The Ontario Securities Commission

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

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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

JUNE 5, 2009

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
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Patrick J. LeSage	—	PJL
Carol S. Perry	—	CSP
Suresh Thakrar, FIBC	—	ST

SCHEDULED OSC HEARINGS

June 10, 2009 10:00 a.m.	**Global Energy Group, Ltd. and New Gold Limited Partnerships** s. 127 H. Craig in attendance for Staff Panel: DLK
June 10, 2009 10:00 a.m. June 11-12, 2009 2:00 p.m. June 22, 2009 10:00 a.m. June 26, 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
June 15, 2009 10:00 a.m.	**Goldpoint Resources Corporation, Lino Novielli, Brian Moloney, Evanna Tomeli, Robert Black, Richard Wylie and Jack Anderson** s. 127(1) and 127(5) M. Boswell in attendance for Staff Panel: JEAT
June 16, 2009 10:00 a.m.	**Sextant Capital Management Inc., Sextant Capital GP Inc., Sextant Strategic Opportunities Hedge Fund L.P., Otto Spork, Robert Levack and Natalie Spork** s. 127 S. Kushneryk in attendance for Staff Panel: JEAT

June 16, 2009 10:00 a.m. June 17-19, 2009 9:30 a.m.	**Imagin Diagnostic Centres Inc., Patrick J. Rooney, Cynthia Jordan, Allan McCaffrey, Michael Shumacher, Christopher Smith, Melvyn Harris and Michael Zelyony** s. 127 and 127.1 J. Feasby in attendance for Staff Panel: MGC/MCH
June 16, 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
June 22, 24-26, 2009 10:00 a.m. June 23, 2009 2:30 p.m.	**Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling** s. 127(1) and 127.1 J. Superina, A. Clark in attendance for Staff Panel: JEAT/DLK/PLK
June 25, 2009 2:00 p.m.	**Gold-Quest International, Health and Harmoney, Iain Buchanan and Lisa Buchanan** s. 127 H. Craig in attendance for Staff Panel: TBA
June 25, 2009 2:00 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
June 25, 2009 2:00 p.m.	**Paul Iannicca** s. 127 H. Craig in attendance for Staff Panel: TBA
June 29, 2009 10:00 a.m.	**Goldbridge Financial Inc., Wesley Wayne Weber and Shawn C. Lesperance** s. 127 J. Feasby in attendance for Staff Panel: JEAT
June 29, 2009 11:00 a.m.	**M P Global Financial Ltd., and Joe Feng Deng** s. 127(1) M. Britton in attendance for Staff Panel: JEAT
June 30, 2009 10:00 a.m.	**FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun** s. 127 A. Sonnen in attendance for Staff Panel: LER
July 6, 2009 10:00 a.m.	**Lyndz Pharmaceuticals Inc., Lyndz Pharma Ltd., James Marketing Ltd., Michael Eatch and Rickey McKenzie** s. 127(1) and (5) J. Feasby in attendance for Staff Panel: JEAT
July 9, 2009 10:00 a.m.	**Berkshire Capital Limited, GP Berkshire Capital Limited, Panama Opportunity Fund and Ernest Anderson** s. 127 E. Cole in attendance for Staff Panel: TBA
July 10, 2009 9:30 a.m.	**Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson** s. 127 J. Superina in attendance for Staff Panel: TBA

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 22 2009 10:00 a.m.	**Andrew Keith Lech** s. 127(10) J. Feasby 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: LER
July 23, 2009 2:00 p.m.	**Teodosio Vincent Pangia** s. 127 J. Feasby in attendance for Staff Panel: LER
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
October 20, 2009 10:00 a.m.	**Borealis International Inc., Synergy Group (2000) Inc., Integrated Business Concepts Inc., Canavista Corporate Services Inc., Canavista Financial Center Inc., Shane Smith, Andrew Lloyd, Paul Lloyd, Vince Villanti, Larry Haliday, Jean Breau, Joy Statham, David Prentice, Len Zielke, John Stephan, Ray Murphy, Alexander Poole, Derek Grigor and Earl Switenky** s. 127 and 127.1 Y. Chisholm in attendance for Staff Panel: TBA
November 16, 2009 10:00 a.m.	**Maple Leaf Investment Fund Corp. and Joe Henry Chau** s. 127 A. Sonnen in attendance for Staff Panel: TBA
November 16 – December 11, 2009 10:00 a.m.	**Sulja Bros. Building Supplies, Ltd. (Nevada), Sulja Bros. Building Supplies Ltd., Kore International Management Inc., Petar Vucicevich and Andrew DeVries** s. 127 and 127.1 M. Britton in attendance for Staff Panel: TBA
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	**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

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

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

1.1.2 Teodosio Vincent Pangia and Transdermal Corp.

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

AND

IN THE MATTER OF
TEODOSIO VINCENT PANGIA AND
TRANSDERMAL CORP.

NOTICE OF WITHDRAWAL

WHEREAS on February 25, 2009, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing to consider whether the Commission should extend a Temporary Cease Trade Order made February 23, 2009 (the "Temporary Order"), and Staff filed a Statement of Allegations in support of the Temporary Order pursuant to subsection 127 of the *Securities Act* in respect of Teodosio Vincent Pangia and Transdermal Corp. ("Transdermal");

TAKE NOTICE that Staff of the Commission withdraw the allegations against the Respondent, Transdermal, as of May 29, 2009.

May 29, 2009

Staff of the Ontario Securities Commission
20 Queen Street West
PO Box 55, 19th Floor
Toronto, ON M5H 3S8

Jonathon T. Feasby
LSUC # 46860B
Tel: 416-595-8783
Fax: 416-593-2319

1.1.3 CSA Staff Notice 21-309 – Information Processor For Exchange-Traded Securities other than Options

CANADIAN SECURITIES ADMINISTRATORS
STAFF NOTICE 21-309
INFORMATION PROCESSOR FOR
EXCHANGE-TRADED SECURITIES
OTHER THAN OPTIONS

The purpose of this notice is to inform the public that TSX Inc. (TSX) will act as an information processor for exchange-traded securities other than options[1] under National Instrument 21-101 *Marketplace Operation* (NI 21-101) for a period of five years from July 1, 2009 to June 30, 2014.

1. Regulatory Requirements

NI 21-101 provides for the operation and regulation of an information processor. An information processor is defined as a person or company that receives and provides information under NI 21-101 and has filed Form 21-101F5 *Initial Operation Report for Information Processor* (Form 21-101F5).

Part 7 of NI 21-101 requires that marketplaces that display orders of exchange-traded securities provide information regarding these orders to an information processor if one exists. Marketplaces are also required to provide trade information related to exchange-traded securities to an information processor or, in its absence, to an information vendor. The information processor has some flexibility regarding the information to be reported to it by the marketplaces.

The regulatory requirements that apply to an information processor are set out in Part 14 of NI 21-101. They include:

- a requirement to provide prompt and accurate order and trade information and not unreasonably restrict fair access to such information;
- a requirement that the information processor provides timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities;
- an obligation to maintain reasonable books and records; and
- certain system requirements, including an annual independent systems review.

In addition, the information processor is required to establish, in a timely manner, an electronic connection to each marketplace that is required to provide information under NI 21-101, and also to enter into an agreement with each such marketplace. The agreement must set out that the marketplace will provide the information processor information in accordance with Part 7 of NI 21-101 and that it will comply with any other reasonable requirements set by the information processor.

The information processor is designated as a market participant under the *Securities Act* (Ontario) and has been recognized as an information processor under the *Securities Act* (Québec).

2. The Need for a Consolidated Source of Data and an Information Processor

The need for an information processor is twofold: first, where there are multiple marketplaces trading the same exchange-traded security, an information processor will address information fragmentation and provide investors and market participants with at least one source of consolidated data. Second, an information processor will facilitate compliance by marketplace participants with relevant regulatory requirements in a multiple marketplace environment. It will ensure the availability of consolidated data that meets regulatory standards and which users, as well as regulators, could use to demonstrate or evaluate compliance with certain regulatory requirements like best execution, short selling and “best price” or trade-through obligations.

We recognize that there is a perception that regulatory requirements effectively mandate that marketplace participants connect to and subscribe to data from all marketplaces or to the information processor to be able to comply with their regulatory obligations. Some believe that this, in turn, may lead marketplaces to charge fees that do not reflect the value of their data, or their market share of orders and/or trades. Previous CSA notices[2] and Companion Policy 23-101CP specifically state that this is not the case.

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1 In Québec, options are not "exchange-traded securities", but are derivatives under the *Derivatives Act* (Québec) and are therefore already excluded.

2 Notice of Amendments to NI 21-101 Marketplace Operation, Companion Policy 21-101CP, NI 23-101 Trading Rules and Companion Policy 23-101CP, published at (2006) 29 OSCB 9731 December 15, 2006 and CSA Staff Notice 21-306 Notice of Filing of Forms 21-101F5 – Initial Operation Report for Information Processor, published at (2007) 30 OSCB (Supp-3) (CSA Staff Notice 21-306).

Subsection 4.1(5) of the Companion Policy 23-101CP indicates that, in order to meet best execution obligations where securities trade on multiple marketplaces in Canada, dealers should consider information from all appropriate marketplaces, and not just those marketplaces where a dealer is a participant. However, considering information from all appropriate marketplaces "does not mean that a dealer must have access to real-time feeds from each marketplace. However, its policies and procedures for seeking best execution should include the process for taking into account order and/or trade information from all appropriate marketplaces and the requirement to evaluate whether taking steps to access orders is appropriate under the circumstances." Guidance published relating to the "best execution" requirements established by the Investment Industry Regulatory Organization of Canada in UMIR 5.1 *Best Execution of Client Orders* echo this view as does the policy related to UMIR 5.2 *Best Price Obligation*.[3]

We would also like to clarify that, while we believe that consolidated data from an information processor will facilitate compliance by marketplace participants with their regulatory requirements, this is not the only source from which data can be obtained. Market participants are not required to take real-time data from the information processor and they may rely on other data sources to obtain the marketplace data that they need, such as information vendors or direct data feeds from the marketplaces.

3. Background and Process to Date

a. Request for filings of Forms 21-101F5

In July 2006, we invited entities interested in being an information processor to file Form 21-101F5, and published a separate notice for this purpose.[4] Bourse de Montreal Inc. (MX), CDS Inc. (CDS) and TSX applied to be an information processor for exchange-traded securities.[5] We published a summary of the filings received in April 2007, in CSA Staff Notice 21-306.[6] Since the initial filing, MX and CDS have withdrawn their applications and TSX updated its initial application. A summary of the revised proposal, prepared based on information provided by TSX, is attached at Appendix A of this notice.[7]

b. Factors and criteria considered in the review

Section 16.2 of Companion Policy to NI 21-101 states that the CSA will review Form 21-101F5 to determine whether it is contrary to the public interest for the filer to act as an information processor and also describes the factors used when evaluating the filings received. They include the performance capabilities, standards and procedures for the collection, processing, distribution and publication of order and trade information; whether all marketplaces may obtain access to the information processor on fair and reasonable terms; whether the entity applying for the role of an information processor has sufficient financial resources for the role; the qualification of its personnel; the existence of another entity performing the role of an information processor; and the independent systems review prepared as required by subsection 14.5(b) of NI 21-101.

In CSA Staff Notice 21-306[8] we identified the following criteria to be used to evaluate applications to be an information processor: financial viability; governance requirements; the existence of processes to manage inherent conflicts of interest; system requirements; a commitment to receiving and disseminating data in order to meet the transparency requirements set out in NI 21-101; a competitive fee structure; and, where revenue is shared with contributors of data, a fair method of revenue allocation.

c. Review of TSX Form 21-101F5

As indicated above, since the original filing of Form 21-101F5 by TSX published in summary on April 2007, TSX revised its proposal. The following changes were made:

- TSX will establish a Governance Committee with marketplace representation to make decisions with respect to significant areas of the operations of the information processor;

3 UMIR and its related guidance and policies require dealers to have policies and procedures in place to determine if orders from a marketplace should be initially considered. Part of this consideration of a marketplace for trading is whether there is a reasonable likelihood of liquidity on that marketplace.

4 CSA Notice 21-304 Request for Filing of Form 21-101F5 Initial Operation Report for Information Processor by Interested Information Processor, published in Ontario on July 14, 2006 at (2006) 29 OSCB 5757.

5 MX and CDS also applied to be an information processor for corporate debt securities.

6 See supra note 2.

7 Please note that a detailed description of the technology to be used, including in Form 21-101F5 filed by TSX, has not been published as it is our view that it is commercial and confidential information. This is consistent with our view, also expressed in subsection 16.2(3) of Companion Policy to NI 21-101, that the forms filed by an information processor under NI 21-101 contain intimate financial, commercial and technical information, and that the interests of the filers in non-disclosure outweigh the desirability of adhering to the principle that all forms be available for public inspection.

8 See supra note 2.

- TSX updated the description of the products offered;
- TSX removed the access fees that it initially intended to charge marketplaces to connect to the IP; and
- TSX engaged a third party technology vendor.

These revisions were made not only to update the original filing by TSX to reflect the existing products and technology used by the TSX to consolidate data, but also to address CSA staff concerns regarding the proposed governance structure and the potential conflicts of interest, real or perceived, associated with TSX, a competing marketplace, acting as an information processor. These concerns, as well as concerns about the technology, were also raised by industry participants including dealers and marketplaces.

4. CSA Conclusion

a. TSX as an information processor

We are of the view that TSX's revised proposal meets all our criteria for evaluation of a potential information processor. We note that the governance structure proposed by the TSX promotes the independence of the governance of the information processor from that of TSX's business operations, and also ensures representation from each of the marketplaces contributing the data. The technology solution provides no unfair advantage to TSX, and an undertaking to this effect has been provided by TSX.[9] In addition, we understand that most marketplaces are satisfied with the technology solution proposed by the TSX. We are also satisfied that the fee model preserves the status quo for market data fees by passing the existing marketplaces' data fees through to the subscribers of the information. The fee model - the pass-through of data fees plus a distribution fee charged and retained by TSX - meets our criterion that an information processor have some method to share data fee revenue with the contributors of data.

Based on our review of the updated Form 21-101F5 filed by TSX, we believe that it is not contrary to the public interest for TSX to be an information processor for exchange-traded securities other than options[10], for a period of five years beginning July 1, 2009 and ending June 30, 2014. In connection with Form 21-101F5 and the information represented within it, TSX agreed to a number of undertakings, listed at Appendix B of this notice.

The TSX IP will disseminate the following products:

- Consolidated Data Feed, which will provide access to pre- and post-trade market data from each contributing marketplace;
- Consolidated Last Sale, which will provide real-time last sale data from all contributing marketplaces; and
- Canadian Best Bid and Offer, which will provide a consolidated best bid and offer for all exchange-traded securities, other than options.

The inclusion of a consolidated depth-of-book product will depend on the outcome of the discussions relating to the proposed CSA Trade-Through Protection Rule.

b. Obligations of the marketplaces

We remind the marketplaces of the requirement in Part 7 of NI 21-101 to provide their data to TSX, as an information processor. In order to comply with this requirement, the marketplaces must, if they have not done so already, work with TSX, as an information processor, to establish the necessary connections on a timely basis. Upon publication of this notice, we expect marketplaces to immediately begin working with the TSX to establish connections and facilitate testing of those connections and the incorporation of that data into the existing TSX products. We acknowledge that providing information to the information processor and incorporating it into the feeds may take a number of months.

c. Review of marketplace data fees

Recently, concerns were raised regarding the existing levels of fees charged by marketplaces, and the potential for a pass-through model to lead to an increase of those fees. Some thought that an information processor could be used to set data fees and even control marketplace fees.

9 See undertaking 2c in Appendix B.

10 In Québec, options are not "exchange-traded securities", but are derivatives under the *Derivatives Act* (Québec) and are therefore already excluded.

The CSA will be undertaking a review of market data fees. This may entail reviewing the regulatory requirements relating to data fees globally; looking at fee models used by data consolidators, vendors and marketplaces in Canada and in other jurisdictions; understanding what steps other markets have taken to ensure that the cost (including data fees) and benefits of marketplace participation are aligned; and reviewing the options available to correct or mitigate potential abuses. Once this review is completed, we will consider what, if any, steps should be taken in this area. Such steps may include further regulation or other mechanisms to correct or mitigate any potential issues.

It is our view, however, that the critical need for consolidated data in a multiple marketplace environment, and the important fact that the TSX IP fee model maintains the status quo, both mean that we should proceed with the current information processor initiative before our review of market data fees is complete. We confirm our expectation that the distribution of a marketplace's data through an information processor will not lead that marketplace to charge unjustified or excessive fees for its data. We would like to remind marketplaces and marketplace participants that, currently, NI 21-101 provides us with a way to take action if the fees charged by marketplaces unreasonably prohibit, condition or limit access to the services of the marketplaces.[11] Such fees would include data fees charged through an information processor.

5. Questions

Questions may be referred to:

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June 5, 2009

11 Subsection 5.1(b) of NI 21-101 states that "[a] recognized exchange … shall not unreasonably prohibit, condition or limit access by a person or company to services offered by it". Similarly, subsection 6.13(b) of NI 21-101 states that "[a]n ATS shall not unreasonably prohibit, condition or limit access by a person or company to services offered by it".

APPENDIX A

SUMMARY OF TSX'S PROPOSAL FOR AN INFORMATION PROCESSOR FOR EXCHANGE-TRADED SECURITIES OTHER THAN OPTIONS

1. Corporate Governance

TSX Inc. (TSX) is wholly-owned by TMX Group Inc. (TMX Group), which is a publicly held company. TSX operates the Toronto Stock Exchange, and wholly owns TSX Venture Exchange Inc. Pursuant to NI 21-101, Toronto Stock Exchange and TSX Venture Exchange are required to contribute data to an information processor, if one is in place.

The TSX Information Processor (TSX IP) will be operated by the TMX Datalinx division of TSX. TMX Datalinx is the market data division of TMX Group. TMX Datalinx currently distributes equity market data for most equity marketplaces in Canada who contribute their data on a voluntary commercial basis. TMX Datalinx also obtains other data from a variety of marketplaces and partners which it distributes to downstream clients.

Personnel that would be involved in the operations of the TSX IP include staff from various TMX Group divisions representing data product management, sales, administration, vendor and customer support services, technologies, as well as staff from support functions such as finance and legal. Staff from independent, third party technology providers will also contribute to the operations of the TSX IP in accordance with documented service standards that are set out in the agreements that TSX has entered into with these third party providers. TMX Datalinx staff in particular will oversee the TSX IP's business and product development and manage operational priorities as well as any new policies and procedures related to enhancements and operational support.

The TSX IP will have a Governance Committee (IP Governance Committee). The IP Governance Committee will contribute to the development of a clear information processor strategy that is open, transparent and accountable. The IP Governance Committee will promote fair and impartial treatment for members and stakeholders and evaluate, on an ongoing basis, the IP Governance Committee's effectiveness.

Each marketplace that contributes data to the TSX IP will be entitled to nominate one representative on the IP Governance Committee. In addition, an individual who is independent of all marketplaces and TMX Group will sit on the IP Governance Committee in a non-voting capacity and act as Committee Chair. Each marketplace will have one voting seat.

The IP Governance Committee will have decision making authority with respect to scope of service, operational priorities and enhancements, bandwidth and capacity planning, criteria and methods for monitoring performance. Within the scope of service, the IP Governance Committee will establish the means in which to ensure the data set and quality of the TSX IP services are maintained and evaluated. As referenced above, TSX will appoint an independent, non-voting, Committee Chair of the IP Governance Committee.

The TSX IP will also establish a sub-committee of the IP Governance Committee (IP Advisory Sub-Committee), which will include additional representation from at least one data vendor, and one market participant from each of a buy and sell side firm. The IP Advisory Sub-Committee will have input into, and be a forum for raising issues on, TSX IP matters, and will be advisory in nature and non-voting. The IP Governance Committee will help determine the composition, structure and meeting frequency of the IP Advisory Sub-Committee.

To further address any perceived conflicts of interest, the TSX IP will implement policies and procedures to ensure that TSX staff who are not involved in operating the TSX IP do not acquire knowledge of, or access to, competitor data or client information. As well, TSX will enter into a universal information processor agreement with each contributing marketplace which will include detailed service level terms and change management and operational procedures which will ensure, on a commercial basis, that data transmitted to the TSX IP will not be inappropriately manipulated by TSX. Perceived conflicts of interest will also be mitigated by the use of a third party technology solution, as is described below under "Systems and Operations".

2. Systems and Operations

TMX Datalinx uses a range of in-house and independent, third party technologies to distribute Canadian equity, news, fixed income, derivatives, and foreign exchange decision support content to capital markets participants globally. In 2007, TMX Datalinx selected a global, market-leading independent technology provider to deploy and manage the TSX IP solution, the consolidated data feed (CDF) suite of products. The CDF solution is intended to offer an exchange independent solution by deploying third party technology and operational/technical support while leveraging existing TSX hosting infrastructure with connectivity to over 100 market data vendors, 7,000 clients, and over 153,000 subscriptions.

The CDF solution simultaneously distributes real-time consolidated data (running hot/hot) from two production environments in separate physical locations providing clients with flexible connectivity options (in terms of location) and redundancy. Either location can be accessed as the primary site. Information from a contributing marketplace can be transmitted to the TSX IP in its native format and will be normalized and consolidated by the TSX IP, saving marketplaces the one time and ongoing costs of building and supporting a new format for the TSX IP.

The CDF solution has been designed to provide timestamps when the data first touches its platform and timestamps when the data exits the platform, so that each marketplace and customer can monitor latency in real time, on a continuous basis.

TSX and its third party providers have procedures in place to add capacity to the TSX IP as required. The current technology is scalable through additional infrastructure, which is commoditized servers and operating systems. The TSX IP benefits from this independence while leveraging TMX Group's exchange grade data centers. Independent third party providers monitor system performance, manage capacity, and provide managed services for the CDF software applications and physical infrastructure while TMX Group staff provides infrastructure management for the facilities, network, and environmentals.

The TSX IP's technology providers will provide real-time and ongoing development support and 24/7 monitoring of software, hardware and helpdesk support.

The TSX IP will also rely on TMX Group's business continuity planning and disaster recovery planning model, which includes infrastructure investments and a detailed framework for operating markets and recovery from disasters, detailed planning procedures and 24/7 support. The CDF uses the TMX Datalinx distribution network of data distributors. With the recent combination with the Bourse de Montréal Inc., TMX Group now has its own network connectivity and points of presence in London, New York and Chicago, in addition to its existing network of major telecommunications carriers. Through these and other established connections, delivery of the data feed products are accessible almost anywhere in the world.

In addition to these resources, TMX Datalinx has a Senior Product Manager, Consolidated Data Feeds and a Services Analyst to provide business development and business support for the TSX IP. Users and marketplaces will also have access to TMX Vendor Services front line support.

3. Fees and Revenue Sharing

The TSX IP will operate a pass-through fee model, which TSX asserts is the global data feed standard used by most exchanges, specialist data services and data distributors. Under this model, contributing marketplaces enter into contractual agreements with data vendors and subscribers directly, allowing each marketplace's fees and policies to be passed along to the end users.

The TSX IP will not charge marketplaces any fees to connect or contribute to the TSX IP. The TSX IP will not charge end users any fees for the CDF, the Canadian Best Bid and Offer (CBBO) or the Consolidated Last Sale (CLS) (The CDF and CBBO are already in use by market participants.) The TSX IP will charge a nominal monthly IP distribution fee only applicable to data vendors and dealers that receive the CDF, CBBO and CLS data feeds for the purpose of redistributing the CDF, CBBO or CLS data. These monthly fees will be $500 per month for the CDF, $300 per month for the CBBO, and $300 per month for the CLS. Any significant changes to fees proposed by the TSX IP would be reviewed and approved by the Canadian Securities Administrators.

The TSX IP data feeds are designed to provide the full data sets required to meet regulatory trade through obligations while also lowering overall costs by economizing telecommunication, network and support expenditures.

4. Access

TSX anticipates that a variety of data vendors and dealers will want to access and/or re-distribute the CDF, CBBO, and/or CLS. All interested parties who execute the requisite data distribution agreement or addendum with TSX (as the information processor) and with each marketplace will be permitted to access and/or re-distribute data from the TSX IP. Individual subscribers will need to contract directly with a contributing marketplace in order to receive that marketplace's data.

There are a variety of telecommunication options for industry constituents to access the TSX IP hosted facilities, and in the vast majority of cases, those constituents will be able to access the TSX IP system using their existing communications links. Marketplaces can report their data to the TSX IP in their existing format and the TSX IP will disseminate in a widely used and adopted data format.

5. Selection of Securities Reported to the Information Processor and Services Provided by the Information Processor

The TSX IP will consolidate data for all exchange-traded securities other than options, as required under NI 21-101. As required, the TSX IP will work with the marketplaces and Canadian Securities Administrators to determine if there is a regulatory reason to expand the type or scope of securities. The TSX IP will use the Symbol Status message sent out daily in each of the CDF services to communicate all symbols in each service.

The scope of services to be offered by the TSX IP to permit market participants to address their regulatory trade through protection obligations are the CDF, CBBO and CLS. Details about each service are provided below.

a. Consolidated Data Feed (CDF)

The CDF feed provides access to pre- and post-trade market data from each contributing marketplace, through existing telecommunications links to TSX. As a multicast feed of consolidated data, where each marketplace is a permissionable data stream, CDF allows for a scalable solution for end users to acquire market data from the TSX IP for one or more marketplaces.

