
Offering Price and Description:
Warrants to Subscribe for up to 6,586,770 Units at a Subscription Price of $ 6.65
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1366164

Issuer Name:
Front Street Flow-Through 2009-I Limited Partnership
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 28, 2009
NP 11-202 Receipt dated January 30, 2009
Offering Price and Description:
$150,000,000.00 - (Maximum Offering . 6,000,000 Units) - Subscription Price: $25.00 per Unit
$10,000,000.00 - (Minimum Offering (400,000 Units) - Subscription Price: $25.00 per Unit
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
Raymond James Ltd.
Tuscarora Capital Inc.
Blackmont Capital Inc.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Richardson Partners Financial Ltd.
Wellington West Capital Markets Inc.
Promoter(s):
Front Street Capital Management General Partner I Corp.
Project #1361619

Issuer Name:
Imperial Money Market Pool
Imperial Short-Term Bond Pool
Imperial Canadian Bond Pool
Imperial Canadian Dividend Pool
Imperial International Bond Pool
Imperial Canadian Income Trust Pool
Imperial Canadian Dividend Income Pool
Imperial Global Equity Income Pool
Imperial Canadian Equity Pool
Imperial Registered U.S. Equity Index Pool
Imperial U.S. Equity Pool
Imperial Registered International Equity Index Pool
Imperial International Equity Pool
Imperial Overseas Equity Pool
Imperial Emerging Economies Pool
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated January 29, 2009
NP 11-202 Receipt dated January 30, 2009
Offering Price and Description:
Mutual fund trust units at net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1354532

Issuer Name:
Jov Leon Frazer Preferred Equity Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated January 26, 2009
NP 11-202 Receipt dated January 30, 2009
Offering Price and Description:
Class A, F, I and T Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
JovFunds Management Inc.
Project #1360424

Issuer Name:
Kinross Gold Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated January 29, 2009
NP 11-202 Receipt dated January 29, 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:
Newmont Mining Corporation
Principal Regulator - Ontario
Type and Date:
Final MJDS Prospectus dated January 28, 2009
Mutual Reliance Review System Receipt dated January 28, 2009
Offering Price and Description:
• debt securities;
• common stock;
• preferred stock;
• guarantees; and
• warrants.
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1369156

Issuer Name:
O'Leary Global Income Opportunities Fund
Principal Regulator - Quebec
Type and Date:
Final Long Form Prospectus dated January 29, 2009
NP 11-202 Receipt dated January 30, 2009
Offering Price and Description:
Investment fund trust units
Each unit consists of one transferable trust unit (Trust Unit) and one Trust Unit purchase warrant (Warrant).
Price per Unit: $12.00 - Maximum Offering: $150,000,000.00 (12,500,000 Units); Minimum Offering: $25,000,008.00 (2,083,334Units) Minimum Purchase: 100 Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
National Bank Financial Inc.
Blackmont Capital Inc.
Wellington West Capital Markets Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Promoter(s):
Gencap Funds LP
Project #1364288

Issuer Name:
Red Back Mining Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated February 3, 2009
NP 11-202 Receipt dated February 3, 2009
Offering Price and Description:
Cdn$150,000,000.00 - 20,000,000 Common Shares
Cdn$7.50 per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Scotia Capital Inc.
Promoter(s):
-
Project #1368859

Issuer Name:
Saxon High Income Fund
Saxon Stock Fund
Saxon Small Cap
Saxon Microcap Fund
Saxon U.S. Equity Fund
Saxon U.S. Small Cap Fund
Saxon International Equity Fund
Saxon World Growth
Saxon Global Small Cap Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated January 26, 2009
NP 11-202 Receipt dated January 28, 2009
Offering Price and Description:
Series A Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Mackenzie Financial Corporation
Project #1355994

Issuer Name:
Scotia Money Market Fund
Scotia Canadian Income Fund
Scotia Diversified Monthly Income Fund
Scotia Canadian Tactical Asset Allocation Fund
Scotia Canadian Dividend Fund
Scotia Canadian Growth Fund
Scotia International Value Fund
Scotia Global Growth Fund
Scotia Global Opportunities Fund
Scotia Global Climate Change Fund
Scotia Selected Income & Modest Growth Portfolio
Scotia Selected Balanced Income & Growth Portfolio
Scotia Selected Moderate Growth Portfolio
Scotia Selected Aggressive Growth Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated February 2, 2009
NP 11-202 Receipt dated February 3, 2009
Offering Price and Description:
Mutual fund trust units at net asset value
Underwriter(s) or Distributor(s):
Scotia Securities Inc.
Scotia Securities Inc.
Promoter(s):
-
Project #1359785

