The Ontario Securities Commission

OSC Bulletin

May 1, 2009

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

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Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

MAY 1, 2009

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

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

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

SCHEDULED OSC HEARINGS

May 4, 2009 10:00 a.m.	**Norshield Asset Management (Canada) Ltd., Olympus United Group Inc., John Xanthoudakis, Dale Smith and Peter Kefalas** s. 127 M. Mackewn in attendance for Staff Panel: WSW/DLK/MCH
May 5, 2009 10:00 a.m.	**Berkshire Capital Limited, GP Berkshire Capital Limited, Panama Opportunity Fund and Ernest Anderson** s. 127 E. Cole in attendance for Staff Panel: WSW/ST
May 7, 2009 10:00 a.m.	**Neo Material Technologies Inc. and Pala Investments Holdings Limited and Its Wholly-owned subsidiary 0833824 B.C. Ltd.** s. 104 J. S. Angus 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 and 127(1) D. Ferris in attendance for Staff Panel: PJL/CSP
May 8, 2009 8:30 a.m.	**Teodosio Vincent Pangia and Transdermal Corp.** s. 127 J. Feasby in attendance for Staff Panel: LER/CSP

May 11, 2009 10:00 a.m.	**Rex Diamond Mining Corporation, Serge Muller and Benoit Holemans** s. 127 J. Waechter in attendance for Staff Panel: WSW/DLK/KJK
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 12, 2009 2:30 p.m.	**FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun** s. 127 A. Sonnen in attendance for Staff Panel: LER
May 15, 2009 2:00 p.m.	**Rajeev Thakur** s. 127 M. Britton in attendance for Staff Panel: TBA
May 19-22; June 17-19, 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
May 21, 2009 2:00 p.m.	**Nest Acquisitions and Mergers and Caroline Frayssignes** s. 127(1) and 127(8) C. Price in attendance for Staff Panel: TBA
May 25, 27 – 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
May 26, 2009 2:30 p.m.	**Borealis International Inc., Synergy Group (2000) Inc., Integrated Business Concepts Inc., Canavista Corporate Services Inc., Canavista Financial Center Inc., Shane Smith, Andrew Lloyd, Paul Lloyd, Vince Villanti, Larry Haliday, Jean Breau, Joy Statham, David Prentice, Len Zielke, John Stephan, Ray Murphy, Alexander Poole, Derek Grigor and Earl Switenky** s. 127 and 127.1 Y. Chisholm in attendance for Staff Panel: TBA
May 26, 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: TBA
May 26, 2009 2:30 p.m.	**Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmoney, Harmoney Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale** s. 127 H. Craig in attendance for Staff Panel: TBA

May 26, 2009	**Paul Iannicca**
2:30 p.m.	s. 127
	H. Craig in attendance for Staff
	Panel: TBA
June 1-3, 2009	**Robert Kasner**
10:00 a.m.	s. 127
	H. Craig in attendance for Staff
	Panel: TBA
June 3, 2009	**Adrian Samuel Leemhuis, Future Growth Group Inc., Future Growth**
10:00 a.m.	**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
June 4, 2009	**Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia**
10:00 a.m.	**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	**Abel Da Silva**
11:00 a.m.	s. 127
	M. Boswell in attendance for Staff
	Panel: TBA
June 5, 2009	**Andrew Keith Lech**
10:00 a.m.	s. 127(10)
	J. Feasby in attendance for Staff
	Panel: TBA
June 10, 2009	**Global Energy Group, Ltd. and New Gold Limited Partnerships**
10:00 a.m.	s. 127
	H. Craig in attendance for Staff
	Panel: TBA
June 15, 2009	**Goldpoint Resources Corporation, Lino Novielli, Brian Moloney, Evanna Tomeli, Robert Black, Richard Wylie and Jack Anderson**
	s. 127(1) and 127(5)
	M. Boswell in attendance for Staff
	Panel: TBA
June 16, 2009	**Sextant Capital Management Inc., Sextant Capital GP Inc., Sextant**
10:00 a.m.	**Strategic Opportunities Hedge Fund L.P., Otto Spork, Robert Levack and Natalie Spork**
	s. 127
	S. Kushneryk in attendance for Staff
	Panel: TBA
June 22-26, 2009	**Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling**
10:00 a.m.	s. 127(1) and 127.1
	J. Superina, A. Clark in attendance for Staff
	Panel: JEAT/DLK/PLK
July 6, 2009	**Lyndz Pharmaceuticals Inc., Lyndz Pharma Ltd., James Marketing Ltd.,**
10:00 a.m.	**Michael Eatch and Rickey McKenzie**
	s. 127(1) and (5)
	J. Feasby in attendance for Staff
	Panel: TBA

July 10, 2009 10:00 a.m.	**Uranium308 Resources Inc., Uranium308 Resources PLC., Michael Friedman, George Schwartz, Peter Robinson, Alan Marsh Shuman and Innovative Gifting Inc.** s. 127 M. Boswell in attendance for Staff Panel: TBA
July 23, 2009 10:00 a.m.	**W.J.N. Holdings Inc., MSI Canada Inc., 360 Degree Financial Services Inc., Dominion Investments Club Inc., Leveragepro Inc., Prosporex Investment Club Inc., Prosporex Investments Inc., Prosporex ltd., Prosporex Inc., Networth Financial Group Inc., Networth Marketing Solutions, Dominion Royal Credit Union, Dominion Royal Financial Inc., Wilton John Neale, Ezra Douse, Albert James, Elnonieth "Noni" James, David Whitely, Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Trudy Huynh, Dorlan Francis, Vincent Arthur, Christian Yeboah, Azucena Garcia and Angela Curry** s. 127 H. Daley in attendance for Staff Panel: TBA
July 27-31; August 5-14, 2009 10:00 a.m.	**Shane Suman and Monie Rahman** s. 127 and 127(1) C. Price in attendance for Staff Panel: TBA
August 10-17; 19-21, 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 3, 2009 10:00 a.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: TBA
September 9, 2009 10:00 a.m.	**Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang** s. 127 and 127.1 M. Britton in attendance for Staff Panel: LER
September 21-25, 2009 10:00 a.m.	**Swift Trade Inc. and Peter Beck** s. 127 S. Horgan in attendance for Staff Panel: TBA
September 30 – October 23, 2009 10:00a.m.	**Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited** s. 127 M. Britton in attendance for Staff Panel: TBA

October 19 – November 10; November 12-13, 2009 10:00 a.m.	**Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiaints Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group** s. 127 and 127.1 H. Craig in attendance for Staff Panel: TBA
November 16 – December 11, 2009 10:00 a.m.	**Sulja Bros. Building Supplies, Ltd. (Nevada), Sulja Bros. Building Supplies Ltd., Kore International Management Inc., Petar Vucicevich and Andrew DeVries** s. 127 and 127.1 M. Britton in attendance for Staff Panel: TBA
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

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) and (5)

P. Foy in attendance for Staff

Panel: TBA

TBA

Gregory Galanis

s. 127

P. Foy in attendance for Staff

Panel: TBA

TBA

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

s. 127

C. Price in attendance for Staff

Panel: PJL/ST

TBA

Nest Acquisitions and Mergers and Caroline Frayssignes

s. 127

C. Price in attendance for Staff

Panel: TBA

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

S. B. McLaughlin

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

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

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

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

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

1.1.2 Notice of Correction – CSA Staff Notice 11-312 National Numbering System

The following line was inadvertently omitted from the chart. It should appear in numerical order, second from the end.

Category, Sub-Category and Document Type Numbers

Category (1st digit)	**Sub-Category** (2nd digit)	**Document Type** (3rd digit)
8 – Mutual Funds	1 – Mutual Fund Distributions	

1.4 Notices from the Office of the Secretary

1.4.1 Irwin Boock et al.

FOR IMMEDIATE RELEASE
April 28, 2009

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

AND

IN THE MATTER OF
IRWIN BOOCK, STANTON DEFREITAS, JASON WONG, SAUDIA ALLIE, ALENA DUBINSKY, ALEX KHODJIAINTS, SELECT AMERICAN TRANSFER CO., LEASESMART, INC., ADVANCED GROWING SYSTEMS, INC., INTERNATIONAL ENERGY LTD., NUTRIONE CORPORATION, POCKETOP CORPORATION, ASIA TELECOM LTD., PHARM CONTROL LTD., CAMBRIDGE RESOURCES CORPORATION, COMPUSHARE TRANSFER CORPORATION, FEDERATED PURCHASER, INC., TCC INDUSTRIES, INC., FIRST NATIONAL ENTERTAINMENT CORPORATION, WGI HOLDINGS, INC. AND ENERBRITE TECHNOLOGIES GROUP

TORONTO – The Commission issued an Order which provides that the hearing of this matter on the merits shall be held on Monday, October 19, 2009 through to Friday, November 13, 2009, excluding Wednesday, November 11, 2009, commencing each day at 10:00 a.m. at the offices of the Commission on the 17th floor, 20 Queen Street West in Toronto.

A copy of the Order dated April 22, 2009 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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

1.4.2 HudBay Minerals Inc.

FOR IMMEDIATE RELEASE
April 28, 2009

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

AND

IN THE MATTER OF
HUDBAY MINERALS INC.

AND

IN THE MATTER OF
A DECISION OF THE
TORONTO STOCK EXCHANGE

TORONTO – The Commission issued its Reasons for Decision today in the above matter.

A copy of the Reasons for Decision dated April 28, 2009 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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Laurie Gillett
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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 E*TRADE Financial Corp. et al.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions. Foreign registered broker/dealers granted relief, subject to certain conditions, from the dealer registration requirements in respect of the resale of securities by Canadian resident employees of the corporate clients of the Applicants for whom the Applicants provide certain stock plan administration services.

Applicable Ontario Statutory Provisions

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

Applicable National Rules

National Instrument 45-106 Prospectus and Registration Exemptions, ss. 2.24, 2.28.
National Instrument 45-102 Resale of Securities, s. 2.14.

April 21, 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
E*TRADE FINANCIAL CORP.,
E*TRADE SECURITIES LLC,
E*TRADE CLEARING LLC AND
E*TRADE CAPITAL MARKETS, LLC

DECISION

Background

The principal regulator in the Jurisdiction has received an application from E*TRADE Financial Corp. (the **Filer**), E*TRADE Securities LLC (**ET Securities**), E*TRADE Clearing LLC (**ET Clearing**) and E*TRADE Capital Markets, LLC (**ET Capital Markets**, and together with ET Securities and ET Clearing, the **Affiliates**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the dealer registration requirements in the Legislation in respect of the resale of securities by Canadian resident employees of the corporate clients of the Filer and its Affiliates for whom the Filer and its Affiliates provide certain stock plan administration services (the **Requested Relief**).

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

(a) the Ontario Securities Commission is the principal regulator for 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 British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Newfoundland and Labrador, New Brunswick, Prince Edward Island and Nova Scotia (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 Filer and the Affiliates:

Parties

1. The Filer is a corporation incorporated under the laws of Delaware and is listed on the National Association of Securities Dealers Automated Quotation System. The Filer is a financial services company that, through its affiliates, provides a wide range of financial services to retail investors, including trading and investing services.

2. ET Securities, the Filer's U.S. broker-dealer affiliate, is incorporated under the laws of Delaware and is a member of the Financial Industry Regulatory Authority. ET Securities carries on business in the U.S. as an online brokerage firm, providing, *inter alia*, electronic securities trading services to self-directed investors.

3. ET Clearing is a single member limited liability company formed under the laws of Delaware. ET Clearing clears and settles securities transactions for the Filer and its affiliates and is a U.S. broker-dealer and a member of the Financial Industry Regulatory Authority.

4. ET Capital is a single member limited liability company formed under the laws of Illinois. ET Capital provides brokerage and market making services to institutional investors and is a U.S. broker-dealer and a member of the Financial Industry Regulatory Authority.

5. E*TRADE Financial Corporate Services, Inc. (**Corporate Services**) is a corporation incorporated under the laws of Delaware and a wholly-owned subsidiary of the Filer, which carries on business in the U.S. as a provider of stock plan administration services (**Stock Plan Administration Services**) to certain corporate clients of the Filer and its Affiliates (the **Issuer Clients**).

6. Prior to the Transaction (as defined below), E*TRADE Canada Securities Corporation (**E*Trade Canada**) was a wholly owned subsidiary of the Filer and was registered as a dealer in the category of investment dealer, or the equivalent, in each of the Jurisdictions and was a member of the Investment Industry Regulatory Organization of Canada.

The Transaction

7. On September 22, 2008, the Bank of Nova Scotia announced that it had completed the transaction originally announced on July 14, 2008 (the **Transaction**) and had purchased E*Trade Canada from the Filer. E*Trade Canada has now changed its name to Scotia iTRADE Corp. and proposes to carry on business as Scotia iTRADE.

Stock Plan Administration Services Prior to the Transaction

8. The Issuer Clients are predominantly headquartered in the U.S. and include multi-national corporations. The Issuer Clients have adopted incentive stock benefit plans, including stock option and stock purchase plans, pursuant to which they may issue securities (the **Plan Securities**) from time to time to their and their related entities' employees, executive officers, directors or consultants, or to permitted assigns of any of the foregoing persons (the **Employees**). A small number of the Employees of some of the Issuer Clients are Canadian residents (the **Canadian Employees**).

9. Under the Stock Plan Administration Services, Corporate Services provides access to proprietary software and technology that allows Issuer Clients to manage the administration of their incentive stock benefit plans. Through the Stock Plan Administration Services, the Filer and/or its Affiliates allow Employees to track and maintain records and provide instructions with respect to the purchase of Plan Securities under these plans, the grant and exercise of options, and the holding and resale of the Plan Securities issued upon exercise of options under these plans. Each Issuer Client and Employee provides contractual representations to the Filer and/or its Affiliates regarding compliance with law (which includes applicable securities laws) in respect of their participation in the Stock Plan Administration Services. The contractual arrangement between an Employee and ET Securities includes a representation from the

Employee that his or her securities transactions will be executed in compliance with the requirements of applicable laws and regulations.

10. Under the Stock Plan Administration Services, the Filer (through its Affiliates) acts as custodian in respect of all Plan Securities issued under an Issuer Client's incentive stock benefit plan. All such Plan Securities are held by the Filer and/or its Affiliates on behalf of the Employees (whether Canadian or not) in accounts located in the U.S. that provide for the final custody of assets by the Filer and/or its Affiliates in the U.S.

11. For all Employees other than Canadian Employees, the Filer (through its Affiliates) also acts as broker in respect of limited purpose accounts held by the Filer in the U.S. for the Employees (**Stock Plan Accounts**). The Stock Plan Account is a restricted brokerage account that permits solely the holding of Plan Securities and the resale of the Plan Securities. On receipt of an Employee's resale order, the Filer (through its Affiliates) sells the Plan Security on a market outside Canada, clears the trade through a clearing corporation outside Canada, and settles the trade with a counterparty outside Canada. The trading process as between Employee and the Filer and/or its Affiliates has been wholly automated through online and interactive voice response trading technology. Cash proceeds received from the resale of the Plan Security are delivered to the Employee or, at the direction of the Employee, to a brokerage account of the Employee's choice.

12. Prior to the Transaction, any Canadian Employee that wished to resell the Plan Securities opened a Stock Plan Account at E*TRADE Canada. The Canadian Employee placed the resell order with E*Trade Canada and then E*Trade Canada placed the resell order with the Filer and/or its Affiliates. This process could be conducted wholly online by the Canadian Employee, with no intermediation by the Canadian broker, through integrated technology in place between E*Trade Canada and the Filer and/or its Affiliates. Though orders could have been placed at E*Trade Canada by phone, the vast majority of Stock Plan Account orders were placed online as part of the online Stock Plan Administration Services.

13. Once the Canadian Employee placed their order with E*Trade Canada and the order was submitted by E*Trade Canada to the Filer and/or its Affiliates, the process followed was as described in paragraph 11. All Plan Securities of the Canadian Employee were traded by the Filer and/or its Affiliates on exchanges located outside of Canada, in accordance with all applicable rules and policies of the applicable exchange, to non-Canadian counterparties. The trades were cleared and settled outside Canada through non-Canadian clearing corporations and settlement agents. The cash proceeds on the sale of the Plan Securities were then delivered to the Canadian Employee or, at the Canadian Employee's direction, deposited to the Employee's brokerage account at E*Trade Canada or at another Canadian broker-dealer.

14. The development and implementation of the technology infrastructure required to integrate Stock Plan Account functionality in Canada at E*Trade Canada with Stock Plan Account functionality in the U.S. at the Filer to permit the resale of Plan Securities by the Canadian Employee through the facilities of E*Trade Canada before entering the facilities of the Filer was a complex, costly, and lengthy undertaking.

Stock Plan Administration Services After the Transaction

15. As a result of the Transaction, and following full integration of E*Trade Canada with the Bank of Nova Scotia, Canadian Employees will have lost their connectivity to the Stock Plan Account infrastructure in the U.S. and will not be able to conduct trades of Plan Securities through E*Trade Canada in the manner in which they were conducted prior to the Transaction.

16. With respect of the issuance of the Plan Securities to Canadian Employees, the Filer and the Affiliates are exempt from the dealer registration requirements in each of the Jurisdictions pursuant to section 2.24 of National Instrument 45 -106 – *Prospectus and Registration Exemptions* (**NI 45-106**).

17. With respect to the participation of the Filer and the Affiliates in the resale of Plan Securities on behalf of Canadian Employees, an exemption from the dealer registration requirements is available under section 2.28 of NI 45-106 (the **Resale Exemption**). However, the Resale Exemption is only available if the conditions set out in section 2.14 of NI 45-102 – *Resale of Securities* (**NI 45-102**) are satisfied.

18. Section 2.14 of NI 45-102 provides:

    (1) The prospectus requirement does not apply to the first trade of a security distributed under an exemption from the prospectus requirement if

        (a) the issuer of the security

(i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or

(ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade; (the **Reporting Issuer Condition**)

(b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada

(i) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series, and

(ii) did not represent in number more than 10 percent of the total number of owners directly or indirectly of securities of the class or series; and (the **10% Condition**)

(c) the trade is made

(i) through an exchange, or a market, outside of Canada, or

(ii) to a person or company outside of Canada.

19. The Filer and its Affiliates will be able to rely on the Resale Exemption for the resale of Plan Securities made on behalf of the vast majority of Canadian Employees. However, the Resale Exemption will not be available to the Filer and its Affiliates in respect of a small number of Canadian Employees because a very limited number of Issuer Clients (who fall into two distinct groups) will not satisfy all of the conditions under section 2.14 of NI 45-102. Each such Issuer Client is referred as a **Non-Exempt Client** and the Canadian Employee of such Non-Exempt Client is referred to as the **Non-Exempt Employee**.

20. The first group of Non-Exempt Clients which does not satisfy all of the conditions under section 2.14 of NI 45-102 is referred to as Reporting Issuer Non-Exempt Clients. The **Reporting Issuer Non-Exempt Clients** satisfy all of the conditions set out under section 2.14 of NI 45-102 except the Reporting Issuer Condition.

21. The second group which does not satisfy all of the conditions under section 2.14 of NI 45-102 consists of four Non-Exempt Clients who are referred to as **10% Non-Exempt Clients**. These 10% Non-Exempt Clients satisfy all of the conditions set out under section 2.14 of NI 45-102 except it is reasonably likely that they do not satisfy the 10% Condition. Of the four 10% Non-Exempt Clients, one has an ownership interest exceeding 30%, while the other three are significantly closer to the 10% threshold.

22. All the 10% Non-Exempt Clients are registered with the United States Securities and Exchange Commission under the *Securities Exchange Act of 1934* and are not exempt from the reporting requirements of that Act pursuant to Rule 12g3-2(b) made under that Act.

23. Based on the current records of the Filer, it is estimated that that the total number of Non-Exempt Employees constitutes approximately 0.03% of the total number of Employees who have access to the Stock Plan Administration Services.

24. In the absence of obtaining the Requested Relief, the Filer and the Affiliates would be subject to the dealer registration requirements in the Legislation in respect to the participation of the Filer and the Affiliates in the resale of Plan Securities on behalf of Non-Exempt Employees.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that at the relevant time that trading activity is engaged in:

(a) the Filer or the Affiliates will facilitate resales in the Plan Securities only on instructions received from the Non-Exempt Employee, and any cash proceeds resulting from such resales will be delivered to the Non-Exempt Employee or to a Canadian registered broker-dealer acting for the Non-Exempt Employee;

(b) all Plan Securities will be traded on exchanges located outside of Canada to non-Canadian counterparties, and cleared and settled outside Canada through non-Canadian clearing corporations and settlement agents in accordance with all applicable rules and policies governing such activities;

(c) Non-Exempt Employees will be treated in the same manner as international employees of Issuer Clients under the Stock Plan Administration Services;

(d) each of the Filer and its Affiliates will be registered as a U.S. broker-dealer;

(e) Non-Exempt Employees will, at all times, constitute less than one (1) percent of the total number of Employees who have access to the Stock Plan Administration Services;

(f) in respect of the first trades of the Plan Securities of a Reporting Issuer Non-Exempt Client by a Non-Exempt Employee, each of the conditions set out under section 2.14 of NI 45-102 is satisfied except the Reporting Issuer Condition;

(g) in respect of the first trades of the Plan Securities of a 10% Non-Exempt Client by a Non-Exempt Employee:

  (i) each of the conditions set out under section 2.14 of NI 45-102 is satisfied except the 10% Condition; and

  (ii) the applicable 10% Non-Exempt Client is registered with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934 and is not exempt from the reporting requirements of that Act pursuant to Rule 12g3-2(b) made under that Act, and

(h) prior to opening a new trading account with the Filer or an Affiliates, all Non-Exempt Employees will receive disclosure that includes:

  (i) a statement that the Non-Exempt Employees may not have the same rights against the Filer, or any of its Affiliates, as U.S. Employees because the Filer and its Affiliates are resident outside of Canada and all or substantially all of their assets are located outside of Canada; and

  (ii) a statement that neither the Filer, nor any of its Affiliates, is registered under the Legislation as a dealer for the purposes of participation of the Filer, or any of its Affiliates, in the resale of Plan Securities on behalf of Non-Exempt Employees and any investor protections that might otherwise be available in the Jurisdictions to clients of a registered dealer under the Legislation, may not be available to Non-Exempt Employees in the Jurisdictions who participate in the Stock Plan Administration Services.

“James E. A. Turner”
Commissioner
Ontario Securities Commission

“Carol S. Perry”
Commissioner
Ontario Securities Commission

2.1.2 Canadian Medical Discoveries Fund Inc.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund merger – approval required because merger does not meet the criteria for pre-approval – labour sponsored investment funds with different investment objectives – merger not a "qualifying exchange" or a tax-deferred transaction under the Income Tax Act – current simplified prospectus and financial statements of continuing fund not required to be sent to unitholders of the terminating fund.

Applicable Legislative Provisions

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

April 20, 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
CANADIAN MEDICAL DISCOVERIES FUND INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the jurisdiction of the principal regulator (the Legislation) for an approval under subsection 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* to permit the Fund to merge with GrowthWorks Canadian Fund Ltd. (the Approval Sought).

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

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

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

Interpretation

Defined terms contained in National Instrument 14-101 – Definitions and in MI 11-102 have the same meaning if used in this decision unless otherwise defined. Canadian Medical Discoveries Fund Inc. is also referred to as the "Fund".

Representations

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

CMDF

1) CMDF is a corporation existing under the laws of Canada with its head office located in Toronto, Ontario.

2) CMDF is registered as a labour sponsored investment fund under the *Community Small Business Investment Funds Act* (Ontario) (the Ontario Act) and as a labour-sponsored venture capital corporation under the *Income Tax Act* (Canada) (the ITA).

3) JovFunds Management Inc. is the manager of CMDF (the Manager).

4) The labour sponsor of CMDF is The Professional Institute of the Public Service of Canada.

5) The authorized capital of CMDF is as follows:

   a) an unlimited number of Class A, Series I, shares;

   b) an unlimited number of Class A, Series II, shares (together with the Class A, Series I, Shares, the Class A Shares);

   c) 25,000 Class B shares which are held by the labour sponsor of CMDF; and

   d) an unlimited number of Class C shares issuable in series.

6) CMDF is a reporting issuer under the applicable securities legislation of each province and territory of Canada and is not on the list of defaulting reporting issuers maintained under the applicable securities legislation of such jurisdictions.

7) CMDF's fundamental investment objective is to achieve long-term capital appreciation through investment in eligible Canadian businesses engaged in the health sciences sector, with emphasis on those businesses involved in the testing and development, or production and commercialization stages of development.

8) CMDF's net asset value is calculated on a daily basis on each day the Toronto Stock Exchange is open for business.

9) Sales and redemptions of shares of CMDF have been suspended since June 25, 2008 in accordance with decisions of the Autorité des marchés financiers du Québec dated June 25, 2008 and December 22, 2008 (the Prior Decisions) as a result of liquidity issues which are detailed in such decisions.

10) Prior to making applications for the Prior Decisions to suspend sales and redemptions the board of directors of CMDF constituted a special committee, the voting members of which were all independent from the Manager (the Committee).

11) The mandate of the Committee was to consider strategic options available for CMDF including, but not limited to various liquidation scenarios, eventual wind-up and closure, and reorganization into another fund or investment vehicle.

12) The Committee retained independent legal and financial advisors to assist it:

    a) in its consideration of strategic options, which ultimately resulted in the recommendation of the approval of the proposed Merger to the CMDF board of directors, which recommendation was adopted; and

    b) in its negotiations with the Manager for the termination of various agreements pursuant to which managerial and administrative services are currently provided to CMDF.

13) A material change report and press release was filed via SEDAR on November 7, 2008 with respect to the proposed Merger.

14) A notice of meeting, a management information circular and a proxy in connection with the annual and special meeting of securityholders to consider the Merger was mailed to securityholders of CMDF on or about February 4, 2009 and was filed on SEDAR.

15) Significant merger terms and conditions, including the redemption fees of 35% in the first three years, were disclosed in the management information circular described in paragraph 14.

16) The Independent Review Committee of CMDF provided a positive recommendation with respect to the Merger and such recommendation was included in the management information circular described in paragraph 14.

17) Securityholders of CMDF approved the Merger at a meeting held February 26, 2009.

GW Canadian

18) GW Canadian was incorporated under the Canada Business Corporations Act with its head office located in Toronto, Ontario.

19) GW Canadian is a registered labour-sponsored investment fund corporation under the Ontario Act and is a registered labour-sponsored venture capital corporation under the ITA and The Labour-Sponsored Venture Capital Corporations Act (Manitoba). GW Canadian is an approved fund under the Labour-sponsored Venture Capital Corporations Act (Saskatchewan). GW Canadian's investing activities are governed by such legislation (the LSIF Legislation).

20) GW Canadian primarily invests in small and medium sized businesses with the objective of obtaining long term capital appreciation and must make "eligible investments" in "eligible businesses" as prescribed under the LSIF Legislation.

21) The labour sponsor of GW Canadian is the Canadian Federation of Labour.

22) The authorized capital of GW Canadian is as follows:

    a) an unlimited number of Class A shares issuable in series, which are widely held, of which there are currently 20 series created and 10 series offered under GW Canadian's current prospectus;

    b) 1,000 Class B Shares which are held by the sponsor of GW Canadian; and

    c) an unlimited number of Class C shares issuable in series, of which there is one issued series designated as "IPA shares" held by the manager of GW Canadian to provide for a "participating" or "carried" interest in the venture investments of GW Canadian.

23) GW Canadian's net asset value is calculated on a weekly basis.

24) Securityholders of GW Canadian approved the Merger at a meeting held on December 3, 2008.

The Merger

25) The proposed Merger will take place in accordance with the following steps:

    a) The articles of incorporation of CMDF will be amended to authorize the exchange

of all the outstanding Class A Shares of CMDF for Class A Shares GW Canadian.

b) CMDF will transfer all of its assets which will consist of cash and portfolio securities, less an amount required to satisfy the liabilities of CMDF, to GW Canadian in exchange for Class A shares of GW Canadian (the Merger Shares).

c) Immediately following the above-noted transfer, CMDF will distribute to its Class A securityholders the Merger Shares so that following the distribution, the securityholders of CMDF will become direct securityholders of GW Canadian.

d) As soon as reasonably practicable following the Merger, CMDF will be wound up.

26) GW Canadian will not generally assume the liabilities of CMDF in connection with the Merger. However, indemnity agreements granted by CMDF in favour of its directors and officers will be assumed by GW Canadian subject to the overriding provision that recourse against GW Canadian under all such indemnities will generally be limited, in aggregate, to the value of the net assets of GW Canadian attributable on the books and records of GW Canadian to the specific series of GW Canadian Class A shares distributed as Merger Shares. Liability arising from this assumption of indemnities will be allocated solely to the Merger Shares. The indemnities will survive for three years following the Merger.

27) Like most corporations in Canada, CMDF carries directors' and officers' liability insurance to help protect directors and officers against liabilities incurred as a result of acting in such capacities. To provide ongoing coverage post-Merger, CMDF may extend the policy to cover claims made during a "run-off" period of up to three years after the Merger, the cost of which would be paid by CMDF (as it would if the Merger were not completed).

28) For a moment in time immediately after GW Canadian purchases the assets of CMDF in exchange for the Merger Shares of GW Canadian, CMDF will have 100% of its portfolio invested in shares of GW Canadian and CMDF will own greater than 10% of the outstanding Class A Shares of GW Canadian.

29) The incremental costs of the Merger will be borne GrowthWorks WV Management Ltd., the manager of GW Canadian, subject to a cap on legal and other advisory costs of $275,000. The costs of the Merger consist mainly of legal, proxy solicitation, printing, mailing, brokerage costs and regulatory fees.

30) CMDF will negotiate and pay for the termination of various agreements pursuant to which managerial and administrative services are currently provided to it and such arrangements were approved by CMDF`s securityholders at a meeting held February 26, 2009.

31) Subject to all necessary approvals being obtained and all conditions to the Merger being satisfied or waived, CMDF will merge into GW Canadian on or about the close of business on May 15, 2009 and GW Canadian will continue as a publicly offered open-end mutual fund.

32) No sales charges will be payable by CMDF or GW Canadian in connection with the acquisition by GW Canadian of the investment portfolio of CMDF or the exchange of CMDF Class A Shares for Merger Shares.

33) Shareholders of CMDF will be entitled to exercise dissent rights pursuant to and in the manner set forth in section 192 of the Canada Business Corporations Act with respect to the resolution approving the sale of all or substantially all of the assets of CMDF to GW Canadian. It is a condition of the Merger that no shares of CMDF are subject to validly exercised dissent rights. This and other conditions of the Merger may be waived or modified. If dissent rights are validly exercised and the Merger proceeds, shareholders that validly exercise these rights and do not withdraw their dissent (Dissenting Shareholders) will be entitled to receive the "fair value" of their CMDF Class A shares, determined as at the day before the CMDF shareholder meeting. Any Dissenting Shareholders who held their CMDF Class A shares for less than eight years may be required, in accordance with the ITA and the Ontario Act, to repay all or a portion of the federal and provincial tax credits granted when the shares were originally purchased.

Approval for the Merger

34) Approval for the Merger is required because the Merger does not satisfy all of the criteria for pre-approved reorganizations set out in subsection 5.6(1) of NI 81-102 because:

a) the fundamental investment objective of CMDF may not be considered substantially similar to that of GW Canadian as would be required under subsection 5.6(1)(a)(ii) of NI 81-102;

b) GW Canadian does not have a current simplified prospectus in each local jurisdiction in which securityholders of CMDF reside as would be required under subsection 5.6(1)(a)(ii) of NI 81-102;

c) the Merger will be completed on a taxable basis and not as a "qualifying exchange" or as a tax deferred transaction as would be required under subsection 5.6(1)(b) of NI 81-102;

d) CMDF delivered a custom-made document, derived from the current long form prospectus of GW Canadian. containing prospectus-level disclosure regarding GW Canadian and the Merger Shares to securityholders of CMDF instead of delivering a "current simplified prospectus" of GW Canadian as would be required under subsection 5.6(1)(f)(ii) of NI 81-102;

e) CMDF disclosed to securityholders of CMDF the most recent interim and annual financial statements availability at GW Canadian's website at www.growthworks.ca or at www.sedar.com or on request from the GrowthWorks WV Management Limited, the manager of GW Canadian, instead of by way of physical delivery as would be required under subsection 5.6(1)(f)(ii) of NI 81-102; and

f) Securityholders of CMDF will not have the right to redeem securities of CMDF prior to the effective date of the Merger as would be required by subsection 5.6(1)(i) of NI 81-102.

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 Approval Sought is hereby granted.

"Leslie Byberg"
Director, Investment Funds

2.1.3 SWEF LP – 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).

April 23, 2009

SWEF LP
c/o Bennett Jones LLP
1 First Canadian Place
Suite 3400
Toronto, ON M5X 1A4

Attention: Gary Solway

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

- 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;
- no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
- 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
- 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 Makers with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

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

2.1.4 AGF Funds Inc. et al.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund mergers – approval required because mergers do not meet the criteria for pre-approved reorganizations and transfers in National Instrument 81-102 – continuing funds have different investment objectives than terminating funds – certain mergers not a "qualifying exchange" or a tax-deferred transaction under Income Tax Act – securityholders of terminating funds provided with timely and adequate disclosure regarding the mergers.

Applicable Legislative Provisions

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

April 21, 2009

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

AND

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

AND

IN THE MATTER OF
AGF FUNDS INC.
(the "FILER")

AND

IN THE MATTER OF
AGF GLOBAL HEALTH SCIENCES CLASS
AGF GLOBAL TECHNOLOGY CLASS
AGF GLOBAL FINANCIAL SERVICES CLASS
AGF GLOBAL PERSPECTIVE CLASS
AGF SPECIAL U.S. VALUE CLASS
AGF U.S. VALUE CLASS
AGF U.S. VALUE FUND
AGF DIVERSIFIED DIVIDEND INCOME FUND
(collectively, the "TERMINATING FUNDS")

AND

IN THE MATTER OF
AGF GLOBAL EQUITY CLASS
AGF GLOBAL VALUE CLASS
AGF AMERICAN GROWTH CLASS
AGF SPECIAL U.S. FUND
AGF MONTHLY HIGH INCOME FUND
(collectively, the "CONTINUING FUNDS")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Terminating Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "Legislation") for approval of the proposed mergers of the Terminating Funds into the respective Continuing Funds (the "Proposed Mergers") pursuant to subsection 5.5(1)(b) of National Instrument 81-102 Mutual Funds ("NI 81-102") (the "Exemption Sought").

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 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 in this decision unless they are defined in this decision.

Representations

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

1. Each of AGF U.S. Value Fund ("U.S. Value Fund") and AGF Special U.S. Fund ("Special U.S. Fund") is an open-ended unit trust established under the laws of Ontario by a declaration of trust pursuant to which the Filer is the trustee (each a "Unit Trust Fund" and together the "Unit Trust Funds").

2. Each of AGF Diversified Dividend Income Fund ("Diversified Dividend Fund") and AGF Monthly High Income Fund ("Monthly Income Fund") is an open-end mutual fund trust established under the laws of Ontario by a declaration of trust pursuant to which the Filer is the trustee (each a "Trust Fund" and collectively the "Trust Funds").

3. AGF All World Tax Advantage Group Limited ("Tax Advantage Group") is a corporation established under the laws of Ontario and each of AGF Global Health Sciences Class, AGF Global Equity Class, AGF Global Technology Class, AGF Global Financial Services Class, AGF Global Value Class, AGF Global Perspective Class, AGF Special U.S. Class, AGF American Growth Class and AGF U.S. Value Class (each a "Corporate Fund" and collectively the "Corporate Funds") constitutes an authorized class of shares issuable in series.

4. AGF Funds Inc. ("AGF"), the Filer, is a corporation incorporated under the laws of Ontario. To the best of its knowledge and belief, the Filer is not in default of securities legislation. The Filer is the manager and trustee of each Unit Trust Fund and each Trust Fund. The Filer is also the manager of each of the Corporate Funds of Tax Advantage Group. The Unit Trust Funds, Trust Funds and the Corporate Funds are hereafter collectively referred to as the "Funds" or individually as a "Fund".

5. Various series of securities of the Corporate Funds and the Trust Funds are qualified for distribution pursuant to a simplified prospectus and an annual information form dated April 18, 2008. Series O units of the Unit Trust Funds are qualified for distribution pursuant to a simplified prospectus and an annual information form dated December 18, 2008.

6. Each of the Funds is a reporting issuer under the securities legislation of each Jurisdiction and is not in default of the applicable securities legislation.

7. The Proposed Mergers involve the mergers of (i) AGF Global Health Sciences Class into AGF Global Equity Class; (ii) AGF Global Technology Class into AGF Global Equity Class; (iii) AGF Global Financial Services Class into AGF Global Value Class; (iv) AGF Global Perspective Class into AGF Global Value Class; (v) AGF Special U.S. Class into AGF American Growth Class; (vi) AGF U.S. Value Class into AGF American Growth Class; (vii) AGF U.S. Value Fund into AGF Special U.S. Fund (to be re-named AGF American Growth Fund after giving effect to its change in investment objective); and (viii) AGF Diversified Dividend Income Fund into AGF Monthly High Income Fund.

8. Meetings of securityholders of the Terminating Funds were held on April 14, 2009 on the same day as meetings of other AGF funds, and it is anticipated that the Proposed Mergers will be effective in May or June 2009. Securityholders of the Terminating Funds voted in favour of the Proposed Mergers. With the exception of the Proposed Merger of AGF Global Perspective Class into AGF Global Value Class (which will be a material change to AGF Global Value Class), the Filer has determined that the other Proposed Mergers will not be a material change to each of the Continuing Funds due to the small size of the Terminating Funds relative to their Continuing Funds. A meeting of securityholders of AGF Global Value Class was also held on April 14, 2009 to approve the Proposed Merger with AGF Global Perspective Class. Securityholders of AGF

Global Value Class voted in favour of the Proposed Merger with AGF Global Perspective Class. All other approvals required by the *Business Corporations Act* (Ontario) in connection with the Proposed Mergers of the Corporate Funds will also be sought. The Filer will be responsible for the costs associated with the meetings.

9. The relevant notices of the meetings and management information circulars were mailed to securityholders of the relevant Funds and filed on SEDAR in accordance with applicable securities legislation.

10. The Filer did not send annual and interim financial statements of the relevant Continuing Fund to securityholders of the Terminating Funds. Instead, the Filer sent to each securityholder of the Terminating Funds:

    (i) a tailored document, consisting of the Part A and the Part B for the relevant Continuing Fund, as set out in the current simplified prospectus of the Continuing Fund filed on SEDAR; and

    (ii) a management information circular fully describing the relevant Proposed Merger, which prominently discloses that the most recent audited annual and un-audited interim financial statements of the Continuing Funds can be obtained by accessing the same at the AGF website or the SEDAR website, or requesting the same from AGF by toll-free number, by fax, or by contacting their dealer, all as described in the management information circular.

11. Amendments to the simplified prospectus and annual information form of each of the Funds were filed to describe the Proposed Mergers on March 3, 2009.

12. A press release and a material change report were filed on SEDAR on behalf of the Terminating Funds with the securities commissions of all the Jurisdictions with respect to the Proposed Mergers on March 3, 2009.

13. The Filer is not entitled to seek the approval of the independent review committee (the "IRC") for the Proposed Mergers due to the fact that one or more conditions of section 5.6 of NI 81-102 will not be met as required by section 5.3(2)(c) of NI 81-102.

14. The IRC reviewed and made recommendations with respect to the Proposed Mergers. The decisions of the IRC were included in the notices of meetings as required by section 5.1(2) of National Instrument 81-107.

15. The securities of each Continuing Fund received by a securityholder of the corresponding Terminating Fund will have the same fee structure as the securities of the Terminating Fund held by that securityholder.

16. Securityholders of each Terminating Fund will continue to have the right to redeem securities of the Terminating Fund at any time up to the close of business immediately before the effective date of the Proposed Mergers.

17. Most of the portfolio assets of each of the Terminating Funds are not likely to be acceptable to the portfolio managers of each of the relevant Continuing Funds and will be sold prior to the Proposed Mergers. The portfolio assets of the Terminating Funds which are to be transferred to the respective Continuing Funds are acceptable to the portfolio managers of each of the Continuing Funds.

18. Except as noted below, each of the Proposed Mergers would otherwise comply with all of the other conditions of section 5.6 of NI 81-102.

19. In the absence of approval or relief, the Proposed Mergers would be prohibited for the following reasons:

    (i) AGF Global Health Sciences Class has a different investment objective than AGF Global Equity Class;

    (ii) AGF Global Technology Class has a different investment objective than AGF Global Equity Class;

    (iii) AGF Global Financial Services Class has a different investment objective than AGF Global Value Class;

    (iv) AGF Special U.S. Class has a different investment objective than AGF American Growth Class;

    (v) U.S. Value Fund will not merge into Special U.S. Fund (to be re-named AGF American Growth Fund) on a tax deferred basis; and

    (vi) Diversified Dividend Fund will not merge into Monthly Income Fund on a tax deferred basis.

    In respect of all of the Proposed Mergers, the Filer would not be permitted to send a tailored simplified prospectus of the Continuing Funds, nor provide access to the annual and interim financial statements of the Continuing Funds, instead of mailing the same to investors in the Terminating Funds.

20. The Filer submits that the Proposed Mergers will reduce duplication between the Funds, thereby increasing operational efficiency as costs of each Continuing Fund will be spread across a greater pool of assets, also allowing for greater diversification.