The TSX IP receives, normalizes, captures, and publishes all business content from the marketplaces contributing to the TSX IP including all data fields, markers, and tags for pre-and post-trade content. Specifically, this collection, processing, validation and publication of information captures all trade, order, cancellations, business content, market state and stock state messages. All messages have a consolidation of timestamps added indicating the time the message was received and published, enabling market participants to measure CDF performance. Each CDF message will contain the following mandatory fields:

- Attributed marketplace (Source)
- Timestamp from Source
- Timestamp received by the CDF
- Timestamp published by the CDF
- Business Class (order, cancel, trade)
- Business Action (buy, sell, trade, cancel)
- Broker Number
- Order Number
- Trade Number
- Volume
- Price
- Symbol
- Special Terms Markers

b. Canadian Best Bid and Offer (CBBO)

The CBBO feed provides real-time access to the consolidated Canadian best bid and offer for exchange-traded securities other than options, as required under NI 21-101. The TSX IP aggregates all business content from the marketplaces contributing to the TSX IP including all data fields, markers, and tags for pre-trade messages. This collection, processing, validation and publication of a consolidated best bid and best offer include the attributed marketplace(s), aggregated volume and price. Each CBBO message will contain the following mandatory fields:

- Attributed marketplace (“Source”)
- Timestamp received by the CDF
- Timestamp published by the CDF

- Business Action (bid, ask)
- Aggregated Volume
- Price
- Symbol

c. Consolidated Last Sale (CLS)

The CLS feed provides real-time last sale data from contributing marketplaces commingled in a normalized consolidated feed. Each CLS message will contain attributed data for each trade and trade cancellation message including the following mandatory fields:

- Attributed marketplace (Source)
- Timestamp from Source
- Timestamp received by the CDF
- Timestamp published by the CDF
- Business Action (trade, trade cancellation)
- Broker Number (buyer and seller)
- Order Number
- Trade Number
- Volume
- Price
- Symbol
- Crosstype (Basis, Contingency, VWAP, Cash, Delayed Delivery, etc.)

d. Other service capabilities of the TSX IP

The CDF includes a software application which consumes the normalized market data and can publish a single consolidated view of the order book. The CDF technology permits the inclusion of a consolidated depth of book product at such time that the requirements and guidelines for a product that allows market participants to meet their regulatory trade through protection obligation has been determined by the Canadian Securities Administrators.

APPENDIX B

UNDERTAKINGS PROVIDED BY TSX

In connection with the updated Form 21-101F5 (F5) filed by TSX Inc. (TSX) on April 24, 2009 and revised on May 21, 2009 and its role as the information processor (TSX IP) for exchange-traded securities other than options[12] TSX undertakes the following:

1. Changes to Form 21-101F5

a. As required by section 14.2 of National Instrument 21-101 *Marketplace Operation* (NI 21-101), TSX will file with the CSA amendments to the information provided in Form 21-101F5. The significant changes referred to in section 14.2(1) of NI 21-101 will be reviewed and approved by CSA staff prior to their implementation. These significant changes include:

- changes to the governance of the TSX IP, including the structure of its Governance Committee (IP Governance Committee) and the IP Advisory Sub-Committee,
- significant changes to the fees related to the services provided by the TSX IP, including subscriber access fees and distribution fees,
- changes to the fee structure and fee / revenue sharing model related to the services provided by the TSX IP,
- changes to the data products offered by the TSX IP,
- significant changes to the systems and technology used by the TSX IP, including those affecting capacity, or
- changes that would have the effect of increasing the TSX IP's level of dependence on TMX Group Inc. proprietary technology.

b. TSX IP will notify CSA staff of the representatives of the IP Governance Committee and the IP Advisory Sub-Committee, and will provide notice of any changes to those representatives.

2. Governance and Conflicts of Interest

a. The Boards of Directors of TMX Group Inc. and TSX will not be involved in IP Governance Committee decisions relating to the scope of service, operational priorities, bandwidth, capacity planning, performance management, including service levels, and the fee and revenue sharing model related to the TSX IP.

b. By July 31, 2009, the TSX IP will establish policies and procedures to separate TSX's marketplace business operations from the TSX IP operations and manage inherent conflicts of interest and provide them to CSA staff for review and approval.

c. The technology used by the TSX IP will not give the Toronto Stock Exchange or TSX Venture Exchange an unfair advantage with respect to their data as compared to other marketplaces.

3. IP Products

a. The TSX IP will only distribute the following products which are described in Form 21-101F5 (together, the Consolidated Data Products):

- the Consolidated Data Feed (CDF);
- the Canadian Best Bid and Offer (CBBO);
- the Consolidated Last Sale (CLS); and
- the Consolidated Depth of Book Feed.

12 In Québec, options are not "exchange-traded securities", but are derivatives under the *Derivatives Act* (Québec) and are therefore already excluded.

b. The TSX IP will not distribute any additional products using the data provided to it under Part 7 of NI 21-101 unless it obtains prior approval from CSA staff.

c. TSX will submit the final specification related to the CLS and the Consolidated Depth of Book Feed products to CSA staff for review and approval prior to the launch of the CLS and Consolidated Depth of Book Feed.

d. The TSX IP will use reasonable efforts to launch[13] the CLS product within 3 months of the later of (i) July 1, 2009, and (ii) the date of receipt of the CSA approval as required in paragraphs 3c and 4b. The TSX IP will use reasonable efforts to launch the CLS product with data from those marketplaces that are not currently contributing their data within 4 months of the later of (i) July 1, 2009, and (ii) the date of receipt of the CSA approval as required in paragraphs 3c and 4b. For greater certainty, the TSX IP will not be responsible for delays to the launch of the CLS product that are attributable to factors outside of the reasonable control of the TSX IP, including the timely performance of necessary activities by marketplaces and other third parties.

e. The TSX IP will use reasonable efforts to launch the Consolidated Depth of Book Feed within 6 months of the later of (i) July 1, 2009, and (ii) the date of receipt of the CSA approval as required in paragraphs 3c and 4b. For greater certainty, the TSX IP will not be responsible for delays to the launch of the Consolidated Depth of Book Feed that are attributable to factors outside of the reasonable control of the TSX IP, including the timely performance of necessary activities by marketplaces and other third parties.

f. As provided by the TSX IP, each data product comprising the Consolidated Data Products is permitted to be bundled for sale to Data Purchasers[14], but will also be made available as separately permissionable feeds.

g. If TSX, or any affiliate (as defined in the *Securities Act* (Ontario)), intends to create and distribute products, using the data provided to the TSX IP under Part 7 of NI 21-101, through its commercial distribution channels and not through the TSX IP:

   i. the data required to be provided to the TSX IP by Data Contributors[15] will not be used for such other products without the permission of the Data Contributors; and

   ii. the additional products will be made available for purchase separately from, and will not be bundled with, the Consolidated Data Products and any other products approved under paragraph 3b.

   TSX will not provide an associate (as defined in the *Securities Act* (Ontario)) with the underlying data which is provided by the Data Contributors to the TSX IP for the purposes of creating the Consolidated Data Products without the permission of the Data Contributors.

h. The TSX IP will consolidate, update and provide in real-time the Consolidated Data Products during the hours of operation of any Canadian marketplace required to provide information to an information processor under NI 21-101, provided that the TSX IP can perform normal course recycle, batch and maintenance operations. TSX IP will provide customer support between the hours of 7:30 -17:30 and 24/7 technical support of the TSX IP.

4. Agreements with Data Contributors

a. The TSX IP will ensure that all Data Contributors are given access to the TSX IP on fair and reasonable terms.

b. The standard agreements or contracts to be entered into between TSX IP and Data Contributors in connection with the TSX IP services will be provided to CSA staff for review and approval prior to their execution. In addition, any proposed material changes to these standard agreements or contracts will be provided to CSA staff for review and approval.

5. Fees / Fee structure / Revenue sharing

a. TSX will make the fee schedule for the Consolidated Data Products available on its website.

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13 For purposes of paragraphs 3(d) and 3(e), a "launch" is achieved when the respective Consolidated Data Product is available for beta testing by market participants.

14 For the purposes of this reference and any subsequent reference, the term Data Purchaser includes subscribers, vendors, and any other party that purchases any data product offered by the TSX IP.

15 For the purposes of this reference and any subsequent reference, the term Data Contributor includes marketplaces and any other party that provides data to the TSX IP under requirements in NI 21-101 to provide order and trade information to an information processor.

b. If any adjustment or modification is proposed to fees, fee structure, or the fee / revenue sharing model relating to the services of the TSX IP, the TSX IP will ask the IP Governance Committee to seek input from the IP Advisory Sub-Committee prior to approving such adjustments or modifications.

c. The TSX IP will report annually to CSA staff, in writing, whether TSX has fully recovered its costs (including cost of capital and cost associated with reporting requirements under subsections 14.4(2), (4), and (5) of NI 21-101) associated with offering the TSX IP services and will review and report on whether the profit margin received from the TSX IP services is in line with industry standards.

d. If there are excess revenues over costs plus a reasonable profit margin, and that excess is not allocated to operating and/or capacity expansion of the TSX IP, the TSX IP will examine its options for the use of that excess revenue and analyze and recommend an appropriate use to the IP Governance Committee. The TSX IP will ask the IP Governance Committee to review the analysis and recommendations and provide its views in writing to the TSX IP. The analysis, recommendations and the views of the IP Governance Committee will be provided to CSA staff within 30 days of the IP Governance Committee having received the analysis and recommendations.

e. As of July 1, 2012 (Review Initiation Date), the TSX IP will conduct a review of the 'pass-through' fee model. Such review will examine the fee models used by data consolidators in other jurisdictions and the cost of data in Canada. It will also consider reports or studies available at the time of the review. A report outlining the conclusions from the review and the basis for those conclusions, along with any recommendations, will be provided to the IP Governance Committee promptly upon completion. The TSX IP will ask the IP Governance Committee to review the report and provide its views in writing to the TSX IP. The report and the views of the IP Governance Committee will be provided to CSA staff within 90 days of the Review Initiation Date.

6. Non-exclusivity

a. TSX acknowledges that the selection of an information processor does not grant that information processor exclusive rights to consolidating and disseminating order and trade data. The TSX IP will not seek exclusivity through the terms of any contract relating to the Consolidated Data Products, or involving the data underlying the Consolidated Data Products, with a Data Contributor or Data Purchaser.

7. Self-assessment

a. In addition to arranging for an annual independent system review referred to in section 14.5 of NI 21-101, the TSX IP will conduct an annual self-assessment of its compliance with subsections 14.4(2), (4), and (5) of NI 21-101 and with its performance with respect to the undertakings provided to the CSA. A report on the self-assessment will be provided to the IP Governance Committee promptly upon its completion. The TSX IP will ask the IP Governance Committee to review the report and provide its views in writing. The report and the views of the IP Governance Committee will be provided to CSA staff within 90 days of the end of the TSX IP's fiscal year.

8. Financial Viability

a. TSX will provide the TSX IP with sufficient financial and other resources to ensure its financial viability and the proper performance of its functions.

9. Term and Notice

a. TSX will act as an information processor for exchange traded securities other than options[16] for a period of five years starting from July 1, 2009 (5-year term). TSX will provide CSA staff with at least one year notice should it determine that it does not wish to continue to act as an information processor upon the expiry of the 5-year term.

16 In Québec, options are not "exchange-traded securities", but are derivatives under the *Derivatives Act* (Québec) and are therefore already excluded.

1.2 Notices of Hearing

1.2.1 Robert Kasner – s. 127

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

AND

IN THE MATTER OF
ROBERT KASNER

NOTICE OF HEARING
(Section 127)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the *Securities Act* (the "*Act*") at the Commission's offices on the 17th floor, 20 Queen Street West, Toronto, Ontario, commencing on Wednesday, June 3, 2009, at 10:00 a.m. or as soon thereafter as the hearing can be held.

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

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

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

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

DATED at Toronto this 29th day of May, 2009

"Daisy Aranha"
Per: John Stevenson
Secretary to the Commission

1.2.2 Teodosio Vincent Pangia – s. 127

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

AND

IN THE MATTER OF
TEODOSIO VINCENT PANGIA

NOTICE OF HEARING
(Section 127)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission, 20 Queen Street West, commencing on June 1, 2009 at 1:30 pm. or as soon thereafter as the hearing can be held,

TO CONSIDER whether, it is in the public interest for the Commission:

(a) to make an order pursuant to section 127(1) clause 2 of the Act that trading in securities by the Respondents cease permanently or for such period as specified by the Commission;

(b) to make an order pursuant to section 127(1) clause 2.1 of the Act that acquisition of any securities by the Respondents be prohibited permanently or for such period as is specified by the Commission;

(c) to make an order pursuant to subsection 127(1) clause 3 of the Act that any exemptions in Ontario securities law do not apply to the Respondents permanently or for such period as specified by the Commission;

(d) to make an order pursuant to section 127(1) clause 7 of the Act that the Respondent resign any position that he holds as a director or officer of an issuer;

(e) to make an order pursuant to section 127(1) clause 8 of the Act that the individual Respondents be prohibited from becoming or acting as an officer or director of any issuer permanently or for such period as specified by the Commission;

(f) to make an order pursuant to section 127(1) clause 8.1 that the Respondent resign one or more positions that he holds as director or officer of a registrant;

(g) to make an order pursuant to section 127(1) clause 8.2 that the Respondent is prohibited from becoming a director or officer of a registrant permanently or for such period as specified by the Commission;

(h) to make an order pursuant to section 127(1) clause 8.5 that the Respondent is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter, permanently or for such period as specified by the Commission;

(i) to make an order pursuant to section 127(1) clause 9 of the Act that the Respondents each pay an administrative penalty of not more than $1 million for each failure of Respondent to comply with Ontario securities law;

(j) to make an order pursuant to section 127(1) clause 6 of the Act that the individual Respondent be reprimanded;

(k) to make an order pursuant to section 127.1 of the Act that the Respondent pay the costs of Staff's investigation and the costs of, or related to, this proceeding, incurred by or on behalf of the Commission; and

(l) to make such other order or orders as the Commission considers appropriate.

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

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

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

DATED at Toronto this 29th day of May, 2009.

"Daisy Aranha"
Per: John Stevenson
Secretary to the Commission

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

AND

IN THE MATTER OF
TEODOSIO VINCENT PANGIA

AMENDED STATEMENT OF ALLEGATIONS
OF STAFF OF THE
ONTARIO SECURITIES COMMISSION

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

I. THE RESPONDENT

1. Teodosio Vincent Pangia ("Pangia") is a resident of Burlington, Ontario. He is not registered to trade in securities in Ontario.

2. On December 16, 2003, in addition to ordering other sanctions, the Ontario Securities Commission permanently banned Pangia from:

   a. trading in securities,

   b. using any exemptions contained in Ontario securities law, or

   c. becoming or acting as a director and/or officer of any issuer.

   The Commission further ordered Pangia to undertake to never apply for registration in any capacity under Ontario securities law.

II. ALLEGATIONS

3. In November and December 2008, Pangia drafted a lengthy Business Plan for Transdermal Corp. ("Transdermal"), a cosmetics and skin care business incorporated in the State of Nevada, U.S.A. During the same period, Pangia provided the Business Plan to potential investors and used it and the representations contained in it as a platform to solicit investment in the company.

4. At the material time, Transdermal had a business office in Burlington, Ontario, at the same address as Pangia's residence. Transdermal's securities are not known to be listed on any exchange. Transdermal has not filed a prospectus with the Commission, nor received a receipt.

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

5. Pangia engaged in acts in furtherance of trades in securities of Transdermal in Ontario, contrary to

his permanent ban and contrary to s. 25(1)(a) of the *Securities Act* (the "Act").

6. By acting as described above, the Respondent acted contrary to Ontario securities law, contrary to the public interest and in a manner that is harmful to the integrity of Ontario's capital markets.

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

DATED at Toronto this 29th day of May, 2009.

1.2.3 Lehman Cohort Global Group Inc. et al. – ss. 127(7), 127(8)

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

AND

IN THE MATTER OF
LEHMAN COHORT GLOBAL GROUP INC.,
ANTON SCHNEDL, RICHARD UNZER,
ALEXANDER GRUNDMANN AND
HENRY HEHLSINGER

NOTICE OF HEARING
Section 127(7) and 127(8)

WHEREAS on May 20, 2009, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order pursuant to sections 127(1) and 127(5) (the "Temporary Order") of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering the following:

i) that all trading in any securities by Lehman, Anton Schnedl ("Schnedl"), Richard Unzer ("Unzer"), Alexander Grundmann ("Grundmann") and Henry Hehlsinger ("Hehlsinger") shall cease;

ii) that any exemptions contained in Ontario securities law do not apply to Lehman or its agents or employees; and

iii) that any exemptions contained in Ontario securities law do not apply to Schnedl, Unzer, Grundmann and Hehlsinger.

TAKE NOTICE THAT the Commission will hold a hearing pursuant to subsections 127(7) and (8) of the Act at the offices of the Commission, 20 Queen Street West, 17th Floor, commencing on June 4, 2009 at 9:00 a.m., or as soon thereafter as the hearing can be held;

TO CONSIDER whether it is in the public interest for the Commission:

1) to extend the Temporary Order pursuant to subsections 127(7) and (8) of the Act until the conclusion of the hearing, or until such further time as considered necessary by the Commission; and

2) to make such further orders as the Commission considers appropriate;

BY REASON OF the facts recited in the Temporary Order and of such allegations and evidence as counsel may advise and the Commission may permit;

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

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

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

"Josee Turcotte"
Per: John Stevenson
Secretary to the Commission

1.2.4 Goldpoint Resources Corporation et al. – ss. 127(7), 127(8)

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

AND

IN THE MATTER OF
GOLDPOINT RESOURCES CORPORATION,
PASQUALINO NOVIELLI also known as
Lee or Lino Novielli, BRIAN PATRICK MOLONEY
also known as Brian Caldwell, and
ZAIDA PIMENTEL also known as Zaida Novielli

NOTICE OF HEARING
Sections 127(7) and 127(8)

WHEREAS on April 30, 2008, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order pursuant to sections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering: that all trading in securities by Goldpoint Resources Corporation ("Goldpoint") shall cease; that all trading in Goldpoint shall cease; and, that Lino Novielli ("Novielli"), Brian Moloney ("Moloney"), Evanna Tomeli ("Tomeli"), Robert Black ("Black"), Richard Wylie ("Wylie"), and Jack Anderson ("Anderson") are ordered to cease trading in all securities (the "Temporary Order");

AND WHEREAS the Temporary Order has been extended, from time to time, as against each of Goldpoint, Novielli, and Moloney until June 15th, 2009;

AND WHEREAS on May 14th, 2009, the Commission ordered that the Hearing on the Merits of this matter shall be held commencing on Monday, 21st of September 2009 through to October 2nd, 2009, with the exception that the hearing will not held on September 29th, 2009. The Hearing on the Merits will commence each day at 10:00 a.m. at the offices of the Commission on the 17th floor, 20 Queen Street West in Toronto.

TAKE NOTICE THAT the Commission will hold a hearing pursuant to subsections 127(7) and (8) of the Act at the offices of the Commission, 20 Queen Street West, 17th Floor, on June 15th, 2009 at 10:00 a.m., or as soon thereafter as the hearing can be held;

TO CONSIDER whether it is in the public interest for the Commission:

1) to extend the Temporary Order, pursuant to subsections 127(7) and (8) of the Act , as against Goldpoint, Novielli, and Moloney until the conclusion of the Hearing on the Merits, or until such further time as considered necessary by the Commission;

2) to make such further orders as the Commission considers appropriate;

BY REASON OF the facts recited in the Temporary Order and of such allegations and evidence as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 26th day of May, 2009.

"Daisy Aranha"
Per: John Stevenson

1.3 News Releases

1.3.1 Sunwide Finance Inc. et al.

FOR IMMEDIATE RELEASE
May 29, 2009

OSC ISSUES REASONS AND DECISION AND ORDERS SANCTIONS IN THE MATTER OF SUNWIDE FINANCE INC., ET AL.

TORONTO – A panel of the Ontario Securities Commission (OSC) today published its Reasons and Decision in a case dealing with misrepresentations made by Sunwide Finance Inc. (Sunwide) and its representatives for the sole purpose of obtaining and appropriating monies from investors through advance fees.

In concluding that certain of the respondents breached section 25(1)(a) of the Ontario *Securities Act* and acted contrary to the public interest, the OSC panel held that it has a "public interest in ensuring that Ontario capital markets are not used ... to perpetrate sham transactions and to misappropriate investor funds, wherever those investors may be located. That behaviour undermines the integrity of Ontario capital markets and their reputation in the rest of the world for fairness and integrity."

The Commission ordered sanctions against each of Sunwide, Sun Wide Group, Sun Wide Insurers, Bryan Bowles, Robert Drury, George Sutton, Lorenzo Romero and Rafael Pangilinan that include a permanent cease trade in securities; a permanent prohibition from acquiring any security; a permanent prohibition from becoming or acting as a director or officer of any issuer, registrant, investment fund manager or promoter in the province of Ontario; and a permanent removal of the applicability of the exemptions contained in Ontario securities law.

Copies of the Commission's Reasons and Decision and Order for Sanctions and Costs are available on the Commission's website (www.osc.gov.on.ca).

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1.3.2 Canadian Securities Regulators Announce that TSX Inc. will Act as an Information Processor for Exchange-Traded Securities

FOR IMMEDIATE RELEASE
June 5, 2009

CANADIAN SECURITIES REGULATORS ANNOUNCE THAT TSX INC. WILL ACT AS AN INFORMATION PROCESSOR FOR EXCHANGE-TRADED SECURITIES

Toronto – The Canadian Securities Administrators (CSA) today published CSA Staff Notice 21-309 *Information Processor for Exchange-Traded Securities other than Options*. The notice informs the public that TSX Inc. (TSX) will act as an information processor for exchange-traded securities other than options, commencing July 1, 2009 for a period of five years.

"In today's multiple marketplace environment, data consolidation is important for both marketplace participants and investors. An information processor would ensure that they have access to information from all of the marketplaces," said Jean St-Gelais, CSA Chair and President, Autorité des marchés financiers.

In July 2006, the CSA published a notice inviting any interested party to file an application to become an information processor for exchange-traded securities. An information processor provides consolidated data to investors and market participants, facilitating compliance with regulatory requirements. The Bourse de Montréal Inc. (MX), CDS Inc. (CDS), and TSX submitted applications. Since the initial filing, the MX and CDS withdrew their applications. Over the course of the application process, the TSX also revised its proposal. The CSA is of the view that the revised TSX proposal meets all of the criteria set out in the 2006 notice. The information processor is designated as a market participant under the *Securities Act* (Ontario) and has been recognized as an information processor under the *Securities Act* (Québec).

During the review process, the CSA evaluated the applications to assess the applicants' ability to meet the requirements of National Instrument 21-101 *Marketplace Operation* including requirements related to: the applicant's systems and performance capabilities; standards and procedures for the collection, processing, distribution and publication of data; marketplace access to the information processor on fair and reasonable terms; sufficiency of financial resources; qualification of personnel; and existence of other information processors. The CSA also considered the applicants' governance, processes to manage inherent conflicts of interest, fee structure and the fairness of their revenue allocation methods.

CSA Staff Notice 21-309 is available on the websites of the various CSA members. For more information, please refer to the attached backgrounder.

The CSA, the council of securities regulators of Canada's provinces and territories, coordinates and harmonizes regulation for the Canadian capital markets.

For more information:

Carolyn Shaw-Rimmington
Ontario Securities Commission
416-593-2361

Sylvain Théberge
Autorité des marchés financiers
514-940-2176

Mark Dickey
Alberta Securities Commission
403-297-4481

Ken Gracey
British Columbia Securities Commission
604-899-6577

Ainsley Cunningham
Manitoba Securities Commission
204-945-4733

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

Natalie MacLellan
Nova Scotia Securities Commission
902-424-8586

Barbara Shourounis
Saskatchewan Financial Services Commission
306-787-5842

Janice Callbeck
Department of the Attorney General
Prince Edward Island
902-368-4552

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

Fred Pretorius
Yukon Securities Registry
867-667-5225

Louis Arki
Nunavut Securities Office
867-975-6587

Donn MacDougall
Northwest Territories
Securities Office
867-920-8984

CSA Staff Notice 21-309 *Information Processor for Exchange-Traded Securities Other Than Options*

Questions and Answers

1. *What information will TSX as the information processor offer?*

   TSX as the information processor will disseminate the following products:

   - "Consolidated Data Feed", which will provide access to pre- and post-trade market data from each contributing marketplace;
   - "Consolidated Last Sale", which will provide consolidated, real-time last sale data from all contributing marketplaces; and
   - "Canadian Best Bid and Offer", which will provide a consolidated best bid and offer for all equity securities

   The inclusion of a consolidated depth-of-book product will depend on the outcome of the discussions relating to the proposed CSA Trade-Through Protection Rule (amendments to National Instrument 21-101 *Marketplace Operation* and NI 23-101 *Trading Rules* published on October 17, 2008). The consolidated depth-of-book product would provide a single consolidated view of the order book.

2. *Are market participants required to purchase the information provided by the information processor?*

   No. The information processor is not the only source from which real-time data can be obtained. Participants may rely on other data sources to obtain the data that they need, such as information vendors or direct data feeds from the marketplaces.

3. *How will TSX address the conflicts of interest, whether real or perceived, associated with it being a competing marketplace and an information processor?*

   The primary steps to be taken by TSX in addressing potential conflicts of interest are as follows:

   - a Governance Committee with marketlace representation will be established that will make decisions with respect to significant areas of the operations of the information processor;
   - policies and procedures will be established to ensure that TSX staff who are not involved in operating the information processor do not acquire knowledge of, or access to, competitor data or client information;
   - agreements with contributing marketlaces will include detailed terms that will ensure, on a commercial basis, that data transmitted to the TSX information processor will not be inappropriately manipulated by TSX; and
   - third party technology, that will be independent from the technology of the exchanges owned and operated by TSX, will be used to consolidate the data.

   In addition, TSX has provided undertakings (included at Appendix B to the Notice) to address governance and conflicts, including that the TSX information processor will not give the Toronto Stock Exchange or TSX Venture Exchange an unfair advantage with respect to their data as compared to other marketplaces.

4. *Why is TSX allowed to act as an IP given the recent data outages?*

   The recent data outages related to the dissemination of TSX's own trading data. The Consolidated Data Feed technology to be used for the information processor function was unaffected and continued to disseminate consolidated data for all other marketplaces that use the service. More information can be obtained from the TSX.

5. *What is the impact of the information processor on fees for market data?*

   The information processor's fee model maintains the status quo with respect to market data fees. Marketplace participants will continue to pay current fees charged by each marketplace for consolidated data obtained through the information processor. We expect that data fees will not increase as a result of the introduction of an information processor. In addition, we note that we will be monitoring marketplaces to ensure that the fees they charge, and pass through the information processor, do not unreasonably prohibit, condition, or limit access to their services.