Issuer Name:
Terra Firma Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated January 26, 2009
NP 11-202 Receipt dated January 29, 2009
Offering Price and Description:
$445,050.00 (Minimum Offering); $1,050,000.00 (Maximum Offering) A Minimum of 1,376,550 Flow-Through Shares and 1,131,600 Common Shares A Maximum of 3,128,865 Flow-Through Shares and 2,828,180 Common Shares
Underwriter(s) or Distributor(s):
Union Securities Ltd.
Promoter(s):
-
Project #1343048

Issuer Name:
Encell Energy Storage Corporation
Principal Jurisdiction - Ontario
Type and Date:
Preliminary CPC Long Form Prospectus dated October 16, 2008
Withdrawn on January 28, 2009
Offering Price and Description:
$1,000,000.00 - Minimum 2,500,000 Common Shares; $1,800,000.00 - Maximum 4,500,000 Common Shares Price: $0.40 per Common Share
Underwriter(s) or Distributor(s):
Research Capital Corporation
Promoter(s):
-
Project #1331527

Issuer Name:
Tenexco Resources Inc.
Principal Jurisdiction - Alberta
Type and Date:
Preliminary CPC Long Form Prospectus dated June 3, 2008
Withdrawn on January 29, 2009
Offering Price and Description:
$200,000.00 - 2,000,000 Common Shares Price: $0.10 per common share
Underwriter(s) or Distributor(s):
Blackmount Capital Inc.
Promoter(s):
Walter A. Dawson
Jeffrey J. Scott
David H.W. (Harry) Dobson
Ref J. Greenslade
Project #1279602

Issuer Name:
Chalk Media Corp.
Principal Jurisdiction - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated October 17, 2008
Closed on January 16, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Blackmont Capital Inc.
Promoter(s):
-
Project #1331850

Issuer Name:
Hilltown Resources Inc.
Principal Jurisdiction - British Columbia
Type and Date:
Amended and Restated Prospectus dated June 11, 2008
Amending and Restating Prospectus dated March 26, 2008
Closed on January 29, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Research Capital Corporation
Promoter(s):
Rudy de Jonge
David Eaton
Project #1114557

Issuer Name:
Veraz Petroleum Ltd.
Principal Jurisdiction - Alberta
Type and Date:
Preliminary Long Form Prospectus dated June 16, 2008
Closed on January 28, 2009
Offering Price and Description:
$15,000,000.00 - $25,000,000.00 - * Common Shares
Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Peters & Co. Limited
Tristone Capital Inc.
Haywood Securities Inc.
Promoter(s):
Gerardjan Cosijn
Project #1282824

Issuer Name:
SinoGas West Inc.
Principal Jurisdiction - Alberta
Type and Date:
Preliminary CPC Long Form Prospectus dated July 24, 2008
Closed on January 22, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1296047

Issuer Name:
Oroplata Exploration Inc.
Principal Jurisdiction - Quebec
Type and Date:
Preliminary Long Form Prospectus dated August 20, 2008
Closed on January 5, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1308420

Issuer Name:
Azimut Exploration Inc.
Principal Jurisdiction - Quebec
Type and Date:
Preliminary Short Form Prospectus dated August 25, 2008
Closed on November 26, 2008
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1309971

Issuer Name:
Intercable Ich Inc.
Principal Jurisdiction - Quebec
Type and Date:
Preliminary Long Form Prospectus dated August 20, 2008
Closed on January 5, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1308420