21. The Filer on behalf of AGF Global Health Sciences Class, AGF Global Technology Class, AGF Global Financial Services Class and AGF Special U.S. Class submits that while each of AGF Global Health Sciences Class, AGF Global Technology Class, AGF Global Financial Services Class and AGF Special U.S. Class has a different investment objective than its corresponding Continuing Fund, the differences are not wholesale differences but differences of degree. The Proposed Mergers simply provide an investor in AGF Global Health Sciences Class, AGF Global Technology Class, AGF Global Financial Services Class and AGF Special U.S. Class with the option to continue as an investor in the corresponding Continuing Fund or to redeem their securities.

22. The Filer submits that investors will not be prejudiced in connection with the Proposed Mergers as:

    (a) the information circular sent to securityholders in connection with a Proposed Merger provides sufficient information about the Proposed Merger to permit securityholders to make an informed decision about the Proposed Merger;

    (b) the information circular sent to securityholders in connection with a Proposed Merger prominently discloses that securityholders can obtain the most recent interim and annual financial statements of the applicable Continuing Fund by accessing the SEDAR website at www.sedar.com, by accessing the AGF website, by calling AGF's toll-free telephone number, by faxing a request to AGF or by contacting a dealer;

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

    (d) each applicable Continuing Fund and Terminating Fund with respect to a Proposed Merger have an unqualified audit report in respect of their last completed financial period; and

    (e) the meeting materials sent to securityholders in respect of a Proposed Merger includes a tailored simplified prospectus consisting of:

        (i) the current Part A of the simplified prospectus of the applicable Continuing Fund; and

        (ii) the current Part B of the simplified prospectus of the applicable Continuing Fund.

Decision

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

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

"Rhonda Goldberg"
Manager
Ontario Securities Commission

2.1.5 Northern Rivers Capital Management Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval granted for change of manager of mutual funds – change of manager will not result in any material changes to the management and administration of the Funds – unitholders have received timely and adequate disclosure regarding the change of manager and the change is not detrimental to unitholders or the public interest.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(a), 5.5(3), 5.7(1)(a).

April 23, 2009

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

AND

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

AND

IN THE MATTER OF
NORTHERN RIVERS CAPITAL MANAGEMENT INC.
(the "Filer")
NORTHERN RIVERS MONTHLY INCOME AND
CAPITAL APPRECIATION FUND AND
NORTHERN RIVERS MONTHLY INCOME AND
CAPITAL APPRECIATION TRUST POOL

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "Legislation") for approval of a change of manager of the Fund and the Pool (as defined below) from the Filer to Mavrix Fund Management Inc. ("Mavrix") under Section 5.5(1)(a) **of National Instrument 81-102 –** *Mutual Funds* (NI 81-102) (the "Approval 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) **t**he Filer has provided notice that section 4.7(1) of **Multilateral Instrument 11-102 –** *Passport System* (MI 11-102) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon, and Nunavut.

Interpretation

Terms defined in National Instrument 41-**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 the manager and trustee of Northern Rivers Monthly Income and Capital Appreciation Fund (the "Fund") and the Northern Rivers Monthly Income and Appreciation Trust Pool (the "Pool").

2. The Filer is a corporation incorporated under the *Canada Business Corporations Act* and is not in default of securities legislation in any jurisdiction of Canada.

3. The Fund and the Pool are open-end investment trusts governed by declarations of trust dated as of September 7, 2006 under the laws of the province of Ontario.

4. The Fund and the Pool are reporting issuers in all of the provinces and territories of Canada (except Quebec) and are not in default of securities legislation in any jurisdiction of Canada.

5. The units of the Fund and the Pool are currently offered under a combined simplified prospectus and annual information form each dated August 25, 2008, as amended by Amendment No. 1 thereto dated February 20, 2009, prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and subject to NI 81-102.

6. NRC and Mavrix entered into an agreement on February 19, 2009 pursuant to which Mavrix will become the trustee and manager of the Fund and the Pool effective on or about April 30, 2009 (the "Effective Date"), subject to receipt of all necessary regulatory and unitholder approvals and the satisfaction of all other conditions precedent to the proposed transaction. On the Effective Date, the name of the Fund and the Pool is expected to be changed by Mavrix to "Mavrix Tax Deferred Income Fund" and "Mavrix Tax Deferred Income Trust Pool", respectively.

7. The Filer will have no further responsibilities in respect of the Fund or the Pool after the Effective Date. The Filer will continue to act as manager for certain other open-end funds that are not relevant to the transaction between the Filer and Mavrix.

8. A press release, amendments to the simplified prospectus and annual information form of the Fund and the Pool and material change reports have been filed in connection with the announcement of the change of manager.

9. Mavrix was incorporated on May 16, 2001 under the *Business Corporations Act (*Ontario). Its head office is located at Suite 501, 212 King Street West, Toronto, Ontario M5H 1K5. Mavrix is not in default of securities legislation in any jurisdiction of Canada.

10. Mavrix is a reporting issuer in all provinces and territories of Canada. The common shares of Mavrix are listed and posted for trading on the Toronto Stock Exchange under the symbol MVX.

11. Mavrix is registered under the *Securities Act* (Ontario) as an adviser in the categories of investment counsel and portfolio manager, and as a dealer in the category of limited market dealer.

12. Mavrix is the manager of the Mavrix Mutual Funds, a family of mutual funds currently offered under a combined simplified prospectus and annual information form each dated July 7, 2008, as amended by an Amendment No. 1 dated January 6, 2009.

13. The name, municipality of residence, position with Mavrix and principal occupation of each of the current directors and executive officers of Mavrix are set forth below:

Name and Municipality of Residence	Position with Mavrix	Principal Occupation
Malvin C. Spooner Etobicoke, Ontario	President, Chief Executive Officer and Director	President, Chief Executive Officer and Director of Mavrix. Mr. Spooner has been a portfolio manager for more than 20 years. Mr. Spooner holds BA, MA and MBA degrees and is a Chartered Financial Analyst.
Pierre Saint-Laurent Mount Royal, Québec	Chairman and Director	President of Asset Counsel Inc. Mr. Saint-Laurent holds B.Sc. and M.Sc. degrees in Economics from the University of Montreal, with doctoral studies in Economics at the University of California at Berkeley, as well as a Diploma in Business Administration from HEC Montreal. He holds the Chartered Financial Analyst designation and is a CFA Examination Grader, as well as a member of the CFA Institute's Candidate Curriculum Committee. He obtained the CAIA (Chartered Alternative Investment Analyst) designation in 2004.

Name and Municipality of Residence	Position with Mavrix	Principal Occupation
Raymond M. Steele Oakville, Ontario	Chief Financial Officer and Director	Chief Financial Officer and Director of Mavrix. Mr. Steele has been a portfolio manager for more than 20 years. Mr. Steele holds a B.Comm degree as well as CMA and CFA designations.
William Shaw West Hill, Ontario	Senior Vice-President and Director	Senior Vice-President and Director of Mavrix. Mr. Shaw has been a portfolio manager for more than 15 years. Mr. Shaw holds BA, BAS and MBA degrees as well as CA, CMA and CFP designations.
A. Kirk Purdy Okotoks, Alberta	Director	President and Chief Executive Officer of Basek Holdings Inc. (a private holding company) and President of Juno Canada Holdings Ltd., a wholly-owned subsidiary of Aston Hill Financial Inc. (formerly, Overlord Financial Inc.), a TSX-V listed company. Mr. Purdy has over 21 years of investment experience in real estate, venture capital, oil and gas, and public markets. Mr. Purdy holds B.Sc and MBA degrees and has the designation of Chartered Director.
Kenneth R. Yurichuk Toronto, Ontario	Director	Chartered Accountant and partner of Bobot & Yurichuk LLP, Chartered Accountants. Mr. Yurichuk also holds a B. Comm degree.
Martine Guimond Montréal, Québec	Director	Lawyer and partner of Gowling Lafleur Henderson LLP. Ms. Guimond holds B.Sc. and LL.B. degrees.
Sergio Di Vito Kleinburg, Ontario	Chief Operating Officer and Senior Vice-President, Trading	Chief Operating Officer and Senior Vice-President, Trading of Mavrix.
David Balsdon Mississauga, Ontario	Chief Compliance Officer, Secretary-Treasurer and Vice-President	Chief Compliance Officer, Secretary-Treasurer and Vice-President of Mavrix.
A. Mario Arra Barrie, Ontario	Senior Vice-President, National Sales	Senior Vice President, National Sales of Mavrix.

14. The Filer considers that the experience and integrity of each of the members of the Mavrix current management team is apparent by their education and years of experience in the investment industry and has been established and accepted through the granting of registration status and through the granting of a receipt to the Mavrix Funds for their combined simplified prospectus and annual information form each dated July 7, 2008, as amended by an Amendment No. 1 dated January 6, 2009.

15. Mavrix intends to administer the Fund and the Pool in substantially the same manner as NRC. There is no intention to change the investment objectives or fees and expenses of the Fund or the Pool. All material agreements regarding the administration of the Fund and the Pool will either be assigned to Mavrix by NRC or Mavrix will enter into new agreements as required. In either case, the material terms of the material agreements of the Fund and the Pool will remain the same, provided that the declarations of trust and management agreements of the Fund and the Pool will be amended to conform to the forms of declaration of trust and management agreement of all the other Mavrix Mutual Funds.

16. Cassels Investment Management Inc. will be retained by Mavrix to continue to act as the investment manager.

17. At a special meeting of unitholders of the Fund and the Pool held on April 7, 2009, unitholders of the Fund and the Pool approved the Change of Manager. A notice of meeting and a management information circular was mailed to unitholders of the Fund and the Pool no later than March 17, 2009 and filed on SEDAR in accordance with applicable securities legislation. The resignation of NRC as trustee and manager of the Fund and the Pool will be effective on the Effective Date. On that date, Mavrix will assume the roles of trustee and manager of the Fund and the Pool, and the declarations of trust and management agreements of the Fund and the Pool will be amended to conform to the forms of declaration of trust and management agreement of all the other Mavrix Mutual 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 Approval Sought is granted.

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

2.1.6 Ag Growth Income Fund and Benachee Resources Inc.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Relief from item 14.2 of Form 51-102F5 Information Circular – Filer exempt from including financial statements for predecessor corporation to be involved in a business combination – fundamental change in business and operations from predecessor corporation and change in all of its executive officers and directors.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1.
Form 51-102F5 Information Circular, Item 14.2.

April 23, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
MANITOBA AND ONTARIO
(THE "JURISDICTIONS")

AND

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

AND

IN THE MATTER OF
AG GROWTH INCOME FUND ("AG GROWTH") AND
BENACHEE RESOURCES INC. ("BENACHEE", AND
TOGETHER WITH AG GROWTH, THE "FILERS")

DECISION

Background

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

(a) exempting the Filers from the requirement under the Legislation to provide financial statement disclosure with respect to Benachee for the years ended December 31, 2008, December 31, 2007 and December 31, 2006 (the "**Financial Statements**") in the management information circular (the "**Circular**") to be prepared by the Filers and delivered to the holders ("**Ag Growth Unitholders**") of trust units ("**Ag Growth Units**") in connection with a special meeting ("**Special Meeting**") of Ag Growth Unitholders expected to be held in late May 2009; (the "**Exemption Sought**") and

(b) that the Application and this Decision be kept confidential and not be made public (the "**Confidentiality Request**").

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

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

(b) 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 in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland; and

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

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. AG GROWTH

1.1 Ag Growth is an unincorporated open-ended limited purpose trust established under the laws of the Province of Ontario pursuant to a Declaration of Trust dated March 24, 2004. The principal office of Ag Growth is located in Winnipeg, Manitoba.

1.2 Ag Growth was created to hold, indirectly, securities and assets of Ag Growth Industries Inc. and other investments in entities conducting business in the grain handling, storage and conditioning equipment market.

1.3 Ag Growth is a reporting issuer or the equivalent under the securities legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland. To its knowledge, Ag Growth is not in default of securities legislation in any jurisdiction of Canada.

1.4 The Ag Growth Units are listed on the Toronto Stock Exchange ("**TSX**") under the symbol "**AFN.UN**".

1.5 Ag Growth has filed an "AIF" and has "current annual financial statements" (as such terms are

defined in National Instrument 44-101 – *Short Form Prospectus Distributions* ("**NI 44-101**")) for the financial year ended December 31, 2008.

2. BENACHEE

2.1 Benachee is a corporation incorporated under the *Canada Business Corporations Act* ("**CBCA**"). The principal office of Benachee is located in Toronto, Ontario.

2.2 Benachee is engaged in the business of the exploration for and the mining of diamonds, primarily in the territory of Nunavut, Canada.

2.3 Benachee is a wholly-owned subsidiary of Tahera Diamond Corporation ("**Tahera**") and is not a reporting issuer in any jurisdiction. To its knowledge, Benachee is not in default of applicable securities legislation in any jurisdiction of Canada.

2.4 The common shares of Benachee (the "**Benachee Shares**") are not listed or posted for trading on any exchange or quotation and trade reporting system.

2.5 Benachee's liabilities substantially exceed its assets, which are comprised principally of mineral and mineral exploration assets.

3. TAHERA

3.1 Tahera is a corporation incorporated under the CBCA. The principal office of Tahera is located in Toronto, Ontario.

3.2 Tahera is engaged in the business of the exploration for and the mining of diamonds, primarily in the territory of Nunavut, Canada.

3.3 Tahera is a reporting issuer in each of the provinces of Canada and its common shares are currently suspended from trading on the TSX.

3.4 Tahera's liabilities substantially exceed its assets, which are comprised principally of securities of Benachee and mineral and mineral exploration assets.

4. CCAA Proceedings

4.1 Pursuant to an initial order granted by the Ontario Superior Court of Justice on January 16, 2008, Tahera and Benachee were granted protection from their creditors pursuant to the provisions of the CCAA by way of a stay of proceedings. The stay of proceedings has been extended on a number of occasions since the date of the initial order and currently expires on May 29, 2009.

5. Possible Business Combination

5.1 On March 3, 2009, Ag Growth entered into a letter of intent (the "**LOI**") with Tahera and Benachee which contemplates the potential business combination (the "**Business Combination**") pursuant to which: (i) all of the Ag Growth Units would be exchanged for Benachee Shares on a one for one basis, such Benachee Shares representing substantially all of the outstanding common shares of Benachee; (ii) in connection with and immediately prior to the share-for-unit exchange in (i) through a series of transactions (A) all of Benachee's assets would be transferred to a new wholly-owned subsidiary of Tahera ("**Newco**"), and (B) all of Benachee's liabilities would be assumed by Newco and/or extinguished with respect to Benachee by way of a court order ("**CCAA Order**") under the *Companies' Creditors Arrangement Act* ("**CCAA**"); and (iii) certain intercompany indebtedness aggregating $13,000,000 owing by Benachee to Tahera would be repaid as to $5,000,000 in cash to be advanced by Ag Growth, as to $4,000,000 by the issue of Benachee Shares and as to $4,000,000 by the issue of preferred shares of Benachee, and all of such cash and shares would be paid or assigned, directly or indirectly, to Caz Petroleum Inc., the principal secured creditor of Tahera and Benachee. On completion of the Business Combination, the capital structure of Ag Growth would be "converted" from an income trust to a corporation (Benachee, after completion of the Business Combination, is hereinafter referred to as "**Ag Growth Corp.**").

5.2 Following the completion of the Business Combination: (i) the sole business of Ag Growth Corp. would be the current business of Ag Growth; (ii) Ag Growth Corp. would be a reporting issuer or the equivalent under the securities legislation in all of the provinces of Canada; and (iii) the common shares of Ag Growth Corp. would, subject to approval by the TSX, be listed on the TSX.

5.3 The proposed Business Combination is expected to constitute a "restructuring transaction" for Ag Growth under the Legislation.

5.4 Pursuant to Ag Growth's constating documents, the Business Combination must be approved by two-thirds of the votes cast by the Ag Growth Unitholders entitled to vote in person or by proxy at the Ag Growth Meeting. The Ag Growth Meeting is anticipated to take place in late May 2009 and the Circular is expected to be mailed in early May 2009 subject to receipt of the Exemption Sought.

6. Financial Statement and Tax Disclosure in the Circular

6.1 Pursuant to Section 14.2 of Form NI 51-102F5 *Information Circular* (the "**Circular Form**") of National Instrument 51-102 *Continuous Disclosure Obligations*, Ag Growth is required to include financial statement disclosure in respect of Benachee, including audited income statements, statements of retained earnings and cash flow statements for the financial years ended December 31, 2008, December 31, 2007 and December 31, 2006 and audited balance sheets as at the end of December 31, 2008 and December 31, 2007.

6.2 Upon the CCAA Order becoming effective, Benachee would no longer carry on the mining or mining exploration business and would have no assets or liabilities associated with that business. Following the Business Combination, Ag Growth Corp. would carry on the manufacturing business currently conducted by Ag Growth and all of the directors and officers of Benachee will have changed. Historical financial statements that would reflect only Benachee's former mining operations would not assist Ag Growth Unitholders or any other potential unitholders with their assessment of the business that would be carried on by Ag Growth Corp. on completion of the Business Combination.

6.3 The Filers propose to include in the Circular a pro forma balance sheet as at March 31, 2009 for Benachee after giving effect to the Business Combination.

6.4 In addition, the Circular will:

(a) contain disclosure in accordance with the Circular Form and in respect of Benachee, in accordance with National Instrument 41-101 *General Prospectus Requirements* ("**NI 41-101**");

(b) include or incorporate by reference, among other things, financial statement disclosure in respect of Ag Growth in compliance with NI 44-101 and the pro forma financial statements of Ag Growth and Benachee in compliance with Form NI 41-101F1 *Information Required in a Prospectus*;

(c) contain qualitative disclosure on how the tax position of Ag Growth Corp. following the completion of the Business Combination will differ from the existing tax position of Ag Growth; and

(d) contain disclosure on how the retained cash flows of Ag Growth Corp. following the completion of the Business Combination will differ from the existing cash flows of Ag Growth.

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:

(a) The Exemption Sought is granted provided that the Filers include in the Circular a pro forma balance sheet as at March 31, 2009 for Benachee after giving effect to the Business Combination.

(b) The Confidentiality Request is granted until the earliest to occur of: (i) the date on which the Filers publicly announce that they have entered into the definitive agreement in respect of the Business Combination; (ii) the date the Filers advise the Decision Maker that there is no longer any need for the Application and this Decision to remain confidential; and (iii) 90 days from the date of this Decision.

"Chris Besko"
Deputy Director – Legal
The Manitoba Securities Commission

2.1.7 Northland Power Income Fund

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Multilateral Instrument 61-101 Protection of Minority Shareholders in Special Transactions – Relief granted from the requirement under subsection 6.3(1) to obtain a formal valuation of exchangeable units to be used as non-cash consideration in connection with a related party transaction; exemption to the formal valuation under subsection 6.3(2) of MI 61-101 is technically not available since, for tax reasons, exchangeable units are being issued by a holding entity within a reporting issuer's structure rather than the reporting issuer directly; investment in Holding LP is akin to an investment in reporting issuer and a formal valuation of the exchangeable units would be in fact a valuation of the reporting issuer.

Applicable Legislative Provisions

Multilateral Instrument 61-101 Protection of Minority Shareholders in Special Transactions, ss. 6.3, 9.1.

April 23, 2009

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

AND

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

AND

IN THE MATTER OF
NORTHLAND POWER INCOME FUND
(the Filer)

DECISION

Background

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

(a) exempting the Filer from the requirement in subsection 6.3(1)(d) of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (MI 61-101) to obtain a formal valuation of the non-cash assets to be issued to the Vendor (as defined below) as consideration under the Proposed Transaction (as defined below), and

(b) that the decision and the related application be kept confidential and not be made public until the earlier of (i) the date that the Filer publicly announces the Proposed Transaction, and (ii) 90 days from the date of the decision.

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 Quebec.

Interpretation

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

Representations

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

The Filer

1. The Filer is an unincorporated open-ended trust established pursuant to a trust indenture, dated February 17, 1997, as supplemented, amended and restated (the "Trust Indenture"), formed under the laws of the Province of Ontario.

2. The Filer is a reporting issuer, or has equivalent status, under securities legislation in all provinces of Canada and, to its knowledge, is not in default of any of the requirements of such legislation.

3. The Filer is authorized to issue an unlimited number of units (the Units). As at December 31, 2008 there were 62,353,143 Units issued and outstanding.

4. As at December 31, 2008, the Filer has issued outstanding $29,035,000 principal amount of convertible debentures (the Convertible Debentures), convertible into Units.

5. The Units and Convertible Debentures are currently listed and posted for trading on the Toronto Stock Exchange under the symbols NPI.UN and NPI.DB respectively.

6. Northland Power Income Fund Management Inc. (the Manager) is the administrator of the Filer and provides management services to several entities that are directly or indirectly owned by the Filer.

Holding LP

7. NPIF Holdings L.P. (Holding LP) is a limited partnership formed under the laws of the Province of Ontario.

8. The general partner of Holding LP is NPIF Holdings GP Inc. (Holding GP), a wholly owned subsidiary of NPIF Commercial Trust (CT), which itself is wholly owned by the Filer.

9. The initial limited partner of Holding LP is CT.

10. Holding LP is not a reporting issuer, or the equivalent, under securities legislation of any jurisdiction.

11. Prior to the closing of the Proposed Transaction, Holding GP and CT, as the initial limited partner of Holding LP, will enter into a first amended and restated limited partnership agreement (the Holding LP Agreement).

12. Under the Holding LP Agreement, Holding LP will be authorized to issue an unlimited number of ordinary limited partnership units (the Ordinary LP Units), an unlimited number of Class A exchangeable limited partnership units (the Class A Exchangeable LP Units) and an unlimited number of Class B convertible limited partnership units (the Class B Convertible LP Units), as well as the general partnership interest.

13. Prior to the closing of the Proposed Transaction, the Filer and CT will sell to Holding LP, and Holding LP will purchase, all of the assets of the Filer (other than its interest in CT) and of CT (other than its interest in Holding GP) in exchange for Ordinary LP Units.

The Proposed Transaction

14. The Filer, through Holding LP, proposes to acquire (the Proposed Transaction) all of the issued and outstanding shares of Northland Power Inc. (the Corporation) from Northland Power Holdings Inc. (the Vendor) in consideration of the issuance by Holding LP of Class A Exchangeable LP Units, the issuance by the Filer of an equal number of special voting units of the Filer (the Special Voting Units) and the issuance by Holding LP of Class B Convertible LP Units.

15. Under MI 61-101, the Vendor is a "related party" of the Filer and the Proposed Transaction constitutes a "related party transaction" because the Vendor is an affiliated entity of the Manager (which is a wholly owned subsidiary of the Corporation) and because James C. Temerty, the Chairman of the Board of Trustees of CT, indirectly beneficially owns all of the issued and outstanding shares of the Vendor.

16. The Filer will issue rights to acquire Units, exercisable after the second anniversary of the closing date of the Proposed Transaction (the Conversion Date) for no additional consideration, to members of management of the Corporation in exchange for the cancellation of their existing rights under the Corporation's long term incentive plan (the Replacement Rights) to acquire shares of the Corporation.

17. The Filer will also issue Units in satisfaction of debt owed by the Corporation to a related party of the Vendor and will enter into an agreement to purchase for cash in January 2010 the interests of certain affiliates of the Vendor in a limited partnership in which the Corporation has the balance of the interests.

18. The Corporation will repay debt owed to the Vendor and the Vendor will repay outstanding debt owed to the Canadian Imperial Bank of Commerce.

19. The independent trustees of CT (the Independent Trustees) have retained Crosbie & Company Inc. (Crosbie) to provide a formal valuation of the Corporation for the Proposed Transaction, which will be prepared in accordance with MI 61-101.

20. The Independent Trustees have also retained Crosbie to provide a 'fairness opinion' that will speak to the fairness to the Filer, from a financial point of view, of the consideration for the Proposed Transaction.

21. Crosbie has confirmed that it agrees with the facts set out in this decision.

22. The Independent Trustees have confirmed that they agree with the facts set out in this decision.

The Class A Exchangeable LP Units and Special Voting Units

23. Pursuant to the terms of an exchange agreement to be dated as of the closing date of the Proposed Transaction, after the Conversion Date each Class A Exchangeable LP Unit will be exchangeable at the option of the holder for one Unit for no consideration.

24. The Class A Exchangeable LP Units are not transferrable pursuant to the Holding LP Agreement.

25. Until the Conversion Date, the Class A Exchangeable LP Units will not receive ordinary cash distributions, although on the Conversion Date the Vendor will be entitled to a cash payment if and to the extent cash distributions on Units exceed $0.09 per month.

26. After the Conversion Date, the Class A Exchangeable LP Units will receive cash distributions from Holding LP that are equivalent to the cash distributions on the Units paid by the Filer.

27. A Class A Exchangeable LP Unit does not entitle the holder thereof to receive any distribution or payment from Holding LP in excess of the amounts that would be payable by the Filer in respect of the Units for which such Class A Exchangeable LP Unit could be exchanged.

28. Each Class A Exchangeable LP Unit will be issued together with a Special Voting Unit.

29. Each Special Voting Unit will provide the same voting rights in the Filer as a Unit.

30. The Special Voting Units will not entitle the holder to receive any distributions from the Filer or to participate in the liquidation or winding up of the Filer.

31. After the Conversion Date, the combination of a Class A Exchangeable LP Unit and a Special Voting Unit will be the economic equivalent of a Unit as a result of the fact that they are:

    (a) exchangeable into Units on a one for one basis;

    (b) have the same economic rights as Units; and

    (c) carry the same voting rights as Units.

32. Under the Proposed Transaction, the Trust Indenture will be amended to provide the Vendor will be granted pre-emptive rights and the right to appoint up to 3 of 7 Trustees of the Filer, subject to conditions.

33. Additional rights attached to the Class A Exchangeable LP Units in respect of Holding LP arise by virtue of the Class A Exchangeable LP Units being limited partnership units and are customary rights associated with limited partnership units in structures similar to that of the Filer.

34. The primary mechanism of liquidity for holders of Class A Exchangeable LP Units after the Conversion Date is expected to be the exchange of the Class A Exchangeable LP Units for Units, given that there will be a public market for the Units and the Class A Exchangeable LP Units are not transferrable.

35. Until the Conversion Date, the value of the combination of a Class A Exchangeable LP Unit and a Special Voting Unit is expected to be less than the value of a Unit as a result of the lack of ordinary cash distributions payable in respect of Class A Exchangeable LP Units and the lack of liquidity for the Class A Exchangeable LP Units.

Class B Convertible LP Units

36. The attributes of the Class B Convertible LP Units are designed such that if the development activities of the Corporation are more successful than expected, the additional value will be shared between the Vendor and the Filer.

37. The Class B Convertible LP Units carry no voting rights (except with respect to any amendment to the terms of the LP Agreement which would adversely affect their rights), no right to distributions and the right to receive $0.001 per Class B Convertible LP Unit only. The Class B Convertible LP Units are not transferrable.

38. The Class B Convertible LP Units will be converted into Class A Exchangeable LP Units on a one-for-one basis when and to the extent that certain development activities are successful and in accordance with terms that are set out in the Holding LP Agreement and which will be described in the information circular to be issued in connection with the annual and special meeting of Unitholders to consider the Proposed Transaction (the Unitholder Meeting). If at the time of such conversion all of the previously issued Class A Exchangeable LP Units have been exchanged for Units, then the Class A Exchangeable LP Units issued on the conversion of the Class B Convertible LP Units will be immediately exchanged for Units.

Special Meeting of Unitholders

39. The Unitholder Meeting will be held to obtain approval for the Proposed Transaction, including minority approval as required under MI 61-101.

40. The information circular to be mailed to Unitholders in connection with the Unitholder Meeting will comply with the requirements of applicable securities law and will disclose, among other matters:

    (a) that the Filer has no knowledge of any material information concerning the Filer, Holding LP or their securities that has not been generally disclosed, in accordance with subsection 6.3(2)(b) of MI 61-101;

    (b) that, to the knowledge of the Filer after reasonable inquiry, no related party of the Filer involved in the Proposed Transaction has knowledge of any material information concerning the Filer, Holding LP or their securities that has not been generally disclosed, in accordance

with subsection 6.3(2)(d) of MI 61-101; and

(c) a description of the effect of the Proposed Transaction on the direct or indirect voting interest in the Filer of any related party of the Filer involved in the Proposed Transaction, in accordance with subsection 6.3(2)(d) of MI 61-101.

41. The information circular will disclose that Independent Trustees have considered the impact of the Proposed Transaction on the business of the Filer, the consideration to be paid by the Filer and the valuation and fairness opinion of Crosbie in formulating its recommendation regarding the Proposed Transaction.

42. The information circular will include the valuation and fairness opinion of Crosbie. In determining whether the Proposed Transaction is fair from a financial point of view to the Filer, Crosbie will attribute a value to the consideration being paid to the Vendor. For this purpose, Crosbie will use the market value of the Units adjusted to reflect the differences between the Class A Exchangeable LP Units and the Units such as the lack of cash distributions prior to the Conversion Date, the lack of liquidity prior to the Conversion Date, and control attributes, including the pre-emptive rights and the right to elect Trustees. Crosbie will also consider adjustments for the value of the Class B Convertible LP Units, if any, based upon the likelihood of their becoming exchangeable. Crosbie will stipulate in the fairness opinion what value or range of values it is attributing to the non-cash assets being paid as consideration to the Vendor.

43. The process described in paragraph 42 may not constitute a formal valuation of the non-cash assets being paid as consideration as required by section 6.3(1)(d) of MI 61-101.

44. The exemption in section 6.3(2) of MI 61-101 is not available because the Class A Exchangeable Units and the Class B Convertible Units are not securities of a reporting issuer or securities of a class for which there is a published market, but their value derives entirely from their relationship to the Filer, which is a reporting issuer, and the value of the Units, for which there is a published market.

45. All of the assets of the Filer will be held through Holding LP and all of the business of the Filer will be carried on through entities owned directly or indirectly by Holding LP. All of the liabilities of the Filer are either liabilities of Holding LP (on a consolidated basis) or have priority over the Class A Exchangeable LP Units.

46. An investment in Holding LP is akin to an investment in the Filer.

47. A formal valuation of the Class A Exchangeable LP Units and the Class B Convertible LP Units would be in fact a valuation of the Filer.

48. Any material changes or material facts with respect to Holding LP would be material changes or material facts with respect to the Filer.

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 the Filer complies with subsection 6.3(2) of MI 61-101 to the extent applicable to a related party transaction, other than clause (a) thereof.

"Naizam Kanji"
Deputy Director, Mergers & Acquisitions, Corporate Finance
Ontario Securities Commission

2.1.8 Volkswagen Group Canada Inc. and VW Credit Canada, Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer granted exemptions from the prospectus requirement, dealer registration requirement and underwriter registration requirement in connection with trades of commercial paper/short term debt - Sufficient to obtain one credit rating at or above a revised category from an approved credit rating agency - Relief granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1).
National Instrument 45-106 Prospectus and Registration Exemptions.

April 9, 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
VOLKSWAGEN GROUP CANADA INC.
(VW Canada) AND
VW CREDIT CANADA, INC. (VCCI, and together with VW CANADA, 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**) that trades of negotiable promissory notes or commercial paper, maturing not more than one year from the date of issue, of the Filers (**Commercial Paper**) be exempt from the dealer registration requirement, the underwriter registration requirement and the prospectus requirement of the Legislation (respectively, the **Dealer Registration Exemption Sought**, the **Underwriter Registration Exemption Sought**, the **Prospectus Exemption Sought** and, together, the **Exemptions 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, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan 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.

In this decision,

"financial intermediary" has the meaning ascribed to that term in Ontario Securities Commission Rule 14-501 *Definitions*;

"financial intermediary short-term debt registration exemption" means the exemption from the registration requirement, for a trade by a financial intermediary or a Schedule III bank, set out in clause 4.1(1)(a) of OSC Rule 45-501, or in a successor provision of OSC Rule 45-501, insofar as that clause or provision provides an exemption from the dealer registration requirement and the underwriter registration requirement for a trade of a type described in the short-term debt dealer registration exemption;

"market intermediary" has the meaning ascribed to that term in Ontario Securities Commission Rule 14-501 *Definitions*;

"NI 45-106" means National Instrument 45-106 *Prospectus and Registration Exemptions*;

"OSC Rule 45-501" means Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*;

"Schedule III bank" means an authorized foreign bank named in Schedule III of the *Bank Act (*Canada);

"short-term debt dealer registration exemption" means the exemption from the dealer registration requirement set out in subsection 2.35(1) of NI 45-106, or in a successor provision in NI 45-106; and

"short-term debt underwriter registration exemption" means the deemed exemption from the underwriter registration requirement contained in subsection 1.4(2) of NI 45-106, or in a successor provision in NI 45-106, insofar as the deemed exemption relates to the short-term debt dealer registration exemption.

Representations

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

1. VW Canada is a corporation existing under the *Canada Business Corporations Act*. Volkswagen Canada Inc., as it was known at the time of the Prior Decision (as defined below), changed its name to Volkswagen Group Canada Inc. on January 1, 2008. The head office of VW Canada is located in Ajax, Ontario. VW Canada is not a reporting issuer, or the equivalent, in any jurisdiction of Canada and is not in default of the Legislation or the securities legislation of any jurisdiction of Canada.

2. VCCI is a corporation existing under the *Canada Business Corporations Act* and is the financing affiliate of VW Canada. The head office of VCCI is located in St. Laurent, Québec. VCCI is not a reporting issuer, or the equivalent, in any jurisdiction of Canada and is not in default of the Legislation or the securities legislation of any jurisdiction of Canada.

3. Subsection 1.4(2) and clause 2.35(1)(b) of NI 45-106 provide that exemptions from the dealer registration, underwriter registration and prospectus requirements of the Legislation for short-term debt (the **Commercial Paper Exemption**) are available only where such short-term debt "has an approved credit rating from an approved credit rating organization." NI 45-106 incorporates by reference the definitions for "approved credit rating" and "approved credit rating organization" that are used in National Instrument 81-102 *Mutual Funds* (**NI 81-102**).

4. The definition of "approved credit rating" in NI 81-102 requires, among other things, that (a) the rating assigned to such debt must be "at or above" certain prescribed short-term ratings, and (b) such debt must not have been assigned a rating by any "approved credit rating organization" that is not an "approved credit rating."

5. DBRS Limited (**DBRS**) has assigned the Commercial Paper a short-term rating of "R-1(low)" (the **DBRS Rating**). Standard & Poor's, a division of The McGraw-Hill Companies, Inc. (**S&P**), has assigned the Commercial Paper a short-term rating of "A-2" (the **S&P Rating**). Moody's Investors Service, Inc. (**Moody's**) has assigned the Commercial Paper a short-term rating of "Prime-2" (the **Moody's Rating**).

6. Each of DBRS, S&P and Moody's is an "approved credit rating organization" under NI 81-102. The DBRS Rating meets the prescribed threshold for an "approved credit rating" under NI 81-102. However, neither the S&P Rating nor the Moody's Rating meets the prescribed threshold for an "approved credit rating" under 81-102 and, as a result, the Commercial Paper of the Filers does not meet the criteria for the Commercial Paper Exemption.

7. The Dealer Registration Exemption Sought and the Prospectus Exemption Sought were granted under a prior decision dated April 11, 2006 (the Prior Decision). By its terms, the Prior Decision will terminate on the earlier of:

   (a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the securities legislation of the jurisdictions of Canada that amends section 2.35 of NI 45-106 or provides an alternate exemption; and

   (b) three years from the date of the Prior Decision.

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 Exemptions Sought are granted provided that:

1. the Commercial Paper:

   (a) matures not more than one year from the date of issue;

   (b) is not convertible or exchangeable into or accompanied by a right to purchase another security other than Commercial Paper; and

   (c) has a rating issued by one of the following rating organizations, or any of their successors, at or above one of the following rating categories or a rating category that replaces a category listed below:

Rating Organization	Rating
DBRS Limited	R-1 (low)
Fitch Ratings Ltd.	F2
Moody's Investors Service, Inc.	P-2
Standard & Poor's	A-2

2. In Ontario, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought are not available in respect of a trade in Commercial Paper by a market intermediary (except for a trade in Commercial Paper with a registered dealer that is an affiliate of

the market intermediary or a trade in Commercial Paper by a lawyer or accountant if the trade is incidental to the principal business of that lawyer or accountant), unless the market intermediary is:

(a) a financial intermediary or Schedule III bank; or

(b) a dealer registered under the Legislation, as a "limited market dealer", provided that:

(i) under its registration, the dealer would be authorized to make the trade if the trade were a trade in a negotiable promissory note or commercial paper referred to in the short-term debt dealer registration exemption; and

(ii) the trade is made on behalf of the dealer by an individual, who is registered under the Legislation to trade on behalf of the dealer and, under that registration, would be authorized to make the trade if the trade were a trade in a negotiable promissory note or commercial paper referred to in the short-term debt dealer registration exemption.

3. In Newfoundland and Labrador, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought are not available in respect of a trade in Commercial Paper by a market intermediary (except for a trade in Commercial Paper with a registered dealer that is an affiliate of the market intermediary or a trade in Commercial Paper by a lawyer or accountant if the trade is incidental to the principal business of that lawyer or accountant), unless the market intermediary is a dealer registered under the securities legislation of Newfoundland and Labrador, as a "limited market dealer", provided that:

(a) under its registration, the dealer would be authorized to make the trade if the trade were a trade in a negotiable promissory note or commercial paper referred to in the short-term debt dealer registration exemption; and

(b) the trade is made on behalf of the dealer by an individual, who is registered under the securities legislation of Newfoundland and Labrador to trade on behalf of the dealer and, under that registration, would be authorized to make the trade if the trade were a trade in a negotiable promissory note or commercial paper referred to in the short-term debt dealer registration exemption.

4. For each jurisdiction of Canada, the Prospectus Exemption Sought will terminate on the earlier of:

(a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the securities legislation of that jurisdiction of Canada that amends the conditions of the prospectus exemption contained in section 2.35 of NI 45-106 or provides an alternate exemption; and

(b) June 30, 2012.

5. Except as provided in paragraph 6, below, for each jurisdiction of Canada, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought will terminate on the earlier of:

(a) in the case of the Dealer Registration Exemption Sought, the date when the short-term debt dealer registration exemption does not apply in that jurisdiction of Canada;

(b) in the case of the Underwriter Registration Exemption Sought, the date when the short-term debt underwriter registration exemption does not apply in that jurisdiction of Canada; and

(c) June 30, 2012.

6. In Ontario, for a financial intermediary or Schedule III bank, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought will terminate on the earlier of:

(a) the date when the financial intermediary short-term debt registration exemption does not apply in Ontario; and

(b) June 30, 2012.

"Wendell S. Wigle"
Commissioner
Ontario Securities Commission

"Margot C. Howard"
Commissioner
Ontario Securities Commission

2.1.9 Toronto-Dominion Bank

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Filer granted exemptions from the prospectus, registration and underwriter registration requirements in connection with trades by the Filer of short term debt instruments that may not meet the "approved credit rating" requirement contained in the short-term debt exemption in section 2.35 of National Instrument 45-106 Prospectus and Registration Exemptions – Sufficient for short-term debt instruments to obtain one credit rating at or above a prescribed standard from an approved credit rating agency, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1).
National Instrument 45-106 Prospectus and Registration Exemptions.

April 23, 2009

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

AND

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

AND

IN THE MATTER OF
THE TORONTO-DOMINION BANK (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 trades by the Filer in negotiable promissory notes or commercial paper, maturing not more than one year from the date of issue (**Short-term Debt Instruments**) be exempt from the dealer registration requirement, the underwriter registration requirement and the prospectus requirement of the Legislation (respectively, the **Dealer Registration Exemption Sought**, the **Underwriter Registration Exemption Sought,** the **Prospectus Exemption Sought** and, together, the **Exemptions 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 Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon.

Notwithstanding the foregoing, the Filer is not seeking to rely on the Dealer Registration Exemption Sought or Underwriter Registration Exemption Sought in Newfoundland and Labrador.

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.

In this decision,

"financial intermediary" has the meaning ascribed to that term in Ontario Securities Commission Rule 14-501 *Definitions*;

"financial intermediary short-term debt registration exemption" means the exemption from the registration requirement, for a trade by a financial intermediary or a Schedule III bank, set out in clause 4.1(1)(a) of OSC Rule 45-501, or in a successor provision of OSC Rule 45-501, insofar as that clause or provision provides an exemption from the dealer registration requirement and the underwriter registration requirement for a trade of a type described in the short-term debt dealer registration exemption;

"market intermediary" has the meaning ascribed to that term in Ontario Securities Commission Rule 14-501 *Definitions*;

"NI 45-106" means National Instrument 45-106 *Prospectus and Registration Exemptions*;

"OSC Rule 45-501" means Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*;

"Schedule III bank" means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

"short-term debt dealer registration exemption" means the exemption from the dealer registration requirement set out in subsection 2.35(1) of NI 45-106, or in a successor provision in NI 45-106; and

"short-term debt underwriter registration exemption" means the deemed exemption from the underwriter registration requirement contained in subsection 1.4(2) of NI 45-106, or in a successor provision in NI 45-106, insofar

as the deemed exemption relates to the short-term debt dealer registration exemption.

Representations

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

1. The Filer is a bank listed on Schedule I of the *Bank Act* (Canada). The head office of the Filer is located in Toronto, Ontario.