   The CSA will begin a review of market data fees and will, upon the completion of this review, determine what, if any, steps may be needed to address any issues. We note that because it is important to have an information processor established now to consolidate data from multiple marketplaces, we decided not to delay the introduction of the information processor until the completion of this review.

1.4 Notices from the Office of the Secretary

1.4.1 Re MFDA By-law No. 1; Independent Financial Brokers of Canada v. OSC and MFDA

FOR IMMEDIATE RELEASE
May 27, 2009

IN THE MATTER OF
THE MUTUAL FUND DEALERS ASSOCIATION
OF CANADA BY-LAW NO. 1

BETWEEN

INDEPENDENT FINANCIAL BROKERS OF CANADA

AND

STAFF OF THE
ONTARIO SECURITIES COMMISSION
AND
STAFF OF THE
MUTUAL FUND DEALERS ASSOCIATION

TORONTO – The Commission will hold a hearing pursuant to sections 21.7 and 144 of the *Securities Act* to consider the application made by the Independent Financial Brokers of Canada for a review of the decision of the Commission approving the proposal of the Mutual Fund Dealers Association of Canada to amend Section 24.3 of MFDA By-Law No. 1, "regarding suspensions in certain circumtances", which was published in the OSC Bulletin on August 1, 2008.

The hearing will be held on June 5, 2009 at 10:00 a.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto in Hearing Room A.

A copy of the application is available at **www.osc.gov.on.ca**.

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1.4.2 Sunwide Finance Inc. et al.

FOR IMMEDIATE RELEASE
May 29, 2009

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

AND

IN THE MATTER OF
SUNWIDE FINANCE INC., SUN WIDE GROUP,
SUN WIDE GROUP FINANCIAL INSURERS &
UNDERWRITERS, BRYAN BOWLES,
ROBERT DRURY, STEVEN JOHNSON,
FRANK R. KAPLAN, RAFAEL PANGILINAN,
LORENZO MARCOS D. ROMERO AND
GEORGE SUTTON

TORONTO – Following a hearing held on November 19, 2008, the Commission issued its Reasons and Decision in the above noted matter. The Commission also issued a separate order giving effect to their decision on sanctions and costs.

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

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1.4.3 Gold-Quest International et al.

FOR IMMEDIATE RELEASE
May 28, 2009

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

AND

IN THE MATTER OF
GOLD-QUEST INTERNATIONAL,
HEALTH AND HARMONEY,
IAIN BUCHANAN AND LISA BUCHANAN

TORONTO – The Commission issued an Order which provides that the Amended Temporary Order against Gold-Quest and the Ontario Respondents is extended to June 25, 2009; and, the hearing to extend the Amended Temporary Order shall be held on June 25, 2009 at 2:00 p.m. or such other date as is agreed by the parties and determined by the Office of the Secretary.

A copy of the Order dated May 26, 2009 is available at **www.osc.gov.on.ca**.

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1.4.4 Paul Iannicca

FOR IMMEDIATE RELEASE
May 28, 2009

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

AND

IN THE MATTER OF
PAUL IANNICCA

TORONTO – The Commission issued an Order adjourning the hearing to June 25, 2009 at 2:00 p.m. or such other date as is agreed by the parties and determined by the Office of the Secretary for the purpose of having a pre-hearing conference.

A copy of the Order dated May 26, 2009 is available at **www.osc.gov.on.ca**.

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1.4.5 Gold-Quest International et al.

FOR IMMEDIATE RELEASE
May 28, 2009

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

AND

IN THE MATTER OF
GOLD-QUEST INTERNATIONAL,
1725587 ONTARIO INC. carrying on business as
HEALTH AND HARMONEY, HARMONEY CLUB INC.,
DONALD IAIN BUCHANAN, LISA BUCHANAN AND
SANDRA GALE

TORONTO – The Commission issued an Order adjourning the hearing to June 25, 2009 at 2:00 p.m. or such other date as is agreed by the parties and determined by the Office of the Secretary.

A copy of the Order dated May 26, 2009 is available at **www.osc.gov.on.ca**.

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1.4.6 Robert Kasner

FOR IMMEDIATE RELEASE
May 29, 2009

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

AND

IN THE MATTER OF
ROBERT KASNER

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Robert Kasner. The hearing will be held on June 3, 2009 at 10:0 a.m. in Hearing Room B on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated May 29, 2009 is available at **www.osc.gov.on.ca**.

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1.4.7 Teodosio Vincent Pangia and Transdermal Corp.

FOR IMMEDIATE RELEASE
May 29, 2009

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

AND

IN THE MATTER OF
TEODOSIO VINCENT PANGIA AND
TRANSDERMAL CORP.

TORONTO – Staff of the Ontario Securities Commission filed a Notice of Withdrawal today against the Respondent, Transdermal Corp. in the above noted matter.

A copy of the Notice of Withdrawal dated May 29, 2009 is available at **www.osc.gov.on.ca**.

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1.4.8 Andrew Keith Lech

FOR IMMEDIATE RELEASE
May 29, 2009

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

AND

IN THE MATTER OF
ANDREW KEITH LECH

TORONTO – The Commission issued an Order today in the above matter adjourning the hearing on the merits to July 22, 2009 at 10:00 a.m.

A copy of the Order dated May 29, 2009 is available at **www.osc.gov.on.ca**.

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1.4.9 Teodosio Vincent Pangia

FOR IMMEDIATE RELEASE
May 29, 2009

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

AND

IN THE MATTER OF
TEODOSIO VINCENT PANGIA

TORONTO – The Office of the Secretary issued a Notice of Hearing today setting the matter down to be heard on June 1, 2009 at 1:30 p.m. or as soon thereafter as the hearing can be held in the above named matter.

Staff of the Ontario Securities Commission filed an Amended Statement of Allegations today in the above noted matter.

A copy of the Notice of Hearing dated May 29, 2009 and the Amended Statement of Allegations dated May 29, 2009 are available at **www.osc.gov.on.ca**.

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1.4.10 Teodosio Vincent Pangia

FOR IMMEDIATE RELEASE
June 1, 2009

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

AND

IN THE MATTER OF
TEODOSIO VINCENT PANGIA

TORONTO – Following a hearing held today, the Commission issued an Order which provides that this matter is adjourned until July 23, 2009 at 2:00 pm.

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

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1.4.11 Lehman Cohort Global Group Inc. et al.

FOR IMMEDIATE RELEASE
June 2, 2009

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

AND

IN THE MATTER OF
LEHMAN COHORT GLOBAL GROUP INC.,
ANTON SCHNEDL, RICHARD UNZER,
ALEXANDER GRUNDMANN AND
HENRY HEHLSINGER

TORONTO – The Office of the Secretary issued a Notice of Hearing on June 1, 2009 setting the matter down to be heard on June 4, 2009 at 9:00 a.m. to consider whether it is in the public interest for the Commission:

(1) to extend the Temporary Order pursuant to subsections 127(7) and (8) of the Act until the conclusion of the hearing, or until such further time as considered necessary by the Commission; and

(2) to make such further orders as the Commission considers appropriate.

A copy of the Notice of Hearing dated June 1, 2009 and Temporary Order dated May 20, 2009 are available at **www.osc.gov.on.ca**.

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1.4.12 Robert Kasner

FOR IMMEDIATE RELEASE
June 2, 2009

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

AND

IN THE MATTER OF
ROBERT KASNER

TORONTO – The hearing scheduled to be held on June 3, 2009 at 10:00 a.m. to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Robert Kasner is adjourned to a further date to be determined.

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1.4.13 Goldpoint Resources Corporation et al.

FOR IMMEDIATE RELEASE
June 3, 3009

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

AND

IN THE MATTER OF
GOLDPOINT RESOURCES CORPORATION,
PASQUALINO NOVIELLI also known as
Lee or Lino Novielli, BRIAN PATRICK MOLONEY
also known as Brian Caldwell, and
ZAIDA PIMENTEL also known as Zaida Novielli

TORONTO – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on June 15, 2009 at 10:00 a.m. to consider whether it is in the public interest for the Commission:

(1) to extend the Temporary Order pursuant to subsections 127(7) and (8) of the Act, as against Goldpoint, Novielli, and Moloney until the conclusion of the Hearing on the Merits, or until such further time as considered necessary by the Commission; and

(2) to make such further orders as the Commission considers appropriate.

A copy of the Notice of Hearing dated May 26, 2009 is available at **www.osc.gov.on.ca**.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 AHL Investment Strategies SPC

Headnote

NP 11-203 – Relief from NI 81-106 and NI 41-101 for a foreign fund to prepare financial statements using International Financial Reporting Standards and have the financial statements audited using International Standards on Auditing; and relief granted from seed capital requirements for commodity pools in NI 81-104– Issuer is an existing investment fund in a foreign jurisdiction that already prepares financial statements in accordance with International Financial Reporting Standards; Investment Manager permitted to redeem $50,000 seed capital investment in the fund provided the fund has received subscriptions from investors other than the Investment Manager totalling at least $5.0 million and provided the Investment Manager maintain $100,000 in excess working capital.

Applicable Legislative Provisions

National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 2.6, 2.7.
National Instrument 41-101 General Prospectus Requirements, ss. 4.2(2).
Form 41-101F2 Information Required in an Investment Fund Prospectus, item 38.
National Instrument 81-104 Commodity Pools, ss. 3.2(2)(a), 10.1.

April 30, 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
AHL INVESTMENT STRATEGIES SPC
(the "Filer")

DECISION

Background

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

(1) pursuant to section 19.1 of National Instrument 41-101 – *General Prospectus Requirements* ("**NI 41-101**") from the requirements under subsection 4.2(2) of NI 41-101 and Item 38 of Form 41-101F2 *Information Required in an Investment Fund Prospectus* to permit:

(a) the Filer to include financial statements prepared using International Financial Reporting Standards ("**IFRS**"), rather than Canadian generally accepted accounting principles ("**GAAP**"), in the final prospectus (the "**Final Prospectus**") of the Filer to be filed in each of the Jurisdictions; and

(b) the Filer to use International Standards on Auditing ("**ISA**"), rather than Canadian generally accepted auditing standards ("**GAAS**"), in auditing the Filer's financial statements included in the Final Prospectus.

(2) pursuant to 17.1 of National Instrument 81-106 – *Investment Fund Continuous Disclosure* ("**NI 81-106**") from the requirements under:

(a) subsection 2.6 of NI 81-106, to permit the financial statements of the Filer to be prepared in accordance with IFRS, rather than Canadian GAAP; and

(b) subsection 2.7 of NI 81-106, to permit the financial statements of the Filer that are required to be audited to be audited in accordance with ISA, rather than Canadian GAAS.

(collectively, the "**Accounting and Audit Relief**"),

(3) pursuant to section 10.1 of National Instrument 81-104 – *Commodity Pools* ("**NI 81-104**") for a decision that the Filer be exempted from the requirements under subsection 3.2(2)(a) of NI 81-104, which requires a commodity pool to have invested in it at all times securities that were issued pursuant to paragraph 3.2(1)(a) of NI 81-104 and had an aggregate issue price of $50,000 (the "**Seed Capital Relief**").

(the Accounting and Audit Relief and the Seed Capital Relief are collectively referred to herein as, the "**Requested Relief**").

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

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

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

Interpretation

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

Representations

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

1. The Filer is incorporated with limited liability in the Cayman Islands and registered as a segregated portfolio company under the *Companies Law* (2007 Revision).

2. Pursuant to its Articles of Association, the Filer may issue separate classes of notes, the value of which will depend on a separate segregated portfolio of the Filer. Each segregated portfolio will have its own investment objective and investment strategy.

3. The Filer will establish and maintain a segregated portfolio (the "**AHL Portfolio**") and proposes to issue a series of Canadian dollar denominated redeemable Class C AHL Alpha CAD notes (the "**Notes**") that will constitute unsubordinated and unsecured obligations of the Filer, the value of which will depend on the AHL Portfolio.

4. The AHL Portfolio's investment objective is to provide investors with the opportunity to realize capital appreciation through investment returns that have a low correlation to traditional forms of stock and bond securities.

5. To pursue its investment objective, the AHL Portfolio will invest the proceeds of any offering of Notes in a diversified portfolio of financial instruments across a range of global markets using a multi-strategy trading program.

6. Man Investments Limited (the "**Investment Manager**"), a company incorporated in England and Wales, which is regulated in the conduct of regulated activities in the United Kingdom by the Financial Services Authority of the United Kingdom, in its capacity as investment manager of the Filer, will provide investment advisory and portfolio management services in respect of the assets of the AHL Portfolio.

7. The Filer is a commodity pool as such term is defined in section 1.1 of NI 81-104, in that the Filer has adopted fundamental investment objectives that permit the Filer to use or invest in specified derivatives in a manner that is not permitted under National Instrument 81-102 – *Mutual Funds* ("**NI 81-102**").

8. The Filer will be subject to the investment restrictions contained in applicable Canadian securities legislation, including NI 81-102, and the AHL Portfolio will be managed in accordance with these restrictions, except as otherwise permitted by NI 81-104.

9. The Filer has filed a non-offering Preliminary Prospectus dated April 14, 2009 with the securities regulatory authorities in Ontario and Québec, a receipt for which was issued by the Commission and the Autorité des marchés financiers on April 14, 2009.

10. Once the Filer obtains a receipt for the Final Prospectus from the Commission and the Autorité des marchés financiers, pursuant to which it will become a reporting issuer under the *Securities Act* (Ontario) and the *Securities Act* (Québec), the financial statements and other reports required to be prepared and filed by the Filer in respect of the AHL Portfolio will be provided to holders of Notes ("**Noteholders**") and available through SEDAR.

11. The Filer and each of its segregated portfolios prepare their financial statements in accordance with IFRS and have their financial statements audited in accordance with ISA, which are accepted under the relevant legal and regulatory requirements of the Cayman Islands. It is intended that once the AHL Portfolio is established, the financial statements of the AHL Portfolio will be prepared in accordance with IFRS and audited in accordance with ISA.

12. The essential books and records of the Filer and each of its segregated portfolios, including the AHL Portfolio, required for an audit are primarily located in the United Kingdom.

13. Ernst & Young LLP, Cayman Islands ("**E&Y CI**") audits the financial statements of the Filer and each of its segregated portfolios in accordance with ISA. It is intended that once the AHL Portfolio is established, E&Y CI will audit the financial statements of the AHL Portfolio in accordance with ISA.

14. E&Y CI is registered with the Canadian Public Accountability Board.

15. The Canadian Accounting Standards Board has confirmed that publicly accountable enterprises will be required to prepare their financial statements in accordance with IFRS for interim and annual financial statements relating to fiscal years beginning on or after January 1,2011.

16. Under National Instrument 52-107 – *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* ("**NI 52-107**"), a "foreign issuer" is permitted to prepare its financial statements in accordance with IFRS and to have its audited financial statements audited in accordance with ISA, provided that an auditor's report describes any material differences in the form and content of such auditor's report as compared to an auditor's report prepared in accordance with Canadian GAAS and indicates that an auditor's report prepared in accordance with Canadian GAAS would not contain a reservation.

17. The Filer and each of its segregated portfolios would qualify as a "foreign issuer" under NI 52-107 but for the fact that it is an investment fund.

18. The Preliminary Prospectus discloses, and the Final Prospectus will disclose, the Filer's intention that the financial statements of the AHL Portfolio will be prepared in accordance with IFRS and audited in accordance with ISA as contemplated.

19. The Preliminary Prospectus is, and the Final Prospectus will be, a non-offering prospectus and no securities are will be offered thereunder. The Notes will be offered from time to time to investors that are resident outside of Canada.

20. The Notes may be purchased on a weekly basis at a price equal to the NAV of the Notes. The Notes may be redeemed on a weekly basis for a redemption price equal to the NAV of the Notes less any costs of funding the redemption and less, if applicable, the redemption fees payable in connection with redemptions of Notes. The Filer does not intend to list the Notes on any stock exchange.

21. As the investment manager of the Fund, the Investment Manager will be obliged to act in accordance with the Investment Management Agreement, which requires the Investment Manager to comply with all applicable laws with respect to the conduct of the Investment Manager's business and the provision of services under the Investment Management Agreement.

22. The Investment Manager is registered as an investment advisor and is regulated in the conduct of regulated activities in the United Kingdom by the Financial Services Authority of the United Kingdom.

23. The Filer and its directors or officers irrevocably and unconditionally submit to the non-exclusive jurisdiction of the judicial, quasi-judicial, and administrative tribunals of the Jurisdictions and any administrative proceedings in any such Jurisdiction, in any proceedings arising out of or related to or concerning the conditions and representations of the decision in connection with the Requested Relief or its activities as a reporting issuer.

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:

(a) in respect of the Accounting and Audit Relief,

  i. the annual financial statements of the AHL Portfolio for the Final Prospectus and for subsequent financial periods will be prepared in accordance with IFRS and audited in accordance with ISA as contemplated;

  ii. the interim financial statements of the AHL Portfolio for subsequent financial periods will be prepared in accordance with IFRS and audited in accordance with ISA as contemplated; and

  iii. the Filer provides the disclosure set out in paragraph 18; and

(b) in respect of the Seed Capital Relief,

  i. the Investment Manager may not redeem any of its initial investment of $50,000 in the AHL Portfolio until $5.0 million has been received by the AHL Portfolio from persons or companies other than the persons and companies referred to in paragraph 3.2(l)(a) of NI 81-104;

  ii. the basis on which the Investment Manager may redeem any of its initial investment of $50,000 from the AHL Portfolio is disclosed in the Preliminary

Prospectus or will be disclosed in the Final Prospectus;

iii. if, after the Investment Manager redeems its initial investment of $50,000 in the AHL Portfolio in accordance with condition (b)(i) above, the value of the Notes subscribed for by investors other than the persons and companies referred to in paragraph 3.2(l)(a) of NI 81-104 drops below $5.0 million for more than 30 consecutive days, the Investment Manager will, unless the AHL Portfolio is in the process of being dissolved or terminated, invest $50,000 in the AHL Portfolio and maintain that investment until condition (b)(i) is again satisfied; and

iv. the Investment Manager will at all times maintain excess working capital of a minimum of $100,000.

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

2.1.2 Certicom Corp. – s. 1(10)

Headnote

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

Applicable Legislative Provisions

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

May 27, 2009

Certicom Corp.
c/o Bennett Jones LLP
1 First Canadian Place, Suite 3400
Toronto, ON M5X 1A4

Attention: Ms. Melissa Robins

Dear Sirs/Mesdames:

Re: Certicom Corp. (the "Applicant") – Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, 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) in each of the Jurisdictions that the Applicant is not a reporting issuer.

As the Applicant has represented to the Decision Makers that:

1. 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;

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

3. 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

4. the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision

Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

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

2.1.3 PenderFund Capital Management Ltd. et al.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 81-102 Mutual Funds – Relief to allow short selling – A group of mutual funds seeks relief under section 19.1 of NI 81-102 from the requirements in NI 81-102 prohibiting short selling – The funds will operate primarily by investing in long positions in securities that they expect to increase in value; the funds wish to be able to use a limited amount of short selling, such that the market value of the securities sold short will not exceed 5% the net asset value of the fund; the principal risk of short selling is that it can lead to unlimited losses, since the shorted security can increase in value without limit; the funds will mitigate this risk by imposing a stop-loss limit – if the security increases in value by more than 20%, the security will be repurchased and the position closed; short selling also involves borrowing, since the shorted security has to be borrowed from a borrowing agent; borrowing can create leverage, which exposes a fund to greater volatility; the funds will eliminate this risk by maintaining the short selling proceeds as cash cover rather than investing it in additional securities; in order to borrow the securities to be shorted, the fund will have to post security with the borrowing agent.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, s. 19.1.

May 26, 2009

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

AND

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

AND

IN THE MATTER OF
PENDERFUND CAPITAL MANAGEMENT LTD.
(the Filer)

AND

IN THE MATTER OF
PENDER SMALL CAP OPPORTUNITIES FUND AND
PENDER CORPORATE BOND FUND
(individually, a Fund and collectively, the Funds)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Funds from the following requirements:

(a) section 2.6(a) of National Instrument 81-102 *Mutual Funds* (NI 81-102) prohibiting a mutual fund from providing a security interest over a mutual fund' s assets;

(b) 2.6(c) of NI 81-102 prohibiting a mutual fund from selling securities short; and

(c) section 6.1(1) of NI 81-102 prohibiting a mutual fund from depositing any part of a mutual fund's assets with an entity other than the mutual fund's custodian,

(together, the Exemption Sought).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, and Manitoba, 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 Filer:

1. the Filer is a company incorporated under the laws of British Columbia and is the manager of the Funds;

2. each Fund is a mutual fund trust established under the laws of British Columbia;

3. neither the Filer nor the Funds are in default of the Legislation;

4. the Funds have filed a preliminary simplified prospectus dated April 15, 2009 with the Decision Makers;

5. the investment practices of each Fund will comply in all respects with the requirements of Part 2 of NI 81-102, except to the extent that the Fund has received the Exemption Sought;

6. the Filer proposes that each Fund be authorized to engage in a limited, prudent and disciplined amount of short selling;

7. the Filer is of the view that each Fund could benefit from the implementation and execution of a controlled and limited short selling strategy;

8. this strategy would operate as a complement to the Fund's primary discipline of buying securities with the expectation that they will appreciate in market value;

9. any short sales made by a Fund will be subject to compliance with the investment objectives of such Fund;

10. in order to effect a short sale, a Fund will borrow securities from either its custodian or a dealer (in either case, the Borrowing Agent), which Borrowing Agent may be acting either as principal for its own account or as agent for other lenders of securities; and

11. each Fund will implement the following controls when conducting a short sale:

    a. securities will be sold short for cash, with the Fund assuming the obligation to return to the Borrowing Agent the securities borrowed to effect the short sale;

    b. the short sale will be effected through market facilities on which the securities sold short are normally bought and sold;

    c. the Fund will receive cash for the securities sold short within normal trading settlement periods for the market in which the short sale is effected;

    d. the securities sold short will be liquid securities in that:

        i. the securities will be listed and posted for trading on a stock exchange, and

            (A) the issuer of the security will have a market capitalization of not less than $100 million, or the equivalent, at the time the short sale is effected; or

(B) the investment advisor will have pre-arranged to borrow for the purposes of such short sale;

or

ii. the securities will be fixed-income securities, bonds, debentures or other evidences of indebtedness of or guaranteed by the Government of Canada or any province or territory of Canada or the Government of the United States of America;

e. at the time securities of a particular issuer are sold short:

i. the aggregate market value of all securities of that issuer sold short by the Fund will not exceed 5% of the net assets of the Fund; and

ii. the Fund will place a stop-loss order with a dealer to immediately purchase for the Fund an equal number of the same securities if the trading price of the securities exceeds 120% (or such lesser percentage as the portfolio advisor of the Fund may determine) of the price at which the securities were sold short;

f. the Fund may deposit Fund assets with the Borrowing Agent as security for the short sale transaction;

g. the Fund will keep proper books and records of all short sales and Fund assets deposited with Borrowing Agents as security;

h. the Fund will develop written policies and procedures for the conduct of short sales prior to conducting any short sales; and

i. the Fund will provide disclosure in its prospectus or annual information form of the short selling strategies and the details of this exemptive relief prior to implementing the short selling strategy.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

1. the aggregate market value of all securities sold short by the Fund does not exceed 20% of the net assets of the Fund on a daily marked-to-market basis;

2. the Fund holds "cash cover" (as defined in NI 81-102) in an amount, including the Fund assets deposited with Borrowing Agents as security in connection with short sale transactions, that is at least 150% of the aggregate market value of all securities sold short by the Fund on a daily marked-to-market basis;

3. no proceeds from short sales by the Fund are used by the Fund to purchase long positions in securities other than cash cover;

4. the Fund maintains appropriate internal controls regarding its short sales including written policies and procedures, risk management controls and proper books and records;

5. any short sale made by the Fund is subject to compliance with the investment objective of the Fund;

6. the short selling relief does not apply if the Fund is a money market fund;

7. for short sale transactions in Canada, every dealer that holds assets of the Fund as security in connection with short sale transactions by the Fund shall be a registered dealer in Canada and a member of a self-regulatory organization that is a participating member of the Canadian Investor Protection Fund;

8. for short sale transactions outside of Canada, every dealer that holds Fund assets as security in connection with short sale transactions by the Fund:

   a. is a member of a stock exchange and, as a result, be subject to a regulatory audit; and

   b. has a net worth in excess of the equivalent of $50 million determined from its most recent audited financial statements that have been made public;

9. except where the Borrowing Agent is the Fund's custodian, when the Fund deposits Fund assets with a Borrowing Agent as security in connection with a short sale transaction, the amount of Fund assets deposited with the Borrowing Agent does not, when aggregated with the amount of Fund assets already held by the Borrowing Agent as security for outstanding short sale transactions of the Fund, exceed 10% of the total net assets of the Fund, taken at market value as at the time of the deposit;

10. the security interest provided by the Fund over any of its assets that is required to enable the Fund to effect short sale transactions is made in accordance with industry practice for that type of transaction and relates only to obligations arising under such short sale transactions;

11. prior to conducting any short sales, the Fund discloses in its simplified prospectus or annual information form a description of: (a) short selling; (b) how the Fund intends to engage in short selling; (c) the risks associated with short selling; and (d) in the Investment Strategy section of the prospectus, the Fund's strategy and this exemptive relief;

12. prior to conducting any short sales, the Fund discloses in its simplified prospectus or annual information form the following information:

    a. that there are written policies and procedures in place that set out the objectives and goals for short selling and the risk management procedures applicable to short selling;

    b. who is responsible for setting and reviewing the policies and procedures referred to in the preceding paragraph, how often the policies and procedures are reviewed, and the extent and nature of the involvement of the board of directors or trustee in the risk management process;

    c. the trading limits or other controls on short selling in place and who is responsible for authorizing the trading and placing limits or other controls on the trading;

    d. whether there are individuals or groups that monitor the risks independent of those who trade; and

    e. whether risk measurement procedures or simulations are used to test the portfolio under stress conditions; and

13. this decision shall terminate upon the coming into force of any legislation or rule of the principal regulator dealing with the matter referred to in sections 2.6(a), 2.6(c), and 6.1(1) of NI 81-102.