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: J. Russell Capital Management Inc. To: Acorn Global Investments Inc.	Commodity Trading Manager	November 10, 2008
Name Change	From: ABS Brokerage Services, LLC To: OES Brokerage Services, L.L.C.	International Dealer	December 15, 2008
Name Change	From: Canusa Capital Corp. To: Bloom Burton & Co. Inc.	Limited Market Dealer	January 23, 2009
New Registration	ECI Investments Inc.	Limited Market Dealer	January 28, 2009
Change in Category	The Investment House of Canada Inc.	From: Limited Market Dealer & Scholarship Plan Dealer; Mutual Fund Dealer & Limited Market Dealer; Mutual Fund Dealer, Limited Market Dealer & Scholarship Plan Dealer To: Mutual Fund Dealer & Limited Marker Dealer	January 29, 2009
New Registration	International Advisory Services Group (IASG) ULC	Investment Dealer	January 29, 2009
New Registration	Genuity Fund Management Inc	Limited Market Dealer & Investment Counsel & Portfolio Manager	January 30, 2009

Type	Company	Category of Registration	Effective Date
Reinstatement	Acorn Global Investments Inc.	Commodity Trading Manager	January 30, 2009
New Registration	Newpark Capital Corp.	Limited Market Dealer	February 2, 2009
New Registration	Firstport Capital Corp.	Limited Market Dealer	February 2, 2009

Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 MFDA Sets Date to Resume Hearing on the Merits in the Matter of Marlene Legare

NEWS RELEASE
For immediate release

MFDA SETS DATE TO RESUME HEARING
ON THE MERITS IN THE MATTER OF
MARLENE LEGARE

January 30, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of Marlene Legare by Notice of Hearing dated June 12, 2008.

The hearing of this matter on its merits, which commenced on December 15, 2008, has been scheduled to resume on March 19, 2009 at 10:00 a.m. (Pacific), or as soon thereafter as the hearing can be held, in the hearing room located at the Fairmont Hotel Vancouver, 900 West Georgia Street, Vancouver, British Columbia.

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 Hearing Panel Approves Settlement Agreement with Peter Bruno Lamarche

NEWS RELEASE
For immediate release

MFDA HEARING PANEL APPROVES SETTLEMENT AGREEMENT WITH PETER BRUNO LAMARCHE

February 3, 2009 (Toronto, Ontario) – A Settlement Hearing in the matter of Peter Lamarche was held yesterday before a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA"). The Hearing Panel approved the Settlement Agreement between Mr. Lamarche and the MFDA, as a consequence of which Mr. Lamarche:

- paid a fine in the amount of $40,000;
- was prohibited from being registered or acting in any supervisory capacity with a Member of the MFDA for two years;
- was prohibited from being registered or acting as a partner, director or senior officer of a Member of the MFDA for three years; and
- paid costs in the amount of $2,500.

The Hearing Panel advised that it would issue written reasons in due course.

A copy of the Settlement Agreement 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

13.1.3 CDS Rule Amendment Notice – Technical Amendments to CDS Procedures – Exchange Trade Reconciliation and Reporting Processes: Change of Process Trigger

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

EXCHANGE TRADE RECONCILIATION AND REPORTING PROCESSES: CHANGE OF PROCESS TRIGGER

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE CDS PROCEDURE AMENDMENT

Background

This procedure amendment is being put forward at the request of the CDS Strategic Development Review Committee ("SDRC") Equity Sub-committee. The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by CDS and CDS participants. Its membership includes representatives from the CDS participant community, and it meets on a monthly basis. The SDRC has three separate sub-committees each with its own membership and meeting schedule: the SDRC Equity Sub-committee, the SDRC Debt Sub-committee and the SDRC Entitlement Sub-committee.

This procedure amendment is designed to improve CDSX®'s reconciliation and reporting processes. CDS has been requested to change the reconciliation process trigger to be the receipt of a trade source file, which would result in the reporting of all discrepancies, regardless of whether a participant supplied file is received or not.

The CDS procedures marked for the amendments may be accessed at the CDS website at:

http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-blacklined?Open

Description of Proposed Amendments

Exchange trades are executed on a variety of marketplaces such as exchanges, Quotation and Trade Reporting Systems ("QTRS") and Alternative Trading Systems ("ATS"), (henceforth referred to as "Trade Source(s)"), and are reported to CDS for settlement between CDS participants. At the end of each trading day, each Trade Source sends CDS an Exchange Trade Input file containing the current day's trade details. CDS then compares this information with the details provided by subscribing CDS participants or their Service Bureaus, through the CDSX domestic exchange trade reconciliation and reporting processes. This CDSX reconciliation process then generates exception records for any differences found, compares the discrepancy funds amount against any participant-input Domestic Trade Tolerance levels, and reports these discrepancies back to the relevant CDS participants.