2. The Filer is a reporting issuer, or the equivalent, in each jurisdiction of Canada and is not in default of its obligations under the Legislation or the securities legislation of any jurisdiction of Canada.

3. The Filer is not registered as a dealer or adviser under the Legislation or the securities legislation of any jurisdiction of Canada.

4. The Filer is a market intermediary and a financial intermediary.

5. The Filer both trades and engages in distributions of Short-term Debt Instruments in the Jurisdiction and the other jurisdictions of Canada as part of its activities as a principal and as an agent.

6. Subsection 1.4(2) and clause 2.35(1)(b) of NI 45-106 provide that exemptions from the dealer registration, underwriter registration and prospectus requirements of the Legislation for short-term debt (the **Short-term Debt Exemption**) are available only where, among other things, the Short-term Debt Instrument "has an approved credit rating from an approved credit rating organization."

7. NI 45-106 incorporates by reference the definitions for "approved credit rating" and "approved credit rating organization" that are used in National Instrument 81-102 *Mutual Funds* (**NI 81-102**). The definition of "approved credit rating" in NI 81-102 requires, among other things, that (a) the rating assigned to such debt must be "at or above" certain prescribed short-term ratings, and (b) such debt must not have been assigned a rating by any "approved credit rating organization" that is not an "approved credit rating."

8. The Filer currently trades, and proposes to continue to trade, Short-term Debt Instruments with the following general characteristics:

(a) they mature not more than one year from the date of issue;

(b) they are not convertible or exchangeable into or accompanied by a right to purchase another security other than another Short-term Debt Instrument; and

(c) they have a credit rating from at least one of the following credit rating organizations not less than the rating indicated:

Rating Organization	Rating
DBRS Limited	R-1 (low)
Fitch Ratings Ltd.	F2
Moody's Investors Service, Inc.	P-2
Standard & Poor's	A-2

9. The Short-term Debt Instruments may have a lower rating than required by the Short-term Debt Exemption and, accordingly, the Short-term Debt Exemption may not be available.

10. The Dealer Registration Exemption Sought and the Prospectus Exemption Sought were previously granted to the Filer under a prior decision dated April 26, 2006 (the Prior Decision). By its terms, the Prior Decision will terminate on the earlier of:

    (a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the securities legislation of the jurisdictions of Canada that amends section 2.35 of NI 45-106 or provides an alternate exemption; and

    (b) three years from the date of the Prior Decision.

11. The Filer is not seeking to rely on the Dealer Registration Exemption Sought or Underwriter Registration Exemption Sought in Newfoundland and Labrador. In such jurisdiction, the Filer relies on Sections 173(10) and 173(1)(b) of the Securities Regulation, C.N.L.R. 805/96 and Section 36(2)(d) of the Securities Act (Newfoundland and Labrador), which provide that a financial intermediary that is regulated by the federal Office of the Superintendent of Financial Institutions is not required to obtain registration as a dealer in Newfoundland and Labrador for the purpose of trading as principal or agent in Short-term Debt Instruments, provided that any Short-term Debt Instrument traded to an individual has a denomination or principal amount of not less than $50,000.

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 Exemptions Sought are granted provided that:

1. each Short-term Debt Instrument:

(a) matures not more than one year from the date of issue;

(b) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a Short-term Debt Instrument; and

(c) has a rating issued by one of the following rating organizations, or any of their successors, at or above one of the following rating categories or a rating category that replaces a category listed below:

Rating Organization	Rating
DBRS Limited	R-1 (low)
Fitch Ratings Ltd.	F2
Moody's Investors Service, Inc.	P-2
Standard & Poor's	A-2

2. For each jurisdiction of Canada, the Prospectus Exemption Sought will terminate on the earlier of:

(a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the securities legislation of that jurisdiction of Canada that amends the conditions of the prospectus exemption contained in section 2.35 of NI 45-106 or provides an alternate exemption; and

(b) June 30, 2012.

3. For each jurisdiction of Canada other than Ontario, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought will terminate on the earlier of:

(a) in the case of the Dealer Registration Exemption Sought, the date when the short-term debt dealer registration exemption does not apply in that jurisdiction of Canada;

(b) in the case of the Underwriter Registration Exemption Sought, the date when the short-term debt underwriter registration exemption does not apply in that jurisdiction of Canada; and

(c) June 30, 2012.

4. In Ontario, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought will terminate on the earlier of:

(a) the date when the financial intermediary short-term debt registration exemption does not apply in Ontario; and

b) June 30, 2012.

5. The Dealer Registration Exemption Sought and Underwriter Registration Exemption Sought do not apply in Newfoundland and Labrador.

"Carol S. Perry"
Commissioner
Ontario Securities Commission

"Suresh Thakrar"
Commissioner
Ontario Securities Commission

2.1.10 Canadian Imperial Bank of Commerce and CIBC Capital Trust

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption granted to a trust from continuous disclosure requirements under National Instrument 51-102 Continuous Disclosure Obligations and certification obligations under National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, subject to certain conditions – Trust established for purpose of effecting offerings of trust securities in order to provide bank with a cost-effective means of raising capital for Canadian bank regulatory purposes – Trust became reporting issuer upon filing a prospectus offering trust securities -Without relief, trust would have to comply with continuous disclosure and certification requirements – Given the nature, terms and conditions of the trust securities and various covenants of the bank in connection with the prospectus offering, the meaningful information to public holders of trust securities is information with respect to the bank, rather than the trust.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings.

April 22, 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
CANADIAN IMPERIAL BANK OF COMMERCE
(the "Bank") AND CIBC CAPITAL TRUST
(the "Trust" and, together with the Bank, the "Filers")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision (the "**Exemption Sought**") under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") that the requirements contained in the Legislation to:

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

(ii) file interim and annual management's discussion and analysis ("**MD&A**") and deliver same to the security holders of the Trust pursuant to sections 5.1 and 5.6 of NI 51-102,

(iii) file an annual information form pursuant to section 6.1 of NI 51-102, and

(iv) comply with any other requirements of NI 51-102

(collectively defined as the "**Continuous Disclosure Obligations**"); and

(b) file interim and annual certificates (collectively the "**Officers' Certificates**") pursuant to Parts 4, 5 and 6 of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* ("**NI 52-109**") (the "**Certification Obligations**")

shall not apply to the Trust, subject to certain conditions.

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

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

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

Interpretation

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

In this decision,

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

"Prospectus" means the final short form prospectus of the Bank and the Trust dated March 5, 2009 in respect of the Offering (as defined below);

"Tax Act" means the *Income Tax Act* (Canada);

Representations

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

The Bank

1. The Bank is a Schedule 1 chartered bank subject to the provisions of the Bank Act. The head office of the Bank is located at Commerce Court, Toronto, Ontario M5L 1A2.

2. The authorized share capital of the Bank consists of an unlimited number of: (i) common shares (the "**Bank Common Shares**") without nominal or par value, provided that the maximum aggregate consideration for all outstanding Bank Common Shares at any time does not exceed $15 billion; and (ii) Class A Preferred Shares (the "**Bank Preferred Shares**") issuable in series without nominal or par value, provided that the maximum aggregate consideration for all Bank Preferred Shares at any time does not exceed $10 billion.

3. The Bank Common Shares are listed and posted for trading on the Toronto Stock Exchange and the New York Stock Exchange. The Bank Preferred Shares are listed on the Toronto Stock Exchange other than the unlisted Series 28 Bank Preferred Shares.

4. The Bank is a reporting issuer, or the equivalent, in each province and territory of Canada (each a "**Reporting Jurisdiction**" and collectively, the "**Reporting Jurisdictions**") and is not, to the best of its knowledge, in default of any requirement of the securities legislation in such Reporting Jurisdictions.

The Trust

5. The Trust is a trust established under the laws of Ontario by Computershare Trust Company of Canada, as trustee (the "**Trustee**") pursuant to a declaration of trust dated as of January 19, 2009, as may be amended, restated and supplemented from time to time (the "**Declaration of Trust**").

6. The Trust's head and registered office is located at Commerce Court, Toronto, Ontario, M5L 1A2. The Trust has a financial year-end of December 31.

7. The Trust completed an initial public offering (the "**Offering**") of trust subordinated unsecured notes (the "**CIBC Tier 1 Notes**") in the Reporting Jurisdictions on March 13, 2009 and may, from time to time, issue further series of CIBC Tier 1 Notes. As a result of the Offering, the capital of the Trust consists of: (i) 9.976% CIBC Tier 1 Notes – Series A due June 30, 2108 (the "**CIBC Tier 1 Notes – Series A**"), (ii) 10.25% CIBC Tier 1 Notes – Series B due June 30, 2108 (the "**CIBC Tier 1 Notes – Series B**") and (iii) voting trust units (the "**Voting Trust Units**"). The CIBC Tier 1 Notes – Series A and CIBC Tier 1 Notes – Series B distributed pursuant to the Prospectus are held by the public and all of the outstanding Voting Trust Units are held, directly or indirectly, by the Bank.

8. As a result of having obtained a receipt for the Prospectus in respect of the Offering, the Trust is a reporting issuer, or the equivalent, in each of the Reporting Jurisdictions. The Trust is not, to the best of its knowledge, in default of any requirement of the securities legislation in the Reporting Jurisdictions.

9. The Trust is a single purpose vehicle established for the purpose of effecting offerings of securities, including CIBC Tier 1 Notes and Voting Trust Units (collectively, the "**Trust Securities**"), in order to provide the Bank with a cost-effective means of raising capital for Canadian bank regulatory purposes by means of (i) creating and selling the Trust Securities; and (ii) acquiring and holding assets, which will consist primarily of two senior unsecured deposit notes of the Bank (the "**CIBC Deposit Notes**") and other eligible assets as specified in the Prospectus (collectively, the "**Trust Assets**"). The Trust Assets will generate income for the payment of principal, interest, the redemption price, if any, and any other amounts, in respect of the Trust's debt securities, including the CIBC Tier 1 Notes. The Trust will not carry on any operating activity other than in connection with offerings of Trust Securities and in connection with the Trust Assets.

CIBC Tier 1 Notes

10. From the date of issue until June 30, 2108 the Trust will pay interest on each series of CIBC Tier 1 Notes in equal (subject to the reset of the interest rate) semi-annual instalments on June 30 and December 31 of each year (each an "**Interest Payment Date**"). Starting on June 30, 2019, and on every fifth anniversary of such date thereafter until June 30, 2104 (each such date, a "**Series A Interest Reset Date**"), the interest rate on the CIBC Tier 1 Notes – Series A will be reset at an interest rate per annum equal to the Government of Canada Yield (as defined in the Prospectus) plus 10.425%. Starting on June 30, 2039, and on every fifth anniversary of such date thereafter until June 30, 2104 (each such date, a "**Series B Interest Reset Date**"), the interest rate on the CIBC Tier 1 Notes – Series B will be reset at an interest rate per annum equal to the Government of Canada Yield (as defined in the Prospectus) plus 9.878%.

11. Under two assignment, set-off and trust agreements entered into among the Bank, the Trust and CIBC Mellon Trust Company as Indenture Trustee, each dated March 13, 2009 (the "**Assignment and Set-Off Agreements**"), the Bank has agreed, for the benefit of the holders of each series of CIBC Tier 1 Notes, that if, in respect of a series of CIBC Tier 1 Notes, (i) the

Bank elects, at its sole option, prior to the commencement of the interest period ending on the day immediately preceding the relevant Interest Payment Date, that holders of that series of CIBC Tier 1 Notes invest interest thereon in a new series of Bank Preferred Shares (the "**Deferral Preferred Shares**"); or (ii) for whatever reason, interest is not paid in full in cash on that series of CIBC Tier 1 Notes on any Interest Payment Date (in either case, an "**Other Deferral Event**"), the Bank will not declare dividends of any kind on the Bank Preferred Shares and the Bank Common Shares (the "**Dividend Restricted Shares**") until the sixth month following the relevant Interest Payment Date (the "**Dividend Stopper Undertaking**"). Accordingly, it is in the interest of the Bank to ensure, to the extent within its control, that the Trust complies with the obligation to pay interest on the Interest Payment Date so as to avoid triggering the Dividend Stopper Undertaking.

12. On each Interest Payment Date on which a Deferral Event (as defined below) has occurred for a series of CIBC Tier 1 Notes, holders of such CIBC Tier 1 Notes will be required to invest interest paid thereon in a new series of Deferral Preferred Shares. A "**Deferral Event**" means: (i) an Other Deferral Event; or (ii) the Bank has failed to declare cash dividends on all of the outstanding Bank Preferred Shares or, failing any Bank Preferred Shares being outstanding, on all of the outstanding Bank Common Shares, in accordance with its ordinary dividend practice in effect from time to time, in each case in the last 90 days preceding the commencement of the interest period for the relevant series of CIBC Tier 1 Notes ending on the day preceding the relevant Interest Payment Date.

13. The Deferral Preferred Shares will pay quarterly non-cumulative preferential cash dividends, as and when declared by the Board of Directors, subject to the provisions of the Bank Act, at the Perpetual Preferred Share Rate (as defined in the Prospectus), subject to any applicable withholding tax.

14. Prior to the issuance of any Deferral Preferred Shares in respect of a Deferral Event, the Bank will not, without the approval of the holders of CIBC Tier 1 Notes, delete or vary any terms attaching to the Deferral Preferred Shares other than any amendments relating to the Bank Preferred Shares as a class.

15. The CIBC Tier 1 Notes will be automatically exchanged, without the consent of the holders thereof, for a new series of newly-issued Bank Preferred Shares (the "**Exchange Preferred Shares**") if (i) an application for a winding-up order in respect of the Bank pursuant to the *Winding-up and Restructuring Act* (Canada) is filed by the Attorney General of Canada or a winding-up order in respect of the Bank pursuant to that Act is granted by a court; (ii) the Superintendent advises the Bank in writing that the Superintendent has taken control of the Bank or its assets pursuant to the Bank Act; (iii) the Superintendent advises the Bank in writing that the Superintendent is of the opinion that the Bank has a risk-based Tier 1 Capital ratio of less than 5.0% or a risk-based Total Capital ratio of less than 8.0%; (iv) the board of directors of the Bank advises the Superintendent in writing that the Bank has a risk-based Tier 1 Capital ratio of less than 5.0% or a risk-based Total Capital ratio of less than 8.0%; or (v) the Superintendent directs the Bank pursuant to the Bank Act to increase its capital or provide additional liquidity and the Bank elects to cause the Automatic Exchange as a consequence of the issuance of such direction or the Bank does not comply with such direction to the satisfaction of the Superintendent within the time specified therein (the "**Automatic Exchange**").

16. Under the terms of two share exchange agreements between the Bank, the Trust and CIBC Mellon Trust Company as Exchange Trustee (the "**Share Exchange Agreements**"), the Bank has granted to the Exchange Trustee for the benefit of the holders of the relevant series of CIBC Tier 1 Notes the right to exchange such CIBC Tier 1 Notes for Exchange Preferred Shares upon an Automatic Exchange and the Exchange Trustee, on behalf of the holders of that series of CIBC Tier 1 Notes has granted to the Bank the right to exchange such CIBC Tier 1 Notes for Exchange Preferred Shares upon an Automatic Exchange. Pursuant to the Share Exchange Agreements, the Bank has covenanted to take or refrain from taking certain actions so as to ensure that holders of that series of CIBC Tier 1 Notes will receive the benefit of the Automatic Exchange, including obtaining the requisite approval of holders of the CIBC Tier 1 Notes of that series to any amendment to the provisions of the Exchange Preferred Shares (other than any amendments relating to the Bank Preferred Shares as a class).

17. The Exchange Preferred Shares will pay quarterly non-cumulative preferential cash dividends, as and when declared by the Board of Directors, subject to the provisions of the Bank Act, at the Perpetual Preferred Share Rate (as defined in the Prospectus), subject to any applicable withholding tax.

18. If the CIBC Tier 1 Notes have not been exchanged for Exchange Preferred Shares pursuant to the Automatic Exchange, the Bank will not, without the approval of the holders of the CIBC Tier 1 Notes, delete or vary any terms attaching to the Exchange Preferred Shares other than any amendments relating to the Bank Preferred Shares as a class.

19. The CIBC Tier 1 Notes have been structured with the intention of achieving Tier 1 regulatory capital for purposes of the guidelines of the Superintendent and as such, have, in certain circumstances, features similar to those of equity securities.

20. The Trust may, subject to approval of the Office of the Superintendent of Financial Institutions Canada ("**Superintendent Approval**"), at its option, on or after June 30, 2014, on giving not more than 60 nor less than 30 days' notice to the holders of the applicable series of CIBC Tier 1 Notes, redeem the CIBC Tier 1 Notes of such series, in whole or in part. The redemption price per $1,000 principal amount of CIBC Tier 1 Notes of a series redeemed on any day that is not a Series A Interest Reset Date or Series B Interest Reset Date, as applicable, will be equal to the greater of par and the Canada Yield Price, and the redemption price per $1,000 principal amount of CIBC Tier 1 Notes of a series redeemed on any Series A Interest Reset Date or Series B Interest Reset Date, as applicable, in respect of such series will be par, together in either case with accrued and unpaid interest to but excluding the date fixed for redemption, subject to any applicable withholding tax (the "**Redemption Price**").

21. Upon the occurrence of certain regulatory or tax events affecting the Bank or the Trust the Trust may, at its option, without the consent of holders of the CIBC Tier 1 Notes but subject to Superintendent Approval, on giving not more than 60 nor less than 30 days' notice to the holders of the applicable series of CIBC Tier 1 Notes, redeem all but not less than all of such a series of CIBC Tier 1 Notes at a price equal to par plus accrued and unpaid interest.

22. The Trust may, after the date that is five years after the date of closing of the Offering, purchase in whole or in part, subject to Superintendent Approval, the CIBC Tier 1 Notes of either series. CIBC Tier 1 Notes purchased by the Trust shall be cancelled and not re-issued.

23. The CIBC Tier 1 Notes will be direct unsecured obligations of the Trust, ranking at least equally with other subordinated indebtedness of the Trust from time to time issued and outstanding. In the event of the insolvency or winding-up of the Trust, the indebtedness evidenced by the CIBC Tier 1 Notes issued by the Trust will be subordinate in right of payment to the prior payment in full of all other liabilities of the Trust except liabilities which by their terms rank in right of equal payment with or subordinate to indebtedness evidenced by such CIBC Tier 1 Notes.

24. The Bank will not assign or otherwise transfer its obligations under the Share Exchange Agreements or the Assignment and Set-Off Agreements, except in the case of a merger, consolidation, amalgamation or reorganization or a sale of substantially all of the assets of the Bank.

25. The Bank has covenanted that it will maintain direct or indirect ownership of 100% of the outstanding Voting Trust Units.

26. As long as any CIBC Tier 1 Notes are outstanding, and are held by any person other than the Bank, the Trust may only be terminated in certain limited circumstances with the approval of the Bank as the holder of the Voting Trust Units and with Superintendent Approval. However, the Bank will not approve the termination of the Trust unless the Trust has sufficient funds to pay the Redemption Price. The Bank will not create or issue any Bank Preferred Shares which, in the event of insolvency or winding-up of the Bank, would rank in right of payment in priority to the Exchange Preferred Shares or the Deferral Preferred Shares.

27. The CIBC Tier 1 Notes are non-voting except in limited circumstances set out in the Declaration of Trust. The Voting Trust Units entitle the holder thereof (i.e. the Bank or an affiliate of the Bank) to vote in respect of certain matters regarding the Trust.

28. Pursuant to the administration agreement dated January 19, 2009, as amended and restated, entered into between the trustee of the Trustee and the Bank, the Trustee has delegated to the Bank certain of its obligations in relation to the administration of the Trust. The Bank, as administrative agent, will provide advice and counsel with respect to the administration of the day-to-day operations of the Trust and other matters as may be requested by the Trustee from time to time.

29. The Trust may, from time to time, issue further series of CIBC Tier 1 Notes, the proceeds of which would be used to acquire additional Trust Assets.

30. Because of the terms of the Trust Securities, the Bank Share Exchange Agreement, the Assignment and Set-Off Agreement and the various covenants of the Bank, information about the affairs and financial performance of the Bank, as opposed to that of the Trust, is meaningful to holders of CIBC Tier 1 Notes. The Bank's filings will provide holders of CIBC Tier 1 Notes and the general investing public with all information required in order to make an informed decision relating to an investment in CIBC Tier 1 Notes and any other Trust Securities that the Trust may issue from time to time. Information regarding the Bank is relevant both to an investor's expectation of

being paid the principal, interest and Redemption Price, if any, and any other amount on the CIBC Tier 1 Notes when due and payable.

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:

1. in respect of the Continuous Disclosure Obligations:

   (a) the Bank remains a reporting issuer under the Legislation and has filed all continuous disclosure documents that it is required to file by the Legislation;

   (b) the Bank files with the securities regulatory authority or regulator in each Reporting Jurisdiction, in electronic format under the Trust's SEDAR profile, the continuous disclosure documents listed in paragraph 1(a), above, of this Decision, at the same time as they are required under the Legislation to be filed by the Bank;

   (c) the Trust pays all filing fees that would otherwise be payable by the Trust in connection with the filing of the continuous disclosure documents under NI 51-102;

   (d) the Trust sends, or causes the Bank to send, the Bank's interim and annual financial statements and interim and annual MD&A, as applicable, to holders of Trust Securities, at the same time and in the same manner as if the holders of Trust Securities were holders of similar debt securities of the Bank;

   (e) all outstanding securities of the Trust are either CIBC Tier 1 Notes, additional series of debt securities having terms substantially similar to either series of the CIBC Tier 1 Notes, or Voting Trust Units;

   (f) the rights and obligations of the holders of additional series of CIBC Tier 1 Notes are the same in all material respects as the rights and obligations of the holders of the CIBC Tier 1 Notes – Series A and CIBC Tier 1 Notes – Series B, with the exception of economic terms such as the interest payable by the Trust and redemption dates and prices;

   (g) the Bank is, directly or indirectly, the beneficial owner of all issued and outstanding voting securities of the Trust, including the Voting Trust Units;

   (h) the Trust does not carry on any operating activity other than in connection with offerings of its securities and the Trust has minimal assets, operations, revenues or cash flows other than those related to the CIBC Deposit Notes or the issuance, administration and repayment of the Trust Securities;

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

   (j) in any circumstances where the CIBC Tier 1 Notes (or any additional series of the Trust's debt securities having terms substantially similar to either series of the CIBC Tier 1 Notes) are voting, the Trust will comply with Part 9 of NI 51-102; and

   (k) the Trust complies with Parts 4A, 4B, 11 and 12 of NI 51-102.

2. in respect of the Certification Obligations:

   (a) the Trust is not required to, and does not, file its own interim filings and annual filings (as those terms are defined in NI 52-109);

   (b) the Trust is and continues to be exempted from the Continuous Disclosure Obligations and the Bank and the Trust are in compliance with the conditions set out in paragraph 1 above; and

   (c) the Bank files with the with the securities regulatory authority or regulator in each of the Reporting Jurisdictions, in electronic format under the Trust's SEDAR profile, the Officers' Certificates of the Bank at the same time as such documents are required under the Legislation to be filed by the Bank.

3. this decision shall expire 30 days after the date a material adverse change occurs in the representations of the Trust in this decision.

DATED this 22nd day of April, 2009.

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

2.1.11 BluMont Capital Corporation and Exemplar Diversified Portfolio

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption granted to a commodity pool from margin deposit limit contained in paragraph 6.8(2)(c) of National Instrument 81-102. Exemption granted to permit commodity pools to invest in derivatives in the U.S. through their portfolio manager that, in turn, will use U.S. future commission merchants. Exemption conditional on the amount of margin deposited not exceeding 20% of the net assets of the fund and on all margin deposited with U.S. futures commission merchants being held in segregated accounts.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 6.8(2)(c), 19.1.

April 27, 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
BLUMONT CAPITAL CORPORATION
(the "Filer") AND
EXEMPLAR DIVERSIFIED PORTFOLIO
(the "Fund")

DECISION

Background

1. The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the "**Legislation**"), for relief pursuant to section 19.1 of NI 81-102 exempting the Fund from the margin deposit limit contained in paragraph 6.8(2)(c) of NI 81-102 (the "**Exemption Sought**").

2. 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 Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in each of the provinces and territories of Canada, except Nunavut (the "**Jurisdictions**").

Interpretation

3. 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

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

   (a) The Fund is a class of shares of Exemplar Portfolios Ltd., a mutual fund corporation incorporated under the *Business Corporations Act* (Ontario) on March 18, 2008. The Filer, a corporation incorporated under the *Business Corporations Act* (Ontario), is the manager of the Fund.

(b) The Fund is expected to be a reporting issuer in all of the provinces and territories of Canada, except Nunavut, and is not, nor is the Filer, in default of any requirements of applicable securities legislation.

(c) The Fund is a "commodity pool" as is defined in Section 1.1 of National Instrument 81-104 as the Fund has adopted a fundamental investment objective that permits it to use or invest in specified derivatives in a manner that is not permitted under NI 81-102.

(d) A preliminary prospectus dated March 24, 2009 has been filed in each of the provinces and territories of Canada, except Nunavut, in respect of the sale and distribution of Series A, Series F, and Series I shares of the Fund.

(e) The investment objective of the Fund is to seek superior long term absolute and risk-adjusted returns with the potential for low correlation to global equity and fixed-income market returns through the selection and management of long and short positions in a globally diversified portfolio of futures, options, forward contracts, and other financial derivative instruments on agricultural and soft commodities, metals, energies, currencies, interest rates and equity indices. The Fund will not be restricted in the amount of leverage it can apply through its use of derivatives.

(f) The Fund will transact on highly liquid exchanges globally that may include, but are not limited to, all futures exchanges in the United States and Canada, the London Metals Exchange (LME), Euronext-LIFFE, the Eurex Deutschland (EUREX), The International Petroleum Exchange of London Limited (IPE), the Singapore International Monetary Exchange (SIMEX), the Sydney Futures Exchange Ltd. and The Tokyo Commodities Exchange (TCE). The Filer also acts as the investment manager of the Fund. The Filer has in turn retained its affiliate, Integrated Managed Futures Corp. (the "**Investment Sub-Advisor**"), to make and execute investment decisions on behalf of the Fund. The Investment Sub-Advisor, a corporation incorporated under the *Business Corporations Act* (Ontario), is a commodity trading manager and a limited market dealer registered in the Province of Ontario and also registered in the United States as a commodity trading advisor and commodity pool operator with the Commodity Futures Trading Commission.

(g) The Investment Sub-Advisor primarily engages in specified derivative transactions in Canada and outside of Canada.

(h) Subject to the prior written approval of the Filer, the Investment Sub-Advisor is authorized to establish, maintain, change and close brokerage accounts on behalf of the Fund. In order to facilitate specified derivatives transactions outside of Canada, the Fund will establish accounts (each an "**Account**") with futures commissions merchants in the United States of America ("**FCMs**").

(i) Each FCM is regulated by the Commodity Futures Trading Commission (the "**CFTC**") and the National Futures Association (the "**NFA**") in the United States, and is required to segregate all assets held on behalf of clients, including the Fund. Each FCM is subject to audits and must have insurance to guard against employee fraud. Each FCM has a net worth, determined from its most recent audited financial statements that have been made public, in excess of the equivalent of $50 million. Each FCM has an exchange assigned to it as its designated self-regulatory organization (the "**DSRO**"). As a member of a DSRO, each FCM must meet capital requirements, comply with the conduct rules of the CFTC, NFA and its DSRO, and participate in an arbitration process with a complainant.

(j) Each FCM is a member of the clearing corporations and exchanges that the standardized futures in the Fund's portfolio are primarily traded through. Each clearing corporation is obliged to apply its surplus funds and the security deposits of its members to reimburse clients of failed members.

(k) Each FCM requires, for each Account, that cash and/or government securities be deposited with the FCM as collateral for specified derivatives transactions ("**Margin**"). Margin represents the minimum amount of funds that must be deposited with the FCM to initiate trading in specified derivatives transactions or to maintain the FCM's open position in standardized futures.

(l) Each FCM is required to hold all Margin, including cash and government securities, in segregated accounts and the Margin is not available to satisfy claims against the FCM made by parties other than the Filer or the Fund.

(m) Margin will be deposited with an FCM in respect of standardized futures traded on exchanges.

(n) Levels of Margin will be established at the FCM's discretion.

(o) The use of Margin allows the Fund to use leverage to invest in standardized futures more extensively than if no leverage was used.

(p) The use of leverage is in accordance with the investment objectives and investment restrictions of the Fund.

Decision

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

6. The decision of the principal regulator under the Legislation is that the Exemption Sought is granted so long as:

(a) the amount of Margin deposited does not, when aggregated with the amount of Margin already held by a FCM on behalf of the Fund, exceed 20% of the net assets of the Fund, taken at market value as at the time of the deposit; and

(b) all Margin deposited with the FCMs is held in segregated accounts and is not available to satisfy claims against an FCM made by parties other than the Filer or the Fund.

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

2.2 Orders

2.2.1 BMO Nesbitt Burns Inc. – 4.1 of Rule 31-502 Proficiency Requirements for Registrants

Headnote

Salespersons of the Applicant who were previously registered in another Jurisdiction prior to January 1, 1994 are exempt from the post-registration proficiency requirements under paragraph 2.1(2) of Rule 31-502 Proficiency Requirements for Registrants, subject to conditions.

Rules Cited:

Ontario Securities Commission Rule 31-502 Proficiency Requirements for Registrants, ss. 2.1(2), 4.1.

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

AND

IN THE MATTER OF
BMO NESBITT BURNS INC.

ORDER
(Section 4.1 of Rule 31-502)

UPON the Director having received the application (the **Application**) of BMO Nesbitt Burns Inc. (the **Applicant**) for an exemption, pursuant to section 4.1 of Ontario Securities Commission Rule 31-502 – *Proficiency Requirements for Registrants* (the **OSC Proficiency Rule**), from the provisions of subsection 2.1(2) of the OSC Proficiency Rule (the **OSC Requirement**);

AND WHEREAS the OSC Requirement provides that the registration of a salesperson is suspended on the last day of the thirtieth month after the date the registration was granted, unless the salesperson has: (a) completed the Wealth Management Essentials Course (the **WME Course**) before the registration was granted, or (b) before the end of the thirty month period, completed the WME Course;

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

AND UPON the Applicant having represented to the Director that:

1. The Applicant is registered under the Act as a dealer in the category of investment dealer and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**);

2. Rule 2900 – *Proficiency and Education* (**Rule 2900**) of IIROC's Dealer Member Rules sets out proficiency requirements for persons registered with IIROC. Consistent with the OSC Requirement, paragraph A.3(c) of Part I of Rule 2900 (the **IIROC Proficiency Rule**) requires registered representatives (**Salespersons**) of investment dealers who are IIROC members (**Dealers**) to have successfully completed the WME Course within thirty months of approval.

3. The IIROC Proficiency Rule first became effective on January 1, 1994 (the **IIROC Effective Date**). Part II of Rule 2900 includes a 'grandfather clause' whereby Salespersons who were registered to trade on behalf of a Dealer in a jurisdiction immediately prior to the IIROC Effective Date are exempted from the IIROC Proficiency Rule.

4. The OSC Proficiency Rule, which became effective on August 17, 2000 (the **Rule Effective Date**), adopted and expanded the IIROC Proficiency Rule, but did not include a similar 'grandfather clause' exempting Salespersons who were registered to trade on behalf of a Dealer immediately prior to the IIROC Effective Date from the OSC Requirement. As such, Salespersons of the Applicants who have been registered to trade on behalf of a Dealer under the securities legislation of a jurisdiction other than Ontario immediately prior to the IIROC Effective Date and who were first registered to trade on behalf of a Dealer under the Act after the Rule Effective Date are subject to the OSC Requirement.

5. Until recently, both the IIROC Proficiency Rule and the OSC Requirement required that, within 30 months of initial approval, a Salesperson must have completed either the Professional Financial Planning Course (the **PFP Course**) or the first course of the Canadian Investment Management Program (the **CIM Program** and, together with the PFP Course, the **Previous Courses**). Both the IIROC Proficiency Rule and the OSC Requirement were recently amended by replacing the Previous Courses with the WME Course.

6. In an order dated November 23, 2004, the Applicant had previously obtained an exemption from the OSC Requirement which referenced the Previous Courses. The Applicant now requires new exemptive relief from the OSC Requirement which reflects the WME Course.

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

IT IS ORDERED, pursuant to section 4.1 of the OSC Proficiency Rule, that Salespersons of the Applicant are not subject to the OSC Requirement, provided that:

(a) immediately prior to the IIROC Effective Date, the particular Salesperson was registered under the securities legislation

of one or more jurisdictions other than Ontario as a Salesperson of a Dealer that was then registered under such legislation as an investment dealer (or the equivalent) and the registration of the Salesperson was not specifically restricted to the sale of mutual funds or non-retail trades; and

(b) after the IIROC Effective Date, that Salesperson was either registered to trade on behalf of a Dealer continuously in one or more jurisdictions other than Ontario, or any period after the IIROC Effective Date in which the Salesperson's registration to trade on behalf of a Dealer was suspended or in which the Salesperson was not so registered does not exceed three years.

April 23, 2009

"Erez Blumberger"
Manager, Registrant Regulation
Ontario Securities Commission

2.2.2 Trueclaim Exploration Inc. – s. 1(11)(b)

Headnote

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

Statutes Cited

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

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

AND

IN THE MATTER OF
TRUECLAIM EXPLORATION INC.

ORDER
(Clause 1(11)(b))

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

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

AND UPON the Applicant representing to the Commission as follows:

1. The Applicant was incorporated on May 17, 2006 pursuant to the *Business Corporations Act* (British Columbia).

2. The Applicant's head office is located at 96 Hagerman Crescent, St. Thomas, Ontario N5R 6K3. The Applicant's registered office is located at Suite 3350, 1055 Dunsmuir Street, Vancouver, British Columbia V7X 1L2.

3. The Applicant completed a qualifying transaction on December 18, 2008 (the **Qualifying Transaction**), whereby the Applicant acquired Trueclaim Resources Inc. (**Trueclaim**), an Ontario corporation, pursuant to the terms of an arrangement agreement between the Applicant, Trueclaim and 7048955 Canada Inc., a wholly-owned subsidiary of the Applicant.

4. As of the date hereof, the Applicant's authorized share capital consists of an unlimited number of common shares (the **Common Shares**), of which

16,689,454 Common Shares are issued and outstanding. The Applicant has outstanding obligations to issue: (i) 3,556,877 Common Shares upon the exercise of 3,556,877 outstanding common share purchase warrants (**Warrants**); and (ii) 1,384,500 Common Shares upon the exercise of 1,384,500 outstanding common share purchase options (**Options**).

5. The Applicant's Common Shares have been listed and posted for trading on the TSX Venture Exchange (the **TSXV**) since March 30, 2007 and are currently trading under the trading symbol "TRM". The Common Shares are not traded on any other stock exchange or trading or quotation system.

6. The Applicant is currently a reporting issuer in Alberta and British Columbia and has been a reporting issuer under the *Securities Act* (Alberta) (the **Alberta Act**) and the *Securities Act* (British Columbia) (the **BC Act**) since March 9, 2007.

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

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

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

10. The materials filed by the Applicant under the Alberta Act and the BC Act are available on the System for Electronic Document Analysis and Retrieval (**SEDAR**), with December 15, 2006 being the date of the first electronic filing on SEDAR by the Applicant.

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

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

13. Since the closing of the Qualifying Transaction, the Applicant has come to have a significant connection to Ontario in that:

    (a) as of the closing of the Qualifying Transaction, more than 50% of the Applicant's issued and outstanding Common Shares were held directly or indirectly by residents of Ontario;

    (b) since the closing of the Qualifying Transaction, the head office of the Applicant has been relocated from British Columbia to Ontario;

    (c) two members of the board of directors of the Applicant are residents of Ontario; and

    (d) the newly appointed President, Chief Financial Officer and Corporate Secretary are each a resident of Ontario.

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

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

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

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

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

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

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

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

director of any other issuer which is or has been subject to:

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

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

other than Eric Plexman, the President and a director of the Applicant, and Luard Manning, a director of the Applicant. Mr. Plexman was formerly a director, a Vice-President and the Secretary of Canmine Resources Corporation (Canmine) and Mr. Manning was formerly a director of Canmine. Canmine was a cobalt chemical refining company also engaged in mineral exploration and development that was listed on the Toronto Stock Exchange. Canmine was placed under CCAA protection during 2002 at a historical low in cobalt prices. Mr. Plexman and Mr. Manning both resigned in February, 2003. Canmine was subsequently placed into receivership and liquidated.

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

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

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

DATED at Toronto this 24th day of April, 2009.

"Jo-Anne Matear"
Corporate Finance Branch

2.2.3 Irwin Boock et al. – Rule 6.7 of the Rules of Procedure of the Ontario Securities Commission

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

AND

IN THE MATTER OF
IRWIN BOOCK, STANTON DEFREITAS, JASON WONG, SAUDIA ALLIE, ALENA DUBINSKY, ALEX KHODJIAINTS, SELECT AMERICAN TRANSFER CO., LEASESMART, INC., ADVANCED GROWING SYSTEMS, INC., INTERNATIONAL ENERGY LTD., NUTRIONE CORPORATION, POCKETOP CORPORATION, ASIA TELECOM LTD., PHARM CONTROL LTD., CAMBRIDGE RESOURCES CORPORATION, COMPUSHARE TRANSFER CORPORATION, FEDERATED PURCHASER, INC., TCC INDUSTRIES, INC., FIRST NATIONAL ENTERTAINMENT CORPORATION, WGI HOLDINGS, INC. AND ENERBRITE TECHNOLOGIES GROUP

ORDER
(Rule 6.7 of the Rules of Procedure of the Ontario Securities Commission)

WHEREAS on October 16, 2008, the Commission commenced this proceeding by issuing a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act");

AND WHEREAS the Notice of Hearing named as respondents the above-named individuals (the "Individual Respondents") and the above-named corporate entities (the "Corporate Respondents");

AND WHEREAS the Notice of Hearing gave notice that the Commission would hold a hearing pursuant to sections 127 and 127.1 of the Act, at the offices of the Commission, commencing on November 24, 2008 at 10 a.m., or as soon thereafter as the hearing could be held, to consider whether it is in the public interest to make orders against the Respondents, as particularized in the Notice of Hearing and by reason of the allegations of Staff set out in the Statement of Allegations of Staff dated October 16, 2008 and any such additional allegations as counsel may advise and the Commission may permit;

AND WHEREAS prior to the commencement of this proceeding, the Commission made temporary orders on May 18, May 22, May 30, 2007 and May 5 and May 14, 2008 against certain of the Individual Respondents and against all of the Corporate Respondents (the "Temporary Orders");

AND WHEREAS the Temporary Orders were modified and extended from time to time by further orders of the Commission;

AND WHEREAS the Temporary Orders in effect as of November 24, 2008, among other things, required pursuant to sections 127(1) and (5) the Act that:

i) trading in the securities of the Corporate Respondents shall cease; and

ii) all trading in any securities by Stanton DeFreitas and Irwin Boock shall cease;

AND WHEREAS on November 24, 2008, the Temporary Orders in respect of the Corporate Respondents and in respect of Boock and DeFreitas were extended until the conclusion of this proceeding or until further order of the Commission with an exception allowing Boock to trade in his existing RRSP account in securities that are listed on the Toronto Stock Exchange or New York Stock Exchange, provided that Boock provides to Staff copies of the monthly account statements for the RRSP account on a timely basis;

AND WHEREAS on January 20, 2009 the hearing was adjourned until February 17, 2009 for the purpose of having a pre-hearing conference on that date;

AND WHEREAS a pre-hearing conference was held on February 17, 2009;

AND WHEREAS a second pre-hearing conference was held on April 3, 2009;

AND WHEREAS pursuant to Rule 6.7 of the Rules of Procedure of the Ontario Securities Commission, the Panel presiding at a prehearing conference may make certain orders;

IT IS HEREBY ORDERED THAT the hearing of this matter on the merits shall be held on Monday, October 19, 2009 through to Friday, November 13, 2009, excluding Wednesday, November 11, 2009, commencing each day at 10:00 a.m. at the offices of the Commission on the 17th floor, 20 Queen Street West in Toronto.

DATED at Toronto this 22nd day of April, 2009.

“Paul K. Bates”

2.2.4 Canadian Imperial Bank of Commerce and CIBC Capital Trust

Headnote

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

Applicable Legislative Provisions

OSC Rule 13-502 Fees, s. 2.9(2).

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

AND

IN THE MATTER OF
THE CANADIAN IMPERIAL BANK OF COMMERCE
AND CIBC CAPITAL TRUST

ORDER

WHEREAS the Ontario Securities Commission (the "**Commission**") has received an application from the Canadian Imperial Bank of Commerce (the "**Bank**") and CIBC Capital Trust (the "**Trust**") for an order, pursuant to section 6.1 of Ontario Securities Commission Rule 13-502 *Fees* (the "**Fees Rule**"), that the requirement to pay a participation fee under section 2.2 of the Fees Rule shall not apply to the Trust, subject to certain terms and conditions;

AND WHEREAS the Bank and the Trust have represented to the Commission that:

1. The Trust is a trust established under the laws of Ontario by Computershare Trust Company of Canada, as trustee (the "**Trustee**") pursuant to a declaration of trust dated as of January 19, 2009, as may be amended, restated and supplemented from time to time.

2. The Trust's head and registered office is located in Toronto, Ontario. The Trust has a financial year-end of December 31.