"Andrew S. Richardson, CA"
Acting Director, Corporate Finance
British Columbia Securities Commission

2.1.4 Claymore Investments, Inc. and Claymore Gold Bullion Fund

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemptive relief granted to closed end fund convertible automatically into exchange traded fund offered in continuous distribution from 10% restriction on purchases of gold and certain mutual fund requirements and restrictions on: transmission of purchase or redemption orders, issuing units for cash or securities, calculation and payment of redemptions and date of record for payment of distributions – National Instrument 81-102 Mutual Funds.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.3(c), 9.1, 9.4(2), 10.2, 10.3, 14.1, 19.1.

May 28, 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
CLAYMORE INVESTMENTS, INC.
(the "Filer")

AND

IN THE MATTER OF
CLAYMORE GOLD BULLION FUND
(the "Fund")

DECISION

Background

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

1. Clause 2.3(e) of National Instrument 81-102 – *Mutual Funds* ("**NI 81-102**"), to permit the Fund to invest up to 100% of its net assets, taken at market value at the time of purchase, in physical gold bullion, of which no more than 10% of its net assets, taken at market value at the time of purchase, may be invested in permitted gold certificates;

2. Sections 9.1 and 10.2 of NI 81-102, to permit purchases and sales of Common Units (as defined below) of the Fund on the Toronto Stock Exchange (the "**TSX**");

3. Subsection 9.4(2) of NI 81-102, to permit the Fund to accept a combination of cash and physical gold bullion as subscription proceeds for Common Units;

4. Section 10.3 of NI 81-102, to permit the Fund to redeem less than the Prescribed Number of Common Units (as defined below) at a discount to their market price, instead of at their net asset value; and

5. Section 14.1 of NI 81-102, to permit the Fund to establish a record date for distributions in accordance with TSX Rules,

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

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

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

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

Interpretation

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

The following terms shall also have the meanings ascribed below:

"Common Units" means the trust units of the Fund, after Conversion (as defined below)..

"Designated Brokers" means registered brokers and dealers that enter into agreements with the Fund to perform certain duties in relation to the Fund.

"Prescribed Number of Common Units" means the number of Common Units of the Fund determined by Claymore from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

"Underwriters" means registered brokers and dealers that have entered into underwriting agreements with the Fund and that subscribe for and purchase Common Units from the Fund, and "Underwriter" means any one of them.

"Unitholders" means beneficial and registered holders of Common Units.

Representations

The Fund and the Filer

1. The Fund is a closed-end investment trust (a non-redeemable investment fund under the Legislation) governed by the laws of Ontario. A preliminary long form prospectus in respect of the Fund was filed via SEDAR under project No. 1406917 on April 21, 2009. A final prospectus for the Fund was filed and receipted on May 20, 2009, at which time the Fund became a reporting issuer under the securities legislation of each province and territory of Canada. The final prospectus will qualify the issuance of redeemable, transferable trust units of the Fund ("**Fund Units**") and purchase warrants ("**Warrants**"). Each Warrant will entitle its holder to purchase one Fund Unit at an exercise price of $10.00 at any time before 4:00 p.m. (Toronto time) on the date that is 6 months following the closing of the Fund's initial public offering (the "**Expiry Time**"). Any Warrant that is not exercised by the Expiry Time will be void and of no value.

2. The Filer is the trustee and manager of the Fund and is a registered investment counsel, portfolio manager and limited market dealer in Ontario and is registered as an investment adviser with the U.S. Securities and Exchange Commission under the Investment Advisers Act of 1940. The Filer is a wholly-owned subsidiary of Claymore Group, Inc., a financial services and asset management company based in Chicago, Illinois.

3. The principal office of the Filer and the Fund is located at 200 University Avenue, 13th Floor, Toronto, Ontario, M5H 3C6.

4. Neither the Filer nor the Fund is in default of the securities legislation of any province or territory of Canada.

The Fund's Investment Objective and Investment Restrictions

5. The investment objective of the Fund is to replicate the performance of the price of gold bullion, less the Fund's expenses and fees. The Fund does not anticipate making regular distributions.

6. The Fund has been created to provide holders of Units with an exposure to physical gold bullion with a currency hedge against the US dollar ("**USD**"). The Manager believes that the Fund will provide a secure, low-cost and convenient alternative to investors interested in holding gold bullion. Given that gold bullion is priced in USD,

the Fund will hedge substantially all of the Fund's USD currency value back to the Canadian dollar.

7. The Fund's investment restrictions provide that

   (a) the Fund will hold a minimum of 90% of its net assets in physical gold bullion in 100 or 400 troy ounce international bar sizes.

   (b) for working capital purposes, the Fund may hold no more than 10% of its net assets in:

      a. permitted gold certificates, as defined in NI 81-102, and

      b. cash and interest-bearing accounts, short-term government debt or short-term investment grade corporate debt.

8. The net proceeds of the Fund's initial public offering (the "**Offering**") will be used to purchase physical gold bullion (the "**Portfolio**") in accordance with the investment objective, strategy, policies and restrictions of the Fund.

The Fund Units and Warrants

9. The Filer has received conditional approval to list the Fund Units and Warrants on the TSX. The Filer has filed a final prospectus for the Fund and received a receipt therefor.

10. Commencing in 2010, Fund Units may be surrendered annually for redemption during the period from May 1 until 5:00 p.m. (Toronto time) on the 20th business day before the last business day in June in each year (the "**Notice Period**") subject to the Fund's right to suspend redemptions in certain circumstances. Fund Units surrendered for redemption during the Notice Period will be redeemed on the second last business day of June of each year (the "**Annual Redemption Date**") and Unitholders will receive payment on or before the 15th day following the Annual Redemption Date. Redeeming Unitholders will receive a redemption price per Fund Unit equal to the net asset value ("**NAV**") per Fund Unit determined as of the Annual Redemption Date less any costs and expenses incurred by the Fund in order to fund such redemption. Fund Units are also redeemable monthly for a redemption price determined by reference to the trading price of the Fund Units.

11. Neither Fund Units nor Common Units issued by the Fund will be Index Participation Units within the meaning of National Instrument 81-102 – *Mutual Funds* ("**NI 81-102**").

Conversion of the Fund to an ETF

12. The Fund is structured such that commencing after six months following the closing of the Offering, if for a period of 10 consecutive trading days, the daily weighted average trading price (or, in the event there has been no trading on a particular day, the average of the closing bid and ask prices) of the Fund Units reflects a discount of greater than 2% of NAV per Fund Unit for that day, there will be an automatic conversion (a "**Conversion**") of the Fund to an open-ended exchange-traded fund ("**ETF**"). In the event of a Conversion, the Fund's investment objective, investment strategy and investment restrictions will remain the same. After a Conversion, the Fund will be generally described as an ETF and would become a "mutual fund" under the Legislation and accordingly, would be subject to the provisions of NI 81-102.

13. At the time of a Conversion, the Fund will prepare and file a preliminary prospectus of the Fund relating to the proposed continuous distribution of Common Units issuable after Conversion and enter into the necessary designated broker and underwriting agreements in connection with such offerings. The Fund will not commence continuous distribution of the Common Units at least until the final prospectus in respect of such distribution has been receipted.

14. In the event of the Conversion of the Fund to an ETF, annual redemptions will no longer be available and Unitholders will be able to exchange and redeem their Common Units. After Conversion, on any trading day, Unitholders may exchange the Prescribed Number of Common Units (or an integral multiple thereof) for baskets of physical gold bullion and cash. Also after Conversion, on any trading day, Unitholders may redeem Common Units of the Fund for cash at a redemption price per Common Unit equal to 95% of the closing price for the Common Units on the TSX on the effective day of the redemption.

The Fund's Bullion Custody Arrangements

15. All of the Fund's physical gold bullion will be held by the Bank of Nova Scotia, acting through its ScotiaMocatta division (the "**Custodian**"). The majority of the Fund's physical gold bullion will be held on an allocated and segregated basis in the vault facilities of the Custodian or an affiliate or a division thereof or a sub-custodian, in a location in Canada. The remaining portion of the physical gold bullion will be held on an allocated and segregated basis in the vault facilities of the Custodian or an affiliate or a division thereof or a sub-custodian, in London and/or New York. The custody arrangements between the Fund and the Custodian or an affiliate or a division thereof, or a sub-custodian, will be governed by the terms of a

custodian agreement (the "Custodian Agreement"), or a sub-custodian agreement. After Conversion, the terms of the Custodian Agreement shall satisfy the custody provisions of Part 6 of NI 81-102, and the Custodian will comply with the requirements of Part 6 of NI 81-102, or the Fund shall apply for exemptive relief from these provisions prior to Conversion.

16. All gold bullion purchased by the Fund will be certified either "London Good Delivery" or "COMEX Good Delivery".

17. The Custodian maintains insurance as the Custodian deems appropriate against all risks of physical loss or damage except the risk of war, nuclear incident, terrorism events or government confiscation. The Custodian maintains insurance with regard to its business on such terms and conditions as it considers appropriate. The Fund is not a beneficiary of any such insurance and does not have the ability to dictate the existence, nature or amount of coverage.

18. The Custodian is one of the largest providers of gold storage services in Canada. The Manager has determined that the Custodian would be the appropriate choice to provide custodial services to the Fund. The following are some of the factors which the Manager considered in making this determination:

    (a) The Custodian is experienced in providing gold storage and custodial services and provides these services to two other large gold bullion funds in Canada, BMG Bullion Fund and Sprott Gold Bullion Fund;

    (b) The Custodian has advised the Fund that it has sufficient storage space in Canada, New York and London to hold the physical gold bullion to be purchased by the Fund, which is the principal asset of the Fund. This is an important factor given the amount of physical gold bullion which the Fund expects to purchase in connection with the initial public offering of its Units and the potential for significant additional purchases if the Warrants are exercised;

    (c) The Custodian is familiar with the unique requirements of ETFs as they relate to the physical handling and storage of gold bullion required in connection with the creation and redemption of Units. This is an important consideration in the event of a Conversion;

    (d) The Custodian has indemnified the Fund in respect of all direct loss, damage or expense arising out of any negligence, wilful misconduct, fraud or lack of good faith by the Custodian or any subcustodian or sub-subcustodian; and

    (e) The Custodian Agreement provides that the Custodian shall not cancel its insurance except upon 30 days prior written notice to the Manager.

19. The Custodian arranges for insurance coverage on the facilities and the contents therein in which the Custodian will store physical gold bullion on behalf of the Fund and other clients of the Custodian. The Manager has discussed the level of insurance coverage generally obtained by the Custodian and believes that the level of insurance will be sufficient.

20. As it is in the gold storage business, the Custodian is in the best position, using its business judgment, to determine and obtain the appropriate level of insurance that is required for the storage of gold bullion.

21. The Manager and the Fund believe that the Custodian has obtained and will provide adequate insurance and the Fund has disclosed in its final prospectus the details associated with that insurance arrangement.

22. The Fund's auditors will be present and will verify the physical count of all gold bullion held by the Fund at least once every year.

Arrangements From and After a Conversion

23. From and after a Conversion:

    (a) Common Units may only be subscribed for or purchased directly from the Fund by Underwriters or Designated Brokers and orders may only be placed for Common Units in the Prescribed Number of Common Units (or an integral multiple thereof) on any day when there is a trading session on the TSX. Under Designated Broker and Underwriter agreements, the Designated Brokers and Underwriters agree to offer Common Units for sale to the public only as permitted by applicable Canadian securities legislation, which requires a prospectus to be delivered to purchasers buying Common Units as part of a distribution. Therefore, first purchasers of Common Units in the distribution on the TSX will receive a prospectus from the Designated Brokers and Underwriters.

    (b) The Fund will appoint Designated Brokers to perform certain functions which include standing in the market with a bid and ask price for Common Units of

the Fund for the purpose of maintaining liquidity for the Common Units.

(c) For each Prescribed Number of Common Units issued, a Designated Broker or Underwriter must deliver payment consisting of, in the Filer's discretion as manager of the Fund, (i) one basket of physical gold bullion (where a "basket of gold bullion" represents a preset amount of gold bullion that the Manager will determine and publish on its website following the close of business on each trading day) and cash in an amount sufficient so that the value of the physical gold bullion and the cash received is equal to the NAV of the Common Units next determined following the receipt of the subscription order; (ii) cash in an amount equal to the NAV of the Common Units next determined following the receipt of the subscription order; or (iii) a different combination of physical gold bullion than is represented by a basket of physical gold bullion and cash, as determined by the Manager, in an amount sufficient so that the value of the physical gold bullion and cash received is equal to the NAV of the Common Units next determined following the receipt of the subscription order.

(d) The net asset value per Common Unit of the Fund will be calculated and published daily and the investment portfolio of the Fund will be made available daily on the Filer's website.

(e) Upon notice given by the Filer from time to time and, in any event, not more than once quarterly, a Designated Broker will subscribe for Common Units in cash in an amount not to exceed 0.3% of the NAV of the Fund, or such other amount established by the Filer and disclosed in the prospectus of the Fund, next determined following delivery of the notice of subscription to that Designated Broker.

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

(g) Except as described in subparagraphs (a) through (e) above, Common Units may not be purchased directly from the Fund. Investors are generally expected to purchase Common Units through the facilities of the TSX. However, Common Units may be issued directly to Unitholders upon the reinvestment of distributions of income or capital gains and in accordance with the distribution reinvestment plan of the Fund, as disclosed in the Fund's prospectus.

(h) Unitholders that wish to dispose of their Common Units may generally do so by selling their Common Units on the TSX, through a registered broker or dealer, subject only to customary brokerage commissions. A Unitholder that holds a Prescribed Number of Common Units or an integral multiple thereof may exchange such Common Units for baskets of physical gold bullion and cash at an exchange price equal to the NAV per Common Unit on the effective day of the exchange request. Unitholders may also redeem their Common Units for cash at a redemption price equal to 95% of the closing price of the Common Units on the TSX on the date of redemption.

(i) As manager, the Filer receives a fixed annual fee from the Fund. Such annual fee is calculated as a fixed percentage of the NAV of the Fund. As manager, the Filer is responsible for all costs and expenses of the Fund except the management fee, any expenses related to the implementation and on-going operation of an independent review committee under National Instrument 81-107, brokerage expenses and commissions, custodian settlement fees, income taxes and withholding taxes and extraordinary expenses.

(j) Unitholders will have the right to vote at a meeting of Unitholders in respect of the Fund in certain circumstances, including prior to any change in the investment objective of the Fund, any change to their voting rights and prior to any increase in the amount of fees payable by the Fund.

Decision

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

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

(a) The prospectus of the Fund contains disclosure regarding the unique risks associated with an investment in the Fund, including the risk that direct

purchases of gold by the Fund may generate higher transaction and custody costs than other types of investments, which may impact the performance of the Fund;

(b) In respect of the relief granted from subsection 9.4(2), the acceptance of any physical gold bullion as payment for the issue price of Common Units is made in accordance with paragraph 9.4(2)(b); and

(c) In respect of the relief granted from section 14.1, the Fund complies with applicable TSX requirements in setting the record date for payment of distributions.

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

2.1.5 Videon CableSystems Inc. – 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).

May 28, 2009

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

AND

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

AND

IN THE MATTER OF
VIDEON CABLESYSTEMS INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer is deemed to have ceased to be a reporting issuer and that the Filer's status as a reporting issuer is revoked (the **Exemptive Relief Sought**).

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

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation formed by Articles of Amalgamation on September 1, 2008 under the *Canada Business Corporations Act*, with its head office located in Calgary, Alberta.

2. The Filer is a reporting issuer in the Jurisdictions.

3. On April 15, 2009, the Filer redeemed its 8.15% Senior Secured Debentures, Series "A" and, as a result, all of its outstanding securities are now held, directly or indirectly, by Shaw Communications Inc.

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

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

6. The Filer 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.

7. The Filer is not in default of any of its obligations under the Legislation as a reporting issuer, other that its obligation to file its interim financial statements for the period ended February 28, 2009, its Management Discussion and Analysis in respect of such financial statements as required under National Instrument 51-102 *Continuous Disclosure Obligations* and the related certification of such financial statements as required under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, all of which became due on April 29, 2009.

8. The Filer is not seeking exemptive relief in British Columbia as the British Columbia Securities Commission (**BCSC**) has confirmed that the Filer ceased to be a reporting issuer in British Columbia effective April 27, 2009, in accordance with BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status*.

Decision

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

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

"Agnes Lau, CA"
Associate Director, Corporate Finance
Alberta Securities Commission

2.1.6 Morgan Stanley Smith Barney LLC et al.

Headnote

Passport System – Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 33-109 Registration Information (NI 33-109) – relief from certain filing requirements of NI 33-109 in connection with a bulk transfer of registered and non-registered individuals pursuant to a joint venture contribution and formation agreement.

Multilateral Instruments Cited

Multilateral Instrument 11-102 Passport System.

National Instruments Cited

National Instrument 33-109 Registration Information.

May 29, 2009

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

AND

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

AND

IN THE MATTER OF
MORGAN STANLEY SMITH BARNEY LLC (MSSB),
MORGAN STANLEY & CO. INCORPORATED
(MS&CO) AND CITIGROUP GLOBAL MARKETS INC.
(CGMI) (the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of Ontario (the **Legislation**), for relief pursuant to section 7.1 of National Instrument 33-109 *Registration Information* (**NI 33-109**) to allow the bulk transfer of certain of the registered individuals of MS&Co and CGMI to a new joint venture, Morgan Stanley Smith Barney LLC (as described below) (the **Bulk Transfer**), effective June 1, 2009 in accordance with section 3.1 of the companion policy to NI 33-109 (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

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

Interpretation

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

Representations

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

MS&Co

1. MS&Co is an indirect wholly-owned subsidiary of Morgan Stanley. Its head office is located in Purchase, New York, United States of America.

2. MS&Co is registered as an adviser in the category of international adviser and as a dealer in the categories of international dealer and limited market dealer under the *Securities Act* (Ontario). MS&Co is also registered as an adviser in the category of portfolio manager and investment counsel (securities and exchange contracts) in British Columbia, and in the category of portfolio manager and investment counsel (foreign) in Alberta.

3. MS&Co is not in default of the securities legislation in any of the Jurisdictions.

CGMI

4. CGMI is an indirect wholly-owned subsidiary of Citigroup Inc. Its head office is located in New York, New York.

5. CGMI is registered as an adviser in the category of international adviser and as a dealer in the category of international dealer under the *Securities Act* (Ontario).

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

MSSB

7. On January 13, 2009, Morgan Stanley and Citigroup Inc. (**Citi**) entered into a joint venture contribution and formation agreement (the **JV Agreement**), pursuant to which they agreed to combine Morgan Stanley's Global Wealth Management Group and Citi's Smith Barney, Quilter (in the United Kingdom) and Smith Barney Australia into a new joint venture called Morgan Stanley Smith Barney.

8. Pursuant to the JV Agreement, each of MS&Co and CGMI will contribute assets, including certain registered and non-registered employees, to MSSB, following which MSSB will operate as one fully-integrated organization.

9. MSSB has assumed all of the existing registrations and approvals for all of the registered individuals that will be transferred to MSSB. It is not anticipated that there will be any disruption in the ability of the Filers to advise and trade (where applicable) on behalf of their respective clients, and MSSB should be able to advise and trade (where applicable) on behalf of such clients immediately after obtaining registration in all appropriate categories in the Jurisdictions.

10. MSSB continues, and will continue to be, registered in the same categories of registration as CGMI was registered as in Ontario and as MS&Co was registered as in Ontario, Alberta and British Columbia, and will be subject to, and will comply with, all applicable securities laws.

11. MS&Co proposes to transfer 62 employees registered in one or more of the Jurisdictions to MSSB.

12. CGMI proposes to transfer 47 employees registered in Ontario to MSSB.

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

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

15. A press release was previously issued on or about January 13, 2009 advising the public of the creation of MSSB. The clients of MS&Co and CGMI have also been contacted and advised of the creation of MSSB.

16. The head office of MSSB will be located in Purchase, New York.

Decision

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

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

"Erez Blumberger"
Manager, Registrant Regulation
Ontario Securities Commission

2.1.7 CPVC Financial Corporation – 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).

May 29, 2009

CPVC Financial Corporation
1, Place Ville-Marie
Suite 3840
Montréal (Québec)
H3B 4M6

Attention to : Douglas M. Stuve

Dear Sir:

Re: CPVC Financial Corporation (the Applicant) – application for a decision under the securities legislation of Alberta, Manitoba, Ontario and Quebec (the Jurisdictions) that the Applicant is not a reporting issuer

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

As the Applicant has represented to the Decision Makers that:

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

(b) no securities of the Applicant are traded on a marketplace as defined in *Regulation 21-101 respecting Market-place Operation*;

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

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

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant's status as a reporting issuer is revoked.

"Alexandra Lee"
Manager, Continuous Disclosure
Autorité des marchés financiers

2.1.8 Silverstone Resources Corp. – s. 1(10)

Headnote

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

Applicable Legislative Provisions

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

June 1, 2009

Silverstone Resources Corp.
Suite 1980, 1055 West Hastings Street
Vancouver, BC
V6E 2E9

Dear Sir:

Re: Silverstone Resources Corp. (the Applicant) - application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, Northwest Territories, Yukon, 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:

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

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

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

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

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

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

2.1.9 K.J. Harrison & Partners Inc. and KJH Capital Preservation Fund

Headnote

National Policy 11-203 – Existing and future mutual funds granted exemptions from National Instrument 81-102 Mutual Funds to engage in short-selling of securities up to 20% of net assets, subject to certain conditions and requirements – Relief is necessary to implement the mutual funds' investment objectives and strategies – Conditions imposed on amount and nature of short-selling to be conducted – NI 81-102.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.6(a) and (c), 6.1(1), 19.1.

May 29, 2009

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

AND

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

AND

IN THE MATTER OF
K.J. HARRISON & PARTNERS INC.
(THE "FILER")

AND

KJH CAPITAL PRESERVATION FUND
(THE "EXISTING FUND")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Existing Fund and such other mutual funds as the Filer or affiliates of the Filer may establish in the future (the Future Funds and, together with the Existing Fund, the Funds, and each a Fund), for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation):

(a) exempting the Funds from the requirement contained in section 2.6(a) of NI 81-102 prohibiting a mutual fund from providing a security interest over a mutual fund's assets;

(b) exempting the Funds from the requirement contained in section 2.6(c) of NI 81-102 prohibiting a mutual fund from selling securities short; and

(c) exempting the Funds from the requirement contained in section 6.1(1) of NI 81-102 prohibiting a mutual fund from depositing any part of a mutual fund's assets with an entity other than the mutual fund's custodian,

(together, 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 subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in each of the other provinces and territories of Canada.

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

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

1. The Filer is a corporation established under the laws of Ontario and is or will be the manager and sole distributor of each Fund.

2. Each Fund is or will become an open-end mutual fund trust established under the laws of the Province of Ontario of which the Manager is or will be the manager.

3. Neither the Filer nor the Existing Fund is, nor will any Future Fund be, in default of the securities legislation in any of the provinces or territories of Canada.

4. Each Fund is or will become a reporting issuer in the provinces of Ontario, British Columbia, Alberta, Manitoba and New Brunswick, or any other jurisdiction as required, and distributes or will distribute securities under a simplified prospectus and annual information form and is otherwise subject to NI 81-102.

5. The head office of the Filer and each Fund is or will be located in Ontario.

6. The Existing Fund is distributed under a simplified prospectus dated August 27, 2008.

7. The Filer proposes that each Fund be authorized to engage in a limited, prudent and disciplined amount of short selling. The Manager believes each Fund could benefit from the implementation

and execution of a controlled and limited short selling strategy. This strategy would complement each Fund's primary objective of buying securities with the expectation of capital preservation.

8. The investment practices of each Fund will comply in all respects with the requirements of Part 2 of NI 81-102, except to the extent that each Fund has received permission from the applicable securities regulatory authorities or regulators of the Jurisdictions to deviate therefrom.

9. Any short sales made by a Fund will be subject to compliance with the investment objectives of such Fund.

10. In order to effect a short sale of securities, each Fund will borrow securities from either its custodian or a dealer (in either case, the "Borrowing Agent"), which Borrowing Agent may be acting either as principal for its own accounts or as agent for other lenders of securities.

11. Each Fund will implement the following controls when conducting a short sale:

    (a) securities will be sold short for cash, with each Fund assuming the obligation to return to the Borrowing Agent the securities borrowed to effect the short sale;

    (b) the short sale will be affected through market facilities through which the securities sold short are normally bought and sold;

    (c) each Fund will receive cash for the securities sold short within normal trading settlement periods for the market in which the short sale is effected;

    (d) the securities sold short will be liquid securities that:

        (i) are listed and posted for trading on a stock exchange; and

            (1) the issuer of the security has a market capitalization of not less than CDN $100 million, or the equivalent thereof, of such security at the time the short sale is effected; or

            (2) the Fund has pre-arranged to borrow for the purpose of such sale; or

        (ii) are bonds, debentures or other evidences of indebtedness of or guaranteed by the Government of Canada or any province or territory of Canada or the Government of the United States of America;

    (e) at the time securities of a particular issuer are sold short:

        (i) the aggregate market value of all securities of that issuer sold short by the Fund will not exceed 5% of the total net assets of the Fund; and

        (ii) each Fund will place a "stop-loss" order with a dealer to immediately purchase for the Fund an equal number of the same securities if the trading price of the securities exceeds 120% (or such lesser percentage as the Manager may determine) of the price at which the securities were sold short;

    (f) the Fund will deposit Fund assets with the Borrowing Agent as security in connection with the short sale transaction;

    (g) the Fund will maintain proper books and records of all short sales and Fund Assets deposited with Borrowing Agents as security;

    (h) the Fund will develop written policies and procedures for the conduct of short sales prior to conducting any short sales; and

    (i) the Fund will provide disclosure in its simplified prospectus, or an amendment thereto, and its annual information form of the short selling strategies and the details of this exemptive relief prior to implementing the short selling strategy.