Currently, the CDSX domestic exchange trade reconciliation and reporting processes are triggered by the receipt of the participant supplied data. If the participant or its Service Bureau does not supply CDS with a file, the Trade Source files are not reviewed or used in the CDSX domestic exchange trade reconciliation and reporting processes. The non-reporting of one-sided, Trade Source supplied data discrepancies has resulted in significant fail costs for some CDS participants. As a result, CDS has been requested to change the trigger for the CDSX domestic exchange trade reconciliation and reporting processes from the receipt of the participant supplied data to the receipt of a Trade Source file, which would result in the reporting of all discrepancies, regardless of whether a participant supplied file is received by CDS or not. With this proposed change, those Trade Sources that a participant has a subscription for and which have submitted trade details to CDS, will be subject to the CDSX domestic trade reconciliation and reporting processes, regardless of whether or not CDS has received participant supplied information.

The following procedures will be impacted by this initiative:

Trade and Settlement Procedures:

- Chapter 3 Exchange Trades, Section 3.5 Reconciling exchange trade details

Proposed CDS procedure amendments are reviewed and approved by the SDRC. These proposed amendments were provided to the SDRC members via email on December 23, 2008 with a review and deemed approval deadline of December 30, 2008.

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed pursuant to this Notice of Effective Date are considered technical amendments as they are matters of a technical nature in routine operating procedures and administrative practices relating to the settlement services.

C. EFFECTIVE DATE OF THE CDS PROCEDURE AMENDMENT

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the Recognition and Designation Order, as amended on November 1, 2006, and Annexe A ("Protocole d'examen et d'approbation des Règles de Services de Dépot et de Compensation CDS Inc. par l'Autorité des marchés financiers") of AMF Decision 2006-PDG-0180, made effective on November 1, 2006, CDS has determined that the proposed amendments will become effective on a date subsequently determined by CDS, and as stipulated in the related CDS Bulletin.

D. QUESTIONS

Questions regarding this notice may be directed to:

Legal Department
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

Fax: 416-365-1984
e-mail: attention@cds.ca

13.1.4 CDS Rule Amendment Notice – Technical Amendments to CDS Procedures – Settled Transaction Report Enhancement

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

SETTLED TRANSACTION REPORT ENHANCEMENT

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE CDS PROCEDURE AMENDMENT

Background

This procedure amendment is being put forward at the request of the CDS Strategic Development Review Committee ("SDRC") Entitlement Sub-committee. The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by CDS and CDS participants. Its membership includes representatives from the CDS participant community, and it meets on a monthly basis. The SDRC has three separate sub-committees each with its own membership and meeting schedule: the SDRC Equity Sub-committee, the SDRC Debt Sub-committee and the SDRC Entitlement Sub-committee.

This procedure amendment is designed to provide CDS participants with information on adjustments made to their security or fund ledgers in a more timely way. Instead of waiting to receive such information on the business day following its occurrence, the proposed change will enable CDS participants to receive it on the same day it occurs.

The CDS procedures marked for the amendments may be accessed at the CDS website at:

http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-blacklined?Open

Description of Proposed Amendments

Currently, the existing external version of the Ledger Adjustments report (the "RMS000416" report) provides CDS participants with details of all the funds and security position adjustments made by CDS to their ledger the previous day. If the CDS user enters details regarding the ledger adjustments in the memo field of their entry screen, this information is also included in the RMS000416 report. The issue with this information being provided the day after the adjustments have been made is that the participant may have difficulty balancing on the day the adjustments were performed. In order to assist CDS participants with current business day balancing, it is being proposed that the same information that is included in the RMS000416 report be made also available to CDS participants on the day the adjustments are made through the Settled Transaction report (the "RMS000038B report"). The RMS000038B report is an intraday report that provides details on all funds and security position movements (i.e. trade settlement, pledging of collateral, borrowing of securities, ledger adjustments, etc) completed in the participant's CUID during the current day and up to the point in time that the report request is generated (i.e. this is an online request report that the participants run themselves multiple times throughout the day).

The following procedures will be impacted by this initiative:

CDS Reporting Procedures:

- Chapter 25 Transaction Reports, Section 25.5 Settled Transactions report

Proposed CDS procedure amendments are reviewed and approved by the SDRC. These proposed amendments were provided to the SDRC members via email on December 23, 2008 with a review and deemed approval deadline of December 30, 2008.