3. The Trust completed an initial public offering (the "**Offering**") of trust subordinated unsecured notes (the "**CIBC Tier 1 Notes**") in each of the provinces and territories in Canada (the "**Jurisdictions**") on March 13, 2009, and may, from time to time, issue further series of CIBC Tier 1 Notes. As a result of the Offering, the capital of the Trust consists of: (i) 9.976% CIBC Tier 1 Notes – Series A due June 30, 2108 (the "**CIBC Tier 1 Notes – Series A**"), (ii) 10.25% CIBC Tier 1 Notes – Series B due June 30, 2108 (the "**CIBC Tier 1 Notes – Series B**") and (iii) voting trust units (the "**Voting Trust Units**"). The CIBC Tier 1 Notes – Series A and CIBC Tier 1 Notes – Series B distributed pursuant to the Offering are held by the public and all of the outstanding Voting Trust Units are held, directly or indirectly, by the Bank.

4. The Trust is a reporting issuer, or the equivalent, in the Jurisdictions. The Trust is not, to the best of its knowledge, in default of any requirement under the securities legislation in the Jurisdictions.

5. Pursuant to an administration agreement dated January 19, 2009, as amended and restated, the Trustee has delegated to the Bank certain of its obligations in relation to the administration of the Trust, including the day-to-day operations of the Trust and other matters as may be requested by the Trustee from time to time.

6. The Trust is a single purpose vehicle established for the purpose of effecting offerings of securities, including CIBC Tier 1 Notes and Voting Trust Securities (collectively, the "**Trust Securities**"), in order to provide the Bank with a cost-effective means of raising capital for Canadian bank regulatory purposes by means of (i) creating and selling the Trust Securities; and (ii) acquiring and holding assets, which will consist primarily of two senior unsecured deposit notes of the Bank (the "**CIBC Deposit Notes**") and other eligible assets as specified in the Prospectus (collectively, the "**Trust Assets**"). The Trust Assets will generate income for the payment of principal, interest, the redemption price, if any, and

any other amounts, in respect of the Trust's debt securities, including the CIBC Tier 1 Notes. The Trust will not carry on any operating activity other than in connection with offerings of Trust Securities and in connection with the Trust Assets.

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

8. Pursuant to a decision document dated April 22, 2009 (the "**Continuous Disclosure Exemption Decision**") granted to the Trust by the Commission, as principal regulator, on behalf of itself and the securities regulatory authorities of the Jurisdictions under the passport system contemplated by Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**"), the Trust has been granted an exemption from the requirements contained in the securities legislation of the Province of Ontario (the "**Legislation**") to:

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

   (ii) file interim and annual management's discussion and analysis and deliver same to security holders of the Trust pursuant to sections 5.1 and 5.6 of NI 51-102;

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

   (iv) comply with any other requirements of NI 51-102

   (collectively referred to herein as the "**Continuous Disclosure Obligations**"); and

   (b) file interim and annual certificates (collectively, the "**Officers' Certificates**") pursuant to Parts 4, 5 and 6 of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the "**Certification Obligations**").

9. As a result of granting the Continuous Disclosure Exemption Decision, the Trust is exempt from the Continuous Disclosure Obligations and the Certification Obligations, subject to certain terms and conditions, and no continuous disclosure documents concerning the Trust will be filed with the Commission.

10. The Office of the Superintendent of Financial Institutions Canada ("**OSFI**") maintains strict guidelines and standards with respect to the capital adequacy requirements of federally regulated financial institutions, including the Bank, and, in particular, specifies minimum required amounts of capital to be maintained by such institutions. Tier 1 capital consists of common shareholders' equity, qualifying non-cumulative perpetual preferred shares, qualifying innovative instruments and qualifying non-controlling interests arising on a consolidation from Tier 1 capital instruments. Innovative instruments, such as the CIBC Tier 1 Notes, must satisfy the detailed requirements of OSFI's Innovative Capital Guidelines (the "**OSFI Guidelines**") to be included in the Tier 1 capital of the Bank.OSFI approved the inclusion of the CIBC Tier 1 Notes as Tier 1 capital of the Bank.

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

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

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

15. On November 1, 2004, the Canadian Institute of Chartered Accountants adopted Guideline 15, Consolidation of Variable Interest Entities (the "**VIE Guideline**"). According to the VIE Guideline, the Bank may not consolidate the Trust because the assets of the Trust consist primarily of the Bank Deposit Notes, a liability of the Bank. As a result, the Trust may not, from a technical accounting perspective, be considered to be a "subsidiary entity" of the Bank for Canadian GAAP purposes and may not be entitled to rely on the exemption in section 2.9(2) of the Fees Rule.

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

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

(b) the capitalization of the Trust represented by the CIBC Tier 1 Notes and any additional securities of the Trust that may be issued, from time to time, by the Trust is included in the participation fee calculation applicable to the Bank and the Bank has paid the participation fee calculated on this basis.

DATED this 22nd day of April, 2009.

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

2.2.5 FrontPoint Partners LLC – ss. 3.1(1), 80 of the CFA

Headnote

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

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

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

Statutes Cited

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

National Instruments Cited

National Instrument 45-106 Prospectus and Registration Exemptions.

OSC Rules Cited

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

OSC Notices Cited

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

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

AND

IN THE MATTER OF
FRONTPOINT PARTNERS LLC

AND

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

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

UPON the application (the **Application**) to the Ontario Securities Commission (the **Commission**) by FrontPoint Partners LLC (**FrontPoint**), on their own behalf, and on behalf of FrontPoint Affiliates (as defined below) that are or may become Named Applicants (as defined below), for:

(a) an order of the Commission, pursuant to section 80 of the CFA (the **Order**), replacing the 2006 Order (as defined below), that each Named Applicant (as defined below) for the purposes of this Order (including their respective directors, partners, officers, employees or other individual representatives, acting on their behalf), is exempt, for a

period of five years, from the adviser registration requirement in the CFA (as defined below) in connection with the Named Applicant acting as an adviser to one or more Funds (as defined below), in respect of Foreign Contracts (as defined below); and

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

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

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

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

"2003 Order" means the order of the Commission captioned *In re FrontPoint Partners LLC, FrontPoint Quantitative Equity Strategies Fund GP, LLC, et al.* and dated May 2, 2003;

"2006 Order" means the order of the Commission captioned *In re FrontPoint Partners LLC, et al.* and dated April 28, 2006;

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

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

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

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

"FrontPoint Affiliate" means an entity, other than FrontPoint, that is an affiliate of, or entity organized by, FrontPoint;

"Fund" means an investment fund;

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

"Named Applicant" means:

(a) FrontPoint;

(b) a FrontPoint Affiliate which executed and filed with the Commission a verification certificate in order to rely on the exemptions granted in the 2003 and/or 2006 Orders; and

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

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

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

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

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

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

AND UPON FrontPoint having represented to the Commission that:

1. FrontPoint is a limited liability company organized under the laws of the State of Delaware in the United States of America, and is an indirect wholly-owned subsidiary of Morgan Stanley, a Delaware corporation. Any FrontPoint Affiliate that files an Identifying Notice for the purpose of becoming a Named Applicant in accordance with this Decision will, at the relevant time, be an entity organized under the laws of a jurisdiction outside of Canada.

2. The Named Applicants are investment managers for certain existing Funds. The Named Applicants may in the future establish or advise certain other Funds, including mutual funds, non-redeemable investment funds or similar investment vehicles.

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

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

5. If, after reviewing an Identifying Notice for a FrontPoint Affiliate, the Director is not of the opinion that it would not be prejudicial to the public interest to specifically name such FrontPoint Affiliate as a Named Applicant for the purposes of this Order, the Director will issue to the FrontPoint Affiliate a written notice of objection (the **Objection Notice**), in which case the FrontPoint Affiliate will not be permitted to rely on the exemption from the adviser registration requirement in the CFA provided to Named Applicants in this Order, but may, by notice in writing sent by registered mail to the Secretary of the Commission within 30 days after receiving the Objection Notice, request and be entitled to a hearing and review by the Commission of the Director's objection.

6. Subsection 78(1) of the CFA provides that the Commission may, on the application of a person or company affected by the decision, make an order revoking or varying a decision of the Commission if, in the Commission's opinion, the order would not be prejudicial to the public interest. Further, subsection 3.1(1) of the CFA provides that a quorum of the Commission may assign any of its powers and duties under the CFA (except powers and duties under section 4 and Part IV) to the Director.

7. Any Funds in respect of which a Named Applicant may act as adviser (under the CFA) pursuant to this Order will be established outside of Canada. Securities of the Funds are and will be primarily offered outside of Canada to institutional investors and high net worth individuals. To the extent the securities of the Funds will be offered to Ontario residents, such investors will qualify as "accredited investors" for the purposes of National Instrument 45-106 *Prospectus and Registration Exemptions*.

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

9. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA, or is registered as a representative or as a partner or an officer of a registered adviser and is acting on behalf of such registered adviser, and otherwise satisfies the applicable requirements specified in section 22 of the CFA. Under the CFA, "adviser" means a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to trading in "contracts", and "contracts" is defined in subsection 1(1) of the CFA to mean "commodity futures contracts" and "community futures options" (with these latter terms also defined in subsection 1(1) of the CFA).

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

11. FrontPoint is not registered in any capacity under the CFA or the OSA, and none of the Named Applicants will be registered under the CFA so long as the particular Named Applicant remains a Named Applicant for the purposes of this Order. If a Named Applicant advises any Funds (that has distributed its securities to any Ontario residents) as to investing in or the buying or selling of securities, it will comply with the adviser registration requirement in the OSA, and may, for this purpose, rely on the exemption from the adviser registration requirement in the OSA contained in section 7.10 of OSC Rule 35-502, insofar as it acts as an adviser (as defined in the OSA) to Ontario residents who hold securities of the Funds.

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

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

    (a) primarily offered outside of Canada;

    (b) only distributed in Ontario through one or more registrants under the OSA; and

    (c) distributed in Ontario in reliance upon an exemption from the prospectus requirement in the OSA.

14. Each of the Named Applicants, where required, is or will be appropriately registered or licensed or is, or will be, entitled to rely on appropriate exemptions from such registration or licensing requirements to provide advice to the Funds pursuant to the applicable legislation of its principal jurisdiction.

15. FrontPoint is registered as an investment adviser with the U.S. Securities and Exchange Commission (the **U.S. SEC**) and has filed claims for exemption under Commodity Futures Trading Rule 4.13(a)(8) from the requirement to register as commodity pool operators under Section 4m(1) of the U.S. Commodity Exchange Act.

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

IT IS ORDERED that the 2006 Order be and hereby is revoked and replaced by the Order; and

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

1. At the time the Named Applicant so acts as an adviser to any such Fund,

    A. the Named Applicant is not ordinarily resident in Ontario;

    B. the Named Applicant is appropriately registered or licensed, or entitled to rely upon appropriate exemptions from registration or licensing requirements, in order to provide to the Fund advice as to trading in the corresponding Foreign Contracts, pursuant to the applicable legislation of the Named Applicant's principal jurisdiction;

    C. securities of the Fund are:

        (i) primarily offered outside of Canada,

(ii) only distributed in Ontario through one or more registrants under the OSA; and

(iii) distributed in Ontario, in reliance on an exemption from the prospectus requirements of the OSA;

D. prior to purchasing any securities of the Fund, all investors in the Fund who are resident in Ontario shall have received disclosure that includes:

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

(ii) a statement to the effect that the Named Applicant is not registered with or licensed by any securities regulatory authority in Canada under applicable securities or commodity futures legislation, and, as a result, investor protections that might otherwise be available to clients of a registered adviser will not be available to purchasers of securities of the Fund; and

2. This Order shall expire five years after the date hereof;

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

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

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

(ii) object, from time to time, to varying the above Order to specifically name any one or more FrontPoint Affiliates that has filed an Identifying Notice, as described in paragraph 3, above, as a Named Applicant, by issuing to the FrontPoint Affiliate an Objection Notice, as described in paragraph 5, above, provided, however, that, in the event of any such objection, the corresponding FrontPoint Affiliate may, by notice in writing sent by registered mail to the Secretary of the Commission, within 30 days after receiving the Objection Notice, request and be entitled to a hearing and review of the objection by the Commission.

April 28, 2009

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

"Paul K. Bates"
Commissioner
Ontario Securities Commission

SCHEDULE

FORM OF IDENTIFYING NOTICE
AND
DIRECTOR'S CONSENT

Part A: Identifying Notice to the Commission

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

From: [Insert name and address] (the **FrontPoint Affiliate**)

Re: ***In the Matter of FrontPoint Partners LLC.*** **(FrontPoint)**
OSC File No.: 2009/0172

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

1. On April 24, 2009, the Commission issued an order (the **Order**), pursuant to section 80 of the *Commodity Futures Act* (Ontario) (the **CFA**), that each of the Named Applicants (as defined in the **Decision** containing the Order) is exempt from the adviser registration requirement in paragraph 22(1)(b) of the CFA in respect of the Named Applicant acting as an adviser to one or more of the Funds (as defined in the Decision), in respect of Foreign Contracts (as defined in the Decision), subject to certain terms and conditions specified in the Order.

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

3. The FrontPoint Affiliate is an affiliate of FrontPoint Partners LLC.

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

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

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

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

Dated at _____ this ____ day of _____, 20___.

_____
Name:

_____
Title:

Part B: Director's Consent

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

From: Director
Ontario Securities Commission

Re: ***In the Matter of FrontPoint Partners LLC*** **(FrontPoint)**
OSC File No.: 2009/0172

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

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

Dated at _____ this ____ day of _____, 20___.

ONTARIO SECURITIES COMMISSION

By:

_____
Name of Signatory:

_____
Position of Signatory:

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

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

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

AND

IN THE MATTER OF
HUDBAY MINERALS INC.

AND

IN THE MATTER OF
A DECISION OF THE TORONTO STOCK EXCHANGE

REASONS FOR DECISION
(Sections 8(3) and 21.7 of the Act)

Hearing:	January 19 and 21, 2009		
Decision:	April 28, 2009		
Panel:	James E. A. Turner	–	Vice-Chair and Chair of the Panel
	Suresh Thakrar	–	Commissioner
	Paulette L. Kennedy	–	Commissioner
Counsel:	Kent Thomson Andrea Burke James Bunting Steven Harris Kyler Wells, General Counsel	–	For Jaguar Financial Corporation
	Lorne Silver Arthur Hamilton	–	For HudBay Minerals Inc.
	Mark Gelowitz Craig Lockwood Jeremy Fraiberg	–	For Lundin Mining Corporation
	Linda Plumpton Andrew Gray Michal Pomotor Martine Valcin Molly Reynolds	–	For the Toronto Stock Exchange
	Jane Waechter Cullen Price Naizam Kanji Michael Tang	–	For Staff of the Commission

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REASONS FOR DECISION

I. BACKGROUND

A. Introduction

[1] This matter arises out of an application by Jaguar Financial Corporation ("**Jaguar"**) related to a transaction under which HudBay Minerals Inc. ("**HudBay**") proposes to acquire all of the outstanding common shares of Lundin Mining Corporation ("**Lundin**") pursuant to a plan of arrangement (the "Transaction").

[2] On January 6, 2009, Jaguar made an application, the Fresh as Amended Request for Hearing and Review (the "**Application**"), pursuant to sections 8(3) and 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") requesting the Ontario Securities Commission (the "**Commission**") to conduct a hearing and review of a decision of the Toronto Stock Exchange (the "**TSX**"). Jaguar made the Application to request the Commission to set aside the TSX decision and to require HudBay to obtain shareholder approval of the Transaction.

[3] The TSX decision, dated December 10, 2008, approved the listing of the additional common shares of HudBay to be issued in connection with the Transaction, without requiring that the Transaction be approved by HudBay shareholders. The decision of the TSX described in this paragraph is referred to in these Reasons as the "**TSX Decision**".

[4] Jaguar submits that the TSX failed to properly conclude that the Transaction would materially affect control of HudBay within the meaning of section 604 of the TSX Company Manual (the "**TSX Manual**") and that the TSX should have exercised its discretion under sections 603 or 604 of the TSX Manual to require that HudBay obtain shareholder approval of the Transaction as a condition of the listing of the additional common shares to be issued in connection with the Transaction.

[5] Lundin and the TSX were granted full intervenor status in this matter by Commission order dated January 12, 2009.

B. The Commission's Order and Decision

[6] On January 19 and 21, 2009, we held a hearing to consider the Application at which we heard evidence and received submissions from Jaguar, HudBay, Lundin, the TSX and Staff of the Commission ("**Staff**").

[7] On January 23, 2009, we issued our order and decision in this matter with full reasons to follow. We took this approach because the outcome of the Application was a matter of some urgency as the Transaction was to be voted on by Lundin shareholders on January 26, 2009 and, if approved, the Transaction was scheduled to be completed on January 28, 2009.

[8] Our order in this matter dated January 23, 2009, a copy of which is attached as Schedule A to these Reasons, provides as follows:

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

2. pursuant to subsection 8(3) of the Act and section 603 of the TSX Company Manual, HudBay shareholder approval of the Transaction is required as a condition to the listing of the [additional common shares of HudBay to be issued in connection with the Transaction]; and

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

[9] These are the full reasons for our order and decision in this matter.

C. The Parties

1. Jaguar

[10] Jaguar is a Canadian merchant bank that invests in small cap companies in a variety of industry sectors. Its common shares are listed on the TSX.

[11] Jaguar is a shareholder of HudBay and owns 1,500,000 HudBay common shares representing approximately 1% of the outstanding common shares of HudBay. Jaguar acquired these shares on November 21, 2008 after the public announcement of the Transaction but before the issue of the TSX Decision. According to Victor Alboini ("**Alboini**"), the Chief Executive Officer of Jaguar, Jaguar acquired the HudBay shares because:

> … it believed that shareholders of HudBay would take steps to oppose the Transaction and prevent it from proceeding, and that if the Transaction could be prevented there would be a significant benefit to HudBay. Jaguar also hoped and believed that the TSX or OSC would take the necessary steps to require a vote of the shareholders of HudBay as a pre-condition of permitting the Transaction to proceed.
>
> (*Alboini Affidavit*, at para. 17)

[12] Shortly after the market close on November 21, 2008, Jaguar issued a news release announcing its intention to make an offer to acquire all of the outstanding common shares of HudBay (the "**Jaguar Offer**"). Jaguar indicated that it intended to commence the Jaguar Offer on or about December 8, 2008. The Jaguar Offer was to be conditional on, among other things, the cancellation of the Transaction. On January 23, 2009, following the issuance of our Order and Decision, Jaguar publicly announced that it would not proceed with the Jaguar Offer.

2. HudBay

[13] HudBay is acquiring all of the outstanding common shares of Lundin under the Transaction.

[14] HudBay is an integrated base metals mining, metallurgical processing and refining company. HudBay owns and operates mines, concentrators and/or metal production facilities in Manitoba, Saskatchewan, Ontario, Michigan and New York State. Its registered office is in Winnipeg, Manitoba and its principal executive office is in Toronto, Ontario. HudBay is a reporting issuer (or its equivalent) in all Canadian provinces. Its common shares are listed on the TSX (under the symbol "HBM").

[15] HudBay's market capitalization as of the close of business on November 20, 2008 (the day immediately preceding the public announcement of the Transaction) was approximately $800 million and HudBay had 153,020,124 common shares outstanding.

[16] HudBay has total assets of approximately $1.9 billion, no long-term debt and shareholders' equity of approximately $1.6 billion; of its total assets, HudBay has just over $844 million of cash resources (based on HudBay's Interim Consolidated Financial Statements as at September 30, 2008). HudBay subsequently used approximately $136 million of its cash resources to subscribe for and acquire 19.9% of Lundin's common shares pursuant to the private placement described in paragraph 55 of these Reasons (the "**Private Placement**").

[17] As of November 21, 2008, SRM Advisors (Monaco) S.A.M. ("**SRM**") held approximately 11% of HudBay's outstanding common shares and Corriente Master Fund Limited Partnership ("**Corriente**") held approximately 2.2% of HudBay's outstanding common shares. As of December 5, 2009, Goodman and Co., the manager of Dynamic Mutual Funds, held approximately 6.4% of HudBay's outstanding common shares.

3. Lundin

[18] Lundin is an international mining company with its head office in Toronto, Ontario. Lundin is a reporting issuer (or its equivalent) in Ontario, Alberta, British Columbia, Québec and Nova Scotia. Lundin common shares are listed on the TSX (under the symbol "LUN") and on the New York Stock Exchange. Lundin also has Swedish depository receipts, representing Lundin common shares, listed on the OMX Nordic Exchange.

[19] Lundin's market capitalization was approximately $394 million as of the close of business on November 20, 2008 and Lundin had 390,436,279 common shares outstanding.

[20] Lundin directly or indirectly owns mines and exploration projects in Portugal, Sweden, Ireland and Spain. It has a 49% equity interest in a Cyprus joint venture company formed to develop a project in Russia and a 24.8% equity interest in the Tenke Fungurume Project ("**Tenke**") in the Democratic Republic of Congo ("**DRC**"). In addition, Lundin has equity investments (with a less than a 20% interest) in issuers with mining projects in Australia, Eritrea, British Columbia and Peru. Lundin has no material North American assets.

[21] Lundin has total assets of U.S. $4.3 billion, long-term debt of U.S. $234 million and shareholder's equity of U.S. $3.2 billion (based on Lundin's Interim Consolidated Financial Statements as at September 30, 2008).

[22] Of its total assets, Lundin has just over U.S. $45 million of cash resources and investments of approximately U.S. $1.6 billion, which consists mostly of Lundin's holding in Tenke. The Tenke investment represents over 35% of its total assets.

[23] As of November 21, 2008, Adolf Lundin held approximately 16.2% of Lundin's outstanding common shares. Overall, it appears that persons related to the Lundin family held approximately 21% of the outstanding common shares of Lundin as of that date or 16.9% after giving effect to the Private Placement.

[24] HudBay holds approximately 19.9% of Lundin's outstanding common shares. Those shares were acquired pursuant to the Private Placement.

4. The TSX

[25] The TSX is a stock exchange recognized by the Commission under subsection 21(1) of the Act.

[26] The TSX regulates certain conduct of listed issuers through its applicable by-laws, rules, regulations, policies, procedures, interpretations and practices.

D. The Transaction

[27] On November 21, 2008, HudBay and Lundin publicly announced the Transaction in a joint news release (the "**Joint Release**"). Pursuant to the Transaction, HudBay will acquire all of the outstanding common shares of Lundin on the basis of 0.3919 of a HudBay common share for each Lundin common share. Lundin will become a wholly-owned subsidiary of HudBay.

[28] HudBay will issue an aggregate of 157,596,192 common shares (the "**Additional HudBay Common Shares**") to Lundin shareholders under the Transaction. HudBay had 153,020,124 common shares outstanding as of November 14, 2008. Upon completion of the Transaction, the existing shareholders of HudBay and Lundin will each, as a separate group, hold approximately 50% of the common shares of the continuing company resulting from the Transaction (which we will refer to in these Reasons as the "**merged entity**"). Accordingly, the issue of the Additional HudBay Common Shares will result in the existing shareholders of HudBay being diluted by just over 100%.

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

[30] The Joint Release stated that the notice of meeting and proxy circular for the special meeting of Lundin shareholders called to consider the approval of the Transaction would be mailed in the first quarter of 2009 and that the Transaction was expected to close prior to May 30, 2009.

[31] On November 21, 2008, HudBay entered into 12 lock-up agreements with shareholders of Lundin holding approximately 21.1% of the outstanding Lundin common shares (16.9% after giving effect to the Private Placement). These shareholders agreed to vote all of such shares in favour of the Transaction at the Lundin shareholders' meeting called to consider approval of the Transaction. Accordingly, when aggregated with the common shares of Lundin acquired by HudBay under the Private Placement, approximately 36.8% of the outstanding Lundin common shares will be voted in favour of the Transaction.

E. Events After the Announcement of the Transaction

The Conference Call

[32] Following the issue of the Joint Release, HudBay and Lundin hosted a conference call during which Allen J. Palmiere, the Chairman and Chief Executive Officer of HudBay ("**Palmiere**"), and Philip Wright, the President and Chief Executive Officer of Lundin, answered questions with respect to the Transaction. Palmiere noted that no HudBay shareholder vote would be called to approve the Transaction. Palmiere stated that Lundin shareholders would, however, have an opportunity to vote on the Transaction.

Market and HudBay Shareholder Reaction to the Transaction

[33] Following the announcement of the Transaction, HudBay's share price on the TSX dropped by approximately 40%. The price of the Lundin common shares was not significantly affected.

[34] A number of analysts covering HudBay expressed negative views with respect to the Transaction.

[35] On November 24, 2008, Jaguar and two other shareholders of HudBay sent a notice to HudBay and the HudBay board of directors requisitioning a shareholders' meeting for the purpose of replacing the HudBay board. Subsequently, on December 11, 2008, HudBay advised Jaguar and the other shareholders submitting the requisition that the requisition was invalid because the shareholders were not registered shareholders.

[36] On November 24, 2008, Corriente wrote to the board of directors of HudBay, demanding that the HudBay board of directors take appropriate steps to investigate and take action with respect to alleged breaches by the HudBay directors of their

fiduciary duties. Corriente indicated that the Transaction was not in the best interests of HudBay's shareholders. Corriente took issue with the Transaction because, among other things, HudBay would acquire Lundin's debt and extremely high-risk assets located outside Canada. Corriente accused HudBay's management and financial advisers of acting to the detriment of HudBay's shareholders. It concluded that "[i]t is clear that the motivations of [the] management team and financial advisers who own virtually no stock in [HudBay] are not aligned with the interests of [HudBay's] shareholders".

HudBay Notice to the TSX

[37] On November 26, 2008, HudBay filed notice by letter with the Listed Issuer Services Committee of the TSX (the "Filing Committee") seeking approval of the listing of the Additional HudBay Common Shares (the letter was filed under section 602 of the TSX Manual). The notice described the Transaction and the Private Placement and included representations by HudBay that insiders of HudBay and Lundin had no beneficial interest, direct or indirect, in the Transaction, which differs from the beneficial interests of other shareholders, and that the Transaction would not materially affect control of HudBay.

HudBay Shareholders' Submissions to the TSX

[38] On December 5, 2008, Jaguar issued a news release outlining the reasons it believed the Transaction should be voted on by minority shareholders of both HudBay and Lundin. Jaguar stated that (i) the Transaction is a related party transaction and is thus subject to shareholder approval by a majority of minority shareholders of each of HudBay and Lundin, (ii) the Transaction will result in a change of control of HudBay, (iii) the decision to approve the Transaction improperly involved directors common to both HudBay and Lundin, and (iv) the involvement of GMP Securities, LP ("**GMP**") as financial adviser to the special committee of independent directors of the HudBay board (the "**Special Committee**") is problematic given its prior business involvement with both HudBay and Lundin.

[39] The TSX received the following communications from shareholders of HudBay opposing the Transaction:

1. a letter dated December 3, 2008 from the British Columbia Investment Management Corporation ("**BCIM**");

2. an e-mail dated December 5, 2008 from Goodman and Co.; and

3. a letter dated December 5, 2008 from counsel for SRM.

[40] The letter from BCIM requested the TSX to exercise its discretion to require a HudBay shareholder vote because of the effect that the Transaction would have on HudBay's liquidity and the negative market reaction to the Transaction. BCIM noted that the Transaction would nearly double HudBay's outstanding shares and reduce its market capitalization from approximately $800 million to $525 million. BCIM also pointed out that major stock exchanges, such as the NYSE, AMEX, NASDAQ, LSE, JSE and HKSE have rules that require a shareholder vote where a transaction significantly dilutes shareholders' economic and voting interests. BCIM stated that a HudBay shareholder vote would "immediately enhance the quality of the marketplace".

[41] The e-mail sent to the TSX by Goodman and Co. requested the TSX to investigate the Transaction, which it believed was rife with improprieties, and supported Jaguar's submissions to the TSX. The e-mail attached Jaguar's news release of December 5, 2008.

[42] SRM's letter requested the TSX to exercise its discretion to require a HudBay shareholder vote because there is a strong factual basis to support the conclusion that the Transaction would materially affect the control of HudBay. Specifically, SRM stated that the Transaction would create a "fundamental shift in control" because (i) Lundin shareholders will own 50.002% of the common shares of the merged entity, (ii) the board of directors of HudBay will be substantially re-configured without the approval of HudBay shareholders, (iii) five of the nine directors of the combined entity will be individuals who currently sit on the Lundin board, (iv) two of the Lundin directors who were recently appointed to the HudBay board will have a longer connection to Lundin, and (v) the Lundin family will become the largest shareholder of HudBay and will have the ability to influence the outcome of a vote of security holders and generally be in a position to materially affect control of the combined entity. SRM also took the position that because two members of the HudBay board of directors were also members of the Lundin board of directors, insiders or other related parties were involved in the Transaction.

[43] As of December, 2008, Jaguar, BCIM, Goodman and Co. and SRM owned in the aggregate approximately 16% of the outstanding common shares of HudBay.

[44] The TSX forwarded the two letters and e-mail referred to above to HudBay and asked for a response to the issues raised.

[45] HudBay responded to the TSX in a letter dated December 8, 2008 stating that (i) the Transaction would not materially affect control of HudBay, (ii) the Transaction did not involve insiders receiving material consideration, (iii) none of the grounds in

section 603 of the TSX Manual were applicable, and (iv) a requirement for shareholder approval has not been imposed by the TSX in other similar transactions.

[46] The TSX also received a letter from Lundin dated December 8, 2008 supporting HudBay's submissions to the TSX.

Jaguar's Request to the TSX

[47] On December 8, 2008, Jaguar spoke with the TSX's Manager of Listed Issuer Services and requested a meeting for the purpose of making submissions with respect to the issues raised by Jaguar and the other objecting shareholders. Later that day, Jaguar was advised that representatives of the TSX would not meet with it but that Jaguar could file written submissions by the end of the following day (December 9, 2008) and that those submissions would be considered by the Filing Committee.

[48] Jaguar filed written submissions with the TSX on December 9, 2008, requesting that the TSX exercise its discretion under sections 603 and 604 of the TSX Manual to require HudBay to obtain approval by its shareholders of the Transaction. The Jaguar letter states that the quality of the marketplace will be affected by the size of the Transaction and the over 100% dilution that will result, by the material effect on control of HudBay and by HudBay's corporate governance practices.

HudBay Response to Shareholder Concerns

[49] On December 9, 2008, HudBay issued a news release and made an online presentation responding to shareholder concerns stating, among other things, that HudBay's independent directors supported the Transaction, that there would be no change of control of HudBay as a result of the Transaction, and that the exchange ratio for the Transaction was determined in an arm's length negotiation. The news release stated, and the presentation confirmed, that no HudBay shareholder approval of the Transaction was necessary.

F. The TSX Decision

[50] On December 8, 2008, materials relating to the HudBay notice filed with the TSX were circulated to the Filing Committee. Those materials included the agenda for the meeting to be held on December 10, 2008 together with the written complaints from BCIM, Goodman and Co., and SRM.

[51] On December 9, 2008, TSX staff distributed a memorandum (the "**Staff Recommendation Memorandum**") to the Filing Committee, together with a copy of the letter from Jaguar received that day. The Staff Recommendation Memorandum referred to the receipt by the TSX of various shareholder complaint letters and stated, among other things, that shareholders of HudBay "have asked that TSX consider the transaction to materially affect control of HudBay or use its discretion under Section 603 of the Company manual to require that HudBay obtain shareholder approval for the transaction". The Staff Recommendation Memorandum concluded that the Transaction did not materially affect control as the Transaction would not give rise to a control person. While the Staff Recommendation Memorandum indicated that the TSX did have the authority to use its discretion under section 603, it went on to state "that applying such discretion would not be appropriate in this circumstance".

[52] The Filing Committee met on December 10, 2008 to consider HudBay's request for approval of the listing of the Additional HudBay Common Shares. The Filing Committee concluded at the meeting that "in this circumstance the rules would not require that the transaction be approved by HudBay shareholders". The minutes of the meeting of the Filing Committee are discussed in more detail beginning at paragraph 140 of these Reasons.

[53] Following the Filing Committee meeting, the TSX advised legal counsel to HudBay of its decision to conditionally approve the listing of the Additional HudBay Common Shares, subject to receipt of certain documentation. The TSX indicated that HudBay shareholder approval of the Transaction was not required as a condition of such approval.

[54] On December 11, 2008, HudBay issued a news release stating that it had received conditional approval from the TSX for the listing of the Additional HudBay Common Shares and that "the listing of HudBay shares is subject to the ordinary conditions of the TSX for transactions of this nature and does not require the approval of the shareholders of HudBay".

G. Events Subsequent to the TSX Decision

[55] On December 11, 2008, HudBay issued a news release stating that in a private placement connected to, but not conditional upon the completion of, the Transaction, it subscribed for and acquired 96,997,492 Lundin common shares, representing approximately 19.9% of the outstanding common shares of Lundin (after giving effect to the private placement). HudBay paid $1.40 for each Lundin common share, for aggregate gross proceeds to Lundin of approximately $136 million. That price represented a premium of approximately 39% based on the market price of the Lundin common shares on the previous day.

[56] On December 15, 2008, Jaguar sent a letter to HudBay seeking additional information with respect to its concerns about the Transaction and requesting copies of the minutes of the meetings of the HudBay board and the Special Committee at which the Transaction was considered. On December 19, 2008, HudBay replied and stated that it had referred Jaguar's letter to the Special Committee, but that it would be inappropriate to disclose to Jaguar documents which contained "commercially sensitive information".

[57] On December 19, 2008, HudBay issued a news release stating that a registered shareholder had requisitioned a shareholders' meeting for the purpose of removing and replacing HudBay's board of directors. The news release states that HudBay would respond to the requisition on January 2, 2009.

[58] On December 22, 2008, Lundin issued a notice of meeting and proxy circular for a shareholders' meeting to be held on January 26, 2009 to approve the Transaction.

[59] On December 30, 2008, in response to the shareholder requisition referred to in paragraph 57 of these Reasons, HudBay issued a news release announcing that a special meeting of its shareholders would be held on March 31, 2009 for the purpose of considering the removal of its board of directors and the election of new directors.

[60] On January 12, 2009, SRM and Corriente (who together own in the aggregate approximately 13.2% of the outstanding common shares of HudBay) commenced an oppression action in the Ontario Superior Court of Justice seeking an order directing HudBay to call, hold and conduct a special meeting of shareholders of HudBay to consider and vote on the Transaction and to elect a new board of directors of HudBay.

H. The Relief Sought by Jaguar

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

[62] Jaguar requests that the Commission issue:

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

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

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

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

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

II. THE ISSUES

[63] Jaguar's Application and the relief requested raise the following principal issues for determination:

1. Does Jaguar have standing to apply for a hearing and review of the TSX Decision under section 21.7 of the Act?

2. If so, what is the appropriate standard of review?

3. Was the process followed by the TSX in making the TSX Decision appropriate?

4. Is there sufficient information before us to permit us to defer to the TSX Decision as it relates to sections 603 and 604 of the TSX Manual?

5. What is our assessment of the effect of the Transaction on the quality of the marketplace within the meaning of section 603 of the TSX Manual?

III. DOES JAGUAR HAVE STANDING TO APPLY FOR A HEARING AND REVIEW OF THE TSX DECISION UNDER SECTION 21.7 OF THE ACT?

A. Applicable Statutory Provisions

[64] A hearing and review of a decision of a recognized stock exchange, such as the TSX, is governed by section 21.7 of the Act. That section provides as follows:

> **21.7(1) Review of decisions** – The Executive Director or a person or company directly affected by, or by the administration of, a direction, decision, order or ruling made under a by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange, recognized self-regulatory organization, recognized quotation and trade reporting system or recognized clearing agency may apply to the Commission for a hearing and review of the direction, decision, order or ruling.
>
> **(2) Procedure** – Section 8 applies to the hearing and review of the direction, decision, order or ruling in the same manner as it applies to a hearing and review of a decision of the Director.

[65] Subsection 8(3) of the Act provides that:

> **8(3) Power on review** – Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper.

B. Is Jaguar a "Person or Company Directly Affected" by the TSX Decision?

1. Positions of the Parties

[66] Jaguar submits that as a shareholder of HudBay, it is a person "directly affected" by the TSX Decision; therefore it is entitled to bring the Application pursuant to subsection 21.7(1) of the Act. Jaguar relies on the Commission decision in *Re Canada Malting Co. (*1986), 9 O.S.C.B. 3566 ("*Canada Malting*") where the Commission held that a minority shareholder was "directly affected" by a decision of the TSX that no shareholder vote would be required as a condition to the listing of additional common shares issued in two private placements.

[67] The TSX submits that Jaguar was aware when it purchased its shares that HudBay did not intend to seek shareholder approval of the Transaction. Unlike other HudBay shareholders who experienced a decline in the value of their shareholdings following the announcement of the Transaction, Jaguar did not suffer any such decline.

[68] Staff submits that Jaguar is directly affected by the TSX Decision based on (i) the facts relevant to Jaguar's standing to bring the application, (ii) a purposive interpretation of the words "directly affected", and (iii) the principles underlying *Canada Malting*.

[69] HudBay and Lundin made no submissions with respect to this issue.

2. Interpretation of "Directly Affected"

[70] The Commission has stated with respect to section 21.7 of the Act that:

> We accept that in interpreting section 21.7 of the Act, we should adopt a *purposive approach*, reading the words of the Act "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament"… Accordingly, the words of section 21.7 should be interpreted in a *contextual manner in light of all the circumstances* before us in this matter…
>
> [Emphasis added]
>
> (*Re Kasman and Anderson* (2008), 31 O.S.C.B. 11605 ("*Kasman*") at para. 48)

[71] Such a purposive interpretation should give effect to the fundamental regulatory objectives of the Act and the important role of the TSX as a recognized stock exchange in attaining those objectives.

[72] The Commission has also stated that:

> The words "directly affected" in subsection 8(2) [now 21.7(1)] of the Act should be interpreted in light of all of the relevant circumstances… In each case under subsection 8(2), in determining standing, the Commission must look at the nature of the power that was exercised, the decision that was made, the nature of the complaint being made by the person requesting the hearing and review and the nature of that person's interest in the matter.
>
> (*Re Instinet Corp. (*1995), 18 O.S.C.B. 5439 at 5446)

[73] Where a decision affects an applicant's rights or economic interests, the Commission has found that such an applicant is "directly affected" by the decision (*Canada Malting*, *supra* at 3575). The Commission will also consider whether an applicant has a personal and individual interest in the decision and its effects, as distinct from a general interest (*Kasman*, *supra* at para. 65). Where a decision has only an incidental effect on an applicant, no standing will be granted under section 21.7 (*Canada Malting*, *supra* at 3573 and *Kasman*, *supra* at para. 66).

3. Conclusion as to Jaguar's Standing

[74] We find that Jaguar is directly affected by the TSX Decision and has standing to apply for a hearing and review of that decision by the Commission under section 21.7 of the Act. In our view, a shareholder of a listed issuer is directly affected by a decision of the TSX not to require a shareholder vote in connection with a proposed transaction that has direct consequences to that shareholder. That principle was accepted by the Commission in Canada Malting. In our view, it is clear that Jaguar's economic interests are directly affected by the TSX Decision.

[75] We acknowledge that Jaguar purchased its shares of HudBay after the Transaction was announced on November 21, 2008. We note, however, that Jaguar held those shares at the time the TSX Decision was made on December 10, 2008. In our view, a person who is a shareholder at the time an application is made to the Commission under section 21.7 of the Act has the status as a shareholder to bring that application, provided they meet the other requirements of section 21.7.

[76] The Ontario High Court of Justice has considered a similar issue in the context of an oppression action. Southey J. stated:

> *I am unimpressed with the argument that no relief should be given in respect of shares purchased after the intention to amalgamate became known.* The submission was that, in respect of those shares, the purchasers "bought into the oppression". If relief is given to anyone in these proceedings, it will mean that the applicant correctly appreciated the legal rights of the preference shareholders. If the applicant and others could not take advantage of those rights with respect to the shares they were bold enough to purchase while those rights were still in dispute, it would mean that less sanguine owners would be deprived of the advantage of selling their shares during the pending litigation at prices reflecting the purchasers' estimate of the chances of success. Any such rule would place a new and, in my view, unwarranted restriction on the price of shares that are traded on a stock exchange.
>
> The conduct of the applicant and those associated in the same interest will either turn out to have provided an effective check on unlawful acts by the directors, or it will prove to have been a very expensive exercise in tilting at windmills. The owners of small numbers of shares probably could not afford to run the risks involved in providing such check.
>
> [Emphasis added]
>
> (*Palmer v. Carling O'Keefe Breweries of Canada Ltd. et al.*, [1989] 56 D.L.R. (4th) 128 at 136 and 137)

We agree with that principle. In our view, the Commission should be reluctant to impose restrictions on the ability of a shareholder to bring an application under section 21.7 of the Act in circumstances such as these.

C. Is There a TSX Decision Subject to Review?

1. Applicable Statutory Provision

[77] Section 21.7 of the Act allows the Commission to review a "direction, decision, order or ruling made under a by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange, recognized self-regulatory

organization, recognized quotation and trade reporting system or recognized clearing agency". Is the TSX Decision a "decision" of the TSX reviewable under section 21.7?

2. Positions of the Parties

[78] Jaguar submits that the TSX Decision is a "direction, decision, order or ruling" made by a "recognized stock exchange" and is therefore subject to review by the Commission under section 21.7 of the Act.