Decision

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

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

    (a) the aggregate market value of all securities sold short by each Fund will not exceed 20% of the net assets of each Fund on a daily marked to market basis;

(b) each Fund holds "cash cover" (as defined in NI 81-102) in the amount, including the Fund assets deposited with Borrowing Agents as security in connection with short sale transactions, that is at least 150% of the aggregate market value of all securities sold short by each Fund on a daily marked to market basis;

(c) no proceeds from short sales of securities by a Fund are used by a Fund to purchase long positions in securities other than cash cover;

(d) each Fund maintains appropriate internal controls regarding its short sales, including written policies and procedures, risk management controls and proper books and records;

(e) any short sale made by a Fund is subject to compliance with the investment objectives of that Fund;

(f) the short selling relief does not apply to a Fund that is classified as a money market fund or a short-term income fund;

(g) for short sale transactions in Canada, every dealer that holds Fund assets as security in connection with short sale transactions by the Fund shall be a registered dealer in Canada and a member of a self-regulatory organization that is a participating member of the Canadian Investor Protection Fund;

(h) for short sale transactions outside of Canada, every dealer that holds Fund assets as security in connection with short sale transactions by the Fund shall:

(i) be a member of a stock exchange and, as a result, be subject to regulatory audit; and

(ii) have a net worth in excess of the equivalent of CDN$100 million determined from its most recent audited financial statements that have been made public;

(i) except where a Borrowing Agent is a Fund's custodian or a sub-custodian thereof, when the Fund deposits Fund assets with a Borrowing Agent as security in connection with a short sale transaction, the amount of Fund assets deposited with the Borrowing Agent does not, when aggregated with the amount of Fund assets already held by the Borrowing Agent as security for outstanding short sale of securities transactions of the Fund, exceed 10% of the net assets of the Funds, taken at market value as at the time of the deposit;

(j) the security interest provided by a Fund over any of its assets that is required to enable the Fund to effect short sale transactions is made in accordance with industry practice for that type of transaction and relates only to obligations arising under such short sale transactions;

(k) prior to conducing any short sales, each Fund discloses in its simplified prospectus, or an amendment thereto, a description of: (a) short selling, (b) how the Fund intends to engage in short selling, (c) the risks associated with short selling, and (d) in the Investment Strategy section of the prospectus, the Fund's strategy and this exemptive relief;

(l) prior to conducting any short sales, each Fund discloses in its annual information form, or an amendment thereto, the following information:

(i) that there are written policies and procedures in place that set out the objectives and goals for short selling and the risk management procedures applicable to short selling;

(ii) who is responsible for setting and reviewing the policies and procedures referred to in the preceding paragraph, how often the policies and procedures are reviewed, and the extent and nature of the involvement of the board of directors or trustee in the risk management process;

(iii) whether there are trading limits or other controls on short selling and who is responsible for authorizing the trading and placing limits or other controls on the trading;

(iv) whether there are individuals or groups that monitor the risks independent of those who trade;

(v) whether risk measurement procedures or simulations are used to test the portfolio under stress conditions; and

12. prior to conducting any short sales, each Fund has provided to its securityholders not less than 60 days' written notice that discloses the Fund's intent to begin short selling transactions and has made the disclosure required in the Fund's simplified prospectus and annual information form as outlined in paragraph (k) and (l) above or the Fund's initial simplified prospectus and annual information form and each renewal thereof has included such disclosure.

This decision shall terminate upon the coming into force of any legislation or rule of the principal regulator dealing with the matter referred to in sections 2.6(a), 2.6(c), and 6.1(1) of NI 81-102.

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

2.1.10 BMO Investments Inc.

Headnote

MI 11-102 Passport System – Process for Exemptive Relief Applications in Multiple Jurisdictions – A mutual fund dealer selling model portfolios of mutual funds is exempt from registration as an adviser with respect to discretionary strategic rebalancing activities carried out by the affiliated adviser to the model portfolios of mutual funds, subject to certain conditions.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System.
Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., ss. 25(1)(c), 74(1).

May 29, 2009

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

AND

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

AND

IN THE MATTER OF
BMO INVESTMENTS 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**) to revoke and replace the Original Decision (as defined herein) with this Decision exempting the Filer from the adviser registration requirement (the **Exemption Sought**) with respect to the Strategic Rebalancing Activities (as defined below) carried out by Jones Heward Investment Counsel Inc. (**JHIC**) in connection with the Product (as defined and described below).

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 the 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

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

Representations

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

1. The Filer is a business corporation incorporated under the laws of Canada. The head office of the Filer is located in Toronto, Ontario, and Ontario is the domicile of the mutual funds it manages.

2. The Filer is registered under the Legislation as a dealer in the category of mutual fund dealer and holds the equivalent registration in each of the other provinces and territories in Canada (the **Other Jurisdictions**).

3. JHIC is registered under the Legislation as an adviser in the categories of investment counsel and portfolio manager and holds the equivalent registration in each of the Other Jurisdictions.

4. The Filer and JHIC are affiliated entities.

5. The Filer's salespersons distribute the BMO MatchMaker and BMO Intuition Portfolios (the **Product**) to their clients (**clients**).

6. The Product consists of a number of portfolios (the **Portfolios**), which together occupy successive portions of the investing spectrum from conservative, income-maintenance investing to aggressive growth investing. Each Portfolio, other than the registered and non-registered savings portfolios (the **Savings Portfolios**), is made up exclusively of securities of BMO Mutual Funds. Each of the Savings Portfolios currently consist of guaranteed investment certificates (**GICs**) and securities of BMO Mutual Funds designed to ensure preservation of capital.

7. Any of the BMO Mutual Funds that currently exist or that may be created in the future (the **Funds**) and that are used in the Product are or will be qualified under a simplified prospectus that has been receipted by the applicable securities regulators under applicable securities legislation.

8. If a client is interested in the Product, the client completes an investor profile form (the **Form**). The Form is used by the Filer as a "know your client" form to enable the Filer to consider the client's financial circumstances, investment knowledge, investment objectives and risk tolerance and thereby assist in determining an appropriate Portfolio for the client. From and based on the information provided in the Form, the Filer recommends one of the Portfolios as suitable for the client.

9. The client receives a description of the Funds in a Portfolio and, in the case of the Savings Portfolios, both the Funds and the GICs in a Portfolio, at the time it is selected by the client (the **Selected Portfolio**), completes the account application and enters into an agreement (the **Account Agreement**) with the Filer. Clients will receive express disclosure that JHIC will be providing discretionary investment management services in connection with the Strategic Rebalancing Activities (defined below) and that the client shall be treated as having retained JHIC to provide such activities just as though JHIC were a direct signatory to the Account Agreement.

10. Except for the Savings Portfolios, each Fund within a Selected Portfolio is given a target weighting and a target range for determining when the Selected Portfolio will be rebalanced through a series of purchase and redemption trades effected by the Filer on behalf of all clients invested in the Funds in the Selected Portfolio. The Selected Portfolio will only be automatically rebalanced if the percentage weighting of at least one of the Funds in the Selected Portfolio varies by more than its set target range. Such trades are referred to herein as the **Auto Rebalancing Activities**. The Savings Portfolios are not subject to the Auto Rebalancing Activities.

11. In addition to the mechanical non-discretionary Auto Rebalancing Activities described above that are effected by the Filer, JHIC will review all of the Portfolios on a periodic basis, currently expected to be every two or three years, to consider changing the relative weightings of the Funds in the Portfolios, and to make any changes in the Funds included in the Portfolios, which will be done on a full discretionary basis. In the case of the Savings Portfolios, JHIC will also consider whether any changes in the GICs in the Portfolios are warranted, again, on a fully discretionary basis. JHIC will give trade instructions to the Filer to effect these changes in the Selected Portfolios and each client account. Such activities are referred to herein as the **Strategic Rebalancing Activities**.

12. The Filer will retain JHIC under an advisory agreement (the **Advisory Agreement**) to provide the Strategic Rebalancing Activities with respect to the Product and will be responsible for the remuneration paid to JHIC, if any, with respect to the provision of such services. The Filer will at all times be ultimately responsible to the client for the Strategic Rebalancing Activities undertaken by JHIC.

13. Each Portfolio is comprised of different asset classes (**Asset Classes**). Each Asset Class is allocated a permitted range (**Permitted Range**), being a minimum and maximum percentage of the Portfolio that can be allocated to Funds of a particular Asset Class. The Asset Classes and Permitted Ranges will be disclosed to the client in the Selected Portfolio and cannot be changed without the prior consent of the client.

14. The Account Agreement will authorize the Filer to permit JHIC to exercise discretion over the client's account so that it may engage in the Strategic Rebalancing Activities in accordance with the terms of the Selected Portfolio and the Product. The Account Agreements of clients in the Product before the relief requested hereby is effective will be amended to address the client's granting of authority to JHIC to engage in the Strategic Rebalancing Activities.

15. There is no separate charge to a client for the Product. The Filer, as manager of the Funds, receives the management fees and fixed administration fee from the Funds used in the Product in the usual manner and each Fund may pay certain operating expenses not covered by the fixed administration fee. No sales charges would be payable in respect of any sales, redemptions or fund switches. As a result, there will be no duplication of any fees.

16. All trades for clients in the Product will be reflected in each client's account on the day following the trade, and will also be reflected in the Filer's trade blotter in connection with the Product. The Filer will be responsible for providing clients with confirmations and account statements that reflect this trading activity in their accounts in accordance with the Legislation.

17. Notwithstanding that there is no direct relationship between the client and JHIC, the client will be entitled to treat JHIC as if JHIC were a party to the Account Agreement with respect to its responsibilities described above.

18. If and when a Fund for which a client has not yet received a prospectus (each a **New Fund**) is intended to be included in a Portfolio, the Filer will provide such client with the Part A section and any and all pages from the Part B section of the simplified prospectus that pertain to the New Fund(s) (the **Tailored Simplified Prospectus**), prior to including such New Fund(s) in the Portfolio. The Tailored Simplified Prospectus will not derogate from the rights of investors and will include all of the disclosure of an investor's legal rights contained in the full simplified prospectus.

19. On March 3, 2009, the Filer was granted an exemption from the adviser registration requirement with respect to the Strategic Rebalancing Activities carried out by JHIC in connection with the Product subject to certain conditions, including condition (b), which provided that "if and when a Fund for which a client has not yet received a prospectus is intended to be included in a Portfolio, the Filer will provide such client with a new or amended simplified prospectus that includes that Fund prior to investing the Portfolio in such Fund" (the **Original Decision**). The Filer now seeks to revoke and replace the Original Decision with this Decision, in which condition (b) will now require that the Filer provide clients with the Tailored Simplified Prospectus rather than a new or amended simplified prospectus.

20. In the absence of the Exemption Sought, the Filer would have to be registered under the Legislation as an adviser in the categories of investment counsel/portfolio manager (or its equivalent in each of the Other Jurisdictions) in order to assume ultimate responsibility for, and to facilitate JHIC's involvement in, the Strategic Rebalancing Activities described in this 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 Exemption Sought is granted, provided that:

(a) the Filer ensures that the Account Agreement and other material with respect to the Portfolios fully describe the Product and the applicable Selected Portfolio including (but not limited to) that:

  (i) in addition to the Auto Rebalancing Activities effected by the Filer, JHIC is authorized to exercise discretion in performing the Strategic Rebalancing Activities in connection with the Selected Portfolio pursuant to the Advisory Agreement;

  (ii) while JHIC provides limited discretionary investment services in performing the Strategic Rebalancing Activities, it is not responsible for determining or confirming the suitability of a Portfolio for the client, and JHIC has no direct relationship with the client and will not provide the client with direct access to investment management services;

  (iii) the Filer assumes ultimate responsibility to the client for the Strategic Rebalancing Activities;

  (iv) JHIC and the Filer are affiliated entities;

(v) in performing its Strategic Rebalancing Activities JHIC will, in its discretion, choose the Funds in which each Portfolio will invest and their weightings so that they are consistent with the general risk profile determined by the Filer and suggested by the characterization of each Portfolio, and the Asset Classes and Permitted Ranges cannot be changed without the prior consent of the client;

(vi) all trades will be effected by the Filer and reflected in the client's account on the day following the trade and will also be reflected in the trade blotter of the Filer in connection with the Product and the client will receive confirmations and account statements reflecting such trading activity in accordance with the Legislation; and

(vii) the client will not be responsible for the remuneration paid to JHIC, if any, with respect to the provision of the Strategic Rebalancing Activities, and there is no separate charge or duplication of any fees to a client in connection with the Product; and

(b) if and when a New Fund for which a client has not yet received a prospectus is intended to be included in a Portfolio, the Filer will provide such client with a Tailored Simplified Prospectus that includes that New Fund prior to adding the New Fund to the Portfolio.

"Margot C. Howard"
Commissioner
Ontario Securities Commission

"Mary Condon"
Commissioner
Ontario Securities Commission

2.1.11 Marret Asset Management Inc. and Marret High Yield Strategies Fund

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from National Instrument 81-106 Investment Fund Continuous Disclosure to permit investment funds representing two tiers of a two-tiered fund structure that use specified derivatives to calculate their NAV on a weekly basis and not on a daily basis, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 81-106 Investment Fund Continuous Disclosure, s. 14.2(3)(b).

May 29, 2009

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

AND

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

AND

IN THE MATTER OF
MARRET ASSET MANAGEMENT INC.
(the Manager)

AND

IN THE MATTER OF
MARRET HIGH YIELD STRATEGIES FUND
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Fund for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) for relief from the requirement in section 14.2(3)(b) of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) that the net asset value of an investment fund must be calculated at least once every business day if the investment fund uses specified derivatives (the Exemption Sought).

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

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

(b) the Fund 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, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and 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.

Representations

This decision is based on the following facts represented by the Manager and the Fund:

1. The Fund is an investment fund established under the laws of Ontario. The Fund will be governed by a declaration of trust.

2. The Manager is the promoter of, and has been retained to act as manager of, including as portfolio advisor for, the Fund. The Manager will be responsible for providing or arranging for the provision of administrative services required by the Fund. The head office of the Manager is located in Ontario.

3. Neither the Manager nor the Fund are in default of securities legislation in any jurisdiction.

4. The Fund filed a preliminary prospectus dated April 20, 2009 on SEDAR with respect to a public offering (the "Offering") of Class A Units (the "Units") and Class F Units (although the offering of Class F Units will not proceed), a receipt for which was issued by the Commission on April 21, 2009.

5. The Fund's investment objectives are to maximize total returns for holders of Units (the "Unitholders"), consisting of both tax-advantaged distributions and capital appreciation, while reducing risk, and to provide Unitholders with attractive monthly tax-advantaged distributions, initially targeted to be 8.00% per annum on the original issue price of $10.00 per Unit by obtaining exposure to a portfolio (the "Portfolio") consisting primarily of high yield debt securities. The Fund will obtain exposure to the Portfolio by entering into the Forward Agreement (as defined below). The Fund may also directly hold a small amount of the same securities as are held in the Portfolio.

6. Marret HYS Trust has been established for the purpose of holding the Portfolio, which will be actively managed by the Manager.

7. The Fund will seek to achieve its investment objective by entering into a forward purchase and sale agreement (the "Forward Agreement") with a Canadian financial institution or one of its affiliates (the "Counterparty"). Under the terms of the Forward Agreement, the Counterparty will agree to deliver to the Fund on May 30, 2014 (the "Termination Date"), a portfolio consisting of securities of Canadian public issuers that are "Canadian securities" as defined under subsection 39(6) of the Income Tax Act (Canada) (the "Canadian Securities Portfolio"). The aggregate value of the Canadian Securities Portfolio will be equal to the redemption proceeds of the relevant number of units of Marret HYS Trust ("Trust Units"), net of any amount owing by the Fund to the Counterparty. The Forward Agreement constitutes a specified derivative.

8. The Units are expected to be listed and posted for trading on the Toronto Stock Exchange (the "TSX"). An application requesting conditional listing approval has been made on behalf of the Fund to the TSX.

9. Units may be redeemed on the second last business day of July of any year commencing in 2011 (the "Annual Redemption Date"), if the average of the net asset value per Unit on the first four valuation dates (as defined in the preliminary prospectus of the Fund) occurring in the month of May preceding the Annual Redemption Date is less than $10.00 (the "Annual Redemption Condition"), at a redemption price per Unit equal to the net asset value per Unit, less any costs associated with the redemption, including commissions and other such costs, if any, related to the partial settlement of the Forward Agreement to fund such redemption.

10. In addition to such annual redemption right, Units may be redeemed on the second last business day of each month, other than in the month of July in a year where the Annual Redemption Condition has been met (the "Monthly Redemption Date"), subject to certain conditions, at a redemption price equal to the lesser of (i) 94% of the market price (as defined in the preliminary prospectus of the Fund) of a Unit and (ii) 100% of the closing market price (as defined in the preliminary prospectus of the Fund) of a Unit on the applicable Monthly Redemption Date less, in each case, any costs associated with the redemption, including brokerage costs.

11. The Fund will use the net proceeds of the Offering for the pre-payment of its purchase obligations under the Forward Agreement.

12. The Forward Agreement provides that the Fund may settle the Forward Agreement, in whole or in part, prior to the Termination Date: (i) to fund monthly distributions on the Units; (ii) to fund redemptions and repurchases of Fund Units from time to time; (iii) to fund operating expenses and

other liabilities of the Fund; and (iv) for any other reason.

13. The Fund will calculate its net asset value on the Thursday of each week (or if any Thursday is not a business day, the immediately preceding business day) and the last business day of each month. The Manager will make the Fund's net asset value per Unit available to the financial press for publication on a weekly basis, and will post the net asset value per Unit on its website at www.marret.ca.

14. The final prospectus of the Fund will disclose that the net asset value per Unit will be calculated and made available to the financial press for publication on a weekly basis, and that the Manager will post the net asset value per Unit on its website.

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. the Fund calculates net asset value per Unit at least once in each week; and

2. the final prospectus of the Fund discloses:

   (a) that the net asset value per Unit is available to the public upon request; and

   (b) a website that the public can access to obtain the net asset value calculation per Unit;

   for so long as: (i) the Units are listed on the TSX, and (ii) the Fund calculates the net asset value per Unit at least once in each week.

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

2.1.12 Sentry Select Capital Inc. and Sentry Select 40 Split Income Trust

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-approved reorganizations and transfers in National Instrument 81-102 – continuing fund has different investment objectives and fee structure than terminating fund – merger is not a "qualifying exchange" or a tax-deferred transaction under Income Tax Act – security-holders of terminating funds provided with timely and adequate disclosure regarding the mergers – financial statements and simplified prospectus of continuing fund not required to be sent to unitholders of the terminating fund in connection with the current merger and future mergers provided the unitholders receive a tailored simplified prospectus and the information circular sent for unitholder meeting clearly discloses the various ways unitholders can access the financial statements.

Applicable Legislative Provisions

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

May 29, 2009

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

AND

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

AND

IN THE MATTER OF
SENTRY SELECT CAPITAL INC.
(the Filer)

AND

SENTRY SELECT 40 SPLIT INCOME TRUST
(the Terminating Fund)

DECISION

Background

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

(a) approval of the merger of the Terminating Fund into Sentry Select Canadian Income Fund (the

Continuing Fund) (the **Merger**) under subsection 5.5(1)(b) of National Instrument 81-102 ***Mutual Funds*** (**NI 81-102**); and

(b) relief from the simplified prospectus and financial statements delivery requirements contained in subsection 5.6(1)(f)(ii) of NI 81-102 in respect of:

(i) the Merger; and

(ii) all future mergers of mutual funds managed by the Filer (the **Prospectus and Financial Statement Relief**)

(collectively, 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 (the **Principal Regulator**) for this application;

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

Interpretation

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

Representations

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

The Filer

1. The Filer is a corporation incorporated under the laws of the Province of Ontario and is the manager and trustee of each of the Terminating Fund and the Continuing Fund (each a **Fund** and collectively, the **Funds**). The Filer is registered in Ontario as a dealer in the category of Mutual Fund Dealer and as an adviser in the categories of Investment Counsel and Portfolio Manager under the *Securities Act* (Ontario), and as an adviser in the category of Commodity Trading Manager under the *Commodity Futures Act* (Ontario). The Filer is also registered in Alberta as an adviser in the category of Portfolio Manager and Investment Counsel under the *Securities Act* (Alberta).

2. The head office of the Filer is located in Ontario.

The Funds

3. Each Fund was established pursuant to a declaration of trust under the laws of the Province of Ontario.

4. The Terminating Fund and the Continuing Fund are mutual funds for the purposes of the Legislation.

5. The Terminating Fund offered its capital units (**Capital Units**) and preferred securities (**Preferred Securities**) in all of the provinces and territories of Canada pursuant to a final prospectus dated December 13, 2006 and the Capital Units were, until November 24, 2008, listed on the Toronto Stock Exchange (the **TSX**). The Preferred Securities matured and were repaid on December 1, 2008. On December 2, 2008, the Terminating Fund converted to an open-end mutual fund in accordance with the provisions of its declaration of trust. The Terminating Fund does not currently intend to qualify any additional units for distribution.

6. The Continuing Fund offers its series A units (**Series A Units**), series F units and series I units in all of the provinces and territories of Canada on a continuing basis pursuant to a simplified prospectus dated August 20, 2008.

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

8. Unless an exemption has been obtained, each of the Funds follows the standard investment restrictions and practices established by the securities regulatory authorities in each province and territory of Canada.

9. The net asset value (**NAV**) for units of each Fund is calculated on a daily basis on each day that the TSX is open for trading.

The Mergers

10. The Filer intends to merge the Terminating Fund (and Select 50 S-1 Income Trust, Sentry Select Focused Growth & Income Trust, Multi Select Income Trust, Pro-Vest Growth & Income Fund (the **Terminating Closed-end Funds**)) into the Continuing Fund (the **Mergers**), which will involve the transfer of assets of the Terminating Fund (and the Terminating Closed-end Funds) in exchange for Series A Units of the Continuing Fund. The units of the Terminating Fund (and the Terminating Closed-end Funds) will be exchanged or transferred on a NAV basis for Series A Units of the Continuing Fund.

11. The board of directors of the Filer approved the Mergers on March 23, 2009 and press releases and material change reports in respect of the Mergers were filed on SEDAR in March 2009.

12. Unitholders of the Terminating Fund approved the Merger at a special meeting of unitholders held on May 20, 2009 (the **Meeting**).

13. In connection with the Meeting, the Filer sent to the unitholders of the Terminating Fund a notice of special meetings of unitholders and joint management information circular and a related form of proxy (collectively, the **Meeting Materials**). The joint management information circular in connection with the Mergers was filed on SEDAR and mailed to unitholders of the Terminating Fund (and the Terminating Closed-end Funds) on April 24, 2009 (the **Circular**).

14. Subject to the required approval of the Principal Regulator and unitholders of the Terminating Fund, the Merger is expected to occur on or about June 12, 2009 (the **Merger Date**).

15. As required by National Instrument 81-107 - *Independent Review Committee for Investment Funds*, an Independent Review Committee (**IRC**) has been appointed for the Funds and the Terminating Closed-end Funds, and the Filer presented the terms of the Mergers to the IRC for a recommendation. The IRC considered the proposed Mergers and provided a positive recommendation to the Filer on the basis that the Mergers would achieve a fair and reasonable result for each of the Funds and the Terminating Closed-end Funds.

16. The Merger is expected to take place using the following steps:

    (a) on the Merger Date, the Terminating Fund will transfer all of its assets to the Continuing Fund in exchange for Series A Units of the Continuing Fund. The Series A Units of the Continuing Fund received by the Terminating Fund will have an aggregate NAV equal to the NAV of the assets of the Terminating Fund and will be issued at the NAV per Series A Unit of the Continuing Fund, in each case as of the close of business on the business day prior to the Merger Date.

    (b) immediately thereafter, the Series A Units of the Continuing Fund received by the Terminating Fund will be distributed to unitholders of the Terminating Fund. Each unitholder of the Terminating Fund will receive Series A Units of the Continuing Fund having the same aggregate NAV as the units they previously held in the Terminating Fund as of the close of business on the business day prior to the Merger Date.

    (c) the Filer will issue a press release forthwith after the Merger is completed announcing the completion of the Merger and the ratio by which units of the Terminating Fund were exchanged for Series A Units of the Continuing Fund. The records of the broker or other intermediary through whom a unitholder holds his, her or its units should reflect the Merger within seven business days after the Merger (although the Filer has no control over this part of the process nor the timing involved).

17. The Terminating Fund and the Continuing Fund are, and are expected to continue to be at all material times, mutual fund trusts under the *Income Tax Act* (Canada) (**Tax Act**) and, accordingly, units of these Funds are "qualified investments" under the Tax Act for registered retirement savings plans, registered retirement income funds, deferred profit sharing plans, registered education savings plans, registered disability savings plans and tax-free savings accounts.

18. Following the Merger, the Continuing Fund will continue as a publicly offered open-end mutual fund and the Terminating Fund will be wound up and terminated immediately.

19. The Filer will pay all costs and expenses relating to the solicitation of proxies and holding the Meeting as well as the costs of implementing the Merger. Neither the Terminating Fund nor the Continuing Fund will bear any of the costs and expenses (including sales charges, redemption fees or other fees or commissions) of the Merger.

20. Unitholders of the Terminating Fund will continue to have the right to redeem units of the Terminating Fund at any time up to the close of business on the business day immediately preceding the effective date of the Merger.

21. Approval of the Merger is required because the Merger does not satisfy all of the criteria for pre-approved reorganizations and transfers as set out in section 5.6 of NI 81-102 because:

    (a) the fundamental investment objective of the Terminating Fund may not be considered to be substantially similar to the fundamental investment objective of the Continuing Fund;

    (b) the Funds do not have the same fee structure; and

(c) it is preferable to complete the Merger on a taxable basis.

22. The primary differences between the fundamental investment objective of the Terminating Fund and the Continuing Fund are that while the Terminating Fund is limited to investing in income funds that are listed and trading on a Canadian stock exchange (which consist of trusts, limited partnerships or other similar entities) and other high yielding securities (where a dividend is currently being paid), the Continuing Fund invests in a diversified portfolio of Canadian securities including equities, fixed-income instruments, real estate investment trusts and income trusts. Although both the Terminating Fund and the Continuing Fund seek to provide monthly distributions, the Continuing Fund also seeks to provide capital appreciation while the Terminating Fund seeks to preserve and enhance NAV.

23. The fee structure for the Terminating Fund and the Continuing Fund is different because the management fee for the units of the Terminating Fund is 0.85% of NAV plus a service fee of 0.50% while it is 2.25% of NAV (which includes a service fee of 1.25%) for the Series A Units of the Continuing Fund. Although the management fees of the Continuing Fund are higher than the Terminating Fund, the expenses associated with each Fund vary and the unitholders of the Continuing Fund are able to switch to other open-end funds managed by the Filer.