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed pursuant to this Notice of Effective Date are considered technical amendments as they are matters of a technical nature in routine operating procedures and administrative practices relating to the settlement services.

C. EFFECTIVE DATE OF THE CDS PROCEDURE AMENDMENT

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the Recognition and Designation Order, as amended on November 1, 2006, and Annexe A ("Protocole d'examen et d'approbation des Règles de Services de Dépot et de Compensation CDS Inc. par l'Autorité des marchés financiers") of AMF Decision 2006-PDG-0180,

made effective on November 1, 2006, CDS has determined that the proposed amendments will become effective on a date subsequently determined by CDS, and as stipulated in the related CDS Bulletin.

D. QUESTIONS

Questions regarding this notice may be directed to:

Legal Department
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

Fax: 416-365-1984
e-mail: attention@cds.ca

13.1.5 CDS Rule Amendment Notice – Technical Amendments to CDS Procedures – Buy-in Screens Enhancements

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

BUY-IN SCREENS ENHANCEMENTS

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE CDS PROCEDURE AMENDMENT

Background

This procedure amendment is being put forward at the request of the CDS Strategic Development Review Committee ("SDRC") Equity Sub-committee. The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by CDS and CDS participants. Its membership includes representatives from the CDS participant community, and it meets on a monthly basis. The SDRC has three separate sub-committees each with its own membership and meeting schedule: the SDRC Equity Sub-committee, the SDRC Debt Sub-committee and the SDRC Entitlement Sub-committee.

This procedure amendment is designed to make the Buy-in List screens of the CDSX® system more efficient and user friendly by introducing the following two enhancements:

1. Automatic repositioning of the cursor beside the last transaction accessed by a user; and
2. Addition of an extension requested column and an extension granted column to the deliverer's Buy-in List screen.

The CDS procedures marked for the amendments may be accessed at the CDS website at:

http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-blacklined?Open

Description of Proposed Amendments

Currently when a participant is inquiring about or maintaining a Buy-in transaction, the participant navigates through the Buy-in List screens to each transaction. Upon returning to the Buy-in List screens from the transaction detail screen, the cursor is automatically repositioned back to the top of the list of transactions, and the participant is unable to determine quickly which transaction they viewed most recently. One of the amendments proposed herein will change this so that when a user returns to a Buy-in List screen from a transaction detail screen via the Inquire, Modify or Extend Buy-in functions, the cursor will be automatically positioned beside the last transaction that was accessed from the Buy-in List screen.

Currently, the Buy-in List screen specific to the receiver on a transaction has an "Extension Requested" column which lets the receiver know whether or not the deliverer on a Buy-in transaction has requested an extension to the time at which the required securities must be delivered. The receiver's Buy-in List screen also has an "Extension Granted" column which lets the receiver know the status of an extension request. The second amendment proposed herein will introduce two similar columns to the deliverer's Buy-in List screen which will display extensions requested and granted. While this information is currently available in a paper report, the Deliverers' Maximum Executable Liability Report, the ability to view it online will provide for a more efficient and timely process.

The following procedures will be impacted by this initiative:

Trade and Settlement Procedures:

- Chapter 9 Buying In Outstanding CNS Positions, Section 9.4.1 Inquiring on a buy-in

Proposed CDS procedure amendments are reviewed and approved by the SDRC. These proposed amendments were provided to the SDRC members via email on December 23, 2008 with a review and deemed approval deadline of December 30, 2008.

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed pursuant to this Notice of Effective Date are considered technical amendments as they are matters of a technical nature in routine operating procedures and administrative practices relating to the settlement services.

C. EFFECTIVE DATE OF THE CDS PROCEDURE AMENDMENT

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the Recognition and Designation Order, as amended on November 1, 2006, and Annexe A ("Protocole d'examen et d'approbation des Règles de Services de Dépot et de Compensation CDS Inc. par l'Autorité des marchés financiers") of AMF Decision 2006-PDG-0180, made effective on November 1, 2006, CDS has determined that the proposed amendments will become effective on a date subsequently determined by CDS, and as stipulated in the related CDS Bulletin.

D. QUESTIONS

Questions regarding this notice may be directed to:

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