[79] With respect to whether there is a "decision" of the TSX, Jaguar submits that subsection 602(c) refers to a decision being made under that subsection, which is itself a "rule" of the TSX.

[80] The TSX agrees that the TSX Decision is a decision made under a rule of a recognized stock exchange and is therefore reviewable under section 21.7 of the Act.

[81] Staff submits that a decision made under a regulatory instrument of the TSX is reviewable by the Commission under section 21.7 of the Act even if it is not a decision resulting from a formal hearing (*Re TSX Inc.* (2007), 30 O.S.C.B. 8917). Staff submits that the Commission has jurisdiction to review the TSX Decision based on the analysis in *Canada Malting*.

[82] HudBay and Lundin made no submissions with respect to this issue.

3. TSX Decision Reviewable

[83] Section 21.7 of the Act provides the Commission with a broad discretion to review decisions of the TSX made under its by-laws, rules and policies. In our view, it is clear that the TSX Decision is a decision made by the TSX under a rule or rules of the exchange (i.e. provisions of the TSX Manual).

[84] Accordingly, we find that the TSX Decision is reviewable under section 21.7 of the Act.

IV. WHAT IS THE APPROPRIATE STANDARD OF REVIEW?

[85] We must now determine the appropriate standard of review applicable to our review of the TSX Decision.

A. Positions of the Parties

Jaguar

[86] Jaguar submits that the Commission exercises original jurisdiction when it exercises its powers of review under section 21.7 of the Act. It is not restricted to a more limited appellate jurisdiction. In support of its position, Jaguar relies on the Commission decisions in *Re Taub* (2007), 30 O.S.C.B. 4739 ("*Taub*") and *Re Berry* (2008), 31 O.S.C.B. 5441 ("*Berry*").

[87] Jaguar submits that the Commission can substitute its own judgment for that of the TSX in these circumstances and should do so if that is fair to the applicant. Jaguar also submits that, because of the serious deficiencies in the TSX Decision, the Commission should show no deference to it.

[88] Jaguar concedes that the Commission generally accords deference to a decision of the TSX, but Jaguar submits that the Commission should intervene in a TSX decision if an applicant can show that one of the grounds established in *Canada Malting* is applicable (see paragraph 105 of these Reasons).

[89] Jaguar submits that the Commission should set aside the TSX Decision for any of the following reasons (i) the public interest requires a HudBay shareholder vote, (ii) the TSX erred in failing to require a HudBay shareholder vote, (iii) the TSX overlooked material evidence, and (iv) there is new and compelling evidence before the Commission.

HudBay

[90] HudBay takes the position that although the Commission's powers on a hearing and review under section 21.7 of the Act are broader than on an ordinary appeal, a hearing and review under section 21.7 is not a trial *de novo*. Accordingly, the Commission should not substitute its judgment for that of the TSX merely because the Commission disagrees with the TSX Decision or because the Commission might have come to a different conclusion.

[91] HudBay submits that a trial *de novo* would detract from the two critical issues the Commission must determine, which are whether (i) the TSX Decision is "reasonable", and (ii) the TSX, in arriving at the TSX Decision, exercised its powers in a manner that accords with the Commission's view of the public interest.

[92] In the alternative, HudBay argues that if the Commission decides to proceed *de novo*, then the Commission ought to do so in exactly the same manner as the TSX in making the TSX Decision, namely, by considering only the information record that was before the TSX when it made its decision.

[93] HudBay submits that Jaguar cannot satisfy the heavy burden that must be met before the Commission will intervene in a decision of the TSX and that the Commission should take a deferential and "restrained approach" on a review under section 21.7 of the Act (*Boulieris v. Investment Dealers Association of Canada*, [2005] 139 A.C.W.S. (3d) 414 (Ont. Sup. Ct. J.) at para. 19). HudBay submits that Jaguar has failed to point to any error in principle or in law on the part of the TSX, to identify material evidence that was overlooked by the TSX, or to submit new and compelling evidence that was not presented to the TSX. Therefore, a high degree of deference should be shown to the TSX Decision.

[94] HudBay also cautions that if the Commission substitutes its own judgment for that of the TSX in this matter, doing so would have the effect of slowing the share issuance process to a crawl and would negatively impact "deal certainty" and merger and acquisition activity among TSX listed issuers. HudBay submits those consequences would detract from the public interest.

Lundin

[95] Lundin submits that the Commission should treat the TSX Decision with deference and unequivocally confirm it. Doing otherwise would have a negative effect on the integrity of the capital markets, which would suffer due to a loss in predictability of regulatory outcomes.

The TSX

[96] The TSX submits that the TSX Decision is entitled to considerable deference and that Commission intervention in circumstances such as these should be based only on very narrow grounds. The issue in dispute involves an application of TSX rules in an area where the TSX has a high degree of expertise (*New Brunswick (Board of Management) v. Dunsmuir*, [2008] 291 D.L.R. (4th) 577 (S.C.C.)). A review should not be an excuse for second-guessing TSX listing decisions because doing so would introduce an unacceptable degree of uncertainty into capital markets.

[97] The TSX submits that in making the TSX Decision, the TSX applied correct principles, made no error in law and referred to all the materials provided to it. The TSX submits that no new facts relevant to the decision have been adduced in Jaguar's evidence and that the TSX Decision is consistent with the Commission's perception of the public interest.

[98] The TSX also submits that Jaguar's argument that the TSX Decision ought to receive a lower level of deference because the reasons provided are inadequate is faulty because (i) there is no requirement that the TSX provide reasons for its listing decisions, (ii) Jaguar is a third party with respect to the TSX Decision, (iii) the TSX Decision includes reasons supporting the conclusions, and (iv) the reasons provided are more than adequate and fulfill the function of reasons (*Ryan v. Law Society of New Brunswick*, [2003] 1 S.C.R. 247).

[99] The TSX submits that the standard of review adopted by the Commission in this matter should be that of "reasonableness". That is to say that, if the TSX Decision is within the range of decisions that could reasonably be reached in the circumstances, the Commission should defer to that decision. It is not necessary that the Commission conclude that the TSX Decision is correct or that the Commission agrees with it.

Staff

[100] Staff submits that in a hearing and review under section 21.7 of the Act, the Commission exercises original jurisdiction and can substitute its judgment for that of the TSX. Staff submits that a hearing and review under section 21.7 is in the nature of a trial *de novo* and new evidence is permitted.

[101] Staff recognizes that the Commission has generally shown restraint when reviewing a decision under section 21.7 of the Act in order to ensure that a recognized stock exchange (or other self-regulatory organization) maintains adequate control over its own processes and procedures.

[102] As a matter of concern, Staff notes that second-guessing decisions of an exchange may lead to an unacceptable degree of uncertainty in the capital markets. Staff submits that the Commission ought not to intervene in the TSX Decision unless Jaguar meets the heavy burden of establishing at least one of the five grounds for intervention referred to in *Canada Malting*. Simply disagreeing with the TSX Decision is not grounds for intervention. However, Staff also submits that the Commission must be satisfied that, in making the TSX Decision, the TSX had all the facts before it and that the decision was made based on a consideration of all of those facts and the best interests of the shareholders of HudBay.

B. The Appropriate Standard of Review

[103] The Commission generally shows deference to the decisions of the TSX, particularly in the areas of the TSX's expertise. We recognize the important role that the TSX plays within our regulatory framework. The Commission's authority under section 21.7 of the Act should not be used as a means to second-guess reasonable decisions made by the TSX. The Commission will not substitute its own view for that of the TSX simply because the Commission might have reached a different conclusion in the circumstances.

[104] A restrained approach will "give substantial leeway to the discretionary decision-maker in determining the "proper purposes" or "relevant considerations" involved in making a given determination" (*Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817 ("*Baker*") at para. 56).

[105] The Commission has held that there are five grounds upon which the Commission may intervene in a decision of the TSX:

1. the TSX has proceeded on an incorrect principle;

2. the TSX has erred in law;

3. the TSX has overlooked material evidence;

4. new and compelling evidence is presented to the Commission that was not presented to the TSX; and

5. the Commission's perception of the public interest conflicts with that of the TSX.

(*Canada Malting*, *supra* at 3587 and *Berry*, *supra* at para. 59)

[106] If the Commission concludes after considering and assessing these grounds that it ought to intervene in a decision pursuant to section 21.7 of the Act, the Commission then exercises original jurisdiction with respect to the ensuing hearing and review, as opposed to a more limited appellate jurisdiction (*Taub*, *supra* at para. 29; *Re Boulieris* (2004), 27 O.S.C.B. 1597 ("*Boulieris*") at para. 28). As a result, the hearing and review is in the nature of a hearing *de novo* and new evidence may be tendered.

[107] In a hearing *de novo*, the Commission is free to substitute its own judgment for that of the TSX (*Taub*, *supra* at para. 30). Such a hearing and review is broader in scope than an appeal, which is usually limited to determining whether there has been an error in law or whether a rule of natural justice has been contravened (*Taub*, *supra* at para. 31 and *Boulieris*, *supra* at para. 30). As noted by the Commission in *Boulieris*:

> The Commission may "confirm the decision under review or make such other decision as the Commission considers proper." The Commission is, therefore, free to substitute its judgment for that of the [decision-maker below]. *The hearing and review is treated much like a trial de novo where the panel may admit new evidence as well as review the earlier proceedings* and the applicant does not have the onus of showing that the [decision-maker] was in error in making the decision that is the subject of the application.
>
> [Emphasis added]
>
> (*Boulieris*, *supra* at para. 29)

[108] However, the Commission may also intervene if a decision is not made fairly; for example, where the Commission finds there was no evidence upon which the relevant conclusions could be supported (*Security Trading Inc. and the Toronto Stock Exchange* (1994), 17 O.S.C.B. 6097 at 6105; see also *Berry*, *supra* at para. 60).

[109] As noted above, the Commission may also intervene in a decision of a self-regulatory organization when that decision does not reflect the Commission's view of the public interest. The Commission has stated:

> Since the Exchange has the power to impose additional or higher requirements in the ordinary case it would not be our intention to substitute our standards for those of the Exchange nor to substitute our discretion for that of the Governors. *If their standards were not consistent with our view of the public interest or their discretion were not exercised fairly, such as an absence of evidence upon which their conclusions could be supported, we would not hesitate to intervene.*
>
> [Emphasis added]
>
> (*Williams v. Toronto Stock Exchange* (1972), 7 O.S.C.B. 87 at 88 and 89)

[110] There is an important policy reason why the Commission retains this discretion in the public interest. The Commission has stated that:

> We believe that the public will support the role of self-regulatory organizations provided that the standards applied by the self-regulatory organizations are or can be made the subject of an appeal to the Securities Commission, the government appointed overseer of the operation of self-regulatory organizations, on the basis that the Commission's perception of the public interest of a particular case should prevail.
>
> (*Re Trizec Equities Ltd.* (1984), 7 O.S.C.B. 2034 at 2040)

C. Conclusion as to the Standard of Review

[111] Accordingly, it is well established that in a hearing and review under section 21.7 of the Act the Commission exercises original jurisdiction and the hearing and review can be conducted as a trial *de novo* (*Boulieris*, *supra* at para. 29 and *Re Taub*, *supra* at para. 30). As a result, the Commission has original jurisdiction to make a decision and can, in its discretion, admit new evidence that was not before the TSX. That general statement is subject to the Commission concluding that it has grounds to intervene based on one of the five grounds for intervention set out in *Canada Malting* (see paragraph 105 of these Reasons).

[112] Our review is not, however, a review only of the information record that was before the TSX when it made its decision. The question we must decide is not whether we would have come to the same conclusion as the TSX based on the information record that was before it. The question is whether, given all of the information and evidence that is now before us, we have grounds to interfere with the TSX Decision. In our view, we are entitled to consider not only the information and documents that were before the TSX in making its decision but also the additional information and evidence before us on this Application (recognizing, however, that the Commission has the discretion to determine the evidence that it is prepared to admit in a review under section 21.7 of the Act). It is important to note that we have concluded that we have before us more extensive information, documents and evidence with respect to HudBay, Lundin and the Transaction than the TSX had before it in making the TSX Decision.

[113] If any additional support for that conclusion is necessary, it can be found in the grounds established by *Canada Malting* for intervention in a decision of the TSX. One of the grounds for intervention established in *Canada Malting* is whether the Commission has received new and compelling evidence that was not before the TSX. In the matter before us, we have received what we consider to be new and compelling evidence with respect to HudBay's governance practices relating to the approval of the Transaction that was not before the TSX. In addition, we are entitled to intervene where our perception of the public interest differs from that of the TSX. The exercise of our public interest jurisdiction requires us to consider all of the relevant evidence before us, not only the information record that was before the TSX at the time it made the TSX Decision.

[114] We recognize, however, that if the Commission is too interventionist in reviewing decisions made by an exchange, that would introduce an unacceptable degree of uncertainty in our regulatory regime and in capital markets. In *Canada Malting*, the Commission stated:

> The TSE supported the Applicants in their request for standing. However, it went on to note the difficulty that would be created for listed companies if the TSE could be second-guessed by the OSC on the initiative of a company's shareholders every time a notice for filing is accepted under By-law 19.06 [the predecessor of section 604 of the TSX Manual].
>
> If the right of appeal meant that the OSC were to review every decision of the TSE on the merits, then companies issuing securities would be faced with the possibility of subsequently being forced to unwind the transaction or face delisting or trading sanctions on the basis that the Commission had decided to substitute its discretion for that of the TSE under By-law 19.06. In our view, this would introduce an unacceptable degree of uncertainty into the capital markets.
>
> (*Canada Malting*, *supra* at 3588 and 3589)

We agree with the caution reflected in that statement. Only in very rare circumstances should the Commission substitute its decision for that of the TSX. Subject to the discussion below, before the Commission intervenes in a decision of the TSX pursuant to section 21.7 of the Act, it should ensure that the applicant has met the heavy burden of demonstrating that its case fits squarely within at least one of the five grounds for intervention identified in *Canada Malting*.

D. Reliance on TSX Decision

[115] There is, however, an additional consideration in this matter. In order to show deference to a decision of the TSX, we must be satisfied that we have a reasonable basis upon which to do so. As discussed more fully below under "Was the Process

Followed by the TSX Appropriate?", we have concluded that we do not have sufficient grounds to defer to the TSX Decision to the extent that decision relates to the application of section 603 of the TSX Manual.

[116] Given that conclusion, we must review the TSX Decision as it relates to section 603 as a matter *de novo* based on all of the information and evidence that is now before us. In considering the TSX Decision in these circumstances, we are not limited to the five grounds for review established in *Canada Malting*. We are entitled to make our own decision as to the interpretation and application of section 603 based on the evidence before us.

[117] If we had come to a different conclusion with respect to our ability to defer to the TSX Decision as it relates to section 603, we believe that we would nonetheless have had sufficient grounds in these circumstances to review the TSX Decision *de novo* on two of the grounds established in *Canada Malting* (i) as a result of the new and compelling evidence before us with respect to HudBay's governance practices as they relate to the approval of the Transaction, or (ii) on the basis of our perception of the public interest.

V. WHAT ARE THE RELEVANT TSX RULES?

A. The TSX Manual

[118] Part VI of the TSX Manual – Changes in Capital Structure of Listed Issuers – sets forth the rules applicable where a listed issuer proposes a change in capital structure. We have set forth in Schedule B, relevant extracts from sections 602, 603, 604 and 611 of the TSX Manual. References to those section numbers in these Reasons are references to the relevant sections of the TSX Manual.

B. Giving Notice of a Transaction

[119] A TSX listed issuer is required to immediately notify the TSX in writing of any transaction involving the potential issue of listed securities (other than unlisted, non-voting or non-participating securities) and the issuer may not proceed with that transaction unless the notice is accepted by the TSX (subsections 602 (a) and (b)).

[120] If a listed issuer wishes to issue additional shares, it must give notice by letter to the TSX of the transaction (section 602). Two key issues that must be addressed in the notice are whether any insider has an interest in the transaction and whether the transaction could materially affect control of the listed issuer (subsection 602(e)).

[121] The TSX has the authority to accept or reject the notice (subsection 602(b)). If a notice is not accepted by the TSX, a listed issuer that proceeds with the transaction may face suspension and delisting. The TSX may attach conditions to its acceptance of notice of a transaction (subsection 602(c) and section 603).

C. Shareholder Approval of a Transaction

[122] When a listed issuer seeks approval for the listing of additional shares in connection with an acquisition and the number of shares issued or issuable as consideration exceeds 25% of the number of outstanding shares of the listed issuer (on a non-diluted basis), then shareholder approval is required as a condition to acceptance of the notice of the transaction (subsection 611(c)).

[123] The TSX will not, however, require shareholder approval where the transaction involves a listed issuer acquiring another public company (a reporting issuer or company of equivalent status) that has 50 or more beneficial shareholders, excluding insiders and employees (subsection 611(d)). That exception is expressly subject to the exercise by the TSX of its discretion under sections 603 and 604.

[124] There is no dispute in this matter that the "public company" exception in subsection 611(d) applies to the Transaction. Accordingly, the question before the TSX in this matter was the interpretation and application of sections 603 and 604.

[125] The TSX will generally require shareholder approval of a transaction where, in the opinion of the TSX, the transaction (i) materially affects control of the listed issuer, or (ii) provides consideration to insiders in aggregate of 10% or greater of the market capitalization of the listed issuer and has not been negotiated at arm's length (section 604).

[126] The TSX Manual defines "materially affect control" as the ability of any listed issuer shareholder(s) to influence the outcome of a vote of shareholders. Where a transaction results in one shareholder holding 20% or more of the voting shares of a listed issuer, there is a presumption that the transaction materially affects control.

[127] When determining whether to exercise its discretion to accept or reject notice of a proposed transaction, the TSX must also consider the effect that the transaction may have on the "quality of the marketplace provided by the TSX" (section 603). The factors that the TSX will consider in exercising this discretion include the following:

1. the involvement of insiders or other related parties of the listed issuer in the transaction;

2. the material effect on control of the listed issuer;

3. the listed issuer's corporate governance practices;

4. the listed issuer's disclosure practices;

5. the size of the transaction relative to the liquidity of the issuer; and

6. the existence of an order issued by a court or administrative regulatory body that has considered the security holders' interests.

[128] Accordingly, the TSX has discretion under section 603 to impose conditions on a transaction and that section indicates that in exercising its discretion the TSX will consider the effect of the transaction on the quality of the marketplace. The factors that the TSX will consider include those specifically enumerated in section 603.

[129] Section 603 was the subject of an extensive public review and comment process before it was approved by the Commission (see: *Request for Comments Notice* (2004), 27 O.S.C.B. 249 ("Request for Comments Notice").

D. Current TSX Policy Review

[130] The TSX is currently conducting a policy review to consider whether to implement rules that would require approval by the shareholders of a listed issuer where the dilution resulting from a transaction exceeds a specific threshold (see *Request for Comments Notice* (2009), 32 O.S.C.B. 3053). In our view, that policy review is not relevant to our interpretation of the existing provisions of the TSX Manual. Currently, there is no bright-line test in the TSX rules that requires shareholder approval where a specified level of dilution is exceeded in the acquisition of a public company.

VI. WAS THE PROCESS FOLLOWED BY THE TSX APPROPRIATE?

A. Positions of the Parties

Jaguar

[131] Jaguar submits that the TSX erred in making the TSX Decision because it was reached through a flawed process that was manifestly unfair and that, on those grounds alone, the Commission should substitute its views for those of the TSX. Jaguar complains that the TSX did not provide Jaguar with HudBay's letter to the TSX dated November 26, 2008, the two letters and e-mail from other shareholders objecting to the Transaction, the December 8, 2008 letter from HudBay to the TSX (which responded to the shareholder complaints), Lundin's letter to the TSX dated December 8, 2008, or the Staff Recommendation Memorandum. Jaguar submits that there is a general obligation of a decision-maker to allow those affected by its decision the opportunity to put forward their views and concerns and have them considered by the decision-maker. Alboini testified on cross-examination before us that the TSX process was not transparent and was, in fact, a "very dark, black hole."

HudBay

[132] HudBay submits that the opportunity provided to Jaguar and the other objecting HudBay shareholders to provide full and complete written submissions to the TSX was sufficient to meet any duty of fairness to them. In the circumstances, any duty of fairness was met because (i) there was ample opportunity for opponents of the Transaction to bring forth relevant concerns and make submissions, (ii) the TSX received such submissions before making the TSX Decision, and (iii) all parties that made submissions to the TSX had the opportunity to retain legal counsel.

Lundin

[133] Lundin agrees with the submissions of HudBay on this issue.

TSX

[134] The TSX submits that the process it followed in making the TSX Decision was fair and appropriate in the circumstances. It submits that the degree and content of procedural fairness required in an administrative decision-making process depends on five factors (i) the nature of the decision and the decision-making process employed by the administrative body, (ii) the nature of the statutory scheme and the precise statutory provisions pursuant to which the public body operates, (iii) the importance of the decision to the individuals affected, (iv) the legitimate expectations of the party challenging the decision, and (v) the nature of the deference accorded to the body.

[135] The TSX submits that in making the TSX Decision, it acted in a manner consistent with section 602 of the TSX Manual. That section requires only that a listed issuer provide written notice of a transaction to the TSX. The TSX submits that Jaguar could not have had a legitimate expectation that the Filing Committee would have followed a decision-making process that included the right to an oral hearing or the right to review and respond to materials received by the Filing Committee. Third parties have no right under the TSX listing approval process to receive and respond to information submitted by others. The TSX must respond quickly and efficiently to listing applications in order to meet the needs of capital market participants. Providing such rights to Jaguar or any other third party would interfere with the TSX's ability to do so.

[136] Notwithstanding, the TSX provided an opportunity to Jaguar and the other objecting shareholders to state their positions and concerns and submit those concerns to the Filing Committee. The TSX submits that the Filing Committee took those concerns into account in making the TSX Decision.

Staff

[137] Staff submits that this case does not centre around procedural fairness to Jaguar and accepts the TSX's position regarding this issue.

B. Conclusion as to the TSX Process

[138] We agree with the submissions of the TSX with respect to the process followed in making the TSX Decision. The TSX made an administrative decision whether to accept the Additional HudBay Common Shares for listing and whether to impose conditions on that acceptance. In doing so, it had an obligation to identify and consider all the facts and circumstances relevant to that decision. The TSX did that through the correspondence it received from HudBay, Lundin, Jaguar and the other objecting shareholders and through its review of that correspondence. In our view, the TSX had no obligation to meet with Jaguar or the other objecting shareholders to discuss their views or to provide them an opportunity to make oral submissions. Nonetheless, the TSX gave Jaguar and the other objecting shareholders a reasonable opportunity to make their views known to the TSX and those views and submissions were before the Filing Committee when it made its decision.

[139] In our view, the TSX was entitled in this matter to make its decision based on the documents, information and representations that were before it. While the TSX must be careful to ascertain that it has all the relevant facts, it does not generally have an obligation to conduct an investigation or carry out due diligence when it is considering the exercise of its discretion under a provision of the TSX Manual. The process followed by the Filing Committee in considering the complaints and submissions of Jaguar and the other objecting shareholders of HudBay was appropriate in the circumstances.

VII. IS THERE SUFFICIENT INFORMATION BEFORE US TO DEFER TO THE TSX DECISION?

A. The Minutes and Reasons of the Filing Committee

[140] The TSX Decision is reflected in the minutes of the meeting of the Filing Committee held on December 10, 2008. The minutes are the only evidence before us of the factors the TSX considered and the analysis and reasoning the TSX applied in making the TSX Decision. Accordingly, it is necessary for us to describe those minutes in some detail. When we refer to the reasons of the TSX, we are referring to the reasons as reflected in the minutes.

[141] The minutes of the meeting of the Filing Committee are just over one page. Except for the single sentence under "Decision" referred to below, the minutes are almost a verbatim reproduction of the Staff Recommendation Memorandum.

[142] The minutes refer to the written complaints from Jaguar and the other shareholders objecting to the Transaction and state the view of those shareholders that the Transaction is a related party transaction and materially affects control of HudBay. The minutes indicate that the objecting shareholders asked the TSX to consider the transaction to materially affect control of HudBay or to use its discretion under section 603 to require that HudBay obtain shareholder approval of the Transaction.

[143] The minutes describe the terms of the Transaction and the level of dilution. The minutes indicate that HudBay has confirmed that (i) the Transaction has been negotiated at arm's length, (ii) no insider of HudBay or Lundin has a beneficial interest, direct or indirect, in the Transaction, which differs from the beneficial interest of the other holders of HudBay or Lundin securities, (iii) the Transaction will not provide consideration to insiders in the aggregate of 10% or greater of HudBay's market capitalization, and (iv) the Transaction will not materially affect control of HudBay.

[144] The minutes indicate that, upon completion of the Transaction, the Lundin family will own 8.2% of the outstanding common shares of HudBay with one of the objecting shareholders holding approximately 5% of the outstanding common shares of HudBay.

[145] Under the heading “Recommendation”, the minutes state that:

> Based on the definition of “materially affects control” on [sic] both the Securities Act (Ontario) and the TSX Company Manual this transaction does not materially affect control as this transaction will not create a new control person. While TSX does have the authority to use its discretion as prescribed under section 603 of the Company Manual, it is my view [the view of the TSX staff manager] that applying such discretion would not be appropriate in this circumstance.

[146] The minutes thereafter conclude under the heading “Decision” as follows:

> The filing committee was in agreement that in this circumstance the rules would not require that the transaction be approved by HudBay shareholders.

[147] The only references in the minutes to the application of section 603 are the two references referred to above. The first reference indicates that the objecting shareholders have asked, among other things, that the TSX “use its discretion under section 603 of the Company Manual to require that HudBay obtain shareholder approval for the transaction”. The second reference is under “Recommendation” where it is indicated that the “TSX does have authority to use its discretion as prescribed under section 603 of the Company Manual ...”. The use of that discretion is not, however, recommended in the Staff Recommendation Memorandum.

[148] There is no reference in the minutes to (i) the effect of the Transaction on the quality of the marketplace, (ii) the factors that are expressly required to be considered under section 603, (iii) the factors that were actually considered by the Filing Committee in making its decision under that section, or (iv) the reasoning and analysis of the Filing Committee. No reasons are given for the recommendation made in the Staff Recommendation Memorandum or for the decision of the Filing Committee. There is simply the one-sentence conclusion referred to in paragraph 146 above under the heading “Decision”. The TSX did not submit any additional affidavit or other evidence to assist us in understanding the grounds upon which the TSX Decision was made or explaining the reasoning applied by the Filing Committee.

[149] It is clear that Jaguar raised issues with respect to the effect of the Transaction on the quality of the marketplace in its letter to the TSX (see paragraph 48 of these Reasons) and that letter was before the Filing Committee when it made its decision. Clearly, the Filing Committee knew that the exercise of its discretion under section 603 was an issue it had to consider and decide.

[150] The initial issue we must determine is whether the minutes reflecting the reasons for the TSX Decision establish a sufficient basis for us to defer to the TSX Decision.

B. Positions of the Parties

Jaguar

[151] Jaguar submits that in making the TSX Decision the Filing Committee relied entirely on the Staff Recommendation Memorandum, which was written the day before Jaguar made submissions to the Filing Committee relevant to its decision. Jaguar submits that the reasons provide no detailed analysis by the Filing Committee.

[152] Because the minutes of the Filing Committee meeting simply repeat the recommendation in the Staff Recommendation Memorandum almost verbatim, and provide a one-sentence “Decision”, Jaguar says that there is no indication that any of the Filing Committee members were given or actually considered the issues raised by its complaint letter of December 9, 2008.

[153] Jaguar also submits that the minutes relating to the TSX Decision are actually two separate documents: the almost verbatim summary and recommendation from the Staff Recommendation Memorandum and the one-sentence decision of the Filing Committee, which together reflect the basis for the TSX Decision. As such, Jaguar says that the reasons are wholly inadequate. The minutes do not discuss any of the submissions made to the TSX by Jaguar and thereby call into question whether the submissions of Jaguar and the other objecting shareholders were seen, reviewed and considered by the Filing Committee. Jaguar identifies a list of eleven issues raised by Jaguar about which the TSX reasons are silent. (Those issues are identified in paragraph 187 of these Reasons.) Jaguar submits that when compared with the reasons provided by other decision-makers in similar circumstances, the reasons underlying the TSX Decision are manifestly inadequate.

[154] Jaguar submits that the minutes simply contain a conclusive finding expressed in a single, solitary sentence that is completely devoid of reasoning. That conclusion does not advert to the discretion under section 603, let alone exercise that discretion in a thoughtful, careful and well-reasoned fashion. Jaguar also submits that a conclusory decision without analysis is one devoid of reasoning. Therefore, no matter how limited the duty to give reasons might be in circumstances such as these, the TSX’s reasons fall well below any appropriate standard. Jaguar submits that it would hardly create an intolerable burden on the TSX to require the Filing Committee to provide adequate reasons in a matter involving a highly contentious, highly extraordinary

transaction of this nature, where there is a right of review by the Commission. This is particularly so given that four shareholders holding approximately 16% of the outstanding HudBay common shares requested the TSX to exercise its discretion under section 603 to require HudBay shareholder approval of the Transaction.

HudBay

[155] HudBay submits that the TSX's reasons are adequate. HudBay submits that the Filing Committee plays a purely administrative, rather than an adjudicative, role and, accordingly, the reasons it provided are adequate.

[156] HudBay submits that the fact that the minutes reflecting the TSX Decision do not provide a "line-by-line" analysis of the Transaction or the parties' positions in no way undermines the validity of the decision made. Courts have repeatedly recognized that administrative bodies have significant leeway or flexibility in the way in which they choose to craft their reasons, acknowledging that the administrative realities in which they operate do not always lend themselves to the provision of detailed reasons. The TSX is not under any obligation to give reasons that deal with all of the issues Jaguar raised in its December 9, 2008 letter.

[157] HudBay submits that the TSX Decision met the two criteria required for an administrative decision-maker to fairly exercise its discretion (i) the TSX Decision demonstrated that the Filing Committee recognized it had the discretion to make a choice, and (ii) there was an indication of the factors the Filing Committee considered in exercising its discretion.

Lundin

[158] Lundin adopts the submissions of HudBay with respect to the adequacy of the reasons for the TSX Decision.

The TSX

[159] The TSX notes that the TSX Manual provides a procedure for the TSX to follow in making decisions with respect to listing additional securities. Within the context of that procedure, the TSX must respond quickly and efficiently to meet the needs of capital market participants. The TSX submits that the minutes reflect the reasoning of and the conclusions reached by the Filing Committee with respect to the Transaction. The TSX submits that the reasons for the TSX Decision as reflected in the minutes are adequate.

[160] The TSX points out that the minutes (i) summarize the concerns raised by the applicant and the other objecting shareholders, in particular the view that the Transaction materially affects control of HudBay, and (ii) reflect the request made by Jaguar and the other objecting shareholders that the TSX conclude that the Transaction materially affects control of HudBay and that the TSX exercise its discretion under section 603 to require HudBay shareholder approval of the Transaction.

[161] The TSX disagrees with the submission of Jaguar that the Filing Committee never saw or considered its December 9, 2008 letter. The minutes state that "TSX has received written complaints from [SRM], the British Columbia Investment Management Corporation, Dynamic Mutual Funds and Jaguar Financial Inc."

[162] The TSX also points out that after setting out the concerns raised in the correspondence from shareholders, the minutes summarize the applicable provisions of the TSX Manual, specifically subsections 611(d) and 604(a)(i). In addition, the minutes describe the relevant terms of the Transaction.

[163] The TSX says that the Filing Committee expressly considered the fact that it had discretion to require HudBay shareholder approval of the Transaction and whether it was appropriate for it to exercise that discretion. Therefore, the TSX submits that the conclusion of the TSX not to exercise its discretion is reasonable in the circumstances and the Commission should defer to it.

Staff

[164] Staff submits that the minutes set out with sufficient particularity the considerations reviewed by the TSX in making its decision with respect to the application of section 604 of the TSX Manual. However, Staff submits that there is no indication in the minutes of the factors the Filing Committee considered when it made its decision under section 603. Staff also submits that the TSX Decision contains "no analysis of the factors in Section 603" and that therefore, it is impossible to tell "whether [the Filing Committee] overlooked material evidence". Accordingly, the Commission does not have the benefit of the Filing Committee's rationale for deciding not to require HudBay shareholder approval under section 603.

[165] As a result, in the submission of Staff, the Commission should determine the principles that should properly be considered in exercising discretion under section 603 and how those principles apply to the circumstances at hand. That is to say that the Commission must interpret and apply section 603.

C. Adequacy of Reasons

[166] The TSX Decision is an administrative decision involving the exercise of discretion by the TSX under the provisions of the TSX Manual. It is not an adjudicative or judicial decision.

[167] The traditional position at common law is that the duty of fairness does not necessarily require that reasons be provided for administrative decisions (Baker, supra at para. 37). That being said, as stated by Justice L'Heureux-Dubé in *Baker*:

> The strong arguments demonstrating the advantages of written reasons suggest that, in cases such as this where the decision has important significance for the individual, *when there is a statutory right of appeal,* or in other circumstances, some form of reasons should be required.
>
> [Emphasis added]
>
> (*Baker*, *supra* at para. 43)

While this matter does not involve an allegation that the TSX breached its duty of fairness to HudBay in making the TSX Decision, it is a circumstance in which an application can be made to the Commission to review the TSX Decision (a right similar to an appeal).

[168] Generally, administrative decision-makers should provide reasons with some form of logical explanation for their conclusions. This fosters fair and transparent decision-making (Baker, supra at para. 38). Simply stating relevant factors with a conclusion is not enough. It has been held that less deference is owed to a decision, even one that might otherwise be entitled to a certain amount of deference, if that decision contains no "reasoned explanation" for its conclusion (*Cougar Aviation Ltd. v. Canada (Minister of Public Works and Government Services)* (2000), 26 Admin. L.R. (3d) 30 (F.C.A.) at para. 25).

[169] Without adequate reasons or some other reasonable explanation, a review of and deference to a decision such as the TSX Decision becomes difficult. The Supreme Court of Canada has stated that:

> Brevity in this era of prolixity is commendable and might well be rewarded by a different result herein but for the fact that the order of the Board reveals only conclusions without any hint of the reasoning process which led thereto. For example, none of the factors which the Board took into account, in reaching its conclusion… are revealed so that a reviewing tribunal cannot with any assurance determine that the statutory mandates bearing upon the Board's process have been heeded.
>
> (*Northwestern Utilities Ltd. v. Edmonton (City)*, [1979] 1 S.C.R. 684 ("*Northwestern Utilities*") at para. 46)

[170] The Commission has recognized the importance of reasons that make clear that all relevant factors have been considered when a decision is made by the TSX. The Commission stated in *Canada Malting* that "[t]he reasons given by the [decision maker] for its decision to accept the notice for filing make it clear that the committee considered relevant factors" (*Canada Malting*, *supra* at 3590). It is also clear that the Commission had before it in *Canada Malting* substantial reasons that considered the relevant factors and upon which the Commission could rely with some confidence.

D. Conclusion as to Deference

[171] We accept for purposes of this analysis that the reasons of the TSX are reflected in the minutes of the December 10, 2008 Filing Committee meeting and those minutes include both the excerpts from the Staff Recommendation Memorandum (which constitute virtually all of the minutes) as well as the conclusion stated under "Decision". We also believe that it is fair to conclude that the submissions of Jaguar, as well as the written complaints from the other objecting shareholders, were before the Filing Committee when it made its decision.

[172] In our view, however, in order for us to defer to the decision of the Filing Committee, we must be able to determine the facts and circumstances that were before the Filing Committee and the factors and considerations it weighed. We must also be able to understand the reasoning the TSX applied in making its decision. As stated in *Northwestern Utilities*, "conclusions without any hint of the reasoning process" are not enough. Adequate reasons or some other reasonable explanation are particularly important in this case because it involves a decision (not to require a HudBay shareholder vote) that is controversial, has very significant consequences to the parties directly affected and to other market participants, and involves considerations as to market quality and integrity.

[173] In a review under section 21.7 of the Act, in order for us to defer to a decision of the TSX, we must have a reasonable basis to do so on the evidence before us. We have an obligation as a supervisory body not to defer to a decision that we cannot conclude is made on a reasonable basis.

E. TSX Decision under Section 604 of the TSX Manual

Effect of Transaction on Control

[174] The TSX concluded under subsection 604(a)(i) of the TSX Manual that the completion of the Transaction would not materially affect control of HudBay. The minutes indicate that the Filing Committee considered the application of section 604 and a number of factors that bear on whether the Transaction would materially affect control of HudBay.

[175] Where a shareholder will acquire 20% or more of the voting shares as a result of a transaction, there is a presumption in the TSX Manual that the transaction materially affects control. It is clear that below the 20% threshold, there is no bright-line test for determining whether a transaction materially affects control. Rather, the determination must be made based on the circumstances of the particular case. The factors that must be considered include the presence or absence of other large shareholdings, the voting behaviour pattern of other shareholders and the distribution of voting shares.

[176] In this case, no single shareholder will own more than 8.2% of the outstanding voting shares of the merged entity after giving effect to the Transaction. While holdings of less than 20% of the voting shares have been held by the Commission to materially affect control in certain circumstances, we are not aware of any decision that has found that a holding below 10% would do so.

[177] Jaguar submits that because of the historical low shareholder turnout at HudBay shareholders' meetings, which has ranged from 36% to 50% of the outstanding shares, a holding of 10.5% of the shares of the merged entity could materially affect control. The 10.5% is the percentage of shares of HudBay that the shareholders of Lundin who have agreed to vote in favour of the Transaction would own after giving effect to the Transaction (calculated prior to the Private Placement). The historical shareholder turnout is one of the factors identified in the TSX Manual that the TSX should consider in assessing whether a transaction materially affects control. Jaguar also argues that the group of shareholders of Lundin who agreed to vote in favour of the Transaction should be viewed as a voting group going forward. On the other hand, HudBay says that simply because those shareholders agreed to vote in favour of the Transaction is no reason to conclude that they will vote together in the future. Certainly, there is no evidence before us of an agreement, arrangement or understanding among those shareholders to vote together in the future.

[178] The TSX appears from the minutes to have considered the relevant facts and circumstances and to have weighed the relevant considerations in concluding that the Transaction would not materially affect control of HudBay. In our view, that conclusion is reasonable in the circumstances. Accordingly, we defer to the decision of the TSX under subsection 604(a)(i) of the TSX Manual.

Arm's Length Negotiation

[179] Subsection 604(a)(ii) of the TSX Manual provides that the TSX will generally require security holder approval of a transaction if it provides consideration to insiders in aggregate of 10% or greater of the market capitalization of the listed issuer and has not been negotiated at arm's length. A transaction will be regarded by the TSX as not having been negotiated at arm's length if any insider of the listed issuer has a beneficial interest, direct or indirect, in the proposed transaction that differs from other shareholders of the same class.

[180] No one argued before us that insiders of HudBay would receive consideration of 10% or more of the market capitalization of HudBay. With respect to the issue of whether the Transaction was negotiated at arm's length, Jaguar did argue that the very active involvement of Palmiere in the negotiation of the Transaction was not appropriate and that the board and Special Committee processes followed by HudBay in approving the Transaction were defective or inadequate. There was limited evidence with respect to these matters before the TSX in making the TSX Decision or before us on the Application.

[181] In our view, the conclusion of the TSX that subsection 604(a)(ii) does not require shareholder approval is reasonable in the circumstances. Accordingly, we defer to the TSX Decision under subsection 604(a)(ii) of the TSX Manual.

F. TSX Decision Under Section 603 of the TSX Manual

[182] Section 603 of the TSX Manual requires the TSX to consider the effect that the Transaction may have on the "quality of the marketplace". It is clear that the Filing Committee knew that the application of section 603, and the exercise by the TSX of its discretion under that section, were issues it had to consider. This is evident both from the shareholder communications received by the TSX and the references to that section contained in the minutes.

[183] However, there is nothing in the TSX minutes for the December 10, 2008 Filing Committee meeting that assesses the effect of the Transaction on the quality of the marketplace. The TSX did not identify or discuss in the minutes any of the factors enumerated in section 603 or any other factors that the Filing Committee considered in making its decision under section 603. Nor is there any reasoning or analysis provided with respect to its conclusion.

[184] We note that the minutes simply state under "Decision" that no shareholder vote is "required". That conclusion appears to be more apt to the analysis of the application of section 604 which describes circumstances in which a shareholder vote is "required". In contrast, section 603 requires the TSX to consider the exercise of a discretion whether to impose a shareholder vote.

[185] We would reiterate that adequate reasons or some other reasonable explanation are particularly important where the TSX is considering the exercise of a broad regulatory discretion such as that contained in section 603 which engages issues of market quality and integrity.

[186] We do not need extensive reasons or analysis, but we do need to know that the TSX applied the appropriate standard and how and why the discretion under section 603 was or was not exercised.

[187] We note that Jaguar raised with the TSX a number of issues related to the effect of the Transaction on the quality of the marketplace. Those issues included:

1. the enormous impact of the Transaction on the rights and economic interests of HudBay shareholders;
2. the excessive premium payable to Lundin shareholders;
3. the significant and immediate negative reaction of the market to the Transaction;
4. the effect of the Transaction on the liquidity of HudBay;
5. the negative market reaction to the Transaction, including by numerous professional analysts;
6. the material reconfiguration of the HudBay board of directors following the closing of the Transaction;
7. the relevance of the Lundin family's significant shareholder position, prior business relationships and representation on the HudBay board of directors following the closing of the Transaction;
8. the significant dilution of existing HudBay shareholders as a result of the Transaction;
9. the unduly accelerated corporate governance procedures involved in the approval of the Transaction;
10. the issues surrounding the relationship of HudBay and GMP and whether GMP is truly independent; and
11. the fact that no competing bidder appeared to exist, raising the issue of whether the acceleration of the Transaction timetable and lack of a HudBay shareholder vote were appropriate.