24. The tax implications of the Merger as well as the differences between the Terminating Fund and the Continuing Fund are described in the Circular so that unitholders of the Terminating Fund can consider this information before voting on the Merger.

25. Subsection 5.6(1)(f) of NI 81-102 requires that certain materials be sent to unitholders of the Terminating Fund in connection with the approval that must be obtained from those unitholders for the Merger. Specifically, the following documents must be sent:

(a) an information circular that describes the Merger, the characteristics of the Continuing Fund and any income tax considerations;

(b) if not previously sent, the current simplified prospectus and the most recent annual and interim financial statements for the Continuing Fund; and

(c) a statement describing how unitholders of the Terminating Fund may obtain the annual information form for the Continuing Fund.

26. The simplified prospectus of the Sentry Select Group of Funds dated as of August 20, 2008 is the relevant simplified prospectus for the Continuing Fund (the **Current Simplified Prospectus**). The Current Simplified Prospectus qualifies several other funds in addition to the Continuing Fund, and only the Continuing Fund is relevant to the unitholders of the Terminating Fund in connection with the Merger.

27. In accordance with section 5.3 of National Instrument 81-106 *Investment Fund Continuous Disclosure*, it has been the Filer's practice to annually solicit instructions from existing investors in the Filer's open-end mutual funds to request delivery of such financial statements. Unitholders in the Filer's open-end mutual funds have the opportunity to request to receive such documents on an annual basis.

28. The Filer believes that the Merger will be beneficial to unitholders of the Terminating Fund for the following reasons:

(a) The Continuing Fund's larger portfolio and broader investment mandate should offer improved portfolio diversification to unitholders of the Terminating Fund.

(b) Unitholders of the Terminating Fund are expected to enjoy increased economies of scale and lower proportionate fund operating expenses (which are borne indirectly by unitholders) as part of a larger combined Continuing Fund. As a fund's size decreases, unitholders bear an increased proportionate amount of operating expenses. For instance, the Terminating Fund has experienced a significant decrease in asset size which has resulted in unitholders of the Terminating Fund bearing increased proportionate operating costs;

(c) Changes to the tax treatment of income trusts have resulted in a reduction in the number of income trusts due to mergers and acquisition activity and conversions back into corporations. It is anticipated that this trend will continue. The Filer believes that the interests of the unitholders are better served by being invested in a larger Continuing Fund with a more flexible mandate, which is better suited to the changing income trust environment which will offer fewer quality income trusts as potential investments as time goes on;

(d) The Merger is expected to eliminate the administrative and regulatory costs of operating the Terminating Fund as a separate investment fund which costs are

borne by the Terminating Fund and, therefore, indirectly by the unitholders of the Terminating Fund;

(e) The Continuing Fund allows greater unitholder flexibility with respect to switches and conversions; and

(f) The Filer is proposing that the Merger take place on a taxable basis, because if it was effected on a non-taxable basis, the Continuing Fund may lose the benefit of its loss carry forwards for tax purposes.

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 in respect of the Prospectus and Financial Statement Relief:

(a) in satisfaction of the simplified prospectus delivery requirement in subsection 5.6(1)(f)(ii) of NI 81-102, the Filer sends unitholders of a terminating fund 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 as it relates to the continuing fund;

(b) the information circular sent to unitholders in connection with a merger prominently discloses that unitholders 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 calling the Filer's toll-free telephone number at 1-888-739-4623 or by writing to Sentry Select Capital Inc., The Exchange Tower, Suite 2850, 130 King Street West, Toronto, Ontario, M5X 1A4;

(c) upon a request by a unitholder of a terminating fund for financial statements, the Filer will make best efforts to provide the unitholder with financial statements of the applicable continuing fund in a timely manner so that the unitholder can make an informed decision regarding the applicable merger;

(d) each applicable terminating fund and the applicable continuing fund with respect to a merger have an unqualified audit report in respect of their last completed financial period; and

(e) the information circular sent to unitholders in connection with a merger provides sufficient information about the merger to permit unitholders to make an informed decision about the merger.

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

2.1.13 National Bank Securities 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 – some continuing funds have different investment objectives and fees than terminating funds, some mergers not a "qualifying exchange" or a tax-deferred transaction under Income Tax Act, tailored document will be sent to securityholders instead of complete current prospectus and financial statements will be sent upon request - 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.

May 29, 2009

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

AND

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

AND

IN THE MATTER OF
NATIONAL BANK SECURITIES INC.
(the Manager)

AND

NATIONAL BANK TREASURY BILL PLUS FUND
ALTAMIRA T-BILL FUND
ALTAMIRA SHORT TERM GOVERNMENT BOND FUND
ALTAMIRA INFLATION-ADJUSTED BOND FUND
ALTAMIRA SHORT TERM GLOBAL INCOME FUND
ALTAMIRA HIGH YIELD BOND FUND
ALTAMIRA MONTHLY INCOME FUND
ALTAMIRA BALANCED FUND
NATIONAL BANK RETIREMENT BALANCED FUND
ALTAMIRA GLOBAL DIVERSIFIED FUND
NATIONAL BANK/FIDELITY CANADIAN
ASSET ALLOCATION FUND
ALTAMIRA CANADIAN VALUE FUND
ALTAMIRA CAPITAL GROWTH FUND LIMITED
ALTAMIRA SPECIAL GROWTH FUND
ALTAMIRA GLOBAL VALUE FUND
NATIONAL BANK FUTURE ECONOMY FUND
ALTAMIRA SELECT AMERICAN FUND
NATIONAL BANK EUROPEAN EQUITY FUND
NATIONAL BANK ASIA-PACIFIC FUND
ALTAMIRA GLOBAL DISCOVERY FUND
NATIONAL BANK EUROPEAN
SMALL CAPITALIZATION FUND
NATIONAL BANK NATURAL RESOURCES FUND
NATIONAL BANK GLOBAL TECHNOLOGIES FUND
NATIONAL BANK CANADIAN INDEX FUND
NATIONAL BANK CANADIAN INDEX PLUS FUND
NATIONAL BANK AMERICAN INDEX PLUS FUND
ALTAMIRA PRECISION EUROPEAN INDEX FUND
ALTAMIRA PRECISION U.S. MIDCAP INDEX FUND
(each, a Terminating Fund and
collectively, the Terminating Funds,
and with the Manager, the Filers)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (**Legislation**) for approval under subsection 5.5(1)(b) of National instrument 81-102 Mutual Funds (**NI 81-102**) of the mergers **(Mergers**) of the Terminating Funds into the applicable Continuing Funds (defined below) (**Approval Sought**).

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

(a) the Autorité des marchés financiers is the principal regulator for this application;

(b) the Manager 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, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, the Yukon Territory and Nunavut Territory, where applicable; 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. The following additional terms shall have the following meanings:

Altamira Funds means Altamira T-Bill Fund, Altamira Short Term Government Bond Fund, Altamira Inflation-Adjusted Bond Fund, Altamira Short Term Global Income Fund, Altamira High Yield Bond Fund, Altamira Monthly Income Fund, Altamira Balanced Fund, Altamira Global Diversified Fund, Altamira Canadian Value Fund, Altamira Capital Growth Fund Limited, Altamira Special Growth Fund, Altamira Global Value Fund,

Altamira Select American Fund, Altamira Global Discovery Fund, Altamira Precision European Index Fund and Altamira Precision U.S. Midcap Index Fund;

Continuing Funds means National Bank Money Market Fund, National Bank Mortgage Fund, Altamira Long Term Bond Fund, National Bank Global Bond Fund, National Bank High Yield Bond Fund, National Bank Monthly Income Fund, National Bank Balanced Diversified Fund, National Bank Growth Diversified Fund, Altamira Growth & Income Fund, National Bank Canadian Equity Fund, Altamira Equity Fund, National Bank Small Capitalization Fund, National Bank Global Equity Fund, Altamira US Larger Company Fund, Altamira European Equity Fund, Altamira Asia Pacific Fund, National Bank Emerging Markets Fund, Altamira Global Small Company Fund, Altamira Resource Fund, Altamira Science and Technology Fund, Altamira Precision Canadian Index Fund, National Bank American Index Fund, Altamira Precision International Currency Neutral Index Fund and Altamira Precision U.S. Currency Neutral Index Fund;

Current Simplified Prospectus means, as applicable, the simplified prospectus relating to the National Bank Mutual Funds dated May 16, 2008, as amended, or the simplified prospectus relating to the Altamira Funds dated November 3, 2008, as amended, that qualifies the Continuing Funds, among others, for sale;

Fund or **Funds** means, individually or collectively, the Terminating Funds and the Continuing Funds;

IRC means the independent review committee for the Funds;

Materially Changed Continuing Fund means Altamira US Larger Company Fund;

National Bank Mutual Funds means National Bank Treasury Bill Plus Fund, National Bank Retirement Balanced Fund, National Bank/Fidelity Canadian Asset Allocation Fund, National Bank Future Economy Fund, National Bank European Equity Fund, National Bank Asia-Pacific Fund, National Bank European Small Capitalization Fund, National Bank Natural Resources Fund, National Bank Global Technologies Fund, National Bank Canadian Index Fund, National Bank Canadian Index Plus Fund and National Bank American Index Plus Fund;

NI 81-107 means National Instrument 81-107 *Independent Review Committee for Investment Funds*; and

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

Representations

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

1. The Manager is a corporation governed by the *Canada Business Corporations Act*, with its head office in Montreal, Quebec.

2. The Manager is the manager of each of the Funds.

3. The Funds are either open-ended mutual fund trusts established under the laws of Ontario or mutual fund corporations governed under the laws of Ontario.

4. Securities of the National Bank Mutual Funds are currently qualified for sale in each province and territory of Canada by a simplified prospectus and annual information form dated May 16, 2008 (as they may be amended from time to time). Securities of the Altamira Funds are currently qualified for sale in each province and territory of Canada by a simplified prospectus and annual information form dated November 3, 2008 (as they may be amended from time to time).

5. Each of the Funds is a reporting issuer under applicable securities legislation of each province and territory of Canada. None of the Funds or the Manager are in default of securities legislation in any province or territory of Canada.

6. Other than circumstances in which the securities regulatory authority of a province or territory of Canada has expressly exempted a Fund therefrom, each of the Funds follows the standard investment restrictions and practices established by the Decision Makers.

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

8. The Manager intends to reorganize the Funds as follows:

   (a) National Bank Treasury Bill Plus Fund and Altamira T-Bill Fund will merge into National Bank Money Market Fund;

   (b) Altamira Short Term Government Bond Fund will merge into National Bank Mortgage Fund;

   (c) Altamira Inflation-Adjusted Bond Fund will merge into Altamira Long Term Bond Fund;

   (d) Altamira Short Term Global Income Fund will merge into National Bank Global Bond Fund;

(e) Altamira High Yield Bond Fund will merge into National Bank High Yield Bond Fund;

(f) Altamira Monthly Income Fund will merge into National Bank Monthly Income Fund;

(g) Altamira Balanced Fund and National Bank Retirement Balanced Fund will merge into National Bank Balanced Diversified Fund;

(h) Altamira Global Diversified Fund will merge into National Bank Growth Diversified Fund;

(i) National Bank/Fidelity Canadian Asset Allocation Fund will merge into Altamira Growth & Income Fund;

(j) Altamira Canadian Value Fund will merge into National Bank Canadian Equity Fund;

(k) Altamira Capital Growth Fund Limited will merge into Altamira Equity Fund;

(l) Altamira Special Growth Fund will merge into National Bank Small Capitalization Fund;

(m) Altamira Global Value Fund and National Bank Future Economy Fund will merge into National Bank Global Equity Fund;

(n) Altamira Select American Fund will merge into Altamira US Larger Company Fund;

(o) National Bank European Equity Fund will merge into Altamira European Equity Fund;

(p) National Bank Asia-Pacific Fund will merge into Altamira Asia Pacific Fund;

(q) Altamira Global Discovery Fund will merge into National Bank Emerging Markets Fund;

(r) National Bank European Small Capitalization Fund will merge into Altamira Global Small Company Fund;

(s) National Bank Natural Resources Fund will merge into Altamira Resource Fund;

(t) National Bank Global Technologies Fund will merge into Altamira Science and Technology Fund;

(u) National Bank Canadian Index Fund and National Bank Canadian Index Plus Fund will merge into Altamira Precision Canadian Index Fund;

(v) National Bank American Index Plus Fund will merge into National Bank American Index Fund;

(w) Altamira Precision European Index Fund will merge into Altamira Precision International Currency Neutral Index Fund; and

(x) Altamira Precision U.S. Midcap Index Fund will merge into Altamira Precision U.S. Currency Neutral Index Fund.

9. The Merger of Altamira Select American Fund into Altamira US Larger Company Fund will be a material change for the Continuing Fund, as the net asset value of the Continuing Fund is smaller than the net asset value of the Terminating Fund.

10. A press release announcing the proposed Mergers was issued and filed on April 6, 2009 and amendments to the simplified prospectuses and annual information forms of the Funds and a material change report with respect to the proposed Mergers were filed via SEDAR on April 16, 2009.

11. As required by securities regulation, the Manager presented the conflict of interest matters inherent to the proposed Mergers to the IRC. In the context of its mandate and of NI 81-107, the IRC issued a favourable recommendation with respect to the policies proposed by the Manager to address these conflicts of interest.

12. The portfolios and other assets of each Terminating Fund to be acquired by the applicable Continuing Fund arising from the Mergers are currently, or will be, acceptable, on or prior to the effective date of the Mergers, to the portfolio advisors of the applicable Continuing Fund and are or will be consistent with the investment objectives of the applicable Continuing Fund.

13. None of the Continuing Funds will assume the liabilities of the applicable Terminating Fund(s). Each Terminating Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the date of the Mergers.

14. Securityholders of each Terminating Fund will receive, on a dollar-for-dollar basis, securities in the same or an equivalent series of the applicable Continuing Fund as they currently own in the Terminating Fund:

(a) Where an Altamira Fund is being merged into a National Bank Mutual Fund, Mutual Fund securities of the Altamira Fund will be exchanged for Investor Series

securities of the National Bank Mutual Fund.

(b) Where a National Bank Mutual Fund is being merged into an Altamira Fund, Investor Series securities of the National Bank Mutual Fund will be exchanged for Mutual Fund securities of the Altamira Fund.

(c) New Advisor Series securities will be created for any Continuing Fund that is an Altamira Fund if the Terminating Fund is a National Bank Mutual Fund that currently offers Advisor Series securities.

(d) Series I securities (and Series A securities if any are outstanding as of the effective date of the Merger) of Altamira Inflation-Adjusted Bond Fund will be exchanged for Investor Series securities of Altamira Long Term Bond Fund.

15. No sales charges will be payable in connection with the acquisition by a Continuing Fund of the investment portfolio of an applicable Terminating Fund.

16. Each Terminating Fund will merge into the applicable Continuing Fund on or about the close of business on June 12, 2009. Each Terminating Fund will be wound up as soon as reasonably possible following the Mergers, and the Continuing Funds will continue as publicly offered open-end mutual funds governed by the laws of Ontario.

17. Securityholders of a Terminating Fund will continue to have the right to redeem securities of the Terminating Fund for cash at any time up to the close of business on the effective date of the Mergers.

18. A notice of meeting, a management information circular and a proxy in connection with meetings of securityholders (collectively, the **Meeting Materials**), describing the proposed Mergers and the IRC's recommendation under paragraph 11 above, was mailed to securityholders of the Terminating Funds and securityholders of the Materially Changed Continuing Fund, on May 13, 2009 and filed via SEDAR on May 14, 2009.

19. Securityholders of the Terminating Funds and of the Materially Changed Continuing Fund will be asked to approve the Mergers at meetings to be held on June 4, 2009.

20. The Manager will pay for the costs of the Mergers. These costs consist mainly of brokerage charges associated with the merger-related trades that occur both before and after the date of the Mergers and legal, proxy solicitation, printing, mailing and regulatory fees.

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

(a) in each of the Mergers, the Continuing Funds do not have substantially similar investment objectives to the relevant Terminating Fund, with the exception of:

(i) the Merger of Altamira High Yield Bond Fund into National Bank High Yield Bond Fund;

(ii) the Merger of Altamira Monthly Income Fund into National Bank Monthly Income Fund;

(iii) the Merger of Altamira Balanced Fund into National Bank Balanced Diversified Fund;

(iv) the Merger of National Bank European Equity Fund into Altamira European Equity Fund;

(v) the Merger of National Bank Asia-Pacific Fund into Altamira Asia Pacific Fund;

(vi) the Merger of Altamira Global Discovery Fund into National Bank Emerging Markets Fund;

(vii) the Merger of National Bank Natural Resources Fund into Altamira Resource Fund;

(viii) the Merger of National Bank Global Technologies Fund into Altamira Science and Technology Fund; and

(ix) the Merger of National Bank Canadian Index Fund into Altamira Precision Canadian Index Fund.

(b) In each of the following Mergers, the Continuing Funds and relevant Terminating Fund do not have substantially similar fee structures:

(i) the Merger of National Bank Treasury Bill Plus Fund and Altamira T-Bill Fund into National Bank Money Market Fund;

(ii) the Merger of Altamira Short Term Government Bond Fund into National Bank Mortgage Fund;

(iii) the Merger of Altamira Inflation-Adjusted Bond Fund into Altamira Long Term Bond Fund;

(iv) the Merger of Altamira Short Term Global Income Fund into National Bank Global Bond Fund;

(v) the Merger of Altamira Balanced Fund into National Bank Balanced Diversified Fund;

(vi) the Merger of Altamira Global Diversified Fund into National Bank Growth Diversified Fund;

(vii) the Merger of National Bank/Fidelity Canadian Asset Allocation Fund into Altamira Growth & Income Fund;

(viii) the Merger of Altamira Capital Growth Fund Limited into Altamira Equity Fund;

(ix) the Merger of Altamira Special Growth Fund into National Bank Small Capitalization Fund;

(x) the Merger of Altamira Global Value Fund into National Bank Global Equity Fund; and

(xi) the Merger of National Bank Canadian Index Fund and National Bank Canadian Index Plus Fund into Altamira Precision Canadian Index Fund.

(c) each of the Mergers will not be a "qualifying exchange" within the meaning of section 132.2 of the Tax Act or a tax-deferred transaction under subsection 85(1), 85.1(1), 86(1) or 87(1) of the Tax Act, with the exception of the Merger of Altamira Short Term Government Bond Fund into National Bank Mortgage Fund and the Merger of Altamira Short Term Global Income Fund into National Bank Global Bond Fund;

(d) the Current Simplified Prospectus will not be sent to securityholders of the Terminating Funds but, instead, the Manager will send such securityholders an excerpt of the Current Simplified Prospectus consisting of Part A and Part B for the relevant Continuing Fund; and

(e) the most recent annual and interim financial statements for the Continuing Funds will not be sent to the securityholders of the Terminating Funds but, instead, the Manager will prominently disclose in the information circular sent to securityholders of the Terminating Funds that they can obtain the most recent interim and annual financial statements of the Continuing Funds by accessing the SEDAR website at www.sedar.com, by accessing the Manager's website or by calling a toll-free number.

22. The Manager will, except as noted above in paragraph 21, comply with all of the other criteria for pre- approved reorganizations and transfers set out in section 5.6 of NI 81-102.

23. The tax implications of the Mergers as well as the foregoing differences between the investment objectives and fee structures of the Terminating Funds and the Continuing Funds are described in the Meeting Materials so that the securityholders of the Terminating Funds may consider this information before voting on the Mergers. The Meeting Materials also describe the various ways in which investors can obtain a copy of the annual information forms and the management reports of fund performance for the Continuing Funds.

Decision

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

The decision of the Decision Makers under the Legislation is that the Approval Sought is granted provided that:

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

(b) the information circular sent to security-holders in connection with a Merger prominently discloses that security-holders 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 Manager's website or by calling the Manager's toll-free telephone number;

(c) upon request by a securityholder for financial statements, the Manager will

make best efforts to provide the securityholder with financial statements of the applicable Continuing Fund in a timely manner so that the securityholder can make an informed decision regarding a Merger;

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

(e) the material sent to securityholders of the Terminating Funds in respect of each Merger includes a tailored simplified prospectus consisting of:

(i) the Part A of the Current Simplified Prospectus; and

(ii) the Part B of the Current Simplified Prospectus of the applicable Continuing Fund.

"Josée Deslauriers"
Director, Investment Funds and Continuous Disclosure

2.1.14 Morgan Stanley Smith Barney LLC – s. 7.1(1) of NI 33-109 Registration Information

Headnote

Application pursuant to section 7.1 of NI 33-109 that the Applicant be relieved from the Form 33-109F4 requirements in respect of certain of its Nominal Officers. The exempted officers are without significant authority over any part of the Applicant's operations and have no connection with its Ontario operation. The Applicant is still required to submit a Form 33-109F4 on behalf of each of its directing minds, who are certain Executive Officers, and its Registered Individuals who are those officers involved in the Ontario business activities.

Statutes Cited

Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., s. 147.

Rules Cited

National Instrument 33-109 Registration Information.

May 29, 2009

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

AND

IN THE MATTER OF
MORGAN STANLEY SMITH BARNEY LLC

DECISION
(Subsection 7.1(1) of National Instrument 33-109)

UPON the application (the **Application**) of Morgan Stanley Smith Barney LLC (the **Applicant**) to the Ontario Securities Commission (the **Commission**) pursuant to section 7.1 of National Instrument 33-109 *Registration Information* (**NI 33-109**) for an exemption from the requirement in subsection 2.1(c) and section 3.3 of NI 33-109 that the Applicant submit a completed Form 33-109F4 for all Permitted Individuals (as defined below) of the Applicant in connection with the Applicant's registration as a dealer in the category of limited market dealer (**LMD**);

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

AND UPON the Applicant having represented to the Director that:

1. The Applicant is a limited liability company formed under the laws of the State of Delaware in the United States of America and is the result of a new joint venture arrangement between Morgan Stanley and Citigroup Global Markets Inc. The head office of the Applicant is located in Purchase, New York.

2. The Applicant has applied to be registered under the *Securities Act* (Ontario) (the **Act**) as a dealer in the categories of LMD and international dealer and as an adviser in the category of international adviser (investment counsel and portfolio manager). The Applicant is currently registered as a broker-dealer and investment adviser with the United States Securities and Exchange Commission and as a futures commission merchant with the National Futures Association. The Applicant is also a member of the Financial Industry Regulatory Authority and the New York Stock Exchange.

3. The Applicant provides investment, financing and related services to individual and institutional clients on a global basis.

4. Less than 1% of the aggregate consolidated gross revenues from trading activities of the Applicant in any one financial year would be expected to arise from the Applicant acting as a dealer for clients in Ontario.

5. Pursuant to NI 33-109, an LMD is required to submit, in accordance with National Instrument 31-102 *National Registration Database* (**NI 31-102**), a completed Form 33-109F4 for each permitted individual of the Applicant, including all directors and officers who have not applied to become registered individuals of the Applicant under subsection 2.2(1) of NI 33-109. The definition of "permitted individual" in the Instrument includes, among others, a director or officer of a firm.

6. All individuals who intend to trade securities in Ontario on behalf of the Applicant and who are officers of the Applicant, are, or will seek to become, registered as trading officers (the **Registered Individuals**) in accordance with the registration requirement under section 25(1) of the Act and the requirements of NI 31-102, by submitting a Form 33-109F4 completed with all the information required for a Registered Individual.

7. Other than the Executive Officers (as defined below), the Applicant's remaining officers would not reasonably be considered to be senior officers of the Applicant from a functional point of view. These officers (the **Nominal Officers**) have the title "managing director," "executive director," "vice president" or similar titles but are not in charge of a principal business unit, division or function of the Applicant and, in any event, are not, or will not be, involved or have oversight of, or direction over, the Applicant's dealer activities in Ontario. The Applicant considers its permitted individuals (the **Permitted Individuals**) who have obtained, or will be seeking, non-trading officer status (the **Executive Officers**) as the holders of its most senior executive positions and/or are the individuals that are in direct contact with its Canadian clients from a marketing or direct client relationship perspective.

8. It is currently anticipated that a very small number of the Applicant's hundreds of officers will be involved in the Applicant's trading activity in Ontario and will therefore seek registration as Registered Individuals.

9. The Applicant seeks relief from the requirement to submit Form 33-109F4s for the Nominal Officers. The Applicant proposes to submit Form 33-109F4s on behalf of each of its Executive Officers completed with all the information required for a Permitted Individual. The Applicant also proposes to submit a Form 33-109F4 for the individual at any point in time who is its Designated Compliance Officer under its LMD registration.

10. In the absence of the requested relief, NI 33-109 would require that in conjunction with the Applicant's LMD registration, the Applicant submit a completed Form 33-109F4 for each of its Nominal Officers, rather than limiting this filing requirement to the much smaller number of Executive Officers. In addition, the Applicant would be required to submit a completed Form 33-109F4 for any additional new Nominal Officer, if the requested exemption is not granted. The information contained in the filed Form 33-109F4s would also need to be monitored on a constant basis to ensure that notices of change were submitted in accordance with the requirements of section 5.1 of NI 33-109 and that all information was kept current.

11. Given the relatively limited scope of the Applicant's activities in Ontario and given that the Nominal Officers will not have any involvement in the Applicant's Ontario activities, the preparation and filing of Form 33-109F4s on behalf of each Nominal Officer would achieve no regulatory purpose, while imposing an unwarranted administrative and compliance burden on the Applicant.

AND WHEREAS the Director is satisfied that it would not be prejudicial to the public interest to make the requested Order on the basis of the terms and conditions proposed;

IT IS ORDERED pursuant to section 7.1 of NI 33-109 that the Applicant is exempt from the requirement in subsection 2.1(c) of NI 33-109 and section 3.3 of NI 33-109 to submit a completed Form 33-109F4 for each of its Permitted Individuals who are Nominal Officers not involved in its Ontario business, provided that at no time will the Nominal Officers include any Executive Officer or Designated Compliance Officer, or other officer who will be involved in, or have oversight of, the Applicant's activities in Ontario in any capacity.

"Erez Blumberger"
Manager, Registrant Regulation

2.2 Orders

2.2.1 Sunwide Finance Inc. et al.

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

AND

IN THE MATTER OF
SUNWIDE FINANCE INC., SUN WIDE GROUP, SUN WIDE GROUP FINANCIAL INSURERS & UNDERWRITERS, BRYAN BOWLES, ROBERT DRURY, STEVEN JOHNSON, FRANK R. KAPLAN, RAFAEL PANGILINAN, LORENZO MARCOS D. ROMERO AND GEORGE SUTTON

ORDER

WHEREAS on November 19, 2007, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering that Sunwide Finance Inc. (a.k.a. Sun Wide Finance Inc., Sunwide Financial Inc., Sun Wide Financial Inc.) ("Sunwide"), Sun Wide Group, Sun Wide Group Financial Insurers & Underwriters ("Sun Wide Insurers"), Wi-Fi Framework Corporation ("Wi-Fi"), and their officers, directors, employees and/or agents cease trading in all securities immediately, including the securities of Wi-Fi (the "Temporary Order");

AND WHEREAS on November 19, 2007, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS on November 21, 2007 the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on December 3, 2007 at 2:00 p.m;

AND WHEREAS the Commission held a Hearing on December 3, 2007, none of the respondents attended before the Commission on that date, and the Commission ordered that the Temporary Order be extended to March 4, 2008 and that the hearing be adjourned to that date;

AND WHEREAS the Commission held a Hearing on March 4, 2008, none of the respondents attended before the Commission, and the Commission ordered that the Temporary Order be extended to July 22, 2008 and that the hearing be adjourned to that date;

AND WHEREAS the Commission held a Hearing on July 22, 2008, none of the respondents attended before the Commission, and the Commission ordered that the Temporary Order be extended to September 4, 2008 and that the hearing be adjourned to September 3, 2008;

AND WHEREAS the Commission issued a Notice of Hearing and Statement of Allegations on August 21, 2008;

AND WHEREAS the Statement of Allegations named three respondents not previously named on the Temporary Order, being Robert Drury ("Drury"), Lorenzo Marcos D. Romero ("Romero"), and Rafael Pangilinan ("Pangilinan"), and removed Wi-Fi as a respondent (the remaining respondents are referred to, collectively, as the "Respondents");

AND WHEREAS the Commission held a Hearing on September 3, 2008 and none of the Respondents attended before the Commission;

AND WHEREAS the Commission amended the Temporary Order on September 4, 2008 to reflect the addition of Drury, Romero and Pangilinan as Respondents and the removal of Wi-Fi as a respondent, and extended the Temporary Order until the completion of the hearing on the merits and ordered that the hearing be adjourned to November 19, 2008 at 10:00 a.m.;

AND WHEREAS the Commission held a Hearing on November 19, 2008 to address the merits, sanctions and costs in this matter and none of the Respondents attended before the Commission on that date;

AND WHEREAS the Commission is satisfied that Staff took reasonable steps to give the Respondents adequate notice of the Hearing held on November 19, 2008 and to serve the Respondents with the order dated September 4, 2008 setting down the Hearing;

AND WHEREAS the Commission considered the evidence and the submissions made to it;

IT IS HEREBY ORDERED THAT:

1. Pursuant to paragraph 2 of subsection 127(1) of the Act, each of Sunwide, Sun Wide Group, Sun Wide Insurers, Bryan Bowles ("Bowles"), Drury, George Sutton ("Sutton"), Romero and Pangilinan permanently cease trading in securities;

2. Pursuant to paragraph 2.1 of subsection 127(1) of the Act, each of the Respondents referred to in clause (1) above be permanently prohibited from acquiring any security;

3. Pursuant to paragraph 3 of subsection 127(1) of the Act, the exemptions contained in Ontario securities law not apply permanently to the Respondents referred to in clause (1) above;

4. Pursuant to paragraphs 8, 8.2, 8.4 and 8.5 of subsection 127(1) of the Act, each of Bowles, Drury, Sutton, Romero and Pangilinan be permanently prohibited

from becoming or acting as a director or officer of any issuer, registrant, investment fund manager or promoter in the province of Ontario; and

5. Pursuant to section 127.1 of the Act each of the Respondents referred to in clause (1) above shall jointly and severally pay the costs of Staff's investigation and this proceeding in the amount of $5,000.

DATED at Toronto this 28th day of May, 2009.

"James E. A. Turner"

"Suresh Thakrar"

"Carol S. Perry"

2.2.2 Gold-Quest International et al. – s. 127

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

AND

IN THE MATTER OF
GOLD-QUEST INTERNATIONAL,
HEALTH AND HARMONEY,
IAIN BUCHANAN AND LISA BUCHANAN

ORDER
(Section 127 of the *Securities Act*)

WHEREAS on the 1st day of April, 2008, the Ontario Securities Commission (the "Commission") ordered, pursuant to clause 2 of subsection 127(1) and subsection 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that all trading in any securities of Gold-Quest International ("Gold-Quest") shall cease (the "Temporary Order");

AND WHEREAS the Commission further ordered as part of the Temporary Order that pursuant to clause 2 of subsection 127(1) and subsection 127(5) of the Act that all trading in any securities by Health and HarMONEY, Iain Buchanan and Lisa Buchanan (the "Ontario Respondents") shall cease;

AND WHEREAS the Commission further ordered as part of the Temporary Order that pursuant to clause 3 of subsection 127(1) and subsection 127(5) of the Act that any exemptions contained in Ontario securities law do not apply to Gold-Quest and the Ontario Respondents;

AND WHEREAS the Commission further ordered as part of the Temporary Order that pursuant to clause 3 of subsection 127(1) and subsection 127(5) of the Act that any exemptions contained in Ontario securities law do not apply to Gold-Quest's officers, directors, agents or employees;

AND WHEREAS on April 8, 2008, the Commission issued a Notice of Hearing in this matter (the "Notice of Hearing");

AND WHEREAS Gold-Quest and the Ontario Respondents were served with the Temporary Order, the Notice of Hearing and the Evidence Brief of Staff of the Commission ("Staff") as set out in the Affidavit of Service of Dale Grybauskas dated April 14, 2008;

AND WHEREAS no correspondence has ever been sent to Staff on behalf of Gold-Quest and no one has ever appeared for Gold-Quest;

AND WHEREAS upon hearing submissions from counsel for Staff and on written consent of counsel for the Ontario Respondents dated April 11, 2008, the Commission extended the Temporary Order until July 14, 2008 or until further order of the Commission, subject to a

carve-out to permit Iain Buchanan to trade in securities listed on a recognized public exchange only in his own existing account(s), for his own benefit, and through a dealer registered with the Commission, and a carve-out to permit Lisa Buchanan to trade in securities listed on a recognized public exchange only in her own existing account(s), for her own benefit, and through a dealer registered with the Commission (the "Amended Temporary Order");

AND WHEREAS on May 6, 2008, the U.S. Securities and Exchange Commission (the "SEC") filed an emergency civil enforcement action against Gold-Quest, and U.S. District Court Judge Lloyd D. George issued numerous orders against Gold-Quest and persons related to Gold-Quest, including orders prohibiting the trading in securities of Gold-Quest, freezing assets related to the sale of Gold-Quest securities and appointing a permanent receiver for Gold-Quest;

AND WHEREAS on July 14, 2008, counsel for Staff attended before the Commission while counsel for the Ontario Respondents did not attend but provided correspondence with respect to the Temporary Order;

AND WHEREAS on July 14, 2008, upon hearing submissions from counsel for Staff and considering the correspondence from counsel for the Ontario Respondents, the Commission extended the Amended Temporary Order against Gold-Quest and the Ontario Respondents until October 7, 2008;

AND WHEREAS on October 7, 2008, counsel for Staff and counsel for the Ontario Respondents did not oppose the extension of the Amended Temporary Order;

AND WHEREAS on October 7, 2008, upon considering the correspondence from counsel for the Ontario Respondents, the Commission extended the Amended Temporary Order against Gold-Quest and the Ontario Respondents until December 9, 2008;

AND WHEREAS on December 9, 2008, counsel for Staff and counsel for the Ontario Respondents did not oppose the extension of the Amended Temporary Order;

AND WHEREAS on December 9, 2008, upon considering the correspondence from counsel for the Ontario Respondents, the Commission extended the Amended Temporary Order against Gold-Quest and the Ontario Respondents until February 10, 2009;

AND WHEREAS on February 10, 2009, counsel for Staff and counsel for the Ontario Respondents did not oppose the extension of the Amended Temporary Order;

AND WHEREAS on February 10, 2009, upon considering the correspondence from counsel for the Ontario Respondents, the Commission extended the Amended Temporary Order against Gold-Quest and the Ontario Respondents until March 20, 2009;

AND WHEREAS on March 12, 2009, Staff of the Commission issued a Statement of Allegations against Gold-Quest, the Ontario Respondents, the Harmoney Club Inc., and Sandra Gale alleging breaches of the Act related to trades in the securities of Gold-Quest and the Harmoney Club Inc.;

AND WHEREAS on March 20, 2009, upon considering the correspondence from counsel for the Ontario Respondents, the Commission extended the Amended Temporary Order against Gold-Quest and the Ontario Respondents until May 27, 2009 and adjourned the hearing into the extension of the Amended Temporary Order against Gold-Quest and the Ontario Respondents until May 26, 2009;

AND WHEREAS on May 26, 2009, no counsel appeared for Gold-Quest and Health and HarMONEY;

AND WHEREAS on May 26, 2009, upon being informed that counsel for Iain Buchanan and Lisa Buchanan do not oppose the extension of the Amended Temporary Order until June 25, 2009, we conclude that it is in the public interest to extend the Amended Temporary Order without prejudice to the right of the Ontario Respondents to bring an application before the Commission to challenge the scope of the Amended Temporary Order;

AND WHEREAS counsel for Staff and counsel for Iain Buchanan and Lisa Buchanan agree that the hearing to extend the Amended Temporary Order shall be scheduled for June 25, 2009;

IT IS ORDERED THAT:

1. The Amended Temporary Order against Gold-Quest and the Ontario Respondents is extended to June 25, 2009 on the terms and conditions set forth in the Amended Temporary Order; and

2. A hearing to extend the Amended Temporary Order shall be held on June 25, 2009 at 2:00 p.m. or such other date as is agreed by the parties and determined by the Office of the Secretary.

DATED at Toronto this 26th day of May, 2009

"James E. A. Turner"

2.2.3 Fusion Resources Limited – s. 1(10)

Headnote

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

Applicable Legislative Provisions

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

May 28, 2009

Lawson Lundell LLP
1600 – 925 West Georgia Street
Vancouver, BC V6C 3L2

Attention: H. Jane Murdoch

Dear Sirs/Mesdames

Re: Fusion Resources Limited (the Applicant) -- Application for an order under clause 1(10)(b) of the Securities Act (Ontario) that the Applicant is not a reporting issuer

The Applicant has applied to the Ontario Securities Commission for an order under clause 1(10)(b) of the Act that the Applicant is not a reporting issuer.

As the Applicant has represented to the Commission that:

- The outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in Ontario and less than 51 security holders in Canada;
- No securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
- The Applicant is not in default of any of its obligations under the Act as a reporting issuer; and
- The Applicant will not be a reporting issuer or the equivalent in any jurisdiction in Canada immediately following the Director granting the relief requested.

The Director is satisfied that it would not be prejudicial to the public interest to grant the requested relief and orders that the Applicant is not a reporting issuer.

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

2.2.4 Paul Iannicca – s. 127

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

AND

IN THE MATTER OF
PAUL IANNICCA

ORDER
(Section 127 of the Securities Act)

WHEREAS on March 13, 2009, the Commission issued a Notice of Hearing pursuant to sections 127 and 127.1 of the Act accompanied by a Statement of Allegations dated March 12, 2009, issued by Staff of the Commission ("Staff") with respect to Paul Iannicca ("Iannicca");

AND WHEREAS on March 13, 2009, counsel for Iannicca was served with the Notice of Hearing and Statement of Allegations;

AND WHEREAS on March 20, 2009, upon hearing submissions from counsel for Staff, the hearing was adjourned to May 26, 2009;

AND WHEREAS on May 26, 2009, counsel for Staff attended before the Commission and requested that the hearing be adjourned to June 25, 2009 for the purpose of conducting a pre-hearing conference;

AND WHEREAS on May 26, 2009, counsel for the Respondent did not attend but provided correspondence whereby counsel for the Respondent agreed to the adjournment of this hearing to June 25, 2009 for the purpose of having a pre-hearing conference;

AND WHEREAS on May 26, 2009, upon hearing submissions from counsel for Staff;

IT IS ORDERED THAT the hearing is adjourned to June 25, 2009 at 2:00 p.m. or such other date as is agreed by the parties and determined by the Office of the Secretary for the purpose of having a pre-hearing conference.

DATED at Toronto this 26th day of May, 2009

"James E. A. Turner"

2.2.5 Gold-Quest International et al. – s. 127

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

AND

IN THE MATTER OF
GOLD-QUEST INTERNATIONAL,
1725587 ONTARIO INC. carrying on business as HEALTH AND HARMONEY, HARMONEY CLUB INC., DONALD IAIN BUCHANAN, LISA BUCHANAN AND SANDRA GALE

ORDER
(Section 127 of the Securities Act)

WHEREAS on April 1, 2008, the Ontario Securities Commission (the "Commission") ordered, pursuant to clause 2 of subsection 127(1) and subsection 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that all trading in any securities of Gold-Quest International ("Gold-Quest") shall cease (the "Temporary Order");

AND WHEREAS the Commission further ordered as part of the Temporary Order that pursuant to clause 2 of subsection 127(1) and subsection 127(5) of the Act that all trading in any securities by Health and HarMONEY, Donald Iain Buchanan and Lisa Buchanan shall cease;

AND WHEREAS the Commission further ordered as part of the Temporary Order that pursuant to clause 3 of subsection 127(1) and subsection 127(5) of the Act that any exemptions contained in Ontario securities law do not apply to Gold-Quest, Health and HarMONEY, Donald Iain Buchanan and Lisa Buchanan;

AND WHEREAS the Commission further ordered as part of the Temporary Order that pursuant to clause 3 of subsection 127(1) and subsection 127(5) of the Act that any exemptions contained in Ontario securities law do not apply to Gold-Quest's officers, directors, agents or employees;

AND WHEREAS on April 8, 2008, the Commission issued a Notice of Hearing to consider among other things, the extension of Temporary Order (the "TCTO Hearing");

AND WHEREAS on April 11, 2008 the Temporary Order was extended by the Commission with some amendments (the "Amended Temporary Order");

AND WHEREAS the Amended Temporary Order has been extended from time to time, most recently until May 27, 2009, and the TCTO Hearing has been adjourned from time to time most recently until May 26, 2009;

AND WHEREAS on March 13, 2009, the Commission issued a Notice of Hearing of pursuant to sections 127 and 127.1 of the Act (the "Hearing") accompanied by a Statement of Allegations dated March 12, 2009, issued by Staff of the Commission ("Staff") with respect to Gold-Quest, 1725587 Ontario Inc. carrying on business as Health and HarMONEY, the Harmoney Club, Donald Iain Buchanan, Lisa Buchanan and Sandra Gale;

AND WHEREAS on March 20, 2009, upon hearing submissions from Sandra Gale, counsel for Staff and counsel for Donald Iain Buchanan and Lisa Buchanan, it was ordered that the Hearing be adjourned to May 26, 2009;

AND WHEREAS on May 26, 2009, counsel for Staff, counsel for Sandra Gale and counsel for Donald Iain Buchanan and Lisa Buchanan attended before the Commission;

AND WHEREAS on May 26, 2009, no one appeared for Gold-Quest, Health and HarMONEY, or the Harmoney Club;

AND WHEREAS on May 26, 2009, upon hearing submissions from counsel for Staff, counsel for Sandra Gale, and counsel for Donald Iain Buchanan and Lisa Buchanan;

IT IS ORDERED THAT the Hearing is adjourned to June 25, 2009 at 2:00 p.m. or such other date as is agreed by the parties and determined by the Office of the Secretary.

DATED at Toronto this 26th day of May, 2009

"James E. A. Turner"

2.2.6 Andrew Keith Lech

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

AND

IN THE MATTER OF
ANDREW KEITH LECH

ORDER

WHEREAS on May 29, 2009, the Commission conducted a hearing in writing with respect to this matter;

AND WHEREAS the hearing on the merits in this matter was set to be heard on June 5, 2009, at 10:00am;

AND WHEREAS Staff of the Commission has advised that there is no longer a panel available to hear this matter;

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

IT IS ORDERED that the hearing on the merits in this matter shall be adjourned to July 22, 2009, at 10:00 a.m.

Dated at Toronto this 29th day of May, 2009.

"Lawrence E. Ritchie"

2.2.7 Rosenblatt Securities Inc. – s. 211 of the Regulation

Headnote

Application in connection with application for registration as an international dealer, for an order pursuant to section 211 of the Regulation exempting the applicant from the requirement in subsection 208(2) of the Regulation that the applicant carry on the business of an underwriter in a country other than Canada to be able to register in Ontario as an international dealer.

Statutes Cited

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

Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 100 (2), 208(2), 211.

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

AND

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

AND

IN THE MATTER OF
ROSENBLATT SECURITIES INC.

ORDER
(Section 211 of the Regulation)

UPON the application (the **Application**) of Rosenblatt Securities Inc. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to section 211 of the Regulation, exempting the Applicant from the requirement in subsection 208(2) of the Regulation that the Applicant carry on the business of an underwriter in a country other than Canada for the Applicant to be registered under the Act as a dealer in the category of international dealer;

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is formed under the laws of the State of New York, United States of America, with its principal place of business located in New York, New York.

2. The Applicant is registered in the United States as a broker-dealer with the Securities and Exchange

Commission and is a member of the Financial Industry Regulatory Authority.

3. The Applicant does not currently carry on business as an underwriter in the United States or in any other jurisdiction.

4. The Applicant has filed an application for registration under the Act as a dealer in the category of international dealer in accordance with section 208 of the Regulation. The Applicant is not currently registered in any capacity under the Act.

5. In the absence of the relief requested in this Application, the Applicant would not meet the requirements of the Regulation for registration as a dealer in the category of international dealer as the Applicant does not carry on the business of an underwriter in a country other than Canada.

6. The Applicant does not now act as an underwriter in Ontario and will not act as an underwriter in Ontario if it is registered under the Act as a dealer in the category of international dealer, despite the fact that subsection 100(2) of the Regulation provides that the registration of an international dealer authorizes the dealer to act as an underwriter for the sole purpose of making a distribution that it is authorized to make by section 208 of the Regulation.

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

IT IS ORDERED, pursuant to section 211 of the Regulation, that, in connection with the registration of the Applicant as a dealer under the Act in the category of international dealer, the Applicant is exempt from the provisions of subsection 208(2) of the Regulation requiring that the Applicant carry on the business of an underwriter in a country other than Canada, provided that, so long as the Applicant is registered under the Act as an international dealer:

(a) the Applicant carries on the business of a dealer, in good standing, in a country other than Canada; and

(b) notwithstanding subsection 100(2) of the Regulation, the Applicant shall not act as an underwriter in Ontario.

May 29, 2009

"Margot C. Howard"
Commissioner
Ontario Securities Commission

"Mary Condon"
Commissioner
Ontario Securities Commission

2.2.8 Teodosio Vincent Pangia

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

AND

IN THE MATTER OF
TEODOSIO VINCENT PANGIA

ORDER

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

AND WHEREAS on June 1, 2009, a hearing was held;

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

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

IT IS ORDERED THAT this matter is adjourned until July 23, 2009 at 2:00 pm.

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

"Lawrence E. Ritchie"

2.2.9 OnePak, Inc. – s. 144

Headnote

Application by an issuer for a revocation of a cease trade order issued by the Commission – cease trade order issued because the issuer had failed to file certain continuous disclosure materials required by Ontario securities law – defaults subsequently remedied by bringing continuous disclosure filings up-to-date – cease trade order revoked.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127, 144.

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

AND

IN THE MATTER OF
ONEPAK, INC.

ORDER
(Section 144)

WHEREAS the securities of OnePak, Inc. ("**OnePak**") are subject to a temporary cease trade order made by the Director dated August 5, 2008 pursuant to paragraph 2 of subsections 127(1) and 127(5) of the *Securities Act* (Ontario) (the "**Act**"), as extended by an order made by the Director on August 15, 2008 pursuant to paragraph 2 of subsection 127(1) of the Act (collectively, the "**Cease Trade Order**") directing that trading in the securities of OnePak cease until the Cease Trade Order is revoked;

AND WHEREAS OnePak has applied to the Ontario Securities Commission (the "**Commission**") pursuant to section 144(1) of the Act for a revocation of the Cease Trade Order (the "**Application**");

AND WHEREAS OnePak has represented to the Commission that:

1. OnePak was incorporated under the laws of the State of Nevada on March 30, 2005.

2. OnePak is a reporting issuer under the securities legislation of the province of Ontario. OnePak is not a reporting issuer or its equivalent in any other jurisdiction in Canada.

3. OnePak's authorized share capital consists of 100,000,000 common shares with a par value of $0.001 per share of which 21,787,113 were issued and outstanding as of April 30, 2009 and 100,000,000 preferred shares with a par value of $0.001 per share of which 333,333 Class B Preferred Shares were issued and outstanding as of April 30, 2009.

4. OnePak's common shares are listed on the Canadian National Stock Exchange.

5. The Cease Trade Order was issued as a result of OnePak's failure to file:

   a. its audited annual financial statements for the year ended December 31, 2007 (the "**2007 Annual Financial Statements**") and its management's discussion and analysis ("**MD&A**") relating to such annual financial statements as required by National Instrument 51-102 – *Continuous Disclosure Obligations* ("**NI 51-102**") together with the related certificates required by National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* ("**NI 52-109**") (collectively, the "**2007 Annual Filings**"), and

   b. its interim financial statements for the period ended March 31, 2008 and its MD&A relating to such interim financial statements as required by NI 51-102 together with the related certificates required by NI 52-109 (collectively, the "**Q1 Interim Filings**").

6. Subsequent to the issuance of the Cease Trade Order, the following became due for filing:

   a. OnePak's interim financial statements for the period ended June 30, 2008 and its MD&A relating to such interim financial statements as required by NI 51-102 together with the related certificates required by NI 52-109 (collectively, the "**Q2 Interim Filings**"),

   b. OnePak's interim financial statements for the period ended September 30, 2008 and its MD&A relating to such interim financial statements as required by NI 51-102 together with the related certificates required by NI 52-109 (collectively, the "**Q3 Interim Filings**"), and

   c. OnePak's audited annual financial statements for the year ended December 31, 2008 (the "**2008 Annual Financial Statements**") and its MD&A relating to such interim financial statements as required by NI 51-102 together with the related certificates required by NI 52-109 (collectively, the "**2008 Annual Filings**").

7. The delay in the filing of the 2007 Annual Filings began with the unexpected death of OnePak's

Chief Financial Officer at the time, Mr. Joseph Dore, in late December of 2007. Mr. Dore had been the person primarily responsible for preparing OnePak's financial statements and MD&A. Following Mr. Dore's death, OnePak appointed a new Chief Financial Officer, who then had to familiarize himself with all of the financial aspects of OnePak.

8. Subsequently, the audit of OnePak's 2007 Annual Financial Statements was delayed due to a delay in receiving a valuation from an independent business valuator with respect to shares of OnePak that were distributed to Citrine Holdings Limited as compensation under an agreement between OnePak and Citrine Holdings Limited described in Note 11 to the 2007 Annual Financial Statements re-filed on SEDAR on May 19, 2009. As a result of the delay in the audit of the 2007 Annual Financial Statements, the completion and filing of the Q1 Interim Filings and the Q2 Interim Filings were also delayed.

9. OnePak filed the 2007 Annual Filings and the Q1 Interim filings on SEDAR on September 15, 2008. OnePak filed the Q2 Interim Filings on SEDAR on September 29, 2008. On May 19, 2009 OnePak re-filed on SEDAR the 2007 Annual Filings, the Q1 Interim Filings and the Q2 Interim Filings to correct certain errors and deficiencies. Also on May 19, 2009, OnePak filed on SEDAR the Q3 Interim Filings. On May 21, 2009 OnePak filed on SEDAR the 2008 Annual Filings. Therefore, OnePak is no longer in default of its continuous disclosure obligations under Ontario securities law.

10. OnePak has paid the applicable fees to the Commission in accordance with OSC Rule 13-502 – Fees in connection with the filing of the 2007 Annual Filings, the Q1 Interim Filings, the Q2 Interim Filings, the Q3 Interim Filings and the 2008 Annual Filings.

11. OnePak has not previously been the subject of any cease trade orders by the Commission, except for the Cease Trade Order, and the earlier management and insider cease trade order issued by the Commission on May 5, 2008 and extended on May 16, 2008 which also related to OnePak's failure to file the 2007 Annual Filings.

12. OnePak will hold an annual meeting of its shareholders within 75 days of this order. OnePak intends to deliver the 2007 Annual Financial Statements and related MD&A and the 2008 Annual Financial Statements and related MD&A to shareholders together with the materials in respect of such meeting.

13. OnePak is not currently the subject of any cease trade orders in any other jurisdiction.

14. OnePak's profiles on SEDAR and SEDI are up-to-date.

15. Upon the issuance of this revocation order, OnePak will issue a news release and file a material change report on SEDAR.

16. Except for the Cease Trade Order, OnePak is not in default of any of the requirements of the Act or the rules and regulations made thereunder.

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

AND UPON the Director being satisfied that it would not be prejudicial to the public interest to revoke the Cease Trade Order;

IT IS ORDERED under Section 144 of the Act, that the Cease Trade Order is revoked.

DATED this 1st day of June, 2009.