[188] There is some overlap in these factors and not all of them may be relevant in this matter in determining the overall effect of the Transaction on the quality of the marketplace. We do need to know, however, whether the Filing Committee considered and assessed any of these or other factors in the circumstances and what view the TSX ultimately took with respect to them. It is not enough to know only that these issues were raised in correspondence with the TSX and were before the Filing Committee.

[189] We wish to be clear that we are not saying that the Filing Committee has an obligation to prepare reasons for the many administrative decisions it makes every day. It does not have that obligation. We recognize that decisions may have to be made by the Filing Committee quickly and efficiently to respond to the needs of capital market participants and that having to prepare substantial reasons for all those decisions is impractical. However, where an application is made to the Commission for review, there must be a reasonable basis for us to assess and understand the decision made by the TSX.

[190] Nor are we taking the technical position that the minutes of a meeting of a TSX committee at which a decision is made must fully reflect all of the considerations addressed in making the decision. In our view, we are not restricted to reviewing only the minutes related to the making of a TSX decision. We are entitled to review other relevant information, the evidence submitted to us and any other reasonable explanation tendered. In this case, however, the only information before us as to the basis upon which the Filing Committee made its decision is contained in the minutes of the Filing Committee meeting held on December 10, 2008.

[191] Based on the foregoing, we conclude that we cannot defer to the TSX Decision as it relates to the application of section 603 of the TSX Manual.

VIII. EFFECT OF THE TRANSACTION ON THE QUALITY OF THE MARKETPLACE

A. Key Issue for Determination

[192] As we have concluded that we cannot give deference to the TSX Decision as it relates to the application of section 603 of the TSX Manual, we must determine on the Application what effect the Transaction may have on the quality of the marketplace and whether HudBay shareholder approval of the Transaction should be required. We would require HudBay shareholder approval only if we conclude that completion of the Transaction without that approval could significantly and adversely affect the quality of the marketplace. In making this assessment, we must interpret and apply section 603 and consider all the relevant facts and circumstances before us.

1. Positions of the Parties

[193] While all of the parties agree that section 603 gives the TSX discretion to impose conditions on its acceptance of a listing notice related to a transaction, including a condition requiring shareholder approval, there is disagreement as to the proper interpretation and application of section 603.

Jaguar

[194] Jaguar submits that the discretion provided for in section 603 must be invoked so as to protect and improve the quality and integrity of the marketplace and safeguard the public interest. This necessitates protection against abusive and heavily dilutive share issuances that are forced upon shareholders of public companies against their will.

[195] Jaguar submits that the quality of the marketplace will be substantially undermined if HudBay shareholders are not permitted to vote on a transaction that is transformative in nature and involves 100% dilution. Not requiring shareholder approval in these circumstances would send a message to the marketplace that the discretion given to the TSX in section 603 is essentially meaningless. As a result, investor confidence in Ontario's capital markets would be significantly eroded.

[196] Jaguar submits that in addition to the factors enumerated in section 603, we should consider any additional relevant factors, including, in particular, the fair treatment of HudBay shareholders. Jaguar submits that there is nothing problematic or inappropriate in relying on factors other than those enumerated in section 603. That is precisely what section 603 provides for. Jaguar submits that the use of the words "based on factors *including* the following …" [emphasis added] indicates that the list of factors set out in section 603 is a non-exhaustive list.

HudBay

[197] HudBay submits that it is essential that the securities regulatory framework in Ontario support the twin goals of "deal certainty" and predictability with respect to regulatory outcomes. HudBay states that in identifying "non-enumerated factors" in section 603, Staff focused on "investor protection" as the key principle informing the assessment of the quality of the marketplace. In doing so, Staff did not appropriately consider the interests of HudBay and the value to the marketplace of deal and regulatory certainty.

[198] HudBay submits that in interpreting section 603 from a public interest perspective, Staff made no mention of the limitations recognized by the Commission on the exercise of its public interest jurisdiction. HudBay referred us to Commission decisions that recognize that the Commission's public interest jurisdiction should be exercised with great caution.

[199] HudBay argues that Staff's interpretation of section 603 would delve deeply into matters of corporate governance and board process; matters that until now have been within the purview of the courts when considering issues such as oppression and breach of fiduciary duty. HudBay submits that the Commission should also recognize that, in exercising its public interest jurisdiction, it should have regard to other remedies available to the parties, such as the outstanding oppression action before the Ontario Superior Court of Justice related to the Transaction. HudBay also submits that the TSX should be allowed to regulate, free from the intervention of the Commission in all but exceptional cases.

Lundin

[200] Lundin submits that there was nothing inappropriate in HudBay choosing one transaction structure over another or in determining that the decision to enter into the Transaction should be that of the board and not of the shareholders. Lundin submits that it is not the conventional or prevailing market practice to require a transaction of this nature to be submitted to shareholders for approval. Lundin says that if the shareholders of HudBay wish to change the law in Ontario or the regulatory regime, that should be addressed in a different way.

[201] Lundin submits that the decision in *McEwen v. Goldcorp*, [2006] 21 B.L.R. (4th) 262 (Ont. Sup. Ct.) and the exercise by the TSX of its discretion not to require shareholder approval in similar transactions, all form part of the regulatory landscape in

which market participants consider their options and structure their transactions. In order for the integrity of the capital markets to be preserved, that landscape must be stable and outcomes must be predictable. Accordingly, the Commission should defer to the TSX Decision.

The TSX

[202] The TSX submits that Jaguar and Staff are inviting the Commission to import factors into Section 603 that are not expressly enumerated and the TSX says that invitation should be declined.

[203] The TSX submits that the factors that are relevant to the consideration of an application to list additional shares are those that are expressly set out in the TSX Manual. The TSX submits that factors beyond those enumerated in section 603 should not be considered because section 603 is intended to provide clear guidance to market participants regarding the applicable rules. The TSX also notes that the enumerated list of factors set out in section 603 was established as a result of a public consultative process that involved extensive stakeholder input and Commission approval. The TSX takes issue with the suggestion that the Commission should consider factors such as the economic impact of the transaction on shareholders and the views of analysts. It submits that the Commission should not open the door to the consideration of new factors in evaluating the reasonableness of the TSX Decision.

[204] The TSX also objects to the suggestion that there should be a detailed evaluation by the TSX of the role and quality of the Special Committee process followed in connection with the Transaction.

[205] The TSX submits that it is required to assess the impact of the Transaction on the quality of the marketplace. That responsibility requires the TSX to consider a number of stakeholders, not just investors, and to balance competing interests, such as the interests of listed issuers, market integrity and deal and regulatory certainty. The TSX acknowledges that other factors such as the public interest and shareholder interests may also be considered in applying section 603.

[206] The TSX submits that the TSX Decision as it relates to section 603 is reasonable in the circumstances and that the Commission should defer to it.

Staff

[207] Staff submits that the terms “quality of the marketplace” and “integrity of the marketplace” are equivalent. In applying section 603, Staff submits that there ought to be a consideration and balancing of the relevant effects of the Transaction on the quality of the marketplace.

[208] Staff submits that in the exercise of its discretion the TSX must consider the factors enumerated in section 603 as well as other relevant factors that are not enumerated. Staff submits that factors not specifically referred to in section 603 are relevant based in part on their interpretation of the word “including” used in section 603.

[209] Staff submits that the decision whether to require a HudBay shareholder vote should be based on the mix of relevant factors in the particular circumstances and how the quality of the marketplace for investors would be affected if the Transaction is permitted to proceed without a shareholder vote. The TSX should consider the circumstances under which the Transaction was negotiated, the process by which it was negotiated and its impact on shareholders.

[210] Staff submits that the exercise of the discretion under section 603 should be assessed based on both the magnitude of the individual factors that could affect the quality of the marketplace and the aggregate impact of all the relevant factors.

[211] Staff also submits that when interpreting section 603, the TSX must take into account the primary purpose underlying the discretion granted, which Staff states is investor protection.

2. Meaning of Quality of the Marketplace

[212] The basic question to be addressed under section 603 of the TSX Manual is the effect of the Transaction on the quality of the marketplace. In our view, the “quality of the marketplace” is a broad concept of market quality and integrity. Assessing the impact of the Transaction on the quality of the marketplace requires a careful consideration of all the relevant facts and circumstances and a balancing of all the relevant considerations that bear on that assessment. Section 603 imposes an important regulatory discretion intended to protect the quality of marketplace. In our view, based on the clear wording of section 603, the factors the TSX must consider under section 603 include, but are not limited to, the factors enumerated in that section. That interpretation is consistent with our view of the regulatory nature of the discretion granted by section 603 and the objectives of the grant of that discretion.

The Request for Comments Notice

[213] This interpretation is consistent with the Request for Comments Notice. In that notice, the TSX stated that "The enumerated list of factors in section 603 was not intended to be exhaustive and other factors such as public interest and shareholder interest will be considered in the context of providing a quality marketplace." The TSX also responded in the Request for Comments Notice to a comment related to section 603 as follows:

> The inclusion of these factors in TSX's discretionary decision process was not intended to "punish" or "reward" listed issuers or stakeholders. *These factors will be considered, if relevant, along with any other relevant enumerated or non-enumerated factors by the TSX* within the context of its discretionary abilities in order to ensure market quality and promote transparency. *We would submit that the practical implications of clauses (iii) and (iv) of proposed section 603 would not decrease significantly the level of certainty for issuers proposing to carry out transactions as they are part of current TSX practice.* While an issuer's corporate governance and disclosure practices are not relevant to all transactions being proposed by all issuers, these are factors that have been and will be considered in some circumstances when reviewing transactions. In particular, when reviewing an application that may be requesting relief from certain requirements in Parts V and VI of the Company Manual, these factors are important in establishing whether the particular issuer has developed a consistent pattern of non-compliance with TSX requirements. It is not our intent to review an issuer's corporate governance record and disclosure practices for every arm's length transaction but rather only in extraordinary circumstances.
>
> [Emphasis added]
>
> (Request for Comments Notice, *supra* at 309 and 310)

[214] Accordingly, the Request for Comments Notice contemplates that factors not enumerated in section 603, such as the public interest and shareholder interests, are relevant to the analysis and should be considered. We also note the statement that the application of section 603 "would not decrease significantly the level of certainty for issuers proposing to carry out transactions as they are part of current TSX practice".

Enumerated Factors

[215] In interpreting section 603 and considering the relevant factors, it is also instructive to consider the six factors expressly enumerated in section 603 (see paragraph 127 of these Reasons). Two of those factors, the involvement of insiders in the transaction and the effect of the transaction on the control of the listed issuer, are issues required to be considered by the TSX under section 604 and addressed by a listed issuer in the listing notice. A third factor, the size of the transaction relative to the liquidity of the listed issuer, relates to the impact of the transaction on the listed issuer and its shareholders. Two other factors, the listed issuer's governance and disclosure practices, relate to practices of the listed issuer that are particularly important to and affect shareholders of the issuer. The last factor, which requires a consideration of any order by a court or regulator that "has considered the security holders' interests," suggests the need to consider the interests of shareholders of the listed issuer. The nature of these enumerated factors informs our interpretation of the quality of the marketplace and the factors that should be considered in assessing it.

Relevant Decisions

[216] The British Columbia Securities Commission (the "**BCSC**") has accepted that shareholder interests are an important consideration when a stock exchange is deciding whether to require shareholder approval of a transaction by the shareholders of an acquiror. The BCSC has stated:

> … companies undertaking transactions that will have a significant impact on their shareholders should be required to take whatever steps are necessary in the circumstances to ensure that those shareholders are treated fairly. This is the reason behind the requirement in the Exchange's policies for shareholder approval in connection with Changes of Control, Changes of Business and Reverse Take-Overs.
>
> (*Re Mercury Partners & Co.*, [2002] B.C.S.C.D. No. 213 at para. 94)

[217] Similarly, in *Re Bradstone Equity Partners Inc.*, [1998] 23 B.C.S.C.W.S. 15 at 52, the BCSC concluded as follows:

> Taking all of these factors into consideration, we are satisfied that the public interest in ensuring the fair treatment of the Peruvian shareholders outweighs both the possible prejudice to Gabriel and the concern respecting the lack of certainty that could result from an effective reversal of the Exchange's

> decision in this matter. Further, it is fundamental to the integrity of our capital markets that companies undertaking transactions that will have such a significant impact on the rights and economic interests of their shareholders take whatever steps are necessary in the circumstances to ensure that those shareholders are treated fairly. Therefore, we consider it to be in the public interest that Peruvian not distribute shares pursuant to its share exchange take over bid for the shares of Gabriel until the Peruvian shareholders have been provided with prospectus level disclosure respecting Gabriel and an opportunity to approve the transaction.

Fair Treatment of Shareholders

[218] In our view, the fair treatment of the shareholders of HudBay is a key factor that must be considered in interpreting and applying section 603 in the circumstances before us. We believe that the need to consider the fair treatment of shareholders is inherent in and important to assessing the impact of the Transaction on the quality of the marketplace. We note that fairness to shareholders is not a factor expressly enumerated in section 603. It is nonetheless a very important consideration.

An Existing Provision of the TSX Manual

[219] We note that we are interpreting and applying section 603, an existing provision of the TSX Manual. We are not rewriting or changing the TSX Manual or incorporating new factors into it. As a matter of principle, there must be circumstances that can arise in which the TSX would, in exercising its discretion under section 603, impose a requirement for shareholder approval. Otherwise, section 603 would be meaningless. Section 603 by its terms requires consideration of the exercise of a broad regulatory discretion and a broad review of factors relevant to the quality of the marketplace. We cannot ignore these requirements because they create some transaction or regulatory uncertainty. In our view, section 603 exists to address the kinds of issues that are before us in this matter.

Economic Impact on Shareholders

[220] The TSX submits that in applying section 603 we should not consider factors such as the economic impact of the Transaction on shareholders and the views of analysts. To the extent that comment relates to whether we should attempt to assess the business or financial merits of the Transaction, we agree. But we cannot completely ignore the economic impact of the Transaction on HudBay shareholders or the transformational effect of the Transaction on HudBay and its business. These are relevant considerations within the mix of the various considerations before us.

Deal and Regulatory Certainty

[221] In considering this matter, we recognize, as submitted by HudBay and Lundin, the importance of “deal certainty” and “regulatory certainty” to the parties to a merger or acquisition transaction.

[222] By “deal certainty”, we mean reasonable certainty that a transaction negotiated and agreed to by the parties will be completed. HudBay submits that requiring HudBay shareholder approval would create deal uncertainty because its shareholders may not vote to approve the Transaction. There is certainly nothing wrong with the parties to a transaction attempting, to the extent legally possible, to obtain certainty that the transaction will be completed. We recognize that this issue may be the subject of significant negotiation and can affect whether a party is prepared to agree to a transaction. We also acknowledge that the public announcement of a transaction may often have a material effect on the market prices of the relevant securities. Accordingly, it is desirable that the announcement of a transaction not be made unless there is a reasonable prospect that the transaction will be completed.

[223] It was submitted to us that many other stock exchanges (or securities regulators) around the world have bright-line tests as to the maximum dilution of an acquiror’s shareholders that will be permitted without shareholder approval. For instance, the New York Stock Exchange requires approval by the shareholders of a listed acquirer where dilution would be 20% or more. Clearly, the TSX does not currently have such a rule where a public company is the target of an acquisition. It is worth noting, however, that market participants who are subject to these rules in other jurisdictions have to live with the uncertainty those rules create by requiring shareholder approval in some circumstances.

[224] By “regulatory certainty”, we mean the ability of market participants to understand the regulatory regime applicable to transactions and to be able to predict with some certainty the outcomes under that regulatory regime. In this case, regulatory certainty also means some certainty that a decision of the TSX can be relied upon and will not be second guessed by the Commission except in extraordinary circumstances.

[225] However, the exercise of discretion lies at the heart of section 603 and we cannot read that discretion out of the section simply because the parties to a transaction want deal or regulatory certainty. The assessment of the effect of the Transaction on the quality of the marketplace must govern the exercise of discretion under section 603. We cannot ignore the provisions of

section 603, or our responsibility for review of decisions of the TSX under section 21.7 of the Act, simply to ensure certainty. We recognize that in interpreting and applying section 603 we must balance all of the relevant interests and considerations.

Matter of First Instance

[226] The interpretation and application of section 603 is a matter of first instance for the Commission. There are no previous decisions of the Commission that have interpreted section 603 or that have identified the factors that should be considered in determining the effect of a transaction on the quality of the marketplace. This is not surprising given that section 603 is a relatively recent addition to the TSX rules. The fact that matters relating to section 603 have not been brought before the Commission before cannot limit our responsibility to interpret and apply section 603 as we consider appropriate in the circumstances.

Sophisticated Parties

[227] HudBay and Lundin are highly sophisticated parties who must be taken to have known the regulatory context in which the Transaction was taking place. The arrangement agreement entered into by HudBay and Lundin contemplates (in Section 6.2(f)) the possibility that HudBay shareholder approval of the Transaction could be required by regulatory authorities. It is a condition to HudBay's obligations under the arrangement agreement that shareholder approval be obtained if that approval is required by a regulator or court. Accordingly, both HudBay and Lundin knew there was a possibility that HudBay shareholder approval might be required in connection with the Transaction.

TSX Rules Affect Broader Interests

[228] The TSX rules form part of our securities regulatory regime. As discussed above, they can engage broad concepts of market quality and integrity. It is obvious that the interpretation and application of the provisions of the TSX Manual in this case are not matters affecting only HudBay and the TSX. We must interpret and apply those provisions in their larger market context.

Public Interest

[229] Staff submits that the discretion reflected in section 603 should be exercised to protect investors on a basis consistent with the public interest. The concept of the quality of the marketplace is not necessarily the same as the public interest under securities laws. However, both concepts raise similar issues and the considerations in applying the two concepts in any particular circumstances will be similar. We do recognize, however, that the concept of the quality of the market must be interpreted in the context of the marketplace that the TSX regulates. We note in this respect that section 603 refers to "the quality of the marketplace provided by the TSX". Accordingly, in interpreting section 603, we must focus on the marketplace provided by the TSX. We do not believe that anything turns on this distinction given that the marketplace provided by the TSX comprises a substantial portion of Ontario's capital markets.

[230] We also believe that the public interest must be considered by the TSX in interpreting its rules. The Commission's recognition order of the TSX indicates that "the protection of the public interest is a primary goal of the TSX". In addition, one of the grounds upon which the Commission is entitled to overrule a decision of the TSX is where our perception of the public interest conflicts with that of the TSX (see paragraph 105 of these Reasons). Accordingly, the TSX must give some consideration to the public interest when interpreting its rules.

[231] We are well aware that our public interest jurisdiction should be exercised with great caution. The Commission has recently stated:

> The Commission's "public interest" jurisdiction is broad and powerful, and must be exercised with caution, as recognized in the *Re Canadian Tire* decision. When considering the exercise of this jurisdiction, the Commission needs to have regard to all of the facts, all of the policy consideration [sic] at play, all of the underlying circumstances of the case, and all of the interests affected by the matter and the remedies sought.
>
> (*Re Sterling Centrecorp Inc.* (2007), 30 O.S.C.B. 6683 at para. 212)

[232] In exercising our public interest discretion and the discretion under section 603, we must carefully consider all of the policy issues raised by this matter and the potential impact of our decision on the interests of market participants and on market practice. We must weigh and balance factors such as (i) deal and regulatory certainty, (ii) the ability of the TSX to act quickly and efficiently in interpreting and applying its rules, (iii) the fair treatment of HudBay and Lundin and the other persons directly affected by our decision, and (iv) the fair treatment of the HudBay shareholders.

Opposition to Transaction

[233] Clearly, there are shareholders of HudBay who are adamantly opposed to the Transaction and who have raised significant concerns. There has also been substantial adverse market reaction to the Transaction from the perspective of HudBay. At the same time, HudBay, its board of directors and Special Committee have concluded that the Transaction is in the best interests of HudBay. It was not the role of the TSX in its original review, or the role of the Commission now, to assess the business or financial merits of the Transaction or to resolve these conflicting positions.

Other Governance Issues

[234] We heard submissions from Jaguar raising issues with respect to the role of Palmiere in negotiating the Transaction, the role of the HudBay board and the Special Committee in approving the Transaction, the compressed timetable for due diligence, and the financial advice given by GMP. The suggestion was that the processes leading to the approval by HudBay of the Transaction were defective and demonstrated poor governance.

[235] We agree with the TSX that these are not issues that it can generally be expected to address or resolve in applying section 603. That is not to say, however, that in another case such matters may not be highly relevant factors that should be addressed if they are raised with the TSX and appear to be real concerns. The Commission has considered such matters in other circumstances when applying its public interest jurisdiction (see, for instance, *Re Standard Trustco Ltd. et al* (1992), 6 B.L.R. (2d) 241, *YBM Magnex International Inc.* (2003), 26 O.S.C.B. 5285, *Re Sears Canada Inc.* (2006), 22 B.L.R. (4th) 267, *Re AiT Advanced Information Technologies Corp.* (2008), 31 O.S.C.B. 712, and *Re Rowan* (2008), 31 O.S.C.B. 6515). These kinds of issues are not solely matters for the courts. In our view, however, there was insufficient evidence before the TSX, and there is insufficient evidence before us now, to resolve these issues. Accordingly, we do not address these issues in our Reasons. In any event, our analysis has led us in a different direction.

B. Factors Considered in Determining the Effect on the Quality of the Marketplace

[236] We reiterate that our task is to interpret and apply section 603 of the TSX Manual based on the facts and circumstances before us. In our view, the following factors are relevant in this matter in determining whether the Transaction could have a significant and adverse effect on the quality of the marketplace if it proceeds without HudBay shareholder approval.

1. Dilution

[237] The Transaction will result in the issuance of additional HudBay common shares representing over 100% of the number of HudBay shares currently outstanding. That means that the former shareholders of Lundin will own approximately 50% of the shares of the merged entity following completion of the Transaction. That level of dilution is extreme. It is at the very outer end of the range of dilutions permitted by the TSX in other transactions without shareholder approval.

[238] While the level of dilution is not determinative, it is an extremely important consideration. Dilution can fundamentally affect the economic interests of shareholders and it directly affects shareholder voting, distribution and residual rights.

[239] The level of dilution inherent in the Transaction would lead one to conclude that the Transaction is a “merger of equals”, not an acquisition by HudBay of Lundin. In a merger of equals, there is potentially a much greater impact on the parties in terms of the transformational impact of the transaction and the effect on such matters as the constitution of the board of directors. One must fairly ask, if the Transaction is a merger of equals, why shareholders of one party (Lundin) are entitled to vote on it when the shareholders of the other party (HudBay) are not? We note that the shareholders of Lundin are receiving a substantial premium for their shares while the shareholders of HudBay are suffering extreme dilution and other consequences.

2. Economic Impact on Shareholders

[240] It is common ground that the share price of HudBay fell by approximately 40% immediately following the public announcement of the Transaction. That far exceeds the market reaction one would expect to the announcement of a transaction such as this. The unusual and substantial drop in the market price of the HudBay shares is one reflection of the significant impact of the Transaction on the shareholders of HudBay.

3. Corporate Governance

(i) Board of Merged Entity

[241] It appears that, upon the completion of the Transaction, five of the nine directors of the merged entity will be former directors of Lundin. HudBay argues that two of those individuals are already directors of HudBay. We note, however, that those

two directors were appointed relatively recently to the HudBay board, in April and August, 2008, respectively. Only one of those directors was elected by a vote of shareholders; the other director was appointed by the board of HudBay.

[242] There was also evidence before us that of the nine directors on the board of the merged entity, four are to be nominated by the parties on each side of the Transaction (by management of HudBay, on the one hand, and by the largest shareholders of Lundin, the Lundin family, on the other hand) with the CEO of the merged entity as the ninth "unaligned" director. Essentially, this would create a deadlock at the board level with the deciding vote by the CEO of the merged entity.

[243] In any event, it is clear that the board of HudBay will be substantially reconfigured as a result of the Transaction. The right of shareholders to vote on and determine the make-up of the board is a fundamental governance right. The shareholders of HudBay are being subjected to a radical change in the composition of the board without their consent or concurrence. We recognize that not every change in the composition of a board requires shareholder approval. In our view, such a fundamental change, as a result of the Transaction, does. The proposed restructuring of the board further underscores that the Transaction constitutes, in effect, a merger of equals.

(ii) Timing of Shareholder Meetings

[244] In the Joint Release, HudBay and Lundin initially indicated that the notice of meeting and proxy circular for the special meeting of Lundin shareholders to vote on the Transaction would be mailed during the first quarter of 2009 and that the Transaction was expected to close prior to May 30, 2009. The date of the Lundin shareholders' meeting was accelerated by the mailing of its notice of meeting and proxy circular on or about December 22, 2008 for a shareholders' meeting to be held on January 26, 2009. That is uncommon haste, over the holiday season, that must be attributed, at least in part, to the controversy over the Transaction.

[245] The HudBay shareholders' meeting requisitioned by shareholders for the purpose of removing the HudBay board was scheduled by HudBay for March 31, 2009. The requisition of that meeting is in direct response to the Transaction and is intended as a means for shareholders to, in effect, vote on the Transaction.

[246] These decisions as to the scheduling of the two shareholder meetings were made at approximately the same time. On December 19, 2008, HudBay announced that it would respond to the shareholder requisition it had received by January 2, 2009. On December 22, 2008, Lundin announced the accelerated date of its shareholders meeting. On December 30, 2008, HudBay announced that the requisitioned shareholders meeting would be held on March 31, 2009. The result was a decision to significantly accelerate the holding of the Lundin shareholders' meeting to vote on the Transaction while delaying for as long as legally possible the holding of the HudBay shareholders' meeting to vote on the removal of the HudBay board.

[247] We note that the board of directors of HudBay knew as early as November 24, 2008 that shareholders were attempting to requisition a shareholders' meeting to remove the HudBay board. The requisition filed by shareholders on that date was rejected by the board on grounds that it was not valid because the shareholders submitting it were not registered shareholders.

[248] While HudBay and Lundin may have the legal right to make these decisions under corporate law, they appear to us to be actions taken for the purpose of frustrating the legitimate exercise by HudBay shareholders of their right to require a shareholders meeting to consider the replacement of the HudBay board, in effect, a shareholder vote on the Transaction. If the Transaction is completed before the requisitioned shareholders meeting, the principal purpose for that meeting will be frustrated. That is manifestly unfair to the shareholders of HudBay. If shareholders wish to challenge a transaction by exercising their fundamental right to elect or remove directors in accordance with their legal rights to do so under corporate law, the board of directors should not be permitted to actively frustrate that objective in this manner.

[249] It appears that the TSX knew, when it made the TSX Decision, that a shareholder of HudBay had filed a requisition for a meeting of HudBay shareholders to remove the board. The TSX may well have concluded that there was sufficient time before the scheduled completion of the Transaction in order to permit the holding of the requisitioned HudBay shareholders meeting. We do not know whether the TSX considered that issue. We do know that the date of the Lundin shareholders meeting was accelerated after the TSX Decision was made on December 10, 2008, and that the fixing of the date of the requisitioned HudBay shareholders meeting also occurred after that date. Accordingly, these important governance matters were not before the TSX when it made the TSX Decision. We have concluded that such matters involve new and compelling evidence presented to the Commission that was not before the TSX when it made the TSX Decision.

[250] These considerations raise serious concerns as to the appropriateness of HudBay's governance practices as they relate to the approval of the Transaction and the fair treatment of HudBay shareholders.

4. Transformational Impact of Transaction on HudBay and its Shareholders

[251] It is clear that the Transaction will have a transformational effect on HudBay and its business. There is evidence before us that the Transaction was viewed by insiders of HudBay as "transformational" and a "radical shift in business plans" for

HudBay. The transformational effect is reflected in the number of significant changes described below that will result from the Transaction. The transformational impact of the Transaction on HudBay and its business must be assessed based on the collective effect of these changes.

[252] We recognize that the transformational effect of a transaction may be difficult to assess in any particular circumstances. Clearly, there will be material financial consequences of any significant acquisition; but those consequences may not be transformational in business terms. Nonetheless, in our view, where a transaction will clearly have a transformational effect on an issuer and its business, that effect is a relevant consideration in assessing under section 603 whether shareholder approval of a transaction should be required.

[253] The Transaction will lead to a significant increase in HudBay's risk profile. It will expose HudBay to higher-risk jurisdictions around the world, including Russia and the DRC (compared to HudBay's existing almost-exclusively North American operations). This is amplified by the fact that over 35% of Lundin's total assets are represented by its investment in Tenke. Notes to Lundin's financial statements indicate that "the carrying value of the company's interests may be subject to uncertainty" as a result of the review by the government of the DRC of the mining contracts related to Tenke. HudBay board members have described the Tenke project as a "high-risk investment" both because of that review and because of a civil war in the DRC.

[254] The Transaction will also expose HudBay to minority interests in joint ventures and other investments with corresponding capital and financial obligations. The Transaction will lead to an increase in HudBay's long-term debt and will affect cash per share, liquidity and other financial measures. Palmiere noted in the conference call following the announcement of the Transaction that Lundin needed an injection of cash to support its operations and to resolve "some liquidity issues and some solvency issues". The collective impact of these factors is further magnified by the current credit crisis.

5. Fair Treatment of HudBay Shareholders

[255] The combined effect of the considerations discussed above raise serious concerns as to the fair treatment of HudBay shareholders. In this case, we believe that the fair treatment of HudBay shareholders is fundamentally more important than considerations such as deal or regulatory certainty in assessing the impact of the Transaction on the quality of the marketplace. We are satisfied that ensuring the fair treatment of HudBay shareholders in this case far outweighs any prejudice to HudBay or Lundin of requiring HudBay shareholder approval of the Transaction. We have carefully considered the implications of our decision for market participants and on market practices. In our view, far from undermining confidence in our capital markets, our decision will foster such confidence.

IX. CONCLUSIONS

[256] We have concluded that we can defer to the TSX Decision as it relates to the application of section 604 of the TSX Manual.

[257] We have concluded that we cannot defer to the decision of the TSX in interpreting section 603 of the TSX Manual because we do not have a reasonable basis to do so on the evidence before us. In the circumstances, we must ourselves determine on the Application whether the completion of the Transaction without HudBay shareholder approval could significantly and adversely affect the quality of the marketplace or be contrary to the public interest. In doing so, we must interpret section 603 and we must consider all of the relevant facts and circumstances including the broader market implications of our decision.

[258] Fair treatment of shareholders is a key consideration going to the quality and integrity of our capital markets. In our view, permitting the Transaction to proceed without a HudBay shareholder vote in these circumstances would be manifestly unfair to HudBay shareholders.

[259] We have concluded, based on the cumulative effect of the considerations discussed above, that the quality of the marketplace (within the meaning of section 603 of the TSX Manual) would be significantly and adversely affected if the Transaction is permitted to proceed without the approval of the shareholders of HudBay. In our view, the circumstances in this matter are extraordinary and justify setting aside the TSX Decision and requiring HudBay shareholder approval of the Transaction as a condition to the listing of the Additional HudBay Common Shares.

[260] As we have stated above, it is not for us to judge the business or financial merits of the Transaction. We are deciding only whether the Transaction should be submitted to a vote of HudBay shareholders for approval. In our view, the HudBay shareholders should be entitled in these circumstances to ultimately decide whether the Transaction is in their best interests and whether it should proceed. That is where the decision properly lies.

[261] We have concluded for the same reasons that permitting the Transaction to proceed without the approval of the shareholders of HudBay would be contrary to the public interest.

[262] We gave effect to these conclusions by issuing our order of January 23, 2009, a copy of which is attached as Schedule A to these Reasons.

X. OTHER MATTERS

Financial Advice to the Special Committee

[263] As noted above, we are not addressing in these Reasons the allegations made by Jaguar that the board and Special Committee processes followed by HudBay in considering and approving the Transaction were defective or inappropriate. That is not to say, however, that we have no concerns based on the material before us. One concern we have relates to the financial advice received by the Special Committee from GMP. GMP, among other things, is advising the Special Committee whether the Transaction is fair from a financial point of view to HudBay shareholders. In connection with its services, GMP is to receive a signing fee when the arrangement agreement is entered into and a much larger success fee payable if the Transaction is consummated.

[264] Such fees create a financial incentive for an advisor to facilitate the successful completion of a transaction when the principal focus should be on the financial evaluation of the transaction from the perspective of shareholders. While the Commission does not regulate the preparation or use of fairness opinions, in our view, a fairness opinion prepared by a financial adviser who is being paid a signing fee or a success fee does not assist directors comprising a special committee of independent directors in demonstrating the due care they have taken in complying with their fiduciary duties in approving a transaction.

HudBay Vote of Shares in Lundin

[265] We also note that HudBay has agreed to vote the 19.9% of the common shares of Lundin acquired by it pursuant to the Private Placement in favour of the Transaction. In our view, HudBay has a different, and potentially conflicting, interest in the outcome of that vote, relative to the other Lundin shareholders.

[266] In our view, having very recently acquired those shares as part of a private placement connected to the Transaction, HudBay should not, as a matter of principle, be permitted to vote them in favour of the Transaction. When those shares are added to the shares already locked-up, the result is that approximately 36.8% of the Lundin shares will be voted in favour of the Transaction. In our view, an acquirer should not generally be entitled, through a subscription for shares carried out in anticipation of a merger transaction, to significantly influence or affect the outcome of the vote on that transaction. The acquirer in a merger transaction has a fundamentally different interest in the outcome of the transaction than the shareholders of the target.

[267] We recognize in expressing this view that it was probably a foregone conclusion that the Lundin shareholders would approve the Transaction regardless of whether HudBay voted those shares in favour of the Transaction.

[268] In any event, the matters discussed in this Part X were not directly raised in the Application and were not addressed by any of the parties in their submissions. We are not influenced by these issues in making our decision in this matter; we are simply expressing our views.

Dated at Toronto this 28th day of April, 2009.

"James E. A. Turner"
James E. A. Turner

"Suresh Thakrar"
Suresh Thakrar

"Paulette L. Kennedy"
Paulette L. Kennedy

Schedule A – Order of January 23, 2009

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

AND

IN THE MATTER OF
HUDBAY MINERALS INC.

AND

IN THE MATTER OF
A DECISION OF THE TORONTO STOCK EXCHANGE

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

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

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

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

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

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

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

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

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

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

IT IS ORDERED THAT:

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

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

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

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

"James E. A. Turner"

"Suresh Thakrar"

"Paulette L. Kennedy"

Schedule B – Relevant Excerpts from the TSX Manual

Sec. 602. General

(a) Every listed issuer shall immediately notify TSX in writing of any transaction involving the issuance or potential issuance of any of its securities other than unlisted, non-voting, non-participating securities.

(b) A listed issuer may not proceed with a Subsection 602(a) transaction unless accepted by TSX. Failure to comply with this provision may result in the suspension and delisting of the listed issuer's listed securities (see Part VII of this Manual).

(c) Subject to Subsection 607(c), TSX will advise the listed issuer in writing generally within seven (7) business days of receipt by TSX of the Subsection 602(a) notice, of TSX's decision to accept or not to accept the notice, indicating any conditions to acceptance or its reasons for non-acceptance. Further information or documentation may be requested before TSX decides to accept or not accept notice of a transaction. In reviewing the transaction described in the notice, TSX will consider the applicable provisions of this Manual.

…

(e) The notice required by Subsection 602(a) should initially take the form of a letter addressed to TSX, requesting acceptance of the notice for filing, unless the applicable section of Part VI requires otherwise. A press release or information circular filed with TSX does not constitute notice under Section 602. The letter should contain the essential particulars of the transaction, and should state whether: (i) any insider has an interest, directly or indirectly, in the transaction and the nature of such interest; and (ii) whether and how the transaction could materially affect control of the listed issuer. A copy of any written agreement in respect of the transaction must be provided with the notice. TSX must be provided with prompt notice of any changes to the material terms of the transaction described in the notice, regardless of whether the amendment could entail a further issuance of securities. This applies even if the transaction as previously accepted by TSX specifically contemplated future amendments, unless the amendment is solely due to standard anti-dilution provisions in the original agreement. The listed issuer may not proceed with the proposed amendment unless it is accepted by TSX.

…

Sec. 603. Discretion

TSX has the discretion: (i) to accept notice of a transaction; (ii) to impose conditions on a transaction; and (iii) to allow exemptions from any of the requirements contained in Parts V or VI of this Manual.

In exercising this discretion, TSX will consider the effect that the transaction may have on the quality of the marketplace provided by TSX, based on factors including the following:

(i) the involvement of insiders or other related parties of the listed issuer in the transaction;

(ii) the material effect on control of the listed issuer;

(iii) the listed issuer's corporate governance practices;

(iv) the listed issuer's disclosure practices;

(v) the size of the transaction relative to the liquidity of the issuer; and

(vi) the existence of an order issued by a court or administrative regulatory body that has considered the security holders' interests.

Sec. 604. Security Holder Approval

(a) In addition to any specific requirement for security holder approval, TSX will generally require security holder approval as a condition of acceptance of a notice under Section 602 if, in the opinion of TSX, the transaction:

(i) materially affects control of the listed issuer; or

(ii) provides consideration to insiders in aggregate of 10% or greater of the market capitalization of the listed issuer and has not been negotiated at arm's length.

If any insider of the listed issuer has a beneficial interest, direct or indirect, in the proposed transaction which differs from other security holders of the same class TSX will regard such a transaction as not having been negotiated at arm's length.

(b) For other transactions, TSX's decision as to whether to require security holder approval will depend on the particular fact situation having specific regard to those items listed in Subsection 604(a). For the purposes of Subsection 604(a)(ii), the insiders participating in the transaction are not eligible to vote their securities in respect of such approval.

(c) If TSX requires security holder approval of a transaction, the resolution to be voted upon must relate specifically to the transaction in question, rather than an unspecified transaction that may take place in the future.

(d) Security holder approval is to be obtained from a majority of holders of voting securities at a duly called meeting of security holders…. The disclosure provided to security holders in seeking security holder approval must be pre-cleared with TSX.

Sec. 611. Acquisitions

(a) Where a listed issuer proposes to issue securities as full or partial consideration for property (which may include securities or assets) purchased from an insider of the listed issuer, TSX may require that documentation such as an independent valuation or engineer's report be provided.

(b) Security holder approval will be required in those instances where the number of securities issued or issuable to insiders as a group in payment of the purchase price for an acquisition exceeds 10% of the number of securities of the listed issuer which are outstanding on a non-diluted basis, prior to the date of closing of the transaction. Insiders receiving securities pursuant to the transaction are not eligible to vote their securities in respect of such approval.

(c) Subject to Subsection 611(d), security holder approval will be required in those instances where the number of securities issued or issuable in payment of the purchase price for an acquisition exceeds 25% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis.

(d) Subject to Sections 603 and 604 and to Subsection 611(b), TSX will not require security holder approval where a reporting issuer (or equivalent status) having 50 or more beneficial security holders, excluding insiders and employees, is acquired by the listed issuer.

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
BakBone Software Incorporated	08 Dec 04	20 Dec 04	20 Dec 04	27 Apr 09
Copper Mesa Mining Corporation	13 Apr 09	24 Apr 09	24 Apr 09	
QSound Labs Inc.	13 Apr 09	24 Apr 09	24 Apr 09	
Chemokine Therapeutics Corp.	13 Apr 09	24 Apr 09	24 Apr 09	
Liberty Mines Inc.	13 Apr 09	24 Apr 09	24 Apr 09	
Genesis Land Development Corp.	14 Apr 09	27 Apr 09	27 Apr 09	
GLR Resources Inc.	14 Apr 09	27 Apr 09	27 Apr 09	
Minco Gold Corporation	14 Apr 09	27 Apr 09		28 Apr 09
Storm Cat Energy Corporation	14 Apr 09	27 Apr 09	27 Apr 09	
Energem Resources Inc.	15 Apr 09	27 Apr 09	27 Apr 09	
Delano Technology Corporation	27 Apr 09	08 May 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
TriNorth Capital Inc.	01 Apr 09	14 Apr 09	14 Apr 09	29 Apr 09	
Orsu Metals Corporation	01 Apr 09	14 Apr 09	14 Apr 09	29 Apr 09	

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Coalcorp Mining Inc.	18 Feb 09	03 Mar 09	03 Mar 09		
Outlook Resources Inc.	31 Mar 09	13 Apr 09	13 Apr 09		
TriNorth Capital Inc.	01 Apr 09	14 Apr 09	14 Apr 09	29 Apr 09	
Orsu Metals Corporation	01 Apr 09	14 Apr 09	14 Apr 09	29 Apr 09	
Synergex Corporation	02 Apr 09	14 Apr 09	14 Apr 09		
Victhom Human Bionics Inc.	02 Apr 09	14 Apr 09	14 Apr 09		

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
High River Gold Mines Ltd.	03 Apr 09	15 Apr 09	15 Apr 09		
Goldstake Explorations Inc.	08 Apr 09	20 Apr 09	20 Apr 09		

Chapter 6

Request for Comments

6.1.1 OSC Notice 11-762 (Revised) – Request for Comments Regarding Statement of Priorities for Fiscal Year Ending March 31, 2010

REQUEST FOR COMMENTS
REGARDING STATEMENT OF PRIORITIES
FOR FISCAL YEAR ENDING MARCH 31, 2010

The *Securities Act* requires the Commission to deliver to the Minister and publish in its Bulletin by June 30 of each year a statement of the Chairman setting out the proposed priorities of the Commission for its current fiscal year in connection with the administration of the Act, the regulations and rules, together with a summary of the reasons for the adoption of the priorities.

In an effort to obtain feedback and specific advice on our proposed objectives and initiatives, the Commission is publishing a draft Statement of Priorities which follows this Request for Comments. The Commission will consider the feedback, and make any necessary revisions prior to finalizing and publishing its 2009/2010 Statement of Priorities.

The Statement of Priorities, once approved by the Minister, will serve as the guide for the Commission's ongoing operations. At that time we will also publish a report on our progress against our 2008/2009 Priorities on our website.

Comments

Interested parties are invited to make written submissions by June 1, 2009 to:

Robert Day
Manager, Business Planning
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
[416] 593-8179
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May 1, 2009

ONTARIO SECURITIES COMMISSION
2009-2010
STATEMENT OF PRIORITIES

JUNE 2009

Introduction

The *Securities Act* requires the Ontario Securities Commission (OSC) to publish in its Bulletin and to deliver to the Minister by June 30 of each year a statement by the Chair setting out the proposed priorities for the Commission for the current financial year. The OSC remains committed to delivering its regulatory services in a businesslike manner and to working closely with its colleagues within the Canadian Securities Administrators (CSA) and with market participants to ensure that the regulatory system remains relevant to the changing marketplace.

Our Vision

To be an effective and responsive securities regulator – fostering a culture of integrity and compliance and instilling investor confidence in the capital markets.

Our Mandate

The OSC's mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets. The mandate is set by statute.

Our Goals

The Statement of Priorities is an annual document required under the *Securities Act*. To meet its mandate, in 2007 the Commission identified four strategic goals over the five-year period ending in 2012. This year's Statement of Priorities sets out the Commission's strategic goals along with specific initiatives for the 2009-10 fiscal year in support of each of those goals:

1. Identify the important issues and deal with them in a timely way;

2. Deliver fair, vigorous and timely enforcement and compliance programs;

3. Champion investor protection, especially for retail investors; and

4. Support and promote a more flexible, efficient and accountable organization.

Our Environment

In furtherance of our mandate, we face the following key challenges to:

- pursue specific initiatives that demonstrate our commitment both to protect investors from fraud and misleading sales practices and to incorporate their views in the development of regulatory changes;

- integrate a macroprudential dimension into our regulatory framework while operating effectively in a rapidly evolving regulatory environment;

- understand the long term impacts of market changes;

- focus on compliance as an integral part of ongoing regulatory enforcement; and

- develop strategic performance benchmarks against which to assess progress in achieving our dual mandate and our strategic goals.

Focus on Investors

Investor protection is a critical element of our two part mandate. We recognize that to serve the interests of all investors, especially retail investors, it is important to obtain their input on matters related to securities regulation. We also believe that informed investors are better equipped to protect themselves and to help regulators protect them. Therefore, we will continue to review our internal processes for adequately addressing investor concerns during the development of securities regulation.

Focus on the Macroprudential Regulatory Framework

Recent market events highlight the potential adverse outcomes that can result from regulatory coverage focused on specific industry segments or entities rather than financial markets as a whole. An assumption that 'regulation' is sufficient when each regulatory agency applies its rules to its constituents, however, fails to recognize the interconnectedness of our financial markets. We need to examine opportunities to better align our disclosure regime and compliance and enforcement approaches internally, in concert with recognized self-regulatory organizations (SROs) and other entities, as well as more broadly to improve the ability of the regulatory system to recognize and address risks that emerge as a consequence of the convergence of financial markets and products.

Focus on Market Developments

Capital markets are evolving at rates that often exceed the ability of both market participants and regulators to fully appreciate the consequences of these changes. Innovative financial instruments can be misunderstood by both institutional as well as retail investors and result in adverse impacts upon market efficiency and investor confidence.

The emergence of multiple marketplaces can bring benefits from increased competition but is also accompanied by increased costs associated with fragmentation. To address these risks we need to examine how we currently regulate different marketplaces and whether changes should be made to the regulatory framework for exchanges and alternative trading systems. We need to clearly understand the impacts of our regulation, especially any unintended consequences to market stability or efficiency, and how our actions support investor protection.

Focus on Compliance

Financial markets in Canada and around the world are going through an unprecedented period of turmoil. Neither market participants nor regulators are insulated from the economic realities of the market place. During economic downturns, cost management programs in the securities industry tend to focus first on non-revenue generating activities; typically back office functions, including compliance and internal control systems. As a result, we need to apply our own resources in the interests of investor protection. Increased reliance on risk assessment tools for allocating our resources most effectively will be part of the solution. We will continue to focus on things that really matter. At the same time we will continue to actively encourage market participants to be vigilant and proactive in preventing, detecting and correcting compliance issues as they have primary responsibility for compliance and control systems.

Strategic Performance Measurement

The OSC's focus on accountability has included establishing, monitoring and reporting on effective use of our resources in managing various aspects of securities regulation. We recognize the importance of delivering our services as effectively and efficiently as possible. Consequently, we are in the process of upgrading our performance measurement programs beyond our traditional activity measures and service delivery parameters to include assessments of the outcomes against our strategic goals. We will work to identify and establish suitable measures for which reliable and appropriate data is available and develop performance benchmarks to enhance both our operational transparency and our accountability framework.

GOAL 1 – Identify the important issues and deal with them in a timely way.

Our goal is to deal with today's concerns, while anticipating tomorrow's challenges. We want to be a strategic leader in fulfilling our mandate to Ontario investors and the Ontario marketplace. We will:

- Consult and collaborate with investors, issuers, intermediaries, other industry participants and professionals to identify important issues;
- Identify trends and emerging issues, and develop solutions to address them efficiently and effectively;
- Work with the Government of Ontario, other securities regulators and market participants to strengthen the Canadian securities regulatory system. We will support efforts to move towards a common securities regulator. We will also continue to further harmonize, streamline and modernize securities laws and ease the regulatory burden on market participants;
- Continue to examine alternative securities regulatory approaches that provide a balanced regulatory approach and adopt best regulatory practices from other Canadian and international jurisdictions to support Ontario markets and investors. We will work to enhance the global competitiveness of our capital markets as well as foster co-operative relationships with securities and other regulators;

- Use the full range of tools available to achieve our mandate, and assign priorities to all our work based on our strategic goals; and

- Ensure our priorities are communicated in a timely and effective manner.

Specific initiatives for 2009-10 include:

- Contribute to strengthening the registration regime by finalizing our proposals designed to harmonize, streamline and modernize current registration requirements, including:

  (i) drafting National Instrument 31-103 *Registration Requirements*, its Companion Policy and accompanying Notice and comment summary/response document and consequential amendments to national registration system rules, exemption rules and other regulations;

  (ii) supporting the Ministry in finalizing legislative amendments that would, if approved, support the new registration regime; and

  (iii) finalizing and implementing the new registration regime, subject to the Minister approving National Instrument 31-103 *Registration Requirements.*

- Continue to work with other Canadian and international regulatory authorities to develop a proposed framework to improve the ability of the regulatory system to recognize and address risks that may emerge as a consequence of the interconnectedness of global financial markets;

- Manage the transition to International Financial Reporting Standards (IFRS) including:

  (i) amending our rules (most notably National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*), as well as our policies and notices, to eliminate references to the existing Canadian generally accepted accounting principles and include appropriate IFRS terms and references;

  (ii) providing guidance for reporting issuers on disclosure expectations in the periods leading up to adoption of IFRS; and

  (iii) providing training to OSC and CSA staff to develop a high level of technical competency in IFRS.

- Continue to address issues related to asset backed commercial paper (ABCP) and develop proposals for a regulatory regime for credit rating agencies by:

  (i) completing our review of comments on the ABCP consultation paper of the Canadian Securities Administrators (CSA);

  (ii) proposing legislative rule-making amendments, drafting a proposed rule on credit agency regulation, and subject to receipt of rule-making authority, publishing the proposed rule for comment;

  (iii) amending NI 45-106 - *Prospectus and Registration Exemptions* to reflect the final recommendations of the CSA's working group and publish for comment.

- Support IOSCO Task Force initiatives relating to the G20 Action Plan; and

- Complete consultations with the industry with respect to implementing a trade-through rule to improve market efficiency.

GOAL 2 – Deliver fair, vigorous and timely enforcement and compliance programs.

Timely and appropriate compliance and enforcement are integral to fostering confidence in capital markets and preventing harm to investors. We will:

- Continue our focus on compliance reviews of market participants to identify and prevent violations of Ontario securities law and ensure effective coordination among OSC branches in addressing improper market conduct;

- Identify gaps in the enforcement framework and co-operate with other regulators and agencies to find practical solutions;
- Improve the effectiveness of our enforcement work by completing investigations and bringing regulatory proceedings forward in a timely manner;
- Provide leadership and assistance to improve collaboration among Canadian and international regulatory agencies and criminal law enforcement agencies;
- Foster inter-jurisdictional co-operation to improve the coordination of investigative efforts, enforcement, and legal tools for enforcement; and
- Increase transparency through timely and effective communications of enforcement actions where warranted.

Specific initiatives for 2009-10 include:

- Refine our enforcement case selection and management processes to better identify activities seen as posing the greatest risks to investors and their confidence in the capital markets, and focus enforcement resources on those matters;
- Leverage our enforcement resources by promoting greater use of our existing systems and examining potential new tools, techniques and methodologies;
- Focus compliance efforts on new and high-risk market participants; and
- Execute focussed on-site compliance reviews of a representative sample of hedge fund managers.

GOAL 3 – Champion investor protection, especially for retail investors.
The interests and needs of investors, particularly retail investors, will continue to be strongly reflected in all the OSC's operations. In addition to our enforcement activities, investor education and awareness and timely access to accurate information are important components of investor protection. We will:

- Continue to reflect investor interests in all that we do;
- Continue to support investor education initiatives;
- Continue to support plain-language investor communication initiatives;
- Work with the self-regulatory organizations (SROs) to improve investor access to timely and affordable means of complaint handling and redress. This includes improving investor awareness of, and access to, existing mechanisms for resolution of complaints and restitution, such as those offered by the Ombudsman for Banking Services and Investments (OBSI);
- Work with the SROs and lead or support initiatives that recognize the importance of the adviser to the retail investor, and strengthen and improve the adviser/retail investor relationship;
- Communicate our understanding of and commitment to investor protection;
- Increase and enhance targeted outreach efforts to investors; and
- Increase the involvement of other industry groups, such as SROs, through collaboration and information exchange.

Specific initiatives for 2009-10 include:

- Expand internal capabilities and sensitivities to investor issues, particularly those of the retail investor, by:
  - (i) Establishing an Investor Secretariat to be a coordinating body within the OSC to better identify and address issues of interest and concern to investors, especially retail investors;
  - (ii) Continuing to work with the other members of the Joint Standing Committee on Retail Investor Issues to coordinate investor-related initiatives and to engage retail investors in the regulatory process;

(iii) Exploring opportunities to gather feedback from investors on OSC regulatory initiatives;

(iv) Enhancing investor outreach programs by supporting the Investor Education Fund and other channels; and

(v) Collaborating with the CSA Investor Education Committee to distribute investor education materials in a consistent and timely manner;

- Develop proposals to modernize investment fund rules in order to achieve more consistent, fair and functional regulation of all investment funds and reduce the number of exemption applications;
- Publish for comment proposals designed to modernize the rules governing scholarship plan operations and enhance the disclosure provided to scholarship plan holders;
- Publishing for comment rules for point-of-sale disclosure for mutual funds and segregated funds that would require clear, concise and plain-language product and sales fee disclosure for investors; and
- Continue to improve processes for investor complaint handling by the Investor Assistance section of the OSC Inquiries & Contact Centre so that issues are dealt with efficiently and effectively.

GOAL 4 – Support and promote a more flexible, efficient and accountable organization.

The OSC's strength is its people. We will make the best use of all our resources, including people, technology, research and financial, to achieve timely and effective execution of all that we do. We expect OSC Commissioners and employees to maintain the highest standards of conduct and personal integrity and to deal openly and fairly with all of our stakeholders. We will continue to constantly improve our business competence and effectiveness. We will:

- Continuously monitor and improve the efficiency and effectiveness of our operations;
- Be responsive and flexible as an organization and treat all stakeholders with respect and fairness;
- Identify skills requirements and ensure that we attract, retain and motivate staff who possess the required skills, and continue improving and enhancing our succession plans;
- Leverage information technology effectively to support our operations and optimize our electronic interface with our stakeholders;
- Secure the most appropriate resources and justify their acquisition through cost- benefit analyses and similar tools;
- Increase the knowledge management and risk analysis capabilities of the OSC; and
- Supplement OSC staff resources with external resources where appropriate.

Specific initiatives for 2009-10 include:

- Improve regulatory accountability by further refining our measurement and reporting culture (including identifying, designing and/or developing measures) to ensure that we continue to be aligned with the priorities of the Commission as well as those of market participants and investors;
- Accelerate the adoption of an internally consistent approach to risk based regulation;
- Develop an enterprise risk management framework; and
- Continue implementation of our IT Strategic Plan including:

(i) improving and integrating branch tools and systems;

(ii) completing the first implementation phase of our document management system; and

(iii) improving reporting tools for branch/information analysis for management.

2009-10 Financial Outlook

OSC Revenues and Surplus

The economic environment is expected to continue to have a material impact on our revenues and expenses. As an organization we strive to operate on a cost recovery basis. Capital market participants fund our operations through fees they pay. Our aim is to have our revenues equal our costs. This is difficult because while our revenues fluctuate in proportion to market activity, most of our costs are relatively fixed.

Variability of our revenues has been the key source of our surpluses. Our fee rates were last set in April 2006. At that time we projected revenues of $181.4 million for the three fiscal years ending March 31, 2009. Actual revenues for the three fiscal years were $217.8 million, $36.4 million or 20.1% above those forecast in 2006. This was due to higher than anticipated growth in the financial markets.

Actual expenses for the same period were $221.0 million, $0.4 million or 0.2% above our forecast of $220.6 million. This resulted in a surplus for the period, as at March 31, 2009, of $46.8 million.

On October 3, 2008, we published proposed fee rules for public comment. Since publishing the draft rule, the economic situation in Ontario and around the world worsened. Following a careful review of the comments from respondents, and in light of current market conditions, on March 12, 2009 we announced our decision to maintain participation fees and activity fees at current rates for one year. As a result, fee rates are not at levels sufficient to recover our costs for fiscal 2010 and we project a revenue shortfall or $22.0 million over the next fiscal year. We plan to use our surplus to offset this deficit.

Over the next year, the OSC will further review issues related to the fee model so we can return to fully recovering our costs in ways that remain fair and transparent to market participants. We are committed to maintaining fees at current levels for the year ending March 31, 2010. Future increases to fee rates will need to be sufficient to fully recover the Commission's costs of operations, and market participants should anticipate future increases.

OSC 2009-2010 Budget Approach

The current economic environment presents a range of risks to investors and our capital markets. Our budget priorities reflect our assessment of these risks and their potential impacts. These challenging economic conditions continue to generate significant pressures for those that we regulate as well as increased demands on our own operations. Immediate issues include:

- Volume and complexity of continuous disclosure work is increasing as issuers struggle with disclosure in the current financial environment. The importance of disclosures related to going concern, pension liabilities, fair valuation, leverage and other disclosures are all magnified during downturns;
- Potential strains arising due to recent adverse market conditions may distract market participants from focusing on compliance requirements;
- Pressures for changes to the regulation of certain products including derivatives and commodities, and certain activities such as rating agencies, commodities and short selling as well as greater needs for coordinated on-site compliance reviews (e.g. money market fund and non-conventional fund sweeps); and
- Market participants, in attempting to deal with the fallout from the market turmoil, may test regulatory and policy boundaries by creating novel products and/or requesting novel exemptive relief.

Downturns have historically exposed questionable practices and occur often at times when investors can be most vulnerable. Potential poor financial health of issuers and registrants pose major, if unquantifiable, complicance and enforcement risks. In developing our 2009-2010 budget the Commission has carefully balanced the need for cost restraint in these challenging times with its duty to take appropriate steps as necessary to pursue its mandate of providing protection to investors and fostering fair and efficient capital markets. Our budget (net of recoveries) will increase by $4.0 million or 4.9% over 2008/09 spending. The ability to limit the increase to this level was the result of an increased focus on internal efficiencies and controllable cost areas. In particular, we held our average salary increases to 1.6% and have virtually frozen our headcount at current levels.

2010 Budget versus 2009 Actual

($$$ Thousands)	2008/2009 Forecast Actual	2009/2010 Budget	$$$ Change	% Change
Revenues	68,500	61,900	(6,600)	-9.6%
Expenses	80,939	84,904	3,965	4.9%
Deficiency of Revenue over Expenses (before recoveries)	(12,439)	(23,004)	(10,565)	
Recoveries	2,830	1,000	(1,830)	-64.7%
Deficiency of Revenue over Expenses	(9,609)	(22,004)	(12,395)	
Capital Expenditures	5,238	1,758	(3,480)	-66.4%

Salaries and benefits, which comprise $63.3 million or 74.6% of the budget reflect an increase of $2.1 million or 3.5%. Most of the increase in salaries and benefits cost reflects prior staffing decisions including the full year costs for staff hired during 2008/09, the planned filling of previously approved positions and the impact of performance-based salary increases. Salaries and benefits is the only area of expenditure that exceeds 10% of expenses. Increased staff costs are partially offset by a $830,000 or 17.2% reduction in professional services costs. Amortization costs for 2009/10 will be $1.6 million higher. This non-cash cost explains about 40% of our total budget increase. Our actual spending in 2008/09 was reduced significantly due to recovery of $2.8 million in costs through enforcement settlements. These amounts were about $1.8 million higher than the average for the previous five years.

The decrease of $3.5 million or 66.4% in the capital budget is due to the completion of the expansion and renovation of our premises in 2008/09. The resulting increase in our capital base has generated the increase in our amortization cost noted above.

Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
04/15/2009	23	AAER Inc. - Units	569,000.00	569.00
04/15/2009	1	ACM Trust 2009-L1 - Notes	599,999,550.00	1.00
01/31/2008 to 12/31/2008	31	ACT II TMT Fund - Units	605,626.49	67,957.02
05/16/2008 to 11/28/2008	270	AFC CAPITAL FUND - Units	13,020,165.73	1,114,781.12
01/31/2008 to 10/31/2008	5	Amethyst Arbitrage Fund - Units	1,215,000.00	167,123.19
04/13/2009	12	ARC Resources Ltd. - Notes	154,173,000.00	N/A
03/31/2008	1	Arrow Asian Income Fund - Units	35,000.00	4,203.70
01/31/2008 to 12/31/2008	3	Arrow F Global Macro - Units	3,064,100.35	323,184.69
04/10/2009	3	Aspenware Inc. - Common Shares	260,400.25	190,435.00
04/16/2009	1	Blue Fin Ltd. - Notes	4,273,500.00	3,500,000.00
04/08/2009	5	BridgePoint Financial Services Limited Partnership III - Limited Partnership Units	100,000.00	100,000.00
03/30/2009	2	Brookfield CDN Real Estate Opportunity Fund II - CDN, L.P. - Limited Partnership Interest	125,900,000.00	N/A
04/14/2009	1	Canadian Auto Receivables Enterprise Network Trust II - Notes	804,180,371.79	N/A
03/31/2008 to 12/31/2008	11	Canadian Income Fund - Units	497,481.25	70,459.38
12/31/2008	1	Canadian Income Fund - Units	3,336.61	543.78
01/04/2008 to 07/04/2008	34	Clocktower Global Fund - Units	429,164.21	35,857.41
01/04/2008 to 12/31/2008	514	Distressed Securities Fund - Units	18,533,815.86	N/A
04/20/2009	1	Downer Group Finance Pty Limited - Debt	97,859,880.00	N/A
04/14/2009	6	Dumont Nickel Inc. - Units	11,500.00	1,150,000.00
01/31/2008 to 11/28/2008	5	ELKHORN US LONG/SHORT - Units	357,478.22	25,509.73
01/31/2008 to 11/28/2008	8	Elmwood - Units	1,379,643.75	144,669.48
12/31/2008	1	Enhanced Income Fund - Units	10,104.86	1,137.94

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
01/31/2008 to 11/28/2008	254	Enso Global - Units	13,227,021.43	844,207.23
01/04/2008 to 10/03/2008	167	EPIC CAPITAL - Units	5,967,667.50	396,351.91
11/25/2008 to 11/28/2008	5	EPIC CAPITAL - Units	33,448.33	282.75
04/17/2009	1	Epocal Inc. - Debentures	5,704,512.50	N/A
01/31/2008 to 08/29/2008	3	European Long/Short - Units	2,536,038.50	226,729.74
04/08/2009	10	Excellon Resources Inc. - Common Shares	1,736,847.00	9,141,300.00
03/28/2009	3	Federal Home Loan Mortgage Corporation - Notes	75,020,000.00	N/A
04/08/2009	16	First Gold Exploration Inc. - Flow-Through Shares	200,000.00	N/A
03/04/2009	1	First Leaside Visions II Limited Partnership - Limited Partnership Units	25,000.00	25,000.00
04/20/2009	2	First Niagara Financial Group Inc. - Common Shares	378,035.00	25,000.00
04/01/2009	1	Flatiron Market Neutral LP - Limited Partnership Units	1,500,000.00	1,400.68
04/01/2009	7	Flatiron Trust - Units	313,800.00	158.50
01/04/2008 to 12/31/2008	82	Focus Fund - Units	3,191,322.77	290,445.85
04/20/2009	32	Gear Energy Ltd. - Common Shares	2,211,955.00	1,523,833.00
04/13/2009 to 04/17/2009	4	General Motors Acceptance Corporation of Canada, Limited - Notes	912,604.57	912,604.57
01/31/2008 to 07/11/2008	48	Global Long/Short - Units	863,210.51	74,479.23
01/31/2008	2	Global Net Short Fund - Units	315,000.00	28,424.47
01/31/2008 to 11/28/2008	50	Goodwood - Units	1,465,924.28	137,744.21
04/03/2009	2	GreenField Factoring Inc. - Notes	109,820.06	N/A
04/09/2009	7	Greenwich Registered Capital Ltd. - Bonds	162,500.00	N/A
04/09/2009	8	Greenwich Registered Investments Ltd. - Common Shares	162.50	1,625.00
04/09/2009	5	Greenwich Registered Investments Ltd. - Notes	175,000.00	175,000.00
06/30/2008 to 11/28/2008	4	HC Global Fund - Units	3,481,003.09	327,129.73
04/10/2009	15	Helio Resource Corp. - Common Shares	5,250,000.00	15,000,000.00
01/04/2008 to 12/31/2008	1160	High Yield - Units	57,991,273.18	8,215,299.35

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
02/29/2008 to 04/30/2008	3	I Convertible Arbitrage Fund - Units	8,530,556.69	698,839.19
04/17/2009	1	InFraReDx, Inc. - Preferred Shares	91,125.73	N/A
08/29/2008 to 11/28/2008	5	Japan Long/Short Fund - Units	8,720,000.00	861,704.46
01/04/2008 to 12/12/2008	282	JC Clark Opportunities - Units	12,244,943.77	1,222,474.77
01/31/2008	3	LH Asian Fund - Units	4,916,922.46	409,681.00
01/31/2008 to 08/30/2008	4	Libra European Equity - Units	570,145.40	49,625.00
04/07/2009	1	Maestro Ventures Ltd. - Common Shares	3,000.00	75,000.00
04/20/2009	16	Metanor Resources Inc. - Common Shares	1,247,500.00	2,495,000.00
01/31/2008 to 03/31/2008	2	MMCAP Risk Arbitrage - Units	505,000.00	18,138.71
12/31/2008	6	MMCAP Risk Arbitrage Fund - Units	205,521.17	17,008.00
01/11/2008 to 12/24/2008	483	Multi-Strategy - Units	15,020,707.78	1,198,059.03
04/16/2009	13	Nelson Financial Group Ltd. - Notes	729,716.99	13.00
04/09/2009	1	Newport Canadian Equity Fund - Units	1,000.35	9,468.00
04/07/2009 to 04/09/2009	45	Newport Fixed Income Fund - Units	2,226,738.96	21,944.40
04/07/2009 to 04/13/2009	21	Newport Yield Fund - Units	286,233.76	2,940.26
11/28/2008	1	North American Fund - Units	250,000.00	234,803.63
08/29/2008 to 11/28/2008	13	NS European Fund - Units	281,210.09	27,586.00
08/29/2008	1	NS European Fund - Units	10,000.00	1,000.00
01/28/2009 to 02/06/2009	1	PAKIT Inc. - Common Shares	100,000.00	200,000.00
01/31/2008 to 11/28/2008	30	PMC Global Long/Short - Units	723,871.02	93,211.00
04/16/2009	16	Quetzal Energy Inc - Receipts	1,410,000.00	N/A
01/31/2008 to 12/31/2008	3	R Fixed Income - Units	1,995,855.33	193,350.90
04/30/2008 to 12/31/2008	3	RG Fund - Units	7,922,534.60	861,631.42
03/31/2008	1	Risk Arbitrage - Units	100,000.00	3,065.42
02/08/2008 to 07/31/2008	137	Roundtable Fund - Units	523,524.17	70,007.99
06/30/2008	2	Russian Fund - Units	2,383,377.47	238,337.75

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
04/09/2009	51	Sirona Biochem Corp. - Common Shares	774,475.05	N/A
04/15/2009	2	Spartan BioScience Inc. - Common Shares	50,000.00	84,206.00
03/14/2008 to 06/30/2008	56	Special Opportunities Fund - Units	7,859,418.03	793,724.59
01/11/2008 to 12/19/2008	21	Tetra US Long/Short Fund - Units	2,452,171.44	227,689.09
04/17/2009	38	The Goldman Sachs Group Inc. - Common Shares	252,825,072.10	1,701,000.00
01/31/2008 to 08/29/2008	4	THETA FUND - Units	1,530,893.23	165,662.41
03/31/2009	4	Total Fitness Holdings (UK) Limited - Notes	2,584,174.00	1,451,784.00
04/14/2009	3	Trelawney Mining and Exploration Inc. - Common Shares	21,812.10	1,244,140.00
04/15/2009	2	Tricon X Funding Limited Partnership - Limited Partnership Units	2,050,000.00	41.00
01/01/2008 to 12/31/2008	16	UBS (Canada) American Equity Fund - Units	33,078,956.95	N/A
01/01/2008 to 12/31/2008	44	UBS (Canada) Balanced Fund - Units	590,488,107.20	N/A
01/01/2008 to 12/31/2008	54	UBS (Canada) Bond Fund - Units	288,451,491.78	N/A
01/01/2008 to 12/31/2008	1	UBS (Canada) Canada Plus Equity Fund - Units	4,768,563.68	N/A
01/01/2008 to 12/31/2008	55	UBS (Canada) Canadian Equity Fund - Units	694,212,898.16	N/A
01/01/2008 to 12/31/2008	26	UBS (Canada) Cash in Action Fund - Units	87,105,434.20	N/A
01/01/2008 to 12/31/2008	102	UBS (Canada) Cash Management Fund - Units	590,549,460.18	N/A
01/01/2008 to 12/31/2008	41	UBS (Canada) Diversified Fund - Units	9,376,515.16	N/A
01/01/2008 to 12/31/2008	1	UBS (Canada) Dynamic Alpha Strategies Fund - Units	4,768,563.68	N/A
01/01/2008 to 12/31/2008	2	UBS (Canada) Global Allocation Fund - Units	19,798,647.50	N/A
01/01/2008 to 12/31/2008	6	UBS (Canada) Global Bond Fund - Units	4,591,264.64	N/A
01/01/2008 to 12/31/2008	21	UBS (Canada) Global Equity Fund - Units	322,448,606.16	N/A
01/01/2008 to 12/31/2008	36	UBS (Canada) International Equity Fund - Units	43,304,440.86	N/A
01/01/2008 to 12/31/2008	90	UBS (Canada) Money Market Fund - Units	772,492,456.74	N/A

Transaction Date	# of Purchasers	Issuer/Security	Total Pur. Price ($)	# of Securities Distributed
01/01/2008 to 12/31/2008	11	UBS (Canada) Small Cap Fund - Units	40,512,810.66	N/A
01/01/2008 to 12/31/2008	12	UBS (Canada) US Cash Management Fund - Units	23,445,261.26	N/A
01/01/2008 to 12/31/2008	12	UBS (Canada) U.S. Cash Management Fund - Units	26,329,102.53	N/A
01/01/2008 to 12/31/2008	26	UBS (Canada) U.S. Equity Fund - Units	87,105,434.20	N/A
01/04/2008 to 12/31/2008	250	US Equity Income Fund - Units	8,584,419.25	1,392,217.60
01/31/2008 to 03/31/2008	3	V GAMMA FUND - Units	265,000.00	20,973.82
04/07/2009	2	Ventas Realty, Limited Partnership - Notes	1,777,104.00	1,440.00
01/31/2008 to 03/30/2008	2	Vicis Relative Value - Units	915,726.98	89,730.74
04/03/2009	2	VVC Exploration Corp. - Units	68,000.00	N/A
04/08/2009	20	Walton AZ Vista Del Monte 2 Investment Corporation - Common Shares	426,970.00	42,697.00
04/13/2009	21	Walton GA Arcade Meadows 1 Investment Corporation - Common Shares	526,070.00	52,607.00
04/13/2009	73	Walton GA Arcade Meadows 2 Investment Corporation - Common Shares	1,454,810.00	857,760.00
04/13/2009	35	Walton TX Amble Way Investment Corporation - Common Shares	449,680.00	44,968.00
04/08/2009	19	Walton TX South Grayson Investment Corporation - Common Shares	165,980.00	16,898.00
01/31/2008 to 11/28/2008	91	WF Asia - Units	2,828,325.60	150,306.67

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
AAER Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated April 22, 2009
NP 11-202 Receipt dated April 22, 2009
Offering Price and Description:
Minimum Offering: $2,000,000.00 or 8,695,652 Offered Units (the "Minimum Offering"); Maximum offering: $5,000,000.00 or 21,739,130 Offered Units (the "Maximum Offering") and Issuance of a Maximum of * Payment Units in Settlement of Certain Outstanding Debts Price: $0.23 per Unit
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Industrial Alliance Securities Inc.
Promoter(s):
-
Project #1407331

Issuer Name:
Allegro Balanced Growth Canada Focus Portfolio Class
Allegro Balanced Growth Portfolio Class
Allegro Balanced Portfolio Class
Allegro Growth Canada Focus Portfolio Class
Allegro Growth Portfolio Class
Investors International Equity Class
Principal Regulator - Manitoba
Type and Date:
Preliminary Simplified Prospectuses dated April 22, 2009
NP 11-202 Receipt dated April 24, 2009
Offering Price and Description:
Series A Shares and Series B Shares, Series T (DSC) Shares and Series T (NL) Shares
Underwriter(s) or Distributor(s):
Investors Group Financial Services Inc.
Investors Group Securities Inc.
Investors Group Financial Services Inc. and Investors Group Securities Inc
Promoter(s):
I.G. Investment Management Ltd.
Project #1408245

Issuer Name:
Capstone Mining Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated April 22, 2009
NP 11-202 Receipt dated April 22, 2009
Offering Price and Description:
$50,135,000.00 - 27,100,000 Common Shares Price: $1.85 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Haywood Securities Inc.
PI Financial Corp.
Promoter(s):
-
Project #1407497

Issuer Name:
Daylight Resources Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated April 21, 2009
NP 11-202 Receipt dated April 22, 2009
Offering Price and Description:
$150,010,000.00 - 21,430,000 Trust Units Price: $7.00 Trust Unit
Underwriter(s) or Distributor(s):
GMP Securities L.P.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
TD Securities Inc.
Canaccord Capital Corporation
Cormark Securities Inc.
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
FirstEnergy Capital Corp.
Thomas Weisel Partners Canada Inc.
Promoter(s):
-
Project #1406906

Issuer Name:
Global Biotech Corp
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated April 24, 2009
Receipted on April 27, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Louis Greco
Perry Choiniere
Gilles Lamarre
Project #1369618

Issuer Name:
Investors Cornerstone I Portfolio
Investors Cornerstone II Portfolio
Investors Cornerstone III Portfolio
Investors International Equity Fund
Principal Regulator - Manitoba
Type and Date:
Preliminary Simplified Prospectuses dated April 22, 2009
NP 11-202 Receipt dated April 24, 2009
Offering Price and Description:
Series A, B and C Units One retail Series of Mutual Fund Units, with No-Load and Deferred Sales Charge purhcase option
Underwriter(s) or Distributor(s):
Investors Group Financial Services Inc.
Investors Group Securities Inc.
Investors Group Financial Services Inc. and Investors Group Securities Inc
Investors Group Financial Services Inc. and Investors Group
Promoter(s):
I.G. Investment Management Ltd.
Project #1408240

Issuer Name:
The Economic Recovery Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated April 28, 2009
NP 11-202 Receipt dated April 28, 2009
Offering Price and Description:
$ * - * Series A, F and L Units Price: $10.00 per Unit of a Series
Minimum Purchase: 200 Units of a Series
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Wellington West Capital Markets Inc.
Canaccord Capital Corporation
Manulife Securities Incorporated
Raymond James Ltd.
Blackmont Capital Inc.
Desjardins Securities Inc.
GMP Securities L.P.
Research Capital Corporation
Richardson Partners Financial Limited
Promoter(s):
First Asset Investment Management Inc.
Project #1409742

Issuer Name:
Whiterock Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated April 28, 2009
NP 11-202 Receipt dated April 28, 2009
Offering Price and Description:
$10,064,000.00 - 680,000 Units Price: $14.80 per Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
CIBC World Markets Inc.
Canaccord Capital Corporation
National Bank Financial Inc.
Scotia Capital Inc.
Dundee Securities Corporation
Promoter(s):
-
Project #1409820

Issuer Name:
AGF Canada Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F, Series O, Series T and Series V Securities)
AGF Canada Fund (Series S Securities)
AGF Canadian All Cap Equity Fund (Mutual Fund, Series F and Series O Securities)
AGF Canadian Growth Equity Fund Limited (Mutual Fund, Series D, Series F and Series O Securities)
AGF Canadian Large Cap Dividend Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F, Series O, Series T and Series V Securities)
AGF Canadian Large Cap Dividend Fund (Mutual Fund, Series D, Series F, Series O, Series T, Series V and Classic Series Securities)
AGF Canadian Small Cap Fund (Mutual Fund, Series D, Series F and Series O Securities)
AGF Canadian Stock Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F, Series O, Series T and Series V Securities)
AGF Canadian Stock Fund (Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF Canadian Value Fund (Mutual Fund, Series D, Series F, Series G, Series H and Series O Securities)
AGF Diversified Dividend Income Fund (Mutual Fund, Series D, Series F, Series G, Series H, Series O and Series T Securities)
AGF Dividend Income Fund (Mutual Fund, Series D, Series F, Series G, Series H and Series O Securities)
AGF Monthly High Income Fund (Mutual Fund, Series D, Series F, Series G, Series H, Series O and Series T Securities)
AGF AggressiveTM Global Stock Fund (Mutual Fund, Series D, Series F and Series O Securities)
AGF Aggressive TM U.S. Growth Fund (Mutual Fund, Series D, Series F and Series O Securities)
AGF American Growth Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF Asian Growth Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F and Series O Securities)
AGF Asian Growth Fund (Series S Securities)
AGF China Focus Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F and Series O Securities)
AGF Emerging Markets Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F and Series O Securities)
AGF Emerging Markets Fund (Mutual Fund, Series D, Series F and Series O Securities)
AGF European Equity Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF European Equity Fund (Series S Securities)
AGF Global Dividend Fund (Mutual Fund, Series D, Series F, Series O, Series T and Series V Securities)
AGF Global Equity Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF Global Equity Fund (Mutual Fund, Series D, Series F and Series O Securities)
AGF Global Perspective Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F, Series G, Series H and Series O Securities)
AGF Global Value Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF Global Value Fund (Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF International Stock Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF Japan Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F and Series O Securities)
AGF Japan Fund (Series S Securities)
AGF Special U.S. Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F and Series O Securities)
AGF Special U.S. Fund (Series S Securities)
AGF U.S. Risk Managed Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F and Series O Securities)
AGF U.S. Risk Managed Fund (Series S Securities)
AGF U.S. Value Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F and Series O Securities)
AGF U.S. Value Fund (Series S Securities)
AGF Canadian Resources Fund Limited (Mutual Fund, Series D, Series F and Series O Securities)
AGF Global Financial Services Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F and Series O Securities)
AGF Global Health Sciences Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F and Series O Securities)
AGF Global Real Estate Equity Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F and Series O Securities)
AGF Global Real Estate Equity Fund (Series S Securities)
AGF Global Resources Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F and Series O Securities)
AGF Global Resources Fund (Series S Securities)
AGF Global Technology Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F and Series O Securities)
AGF Precious Metals Fund (Mutual Fund, Series D, Series F and Series O Securities)
AGF Canadian Balanced Fund (Mutual Fund, Series D, Series F, Series O, Series T and Series V

Securities)
AGF Canadian Balanced Value Fund (Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF Global Balanced High Income Fund (Mutual Fund, Series F, Series O and Series T Securities)
AGF World Balanced Fund (Mutual Fund, Series D, Series F, Series G, Series H, Series O, Series T and Series V Securities)
AGF Canadian Bond Fund (Mutual Fund, Series D, Series F and Series O Securities)
AGF Canadian Conservative Inflation Managed Income Fund (formerly, AGF Canadian Conservative Income Fund) (Mutual Fund, Series D, Series F and Series O Securities)
AGF Canadian High Yield Bond Fund (Mutual Fund, Series D, Series F and Series O Securities)
AGF Canadian Money Market Fund (Mutual Fund, Series D, Series F and Series O Securities)
AGF Dollar Cost Averaging Fund (Mutual Fund and Series D Securities)
AGF Global Government Bond Fund (Mutual Fund, Series D, Series F and Series O Securities)
AGF Global High Yield Bond Fund (Mutual Fund, Series D, Series F and Series O Securities)
AGF Short-Term Income Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F and Series O Securities)
AGF U.S. Dollar Money Market Account (Mutual Fund Securities)
AGF Elements Conservative Portfolio (Mutual Fund, Series D, Series F and Series O Securities)
AGF Elements Balanced Portfolio (Mutual Fund, Series D, Series F, Series O, Series T and Series V Securities)
AGF Elements Growth Portfolio (Mutual Fund, Series D, Series F, Series O, Series T and Series V Securities)
AGF Elements Global Portfolio (Mutual Fund, Series D, Series F and Series O Securities)
AGF Elements Yield Portfolio (Mutual Fund, Series F and Series O Securities)
AGF Elements Conservative Portfolio Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F and Series O Securities)
AGF Elements Balanced Portfolio Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F, Series O, Series T and Series V Securities)
AGF Elements Growth Portfolio Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F, Series O, Series T and Series V Securities)
AGF Elements Global Portfolio Class (Class of AGF All World Tax Advantage Group Limited) (Mutual Fund, Series D, Series F and Series O Securities)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus and Annual Information Form dated April 20, 2009
NP 11-202 Receipt dated April 23, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
-
Project #1389189/1400850

Issuer Name:
Anvil Mining Limited
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated April 27, 2009
NP 11-202 Receipt dated April 27, 2009
Offering Price and Description:
C$30,015,000.00 - 26,100,000 Common Shares C$1.15 per Common Share
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
BMO Nesbitt Burns Inc.
Raymond James Ltd.
Promoter(s):
-
Project #1404755

Issuer Name:
Aurizon Mines Ltd.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated April 21, 2009
NP 11-202 Receipt dated April 22, 2009
Offering Price and Description:
Approximately $50,000,000.00 - 9,708,800 Common Shares $5.15 per Common Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Wellington West Capital Markets Inc.
BMO Nesbitt Burns Inc.
Dundee Securities Corporation
Clarus Securities Inc.
Macquarie Capital Markets Canada Ltd.
Promoter(s):
-
Project #1404442

Issuer Name:
Cardiome Pharma Corp.
Principal Regulator - British Columbia
Type and Date:
Amendment #2 dated April 21, 2009 to the Short Form Base Shelf Prospectus dated November 5, 2008
NP 11-202 Receipt dated April 22, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1333512

Issuer Name:
Churchill VII Debenture Corp.
Churchill VII Real Estate Limited Partnership
Principal Regulator - British Columbia
Type and Date:
Amendment dated April 24, 2009 to Final Long Form Prospectus dated April 8, 2009
NP 11-202 Receipt dated April 27, 2009
Offering Price and Description:
Minimum: $2,500,000.00 (2,000 Units); Maximum: $30,000,000.00 (24,000 Units) $1,250 per Unit
Minimum Subscription: $5,000
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
RBC Dominion Securities Inc.
Raymond James Ltd.
Scotia Capital Inc.
Promoter(s):
Churchill International Securities Corporation
Project #1386639/1386633

Issuer Name:
Lincluden Balanced Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated April 22, 2009
NP 11-202 Receipt dated April 27, 2009
Offering Price and Description:
Mutual fund trust units at net asset value
Underwriter(s) or Distributor(s):
Lincluden Management Limited
Promoter(s):
-
Project #1386323

Issuer Name:
Manulife Canadian Equity Index Fund
Manulife International Equity Index Fund
Manulife U.S. Equity Index Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated April 22, 2009
NP 11-202 Receipt dated April 23, 2009
Offering Price and Description:
Class O units
Underwriter(s) or Distributor(s):
Elliott & Page Limited
Promoter(s):
Elliott & Page Limited
Project #1387678

Issuer Name:
Manulife Financial Corporation
Type and Date:
Final Base Shelf Prospectus dated April 21, 2009
Receipted on April 22, 2009
Offering Price and Description:
US$1,000,000,000.00:
Debt Securities
Class A Shares
Class B Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1374855

Issuer Name:
MD Dividend Fund
MD Select Fund
MD American Growth Fund
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated April 9, 2009 to the Simplified Prospectuses and Annual Information Forms dated June 25, 2008
NP 11-202 Receipt dated April 23, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
MD Management Limited
Promoter(s):
MD Private Trust Company
Project #1271460

Issuer Name:
ONE Financial Real Property Development Trust (2008-1)
ONE Financial Real Property Income Fund (2008-1)
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated April 22, 2009
NP 11-202 Receipt dated April 23, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Research Capital Corp.
Blackmont Capital Inc.
Canaccord Capital Corporation
Raymond James Ltd
Industrial Alliance Securities Inc.
Laurentian Bank Securities Inc.
Burgeonvest Securities Limited
Integral Wealth Securities Limited
MGI Securities Inc.
Promoter(s):
ONE Financial Corporation
Project #1306909/1306913

Issuer Name:
RBC DS North American Focus Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 22, 2009 to the Simplified Prospectus and Annual Information Form dated October 24, 2008
NP 11-202 Receipt dated April 28, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Promoter(s):
-
Project #1324456

Issuer Name:
RBC Canadian Diversified Income Trust Fund
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated April 22, 2009 to the Simplified Prospectus and Annual Information Form dated June 27, 2008
NP 11-202 Receipt dated April 24, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
RBC Direct Investing Inc.
Royal Mutual Funds Inc.
RBC Asset Management Inc.
RBC Dominion Securities Inc.
Royal Mutual Funds Inc./RBC Direct Investing Inc.
Promoter(s):
RBC Asset Management Inc.
Project #1273078

Issuer Name:
Scarlet Resources Ltd.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated April 23, 2009
NP 11-202 Receipt dated April 28, 2009
Offering Price and Description:
$400,000.00 - 2,666,666 Common Shares at a price of $0.15 per Common Share

Underwriter(s) or Distributor(s):
Jordan Capital Markets Inc.
Promoter(s):
Robert Bick
Project #1370964

Issuer Name:
Series A, E, F, I, J and O Securities (unless otherwise indicated) of:
Symmetry Equity Class (of Mackenzie Capital Corporation) (also offering Series E6, E8, F8, G, J6, J8, T6, T8 and W securities)
Symmetry Registered Fixed Income Pool (also offering Series W Securities)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 9, 2009 to the Simplified Prospectuses and Annual Information Forms dated November 19, 2008
NP 11-202 Receipt dated April 23, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Mackenzie Financial Corporation
Project #1320695

Issuer Name:
TD Emerald Balanced Fund
TD Emerald Canadian Bond Index Fund
TD Emerald Canadian Equity Index Fund
TD Emerald Canadian Short Term Investment Fund
TD Emerald Global Government Bond Index Fund
TD Emerald International Equity Index Fund
TD Emerald U.S.Market Index Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses and Annual Information Forms dated April 22, 2009
NP 11-202 Receipt dated April 23, 2009
Offering Price and Description:
Class A Units and Class B Units
Underwriter(s) or Distributor(s):
TD Asset Management Inc.
Promoter(s):
TD Assets Management Inc.
Project #1385543

Issuer Name:
TransCanada PipeLines Limited
Principal Regulator - Alberta
Type and Date:
Final Shelf Prospectus dated April 23, 2009
NP 11-202 Receipt dated April 24, 2009
Offering Price and Description:
$2,000,000,000.00 - Medium Term Note Debentures (Unsecured)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
HSBC Securities (Canada) Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #1404301

Issuer Name:
US Gold Corporation
Type and Date:
Final MJDS Prospectus - dated April 24, 2009
Receipted on April 28, 2009
Offering Price and Description:
US$200,000,000.00 - Debt Securities (which may be guaranteed by one or more of our Co-Registrants) Common Stock Warrants Subscription Rights Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1387653

Issuer Name:
Vista Gold Corp.
Principal Regulator - British Columbia
Type and Date:
Final Base Shelf Prospectus dated April 27, 2009
NP 11-202 Receipt dated April 28, 2009
Offering Price and Description:
US$200,000,000.00:
Common Shares
Debt Securities
Warrants
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1406068

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change of Category	NBC Alternative Investments Inc.	From: Investment Counsel And Portfolio Manager To: Investment Counsel And Portfolio Manager Commodity Trading Manager	April 28, 2009
Consent to Suspension (Rule 33-501 Surrender of Registration)	Becher Mcmahon Capital Markets Inc.	Limited Market Dealer	April 27, 2009
Consent to Suspension (Rule 33-501 Surrender of Registration)	Bjurman, Barry & Associates	International Adviser (Investment Counsel & Portfolio Manager)	April 27, 2009

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 MFDA Hearing Panel Suspends Hill & Crawford Investment Management Group Ltd. and Albert Rodney Hill

NEWS RELEASE
For immediate release

MFDA HEARING PANEL SUSPENDS HILL & CRAWFORD INVESTMENT MANAGEMENT GROUP LTD. AND ALBERT RODNEY HILL

April 22, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") issued a Notice of Application on April 17, 2009 pursuant to section 24.3 of MFDA By-law No. 1 in respect of Hill & Crawford Investment Management Group Ltd. ("HCIM") and Albert Rodney Hill.

A Hearing Panel of the MFDA's Central Regional Council today suspended the rights and privileges of MFDA membership of HCIM and suspended the authority of Albert Rodney Hill to conduct securities related business with HCIM, among other orders, pursuant to section 24.3 of MFDA By-law No. 1.

A copy of the Hearing Panel's Order is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 150 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

13.1.2 MFDA Hearing Panel Approves Settlement Agreement with Keybase Financial Group Inc. and Dax Sukhraj

NEWS RELEASE
For immediate release

MFDA HEARING PANEL APPROVES SETTLEMENT AGREEMENT WITH KEYBASE FINANCIAL GROUP INC. AND DAX SUKHRAJ

April 22, 2009 (Toronto, Ontario) – A Settlement Hearing in the matter of Keybase Financial Group Inc. and Dax Sukhraj (the "Respondents") was held today 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 Staff of the MFDA and the Respondents. The following is a summary of the Orders made by the Hearing Panel:

- Keybase Financial Group Inc. shall pay a fine in the amount of $150,000;
- Keybase Financial Group Inc. shall retain an independent monitor to resolve certain compliance deficiencies;
- Dax Sukhraj shall pay a fine in the amount of $50,000;
- Dax Sukhraj shall complete the Partners, Directors and Senior Officers course within 1 year; and
- The Respondents shall pay costs in the amount of $25,000.00

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

A copy of the Settlement Agreement and the Hearing Panel's Order is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 150 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 MFDA Hearing Panel Issues Reasons for Decision with Respect to Professional Investments (Kingston) Inc. Settlement Hearing

NEWS RELEASE
For immediate release

MFDA HEARING PANEL ISSUES REASONS FOR DECISION WITH RESPECT TO PROFESSIONAL INVESTMENTS (KINGSTON) INC. SETTLEMENT HEARING

April 22, 2009 (Toronto, Ontario) – A Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") has issued its Reasons for Decision in connection with the Settlement Hearing held in Toronto, Ontario on January 23, 2009 in the matter of Professional Investments (Kingston) Inc.

A copy of the Reasons for Decision is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 150 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

13.1.4 MFDA Postpones Next Appearance in the Matter of ASL Direct Inc. and Adrian S. Leemhuis

NEWS RELEASE
For immediate release

MFDA POSTPONES NEXT APPEARANCE IN THE MATTER OF ASL DIRECT INC. AND ADRIAN S. LEEMHUIS

April 27, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of ASL Direct Inc. and Adrian Samuel Leemhuis by Notice of Hearing dated October 17, 2008.

A pre-hearing motion, originally scheduled for May 5, 2009, will now take place on July 29, 2009 at 10:00 a.m. (Eastern) in accordance with the Hearing Panel's Order dated April 7, 2009.

The motion will take place in the Hearing Room in the offices of the MFDA located at 121 King Street West, Suite 1000, Toronto, Ontario and will be open to the public, except as may be required for the protection of confidential matters.

A copy of the Hearing Panel's Order is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 150 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

13.1.5 MFDA Hearing Panel Issues Reasons for Decision in the Matter of Farm Mutual Financial Services Inc.

NEWS RELEASE
For immediate release

MFDA HEARING PANEL ISSUES
REASONS FOR DECISION
IN THE MATTER OF
FARM MUTUAL FINANCIAL SERVICES INC.

April 28, 2009 (Toronto, Ontario) – A Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") has issued its Reasons for Decision in connection with the disciplinary hearing held in Toronto, Ontario on December 10, 2008 concerning Farm Mutual Financial Services Inc. (the "Respondent").

The Hearing Panel imposed the following penalties on the Respondent:

(a) Termination of any and all of the rights and privileges of Membership in the MFDA;

(b) A fine in the amount of $2,141,113.93 with respect to Allegations #1 to #4;

(c) A fine in the amount of $500,000.00 with respect to Allegations #5 and #6; and

(d) Costs in the amount of $50,000.00.

A copy of the Reasons for Decision is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 150 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

13.1.6 IIROC Rules Notice – Request for Comments – Proposed Amendments to Simplify the Equity Margin Project

IIROC RULES NOTICE

REQUEST FOR COMMENTS

PROPOSED AMENDMENTS TO SIMPLIFY THE EQUITY MARGIN PROJECT

Summary and purpose of proposed amendments

On March 25, 2009, the Board of Directors (the Board) of the Investment Industry Regulatory Organization of Canada (IIROC) approved the publication for comment of proposed amendments (Proposed Amendments) to Dealer Member Rule 100.2(f). The Proposed Amendments would simplify a number of processes for IIROC staff and Dealer Members regarding the implementation and ongoing support of the Equity Margin Project's new methodology for margining equity securities.

The Proposed Amendments are to the main proposed amendments on the Equity Margin Project (the Main Proposal) that have not yet been implemented and are currently being reviewed by the securities commissions. The Main Proposal was submitted by IIROC to the securities commissions on September 3, 2008 and it is IIROC's version of the IDA's main proposed amendments on the Equity Margin Project that were approved by the securities commissions on August 18, 2006 when it was an IDA proposal. The Proposed Amendments and the Main Proposal will be implemented together following their approval by the securities commissions. Specifically, the Proposed Amendments set out in Attachment A would:

- remove the 20% customer margin rate category for both long and short customer positions, which is dependent on the security's price volatility and an option or future listed against it on an exchange
- remove the 150% margin rate category for short positions
- allow the market price per share based margin rate methodology to be used where there is no published long or short margin rate for a listed security
- allow the market price per share based margin rate methodology to be used for specific unlisted securities that are eligible for margin
- harmonize the market price per share based margin rate categories with the new methodology's margin rate categories
- correct the rule references to Dealer Member Rule 100.9 within the index products section of Dealer Member Rule 100.2(f).

Issues and specific proposed amendments

The main issue is to simplify the implementation and ongoing support of the new methodology for margining equity securities for both IIROC staff and Dealer Members. By removing the 20% customer margin rate category that is dependent on both the security's price volatility and an option or future listed against it on an exchange, it would eliminate the need to track on an ongoing basis whether a security has an option or future listed against it on an exchange. Consequently, the lowest customer margin rate category would now be 25% for listed equity securities. By removing the 150% margin rate category for short positions, it would allow for the simplification of the implementation programming work that would have been needed for a very small number of securities that would be affected by this margin rate category.

In allowing the market price per share based margin rate methodology to be used where there is no published long or short margin rate for a listed equity security, it would make it possible for Dealer Members to easily determine a margin rate for a security if there were any quality controls issues with IIROC's quarterly margin rate file where the security or its margin rate is missing or if the security is issued after the release of the margin rate file.

In allowing the market price per share based margin rate methodology to be used for specific unlisted securities that are eligible for margin, it would give Dealer Members the choice to either simply use the market price per share margin rate methodology in determining the unlisted security's margin rate or develop systems to link the unlisted security to the margin rate of its related listed security whose margin rate would be published in the margin rate file. Following the implementation of the new methodology for margining equity securities, the market price per share margin rate methodology would have 4 margin rate categories (50%, 60%, 80% and 100%) for long positions, two of which (50% and 80%) are not margin rate categories in the new methodology. The closest margin rate categories to the 50% and 80% margin rate categories in the new methodology are 40% and 75%, respectively. Therefore, in amending the 50% and 80% margin rate categories to 40% and 75%, respectively,

they would be harmonized. Accordingly, the corresponding margin rate category for short positions in the market price per share margin rate methodology to the 50% margin rate category would be amended from 150% to 140%.

Finally, a secondary issue is to correct the rule references to Dealer Member Rule 100.9 within the index products subparagraph of Dealer Member Rule 100.2(f).

The Proposed Amendments and a black-line copy of the Dealer Member Rule affected by these amendments are set out in Attachments A and B.

Proposed Rule classification

IIROC has identified the need to simplify both the implementation and ongoing support of the new methodology for margining equity securities, which will be used to determine the minimum margin and capital requirements for margining equity securities. IIROC assessed this need as being in the public interest and not detrimental to the best interests of the capital markets.

The Board therefore has determined that the Proposed Amendments are not contrary to the public interest.

Due to the extent and substantive nature of the Proposed Amendments, they have been classified as Public Comment Rule proposals.

Effects of the proposed amendments on market structure, Dealer Members, non-Dealer Members, competition and compliance costs

Statements have been made elsewhere as to the nature and effects of the Proposed Amendments.

The specific purpose of the Proposed Amendments is to simplify the implementation and ongoing support of the Equity Margin Project's new methodology for margining equity securities.

It is believed that the proposed amendments will have no impact in terms of capital market structure, competition generally, cost of compliance and conformity with other rules. The Proposed Amendments do not permit unfair discrimination among customers, issuers, brokers, dealers, members or others. It does not impose any burden on competition that is not necessary or appropriate in furtherance of the above purposes.

Technological implications and implementation plan

It is anticipated that there will be less system impacts resulting from the implementation of these rule changes than if they were not implemented, in comparison to the current implementation of the Equity Margin Project's new methodology for margining equity securities. The Bourse de Montréal (the Bourse) is also in the process of passing these amendments. Implementation of the Proposed Amendments will therefore take place once both IIROC and the Bourse have received approval to do so from their respective recognizing regulators.

Request for public comment

Comments are sought on the Proposed Amendments. Comments should be made in writing. Two copies of each comment should be delivered by June 30, 2009 (60 days from the publication date of this notice). One copy should be addressed to the attention of:

Answerd Ramcharan
Specialist, Member Regulation Policy,
Investment Industry Regulatory Organization of Canada,
Suite 1600, 121 King Street West,
Toronto, Ontario
M5H 3T9

The second copy should be addressed to the attention of:

Manager of Market Regulation,
Ontario Securities Commission,
19th Floor, Box 55,
20 Queen Street West,
Toronto, Ontario,
M5H 3S8
marketregulation@osc.gov.on.ca

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the IIROC website (www.iiroc.ca under the heading "IIROC Rulebook – Dealer Member Rules – Policy Proposals and Comment Letters Received").

Questions may be referred to:

Answerd Ramcharan
Specialist, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
(416) 943-5850
aramcharan@iiroc.ca

Attachments

Attachment A – Proposed Amendments

Attachment B – Black-line copy of IIROC Dealer Member Rule 100 reflecting amendments

Attachment A

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AMENDMENTS TO DEALER MEMBER RULE 100.2(F)

PROPOSED AMENDMENTS

1. Subparagraph (i) of Dealer Member Rule 100.2(f) is amended by:

   (a) adding the sentence "Where there is no published long position margin rate for the security, the margin required is the market price per share margin rate as detailed in subparagraph (iv)." immediately after the sentence "The published long position basic margin rate for the security as approved by a recognized self-regulatory organization, multiplied by the market value of the security position.";

   (b) adding the sentence "The Corporation will maintain a list of these markets and market tiers." immediately after the sentence "Positions in securities listed on markets or market tiers with initial or ongoing financial listing requirements that do not include adequate minimum pre-tax profit, net tangible asset and working capital requirements, as determined by the Corporation from time to time, may not be carried on margin.";

   (c) adding the sentence "Where there is no published short position margin rate for the security, the credit required is the market price per share credit required rate as detailed in subparagraph (iv)." immediately below the words "Securities selling at less than $0.25 - market value plus $0.25 per share";

   (d) adding the words "Basic margin rate" immediately above the words "For the purposes of Regulation 100";

   (e) deleting the words "customer account positions, where a related option or future is listed on an exchange, and" immediately after the words "20% (only"; and

   (f) deleting the words "150% (where necessary for short security positions)" immediately below the words "25%, 30%, 40%, 60%, 75% and 100%.".

2. Subparagraph (iv) of Dealer Member Rule 100.2(f) is amended by:

   (a) replacing the words ". Where a published rate is unavailable," with the words "or based on" immediately before the words "the following requirements";

   (b) deleting the words "will apply" immediately after the words "the following requirements";

   (c) replacing the percentage "50%" with the percentage "40%" immediately below the words "Long positions – margin required";

   (d) replacing the percentage "80%" with the percentage "75%" immediately below the words "Securities selling at $1.75 to $1.99 – 60% of market value"; and

   (e) replacing the percentage "150%" with the percentage "140%" immediately below the words "Short positions – credit required".

3. Subparagraph (vi) of Dealer Member Rule 100.2(f) is amended by:

   (a) replacing the letter "c" in the rule references to Rule 100.9 with the letter "a"; and

   (b) adding the rule reference "Rule 100.9(a)(xi)" immediately after the old rule reference "Rule 100.9(c)(x)".

Attachment B

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AMENDMENTS TO DEALER MEMBER RULE 100.2(F)

BLACK-LINE COPY[1]

(f) **Stocks**

(i) Listed on a recognized exchange in Canada or the United States

For positions in securities listed (other than bonds and debentures but including rights and warrants other than Canadian bank warrants) on any recognized stock exchange in Canada or the United States:

Long positions – margin required

The published long position basic margin rate for the security as approved by a recognized self-regulatory organization, multiplied by the market value of the security position. Where there is no published long position margin rate for the security, the margin required is the market price per share margin rate as detailed in subparagraph (iv).

Positions in securities listed on markets or market tiers with initial or ongoing financial listing requirements that do not include adequate minimum pre-tax profit, net tangible asset and working capital requirements, as determined by the Corporation from time to time, may not be carried on margin. The Corporation will maintain a list of these markets and market tiers.

Short positions – credit required

The greater of:

(A) 100% plus the published short position basic margin rate percentage for the security as approved by a recognized self-regulatory organization, multiplied by the market value of the security position

and

(B) Where the security is trading at less than $2.00 per share, the calculated minimum price based requirement as follows:

Securities selling at $1.50 to $1.99 – $3.00 per share

Securities selling at $0.25 to $1.49 – 200% of market value

Securities selling at less than $0.25 – market value plus $0.25 per share

Where there is no published short position margin rate for the security, the credit required is the market price per share credit required rate as detailed in subparagraph (iv).

Basic margin rate

For the purposes of Regulation 100, the term “basic margin rate” means a customized security specific margin rate calculated based on the measured price and liquidity risk for the security. Similar to the calculation of the “floating margin rate” for index products, measured price risk is based on the maximum standard deviation of percentage changes in daily closing prices over the most recent 20, 90 and 260 trading days. Measured liquidity risk is based on the security’s public float value and average daily volume levels. The risk assessments are combined into an overall market risk assessment and, based on that assessment, one of the following margin rates is assigned:

[1] This black line copy has been prepared taking into account other proposals pending implementation that would also result in amendments to Dealer Member Rule 100.2(f).

- 15% (only Member firm account positions are eligible);
- 20% (only ~~customer account positions, where a related option or future is listed on an exchange, and~~ Member firm account positions are eligible);
- 25%, 30%, 40%, 60%, 75% and 100%
- ~~150% (where necessary for short security positions)~~

(ii) Index constituent securities listed on certain other exchanges

For positions in securities (other than bonds and debentures but including warrants and rights), 50% of market value provided:

(A) the exchange on which the security is listed is included on the list of exchanges and associations that qualify as "recognized exchanges and associations" for the purposes of determining "regulated entities"; and

(B) the security is a constituent security on the exchange's major broadly based index.

(iii) Warrants issued by a Canadian chartered bank

For positions in warrants issued by a Canadian chartered bank which entitle the holder to purchase securities issued by the Government of Canada or any province (other than firm positions to which Rule 100.12(d) applies) the margin shall be the greater of:

(A) the margin otherwise required by this Rule according to the published basic margin rate for the warrant; or

(B) 100% of the margin required in respect of the security to which the holder of the warrant is entitled upon exercise of the warrant; provided that in the case of a long position the amount of margin need not exceed the market value of the warrant.

(iv) Unlisted securities eligible for margin

Subject to the existence of an ascertainable market among brokers or dealers, for positions in the following unlisted securities:

(A) Securities of insurance companies licensed to do business in Canada;

(B) Securities of Canadian banks;

(C) Securities of Canadian trust companies;

(D) Securities of mutual funds qualified by prospectus for sale in any province of Canada, with the exception of money market mutual funds (as defined in National Instrument 81-102) which may be margined using a rate of 5%;

(E) Other senior securities of listed companies;

(F) Securities which qualify as legal for investment by Canadian life insurance companies, without recourse to the basket clause;

(G) Unlisted securities in respect of which application has been made to list on a recognized stock exchange in Canada and approval has been given subject to the filing of documents and production of evidence of satisfactory distribution may be carried on margin for a period not exceeding 90 days from the date of such approval;

the margin or credit required shall be determined based on the published basic margin rate for the most junior listed security of the same issuer company as approved by a recognized self-regulatory organization, multiplied by the market value of the security position~~. Where a published rate is unavailable,~~ or based on the following requirements ~~will apply~~:

Long positions – margin required

Securities selling at $2.00 or more – ~~50~~40% of market value

Securities selling at $1.75 to $1.99 – 60% of market value

Securities selling at $1.50 to $1.74 – ~~80~~75% of market value

Securities selling under $1.50 may not be carried on margin.

Short positions – credit required

Securities selling at $2.00 or more – ~~150~~140% of market value

Securities selling at $1.50 to $1.99 – $3.00 per share

Securities selling at $0.25 to $1.49 – 200% of market value

Securities selling at less than $0.25 – market value plus $0.25 per share

(v) Other unlisted stocks

For positions in all other unlisted stocks not mentioned above:

Long positions – margin required

100% of market value

Short positions – credit required

Securities selling at $0.50 or more – 200% of market value

Securities selling at less than $0.50 – market value plus $0.50 per share

(vi) Index participation units and qualifying baskets of index securities

(A) For index participation units:

(I) In the case of a long position, the floating margin rate percentage (calculated for the index participation unit based on its regulatory margin interval) multiplied by the market value of the index participation units;

(II) In the case of a short position, 100% plus the floating margin rate percentage (calculated for the index participation unit based on its regulatory margin interval) multiplied by the market value of the index participation units;

(B) For a qualifying basket of index securities:

(I) In the case of a long position, the floating margin rate percentage (calculated for a perfect basket of index securities based on its regulatory margin interval), plus the calculated incremental basket margin rate for the qualifying basket of index securities, multiplied by the market value of the qualifying basket of index securities;

(II) In the case of a short position, 100% plus the floating margin rate percentage (calculated for a perfect basket of index securities based on its regulatory margin interval), plus the calculated incremental basket margin rate for the qualifying basket of index securities, multiplied by the market value of the qualifying basket of index securities;

For the purposes of this subparagraph, the definitions in Rule 100.9(~~c~~a)(x), Rule 100.9(a)(xi), Rule 100.9(~~c~~a)(xii), Rule 100.9(~~c~~a)(xx) and Rule 100.9(~~c~~a)(xxiv) apply.

13.1.7 Material Amendments to CDS Rules – Destruction of Non-Transferable Issues – Request for Comment

CDS CLEARING AND DEPOSITORY SERVICES INC. ("CDS")

MATERIAL AMENDMENTS TO CDS RULES

DESTRUCTION OF NON-TRANSFERABLE ISSUES

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED CDS RULE AMENDMENTS

The majority of security certificates currently stored in CDS's vaults are non-transferable issues ("NTI"). Issuers of NTI securities are often inactive or insolvent and the lack of transfer agent services generally renders the certificates non-transferable. Consistent with CDS's strategic goal of promoting dematerialization and to make efforts to reduce the number of security certificates in our vaults, CDS proposes to implement a program whereby certificates representing NTI securities are destroyed by CDS if they have been non-transferable for at least 7 years. In order to allow for destruction of NTI certificates, Rule 6.4.2 "Custody of Securities" should be amended. To evidence a certificate if an issue becomes active again, CDS will retain electronic images of destroyed certificates. Even though certificates will be destroyed, the Participant's ledger position in CDSX and inventory position will be maintained.

B. NATURE AND PURPOSE OF THE PROPOSED CDS RULE AMENDMENTS

The amendments proposed pursuant to this Notice are considered material amendments as they are amendments required to allow CDS to destroy security certificates of non-transferable issues. CDS will enhance its insurance policy to include a bond of indemnity to replace the security certificate(s) destroyed as a result of this program. If an NTI issue becomes active in the future, and the issuer will not process the transfer when presented with the electronic image of the destroyed certificate, CDS will rely on its insurance coverage if required to replace the certificate of an NTI issue that was destroyed pursuant to the program.

C. IMPACT OF THE PROPOSED CDS RULE AMENDMENTS

As of November 30, 2008, CDS held 6,753 NTI issues (represented by 154,988 security certificates in its vaults), representing approximately 75% of its entire certificate inventory. Over an 18 month period, NTI issues increased by an average of .34% per month: using this percentage increase, if the proposed program is not approved, this would mean that by August 31, 2014, approximately 8,602 NTI issues (and therefore even greater number of security certificates) would be required to be stored in CDS's vault. Implementation of a program for destruction of security certificates of NTI will significantly reduce the physical inventory of certificates that are held in CDS's vaults. Because significant costs and risks are associated with ongoing maintenance of custody, control and audit of security certificates, NTI certificate destruction will reduce both CDS's costs and risks and industry costs, and savings can then be passed on to Participants. In terms of impacts to Participants, since this is an inventory management matter, the positions of Participants in NTIs will not be altered by the program. Participants continue to have the choice to either maintaining their positions in CDSX or have the position removed and replaced by a depository acknowledgement. In addition, Participants will be offered a deposit window where they can bring certificates of eligible NTI issues that are held in their vaults to CDS for destruction. There should be no impact to other market participants or the securities and financial markets in general.

C.1 Competition

There is expected to be no impact on competition.

C.2 Risks and Compliance Costs

CDS will no longer maintain physical custody of security certificates for NTIs, thereby realizing significant cost savings associated with vaulting NTIs. CDS will maintain insurance coverage or bond of indemnity for voluntary destruction of NTI certificates. The insurance coverage will cover the risk of a financial loss to CDS in case a certificate is destroyed, requiring CDS to get the certificate replaced, or if a transfer agent refuses to recreate positions for CDS if the issue becomes active or transferable again.

CDS will acquire IBM FileNet image management software, scanners and the services of a commercial shredding company to facilitate destruction of NTI certificates. CDS will maintain controls to reconcile NTI certificates with Security Information Management System ("SIMS") before the destruction of the NTI certificates, reconcile NTI certificates with IBM's FileNet image capture software during the NTI destruction process, and reconcile FileNet Images with SIMS once the destruction has been completed.

C.3 Comparison to International Standards – (a) Committee on Payment and Settlement Systems of the Bank for International Settlements, (b) Technical Committee of the International Organization of Securities Commissions, and (c) the Group of Thirty

The Committee on Payment and Settlement Systems of the Bank of International Settlements, the Technical Committee of the International Organization of Securities Commissions and the Group of Thirty all advocate moving to a dematerialized or at a minimum, an immobilized environment. Although these groups do not refer to the destruction of physical certificates for NTI specifically, the proposed program is in-line with a move to a dematerialized environment and, given the numbers of NTI that in the future become active and transferable, there is low risk involved in this program.

D. DESCRIPTION OF THE RULE DRAFTING PROCESS

D.1 Development Context

CDS Rules do not expressly permit CDS destroying security certificates. Rule 6.4.2 gives CDS discretion to make certain determinations in respect of the custody of securities held in the Depository Service. Accordingly, it is proposed that Rule 6.4.2 be amended to add an additional subsection (f) to allow CDS to determine in its discretion whether or not to destroy any Security Certificate in respect to which transfers have not been available from a Transfer Agent for at least 7 years. CDS determined that 7 years is a reasonable amount of time to wait until the likelihood of an issuer coming back to life. Furthermore, although security certificates are not “data and records”, Rule 3.4.6 contemplates CDS archiving data and records and states that CDS is not obliged to retain records for longer than 7 years. This is another reason why 7 years is specifically mentioned in proposed Rule 6.4.2(f). Destruction of NTI certificates is an inventory management process that will be managed by CDS in accordance with its internal procedures.

D.2 Rule Drafting Process

Each amendment to the CDS Participant Rules is reviewed by CDS’s Legal Drafting Group (“LDG”). The LDG is a committee that includes members of Participants’ legal and business groups. The LDG’s mandate is to advise CDS management and its Board of Directors on rule amendments and other legal matters relating to centralized securities depository and clearing services in order to ensure that they meet the needs of CDS, its Participants and the securities industry.

These amendments were reviewed and approved by the Board of Directors of CDS Ltd. on April 22, 2009.

D.3 Issues Considered

CDS investigated possible solutions that would both achieve the overall objective and benefits of eliminating NTI certificates while continuing to provide Participants with the choice of maintaining their positions or having their positions removed and replaced with a depository acknowledgement. CDS also considered solutions implemented by others. CDS’s current lease at 85 Richmond Street West in Toronto will expire in August 2014 and while the costs associated with a new location cannot be projected now, it is possible that the new location will not have a vault or that a custody arrangement with an external party could be put in place. Implementation of an NTI destruction program now will significantly impact the number of certificates in CDS’s vaults by 2014 and beyond.

D.4 Consultation

CDS consulted with the transfer agents, custodians and DTC on possible alternatives to deal with the growing number of NTI certificates held in CDS’s vaults, as part of CDS’s dematerialization strategy, which was approved by CDS’s Strategy Group and the CDS Board of Directors.

D.5 Alternatives Considered

CDS considered 4 alternatives before deciding on the proposed program:

1. Destruction of NTI certificates using DTC’s model or a variation of DTC’s model

DTC’s program is described below under Section F of this Notice. A variation of DTC’s model was selected: CDS can destroy NTI certificates and CDS Participants do not have to make a choice of either maintaining their positions or removing those positions.

2. Last known Transfer Agent agrees to hold NTI certificates and report those positions to CDS using a daily reconciliation process

This alternative was not selected because there would be a number of NTI issues where the appropriate transfer agent could not be identified. In addition, identification of the last transfer agent would be a manually intensive process since each certificate would have to be reviewed to determine the appropriate transfer agent. The transfer agent community was not in favour of this alternative.

3. One Transfer Agent agrees to hold all NTI issues and report those positions to CDS using a daily reconciliation process

Discussions were held with the two largest transfer agents and they did not have interest in this initiative.

4. A third party custodian is contracted to hold NTI issues on CDS's behalf and report those positions to CDS using a daily reconciliation process

One custodian was approached and provided CDS with a high level proposal which was very expensive, especially given that these costs would be on-going.

D.6 Implementation Plan

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the Ontario *Securities Act*. The Autorité des marchés financiers has authorized CDS to carry on clearing activities in Québec pursuant to sections 169 and 170 of the Québec *Securities Act*. In addition CDS is deemed to be the clearing house for CDSX®, a clearing and settlement system designated by the Bank of Canada pursuant to section 4 of the *Payment Clearing and Settlement Act.* The Ontario Securities Commission, the Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the "Recognizing Regulators".

The amendments to Participant Rules may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment. The target date for implementation is September 21, 2009.

E. TECHNOLOGICAL SYSTEMS CHANGES

E.1 CDS

CDS will create a new process workflow which will identify eligible NTI issues for destruction, which is based on the issue being NTI for 7 years. The certificates identified will be scanned using IBM FileNet image capture software and the image saved in a new database. There will be processes established which will ensure that a certificate cannot be destroyed until the image is taken and stored and that the image cannot be altered or deleted once saved in the FileNet database. CDS's inventory systems will be modified to recognize an image as a valid inventory type.

E.2 CDS Participants

There are no external development impacts to CDS Participants.

E.3 Other Market Participants

There are no external development impacts to other market participants within the Canadian environment.

F. COMPARISON TO OTHER CLEARING AGENCIES

DTC first proposed a program for disposal of worthless warrants, rights and put options in 1990, and over the years, this program has been amended, most recently, receiving approval of the SEC for implementing the current version of NTI destruction program in 2005. DTC's program allows for the destruction of NTI certificates where a participant requests DTC to remove their position in a specified NTI security. This is done by the participant entering the relevant quantity into a DTC function called Position REMoval or "PREM". DTC's analysis showed that most issues that become active again did so within six years of being identified as NTI. This six year timeframe is used within the DTC system to determine when the issue's certificates are eligible for destruction. If an issue has reached the six year time frame and a participant has PREMed their position, the quantity that was PREMed can then be destroyed. Once a participant PREMs a position, they no longer pay custody fees for that position. DTC has procedures in place to take and maintain images of all certificates that are deposited into their system, including NTI issues and to oversee the actual shredding.

G. PUBLIC INTEREST ASSESSMENT

CDS has determined that the proposed amendments are not contrary to the public interest.

H. COMMENTS

Comments on the proposed amendments should be in writing and submitted within 30 calendar days following the date of publication of this notice in the Ontario Securities Commission Bulletin to:

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

Copies should also be provided to the Autorité des marchés financiers and the Ontario Securities Commission by forwarding a copy to each of the following individuals:

Me Anne-Marie Beaudoin
Secrétaire del'Autorité
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Télécopieur: (514) 864-6381
Courrier électronique: consultation-en-cours@lautorite.qc.ca

Manager, Market Regulation
Market Regulation Branch
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario, M5H 3S8

Fax: 416-595-8940
e-mail: marketregulation@osc.gov.on.ca

CDS will make available to the public, upon request, all comments received during the comment period.

I. PROPOSED CDS RULE AMENDMENTS

Appendix "A" contains text of current CDS Participant Rules marked to reflect proposed amendments as well as text of these rules reflecting the adoption of the proposed amendments.

Resa Sitzer
Managing Director, Legal

APPENDIX "A"
PROPOSED CDS RULE AMENDMENTS

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
6.4.2 Custody of Securities With respect to any Security held in the Depository Service, CDS shall determine how such Securities shall be handled and in particular CDS in its discretion may determine whether or not: (a) to require the issuance of a Security Certificate; (b) to cause any Security Certificate to be issued in bearer form, order form or registered form; (c) to cause any Security Certificate in registered form to be registered in the name of CDS, a Nominee, a Custodian or a nominee of a Custodian; (d) to hold any Security Certificate itself or to appoint another Person to hold any Security Certificate in its behalf; ~~or~~ (e) to appoint a Custodian for any Security; or (f) to destroy any Security Certificate in respect of which transfers have not been available from a Transfer Agent for at least 7 years. In exercising or determining whether to exercise any of the foregoing powers, CDS shall take reasonable care in what it, in good faith, considers to be in the best interests of all Participants. In certain circumstances, including the maturity of a Security or a re-organization of the Issuer or a process involving the Tender of a Security, CDS may release certificates or other instruments evidencing a Security held in the Depository Service to the Issuer, its Transfer Agent, its paying agent, or a Depositary Agent, in order to complete the procedure and receive any entitlements or payments owing in respect of the Security.	**6.4.2 Custody of Securities** With respect to any Security held in the Depository Service, CDS shall determine how such Securities shall be handled and in particular CDS in its discretion may determine whether or not: (a) to require the issuance of a Security Certificate; (b) to cause any Security Certificate to be issued in bearer form, order form or registered form; (c) to cause any Security Certificate in registered form to be registered in the name of CDS, a Nominee, a Custodian or a nominee of a Custodian; (d) to hold any Security Certificate itself or to appoint another Person to hold any Security Certificate in its behalf; (e) to appoint a Custodian for any Security; or (f) to destroy any Security Certificate in respect of which transfers have not been available from a Transfer Agent for at least 7 years. In exercising or determining whether to exercise any of the foregoing powers, CDS shall take reasonable care in what it, in good faith, considers to be in the best interests of all Participants. In certain circumstances, including the maturity of a Security or a re-organization of the Issuer or a process involving the Tender of a Security, CDS may release certificates or other instruments evidencing a Security held in the Depository Service to the Issuer, its Transfer Agent, its paying agent, or a Depositary Agent, in order to complete the procedure and receive any entitlements or payments owing in respect of the Security.

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Chapter 25

Other Information

25.1 Consents

25.1.1 Luxell Technologies Inc. – s. 4(b) of the Regulation

Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the Canada Business Corporations Act.

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 181.
Securities Act, R.S.O. 1990, c.S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 289/00, as am., s. 4(b).

IN THE MATTER OF
R.R.O. 1990, REGULATION 289/00
(THE REGULATION)
MADE UNDER THE
BUSINESS CORPORATIONS ACT (ONTARIO)
R.S.O. 1990 C.B.16, AS AMENDED
(THE OBCA)

AND

IN THE MATTER OF
LUXELL TECHNOLOGIES INC.

CONSENT
(Subsection 4(b) of the Regulation)

UPON the application (the "**Application**") of Luxell Technologies Inc. (the "**Corporation**") to the Ontario Securities Commission (the "**Commission**") requesting a consent from the Commission for the Corporation to continue in another jurisdiction pursuant to subsection 4(b) of the Regulation;

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

AND UPON the Corporation having represented to the Commission that:

1. The Corporation was formed under the OBCA by a certificate of amalgamation on December 1, 1994 under the name Luxell Technologies Inc.

2. The Corporation's registered and head office is 2145 Meadowpine Boulevard, Mississauga, Ontario, L5N 6R8. Following completion of the Continuance (as defined in paragraph 12 below), the registered office of the Corporation will be located at 2145 Meadowpine Boulevard, Mississauga, Ontario, L5N 6R8.

3. The Corporation intends to make an application to the Director under the OBCA pursuant to Section 181 of the OBCA (the "**Application for Continuance**") for authorization to continue as a corporation under the *Canada Business Corporations Act* (the "**CBCA**").

4. Pursuant to subsection 4(b) of the Regulation, where a corporation is an offering corporation, the Application for Continuance must be accompanied by a consent from the Commission.

5. The Corporation is an offering corporation under the OBCA.

6. The Corporation is authorized to issue an unlimited number of common shares, where each common share provides the holder with one vote. There were 135,043,525 common shares issued and outstanding as of April 17, 2009.

7. All of the issued and outstanding common shares of the Corporation (the "**Common Shares**") are represented by income participating securities of the Corporation which are listed and posted for trading on the Toronto Stock Exchange (the "**TSX**") under the symbol "LUX".

8. The Corporation is not in default of any of the rules, regulations or policies of the TSX.

9. The Corporation is a reporting issuer under the *Securities Act* (Ontario) (the "**Act**") and the securities legislation of each of British Columbia, Alberta, Manitoba and Quebec that have a reporting issuer concept (collectively, the "**Legislation**").

10. The Corporation is not in default of any of the provisions of the Act or the rules or regulations made thereunder and is not in default under the Legislation.

11. The Corporation is not a party to any proceeding or, to the best of its knowledge, information and belief, any pending proceeding under the OBCA, the Act or the Legislation.

12. The Corporation's shareholders authorized the continuance of the Corporation from the OBCA to the CBCA (the "**Continuance**") by special resolution at a special meeting of shareholders held on April 20, 2009 (the "**Meeting**"). Shareholders holding 106,202,855 Common Shares voted at the Meeting with 105,971,604 votes cast in favour and 73,800 votes cast against either in person or by proxy representing approval of 99.78% of votes cast.

13. The Management Information Circular of the Corporation dated March 20, 2009 (the "**Information Circular**") describing the Continuance was mailed to the shareholders and was filed on the System for Electronic Document Analysis and Retrieval ("**SEDAR**") on March 30, 2009.

14. Full disclosure of the reasons for and implications of the Continuance is included in the Information Circular.

15. The Continuance is being made in connection with the amalgamation of the Corporation with Lux Acquisition Corporation, which is governed by the provisions of the CBCA, all as more particularly described in the Information Circular.

16. Pursuant to Section 185 of the OBCA, all shareholders of record as of the record date for the Meeting are entitled to dissent rights in connection with the Continuance. The Information Circular of the Corporation dated March 20, 2009, which was provided to all shareholders of the Corporation in connection with the Meeting, advised the shareholders of their dissent rights and included a summary comparison of the differences between the OBCA and the CBCA.

17. The Corporation's material rights, duties and obligations under the CBCA will be substantially similar to those under the OBCA.

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

THE COMMISSION HEREBY CONSENTS to the continuance of the Corporation under the CBCA.

DATED at Toronto, Ontario this 21st day of April, 2009.

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

"Carol S. Perry"
Commissioner
Ontario Securities Commission

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