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

2.2.10 Lehman Cohort Global Group Inc. et al. – ss. 127(1), 127(5)

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

AND

**IN THE MATTER OF
LEHMAN COHORT GLOBAL GROUP INC.,
ANTON SCHNEDL, RICHARD UNZER,
ALEXANDER GRUNDMANN AND
HENRY HEHLSINGER**

**TEMPORARY ORDER
SUBSECTION 127(1) AND SUBSECTION 127(5)**

WHEREAS it appears to the Ontario Securities Commission (the "Commission") that:

1. Lehman Cohort Global Group Inc. ("Lehman") is a corporation registered in the Province of Ontario with its registered office located in Toronto, Ontario;

2. Lehman is not registered with the Commission in any capacity;

3. Anton Schnedl ("Schnedl") appears to be the directing mind of Lehman;

4. Schnedl, Richard Unzer ("Unzer"), Alexander Grundmann ("Grundmann") and Henry Hehlsinger ("Hehlsinger") are not registered with the Commission in any capacity;

5. These persons, purporting to act on behalf of Lehman, have been soliciting investors in Europe to provide funds to Lehman for investment;

6. Investors have been instructed to send funds for investment to a Lehman bank account in Toronto (the "Lehman Account");

7. Staff of the Commission ("Staff") are aware that funds have been sent to the Lehman Account;

8. Staff are conducting an investigation into the activities of Lehman;

9. The Commission is of the opinion that the time required to conclude a hearing could be prejudicial to the public interest; and

10. The Commission is of the opinion that it is in the public interest to make this order.

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

IT IS FURTHER ORDERED pursuant to clause 2 of subsection 127(1) and subsection 127(5) of the Act that all trading in any securities by Lehman, Schnedl, Unzer, Grundmann and Hehlsinger shall cease;

IT IS FURTHER ORDERED pursuant to clause 3 of subsection 127(1) and subsection 127(5) of the Act that any exemptions contained in Ontario securities law do not apply to Lehman or its agents or employees;

IT IS FURTHER ORDERED pursuant to clause 3 of subsection 127(1) and subsection 127(5) of the Act that any exemptions contained in Ontario securities law do not apply to Schnedl, Unzer, Grundmann and Hehlsinger, and

IT IS FURTHER ORDERED pursuant to subsection 127(6) of the Act that this order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission.

Dated at Toronto this 20th day of May, 2009

"W. David Wilson"

2.2.11 Canada Pension Plan Investment Board and Universa Investments L.P. – s. 80 of the CFA

Headnote

Section 80 of the Commodity Futures Act (Ontario) – International adviser exempted from the adviser registration requirement in section 22(1)(b) of the CFA where such adviser act as an adviser in respect of commodity futures contracts or commodity futures options (commodities) for certain crown corporations or wholly owned entities of the Government of Canada in connection the adviser acting as an adviser to certain Fund – Commodities are primarily traded on commodity futures exchanges outside of Canada and primarily cleared outside of Canada.

Terms and conditions on exemption ruling correspond to the relevant terms and conditions on the comparable exemption from the adviser registration requirement available to international advisers in respect of securities set out in proposed NI 31-103 Registration Requirements – Exemption also subject to a "sunset clause" condition.

Statutes Cited

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

Instruments Cited

Proposed National Instrument 31-103 Registration Requirements, (2008) 31 OSCB 2279, Part 8 – Exemptions from Registration, Division 1: General, section 8.16.
National Instrument 45-106 Prospectus and Registration Exemptions.

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

AND

IN THE MATTER OF
CANADA PENSION PLAN INVESTMENT BOARD
AND
UNIVERSA INVESTMENTS L.P.

ORDER
(Section 80 of the CFA)

UPON the application (the **Application**) of the Canada Pension Plan Investment Board (the **CPP Investment Board**) and Universa Investments L.P. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order (the **Order**), pursuant to section 80 of the CFA, that the adviser registration requirement in the CFA (as defined below) shall not apply to the Applicant (including its directors, officers and employees acting as advisers on its behalf) where the Applicant acts as an adviser in respect of Contracts (as defined below) for the CPP Investment Board and/or the Subsidiaries (as defined below) in connection the Applicant acting as an adviser to the Funds (as defined below), subject to certain terms and conditions;

AND WHEREAS, for the purposes hereof, the following terms shall have the following meanings:

"Act" means the *Securities Act*, R.S.O. 1990, c. S.5, as amended;

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

"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;

"Contract" means a commodity futures contract or a commodity futures option, in each case, as defined in the CFA;

"CPP" means the Canada Pension Plan and is described in greater detail in paragraph 1 below;

"CPP Act" means the *Canada Pension Plan Act*;

"CPP Investment Board Act" means the *Canada Pension Plan Investment Board Act*;

"Foreign Contract" means a Contract that is 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;

"Funds" means the Universa Black Swan Protection Protocol Offshore II Ltd. and any other foreign domiciled investment funds established or advised by the Applicant in which the CPP Investment Board and/or a Subsidiary is the sole participating shareholder;

"NI 31-103" means proposed National Instrument 31-103 *Registration Requirements* which was published for comment in the February 29, 2008 Ontario Securities Commission Bulletin;

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

"securities" has the meaning set out in the definition of "security" in subsection 1(1) of the Act;

"Shares" means participating, non-voting, redeemable shares of the Funds; and

"Subsidiary" means a corporation, incorporated under an Act of Parliament or the legislature of Ontario, that is resident of or carries on business in Ontario, and is wholly owned, directly or indirectly, by the CPP Investment Board;

AND WHEREAS any other terms used in the Order that are defined in the Act, and not otherwise defined in the Order or in the CFA, shall have the same meaning as in the Act, unless the context otherwise requires;

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

AND UPON the CPP Investment Board, the Subsidiaries and the Applicant having represented to the Commission that:

The CPP

1. The CPP is a contributory, earnings related social insurance program for Canadian employees in all provinces and territories of Canada (other than Québec) established pursuant to the CPP Act. The CPP provides basic benefits to employees who have contributed to the plan upon the retirement, disability or death of such employees.

The CPP Investment Board

2. The CPP Investment Board is a crown corporation established under the CPP Investment Board Act by the Government of Canada and is a wholly owned entity of the Government of Canada. The principal office of the CPP Investment Board is located in Toronto, Ontario.

3. The CPP Investment Board was established by the Government of Canada as a separate corporation that is governed and managed independently of the CPP. The mandate of the CPP Investment Board is set out in the CPP Investment Board Act as follows:

   (a) to manage the assets of the CPP allocated to the CPP Investment Board in the best interests of the contributors and beneficiaries under the CPP;

   (b) to assist the CPP in meeting its obligations to contributors and beneficiaries under the CPP; and

   (c) to invest the assets of the CPP with a view to achieving a maximum rate of return, without undue risk of loss, having regard to the factors that may affect the funding of the CPP and the ability of the CPP to meet its financial obligations.

4. Pursuant to the CPP Investment Board Act, the CPP Investment Board is authorized to establish the Subsidiaries. The CPP Investment Board makes the determination of whether to have securities, Contracts and/or other instruments purchased either held by the CPP Investment Board or by one of the Subsidiaries. Where a Subsidiary is used, the Subsidiary is the entity that purchases such securities, Contracts and/or other instruments and retains third party advisers, if any. All investment decisions for the Subsidiary are made by the CPP Investment Board or delegated to retained third party advisers, if any.

5. The CPP Investment Board and the Subsidiaries are not registered in any capacity under either the Act or the CFA.

6. As at December 31, 2008, the CPP Investment Board, including the Subsidiaries, had approximately $108 billion in assets under management. In light of its mandate and its growing assets under management, the CPP Investment Board is continuously investing and in some cases, retaining others to advise the CPP Investment Board and/or the Subsidiaries in respect of certain assets of the CPP.

The Applicant

7. The Applicant is a limited partnership established under the laws of the State of Delaware, with its head office located in Santa Monica, California, U.S.A. The Applicant does not have an office in Canada and has no directors, officers or employees resident in Canada.

8. The Applicant engages in the business of an adviser in the United States.

9. The Applicant is registered as an investment adviser with the United States Securities and Exchange Commission. It is also registered as a commodity trading advisor and exempt from registration as a commodity trading operator with the U.S. Commodity Futures Trading Commission and approved as a member of the U.S. National Futures Association.

The Funds

10. Each of the Funds is an exempted company established under the laws of the Cayman Islands or another jurisdiction outside of Canada.

11. The Funds will be managed by the Applicant pursuant to an investment management agreement entered into between the applicable Fund and the Applicant. Each of the Funds is not, and has no current intention of becoming, a reporting issuer under the Act or under the securities legislation of any other jurisdiction in Canada.

12. It is anticipated that the CPP Investment Board and/or a Subsidiary will invest in Shares of the Funds and will be, directly or indirectly, the sole participating shareholder in each of the Funds.

Advising by the Applicant

13. As a part of their investment program, the Funds may invest in Contracts.

14. The adviser registration requirement in 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.

15. Where the Shares are offered by the Funds to the CPP Investment Board and/or a Subsidiary, and the Applicant engages in the business of advising the Funds as to the investing in or the buying or selling of securities, Contracts and/or other instruments, the Applicant may, by so acting, be interpreted as having triggered the adviser registration requirement in the Act and the adviser registration requirement in the CFA.

16. The Applicant is not, and has no current intention of becoming, registered in any capacity under either the Act or the CFA.

17. Under an exemption from the adviser registration requirement in the Act set out in section 8.16 of NI 31-103 (the **International Adviser Exemption**) the Applicant would be able to act as an adviser in respect of securities for the CPP Investment Board and/or the Subsidiaries without having to obtain registration under the Act as an adviser, subject to satisfying certain additional requirements specified in NI 31-103.

18. The International Adviser Exemption provides that the adviser registration requirement in the Act does not apply to an international adviser that is acting as an adviser in respect of securities for a “permitted client” (as such term is defined in NI 31-103) if certain conditions are met.

19. In addition to this Application, the CPP Investment Board and certain international advisers (including the Applicant) have applied to the Commission for a ruling granting such international advisers relief from the adviser registration requirement in the Act consistent with the International Adviser Exemption when it acts as an adviser in respect of securities for the CPP Investment Board and/or the Subsidiaries in connection with certain assets of the CPP.

20. 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 Contracts, that corresponds to the

exemption from the adviser registration requirement in the Act for acting as an adviser (as defined in the Act), in respect of securities, that is similar to the International Adviser Exemption in NI 31-103.

21. In accordance with the International Adviser Exemption:

(a) the Applicant,

(i) has its head office or principal place of business in a foreign jurisdiction;

(ii) is registered, or is exempt from registration, under the legislation of the foreign jurisdiction in which its head office or principal place of business is located in a category of registration that permits it to carry on the activities in that jurisdiction that a registered adviser is permitted to carry on in the local jurisdiction;

(iii) engages in the business of an adviser in the foreign jurisdiction in which its head office or principal place of business is located;

(iv) to the extent that the investment strategies of the Funds include investing in Contracts, only acts as an adviser to the CPP Investment Board and/or the Subsidiaries with respect to Contracts that are Foreign Contracts; and

(v) during its most recent fiscal year, derived not more than ten percent of the aggregate consolidated gross revenue of the Applicant, its affiliates and its affiliated partnerships from the portfolio management activities of the Applicant, its affiliates and its affiliated partnerships in Canada; and

(b) the CPP Investment Board and the Subsidiaries are crown corporations or, directly or indirectly, wholly owned entities of the Government of Canada which meet the proposed definition of "permitted client" set out in Section 1.1(1) of NI 31-103.

22. The International Adviser Exemption is premised on the policy that where certain highly sophisticated Canadian investors are advised by foreign advisers (who are appropriately registered in their home jurisdiction), such Canadian investors may not require all the protections afforded by having the foreign adviser register in Canada.

23. The CPP Investment Board and the Subsidiaries are highly sophisticated investors who fit within the contemplated definition of "permitted client" in NI 31-103 and the Applicant is appropriately registered, or exempt from registration, in its home jurisdictions.

24. Pursuant to the CPP Investment Board Act, every investment manager who advises the CPP Investment Board and/or the Subsidiaries regarding assets of the CPP is required to do so in accordance with the CPPIB Act and the investment policies, standards and procedures established by the CPP Investment Board.

25. Shares will be distributed in Ontario to the CPP Investment Board or a Subsidiary (as the case may be) on a private placement basis. The distribution of Shares to the CPP Investment Board or a Subsidiary shall:

(a) be made through a registered dealer under the Act;

(b) be in accordance with the Act and the regulations and rules pursuant thereto, including the requirements under NI 45-106;

(c) meet all the filing requirements required when making a private placement; and

(d) meet the applicable participation fees requirements.

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

IT IS ORDERED pursuant to section 80 of the CFA, that the Applicant (including its directors, officers and employees acting as advisers on its behalf) shall not be subject to the adviser registration requirement in the CFA where the Applicant acts as an adviser in respect of Contracts for the CPP Investment Board and/or the Subsidiaries in connection with the Applicant acting as an adviser to the Funds, provided that, at the relevant time:

(a) the CPP Investment Board and the Subsidiaries are crown corporations or, directly or indirectly, wholly owned entities of the Government of Canada that meet the proposed definition of "permitted client" as set out in paragraph (g) of the definition of "permitted client" under section 1.1(1) of NI 31-103;

(b) the Applicant:

(i) has its head office or principal place of business in a foreign jurisdiction;

(ii) is registered, or is exempt from registration, under the legislation of the foreign jurisdiction in which its head office or principal place of business is located in a category of registration that permits it to carry on the activities in that jurisdiction that a registered adviser is permitted to carry on in the local jurisdiction;

(iii) engages in the business of an adviser in the foreign jurisdiction in which its head office or principal place of business is located;

(iv) to the extent that the investment strategies of the Funds include investing in Contracts, only acts as an adviser to the CPP Investment Board and/or the Subsidiaries with respect to Contracts that are Foreign Contracts;

(v) during its most recent fiscal year, derived less than ten percent of the aggregate consolidated gross revenue of the Applicant, its affiliates and its affiliated partnerships from the portfolio management activities of the Applicant, its affiliates and its affiliated partnerships in Canada;

(vi) before advising the CPP Investment Board and/or any of the Subsidiaries,

(A) will notify the CPP Investment Board or the Subsidiaries (as the case may be):

(I) that it is not registered in Canada;

(II) its jurisdiction of residence;

(III) the name and address of its agent for service of process in Ontario; and

(IV) that there may be difficulty enforcing legal rights against it because the Applicant is resident outside Canada and all or substantially all of its assets are situated outside Canada; and

(B) will deliver to the Commission a submission to jurisdiction and appoints an agent for service in a form acceptable to the Commission; and

(c) this Order, will terminate upon the earlier of:

(i) five years after the date hereof;

(ii) the Applicant being registered as an adviser under the CFA;

(iii) 90 days after the Commission publishes in its Bulletin a notice or a statement to the effect that it does not propose to make NI 31-103; or

(iv) 90 days after the coming into force of NI 31-103 if NI 31-103 does not contain a rule or provision substantially similar to the International Adviser Exemption.

May 29, 2009

“Margot C. Howard”
Commissioner
Ontario Securities Commission

“Mary Condon”
Commissioner
Ontario Securities Commission

2.2.12 BOC International (USA) Inc. – s. 211 of the Regulation

Headnote

Application in connection with application for registration as an international dealer, for an order pursuant to section 211 of the Regulation exempting the applicant from the requirement in subsection 208(2) of the Regulation that the applicant carry on the business of an underwriter in a country other than Canada to be able to register in Ontario as an international dealer.

Statutes Cited

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

Regulations Cited

Regulation made under the Securities Act, R.R.O., Reg. 1015, as am., ss.100(2), 208(2), 211.

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

AND

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

AND

IN THE MATTER OF
BOC INTERNATIONAL (USA) INC.

ORDER
(Section 211 of the Regulation)

UPON the application (the **Application**) of BOC International (USA) Inc. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to section 211 of the Regulation, exempting the Applicant from the requirement in subsection 208(2) of the Regulation that the Applicant carry on the business of an underwriter in a country other than Canada for the Applicant to be registered under the Act as a dealer in the category of international dealer;

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a corporation formed under the laws of the State of Delaware, United States of America, with its principal place of business located in New York, New York.

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

3. The Applicant does not currently carry on business as an underwriter in the United States or in any other jurisdiction.

4. The Applicant has filed an application for registration under the Act as a dealer in the category of international dealer in accordance with section 208 of the Regulation. The Applicant is not currently registered in any capacity under the Act.

5. In the absence of the relief requested in this Application, the Applicant would not meet the requirements of the Regulation for registration as a dealer in the category of international dealer as the Applicant does not carry on the business of an underwriter in a country other than Canada.

6. The Applicant does not now act as an underwriter in Ontario and will not act as an underwriter in Ontario if it is registered under the Act as a dealer in the category of international dealer, despite the fact that subsection 100(2) of the Regulation provides that the registration of an international dealer authorizes the dealer to act as an underwriter for the sole purpose of making a distribution that it is authorized to make by section 208 of the Regulation.

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

IT IS ORDERED, pursuant to section 211 of the Regulation, that, in connection with the registration of the Applicant as a dealer under the Act in the category of international dealer, the Applicant is exempt from the provisions of subsection 208(2) of the Regulation requiring that the Applicant carry on the business of an underwriter in a country other than Canada, provided that, so long as the Applicant is registered under the Act as an international dealer:

(a) the Applicant carries on the business of a dealer, in good standing, in a country other than Canada; and

(b) notwithstanding subsection 100(2) of the Regulation, the Applicant shall not act as an underwriter in Ontario.

June 2, 2009

"David L. Knight"
Commissioner
Ontario Securities Commission

"Suresh Thakrar"
Commissioner
Ontario Securities Commission

2.3 Rulings

2.3.1 Canada Pension Plan Investment Board et al. – s. 74(1)

Headnote

Subsection 74(1) of the Securities Act (Ontario) – International advisers exempted from the adviser registration requirement in section 25(1)(c) of the Securities Act where such advisers act as an adviser in respect of securities for certain crown corporations or wholly owned entities of the Government of Canada – Terms and conditions on exemption ruling correspond to the relevant terms and conditions on the comparable exemption from the adviser registration requirement available to international advisers set out in proposed NI 31-103 Registration Requirements – Exemption also subject to a "sunset clause" condition.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 1(1), 74(1), 25(1)(c).
Commodity Futures Act, R.S.O. 1990, c. C.20. as am., s. 22.

Instruments Cited

Proposed National Instrument 31-103 Registration Requirements, (2008) 31 OSCB 2279, Part 8 – Exemptions from Registration, Division 1: General, s. 8.16.
National Instrument 45-106 Prospectus and Registration Exemptions.

Rules Cited

Ontario Securities Commission Rule 35-502 Non Resident Advisers, sss. 7.3, 7.10.

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

AND

IN THE MATTER OF
CANADA PENSION PLAN INVESTMENT BOARD,
UNIVERSA INVESTMENTS L.P.
AND
KEYWISE CAPITAL MANAGEMENT (HK) LIMITED

RULING
(Subsection 74(1) of the Act)

UPON the application (the **Application**) of the Canada Pension Plan Investment Board (the **CPP Investment Board**), Universa Investments L.P. (**Universa**) and Keywise Capital Management (HK) Limited (together with Universa, the **International Advisers**, as defined in greater detail below) to the Ontario Securities Commission (the **Commission**) for a ruling (the **Ruling**), pursuant to subsection 74(1) of the Act, that the adviser registration requirement in the Act (as defined below) shall not apply to the International Advisers (including their respective directors, officers, representatives and employees acting as advisers on their behalf) where the International Advisers act as an adviser in respect of securities (as defined below) for the CPP Investment Board and/or the Subsidiaries (as defined below) in connection with managing certain assets of the CPP (as defined below), subject to certain terms and conditions;

AND WHEREAS, for the purposes hereof, the following terms shall have the following meanings:

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

"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;

"CFA" means the *Commodity Futures Act*, R.S.O. 1990, c. C. 20, as amended;

"Contract" means a commodity futures contract or a commodity futures option (in each case, as defined in the CFA) that is 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;

"CPP" means the Canada Pension Plan and is described in greater detail in paragraph 1 below;

"CPP Act" means the *Canada Pension Plan Act*;

"CPP Investment Board Act" means the *Canada Pension Plan Investment Board Act*;

"Foreign Security" means (a) a security issued by an issuer incorporated, formed or created under the laws of a foreign jurisdiction, and (b) a security issued by a government of a foreign jurisdiction;

"Fund" means any foreign domiciled investment fund established or advised by an International Adviser in which the CPP Investment Board and/or a Subsidiary is the sole participating shareholder;

"International Advisers" means those entities listed and described in Schedule "A" of this ruling;

"NI 31-103" means proposed National Instrument 31-103 *Registration Requirements*, which was published for comment in the February 29, 2008 Ontario Securities Commission Bulletin;

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

"Rule 35-502" means Ontario Securities Commission Rule 35-502 *Non Resident Advisers*;

"securities" has the meaning set out in the definition of "security" in subsection 1(1) of the Act;

"Shares" means participating, non-voting, redeemable shares of the Funds; and

"Subsidiary" means a corporation, incorporated under an Act of Parliament or the legislature of Ontario, that is resident of or carries on business in Ontario, and is wholly owned, directly or indirectly, by the CPP Investment Board;

AND WHEREAS any other terms used in the Ruling that are defined in National Instrument 14-101 *Definitions* shall have the same meaning, unless herein otherwise specifically defined, or the context otherwise requires;

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

AND UPON the CPP Investment Board, the Subsidiaries and the International Advisers having represented to the Commission that:

The CPP

1. The CPP is a contributory, earnings related social insurance program for Canadian employees in all provinces and territories of Canada (other than Québec) established pursuant to the CPP Act. The CPP provides basic benefits to employees who have contributed to the plan upon the retirement, disability or death of such employees.

The CPP Investment Board

2. The CPP Investment Board is a crown corporation established under the CPP Investment Board Act by the Government of Canada and is a wholly owned entity of the Government of Canada. The principal office of the CPP Investment Board is located in Toronto, Ontario.

3. The CPP Investment Board was established by the Government of Canada as a separate corporation that is governed and managed independently of the CPP. The mandate of the CPP Investment Board is set out in the CPP Investment Board Act as follows:

   (a) to manage the assets of the CPP allocated to the CPP Investment Board in the best interests of the contributors and beneficiaries under the CPP;

   (b) to assist the CPP in meeting its obligations to contributors and beneficiaries under the CPP; and

(c) to invest the assets of the CPP with a view to achieving a maximum rate of return, without undue risk of loss, having regard to the factors that may affect the funding of the CPP and the ability of the CPP to meet its financial obligations.

4. Pursuant to the CPP Investment Board Act, the CPP Investment Board is authorized to establish the Subsidiaries. The CPP Investment Board makes the determination of whether to have securities, Contracts and/or other instruments purchased either held by the CPP Investment Board or by one of the Subsidiaries. Where a Subsidiary is used, the Subsidiary is the entity that purchases such securities, Contracts and/or other instruments and retains third party advisers, if any. All investment decisions for the Subsidiary are made by the CPP Investment Board or delegated to retained third party advisers, if any.

5. The CPP Investment Board and the Subsidiaries are not registered in any capacity under either the Act or the CFA.

6. As at December 31, 2008, the CPP Investment Board, including its Subsidiaries, had approximately $108 billion in assets under management. In light of its mandate and its growing assets under management, the CPP Investment Board is continuously investing and in some cases, retaining others to advise the CPP Investment Board and/or the Subsidiaries in respect of certain assets of the CPP.

The International Advisers

7. The identity and relevant particulars of the International Advisers are set out in Schedule "A", including the applicable regulatory authority under which each International Adviser is licensed or registered (or exempt from licensing or registration) to act as an adviser in its home jurisdiction.

8. None of the International Advisers are registered under the Act as an adviser.

Advising by the International Advisers

9. By advising the CPP Investment Board and/or the Subsidiaries, the International Advisers trigger the adviser registration requirement in the Act and, in the absence of an exemption, are required to register under the Act.

10. The International Advisers are not able to rely on the exemptions available to foreign advisers provided under Rule 35-502. For example, the International Advisers cannot rely on:

(a) section 7.3 of Rule 35-502, because neither the CPP Investment Board nor any of the Subsidiaries are "an investment counsel or portfolio manager or broker or investment dealer acting as portfolio manager" (as required by section 7.3 of Rule 35-502); or

(b) section 7.10 of Rule 35-502, because the International Advisers advise Funds where securities of such Funds are offered only to the CPP Investment Board or a Subsidiary, and accordingly, securities of such Funds are "not primarily offered outside of Canada" (as required by subsection 7.10(i) of Rule 35-502).

11. Under an exemption from the adviser registration requirement in the Act set out in section 8.16 of NI 31-103 (the **International Adviser Exemption**), each of the International Advisers would be able to act as an adviser in respect of securities for the CPP Investment Board and/or the Subsidiaries without having to obtain registration under the Act as an adviser, subject to satisfying certain additional requirements specified in NI 31-103.

12. The International Adviser Exemption provides that the adviser registration requirement in the Act does not apply to an international adviser that is acting as an adviser in respect of securities for a "permitted client"(as such term is defined in NI 31-103) if certain conditions are met.

13. In accordance with the International Adviser Exemption:

(a) each of the International Advisers,

(i) has its head office or principal place of business in a foreign jurisdiction;

(ii) is registered, or is exempt from registration, under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located in a category of registration that permits it to carry on the activities in that jurisdiction that a registered adviser is permitted to carry on in the local jurisdiction;

(iii) engages in the business of an adviser in the foreign jurisdiction in which its head office or principal place of business is located;

(iv) does not advise clients in Canada with respect to securities of Canadian issuers, unless providing that advice is incidental to its providing advice on Foreign Securities; and

(v) during its most recent fiscal year, derived not more than ten percent of the aggregate consolidated gross revenue of the International Adviser, its affiliates and its affiliated partnerships from the portfolio management activities of the International Adviser, its affiliates and its affiliated partnerships in Canada; and

(b) the CPP Investment Board and the Subsidiaries are crown corporations or, directly or indirectly, wholly owned entities of the Government of Canada which meet the proposed definition of "permitted client" set out in Section 1.1(1) of NI 31-103.

14. The International Adviser Exemption is premised on the policy that where certain highly sophisticated Canadian investors are advised by foreign advisers (who are appropriately registered in their home jurisdiction), such Canadian investors may not require all the protections afforded by having the foreign adviser register in Canada.

15. The CPP Investment Board and the Subsidiaries are highly sophisticated investors who fit within the contemplated definition of "permitted client" in NI 31-103 and the International Advisers are appropriately registered, or exempt from registration, in their home jurisdictions.

16. Pursuant to the CPP Investment Board Act, every investment manager who advises the CPP Investment Board and/or the Subsidiaries regarding assets of the CPP is required to do so in accordance with the CPPIB Act and the investment policies, standards and procedures established by the CPP Investment Board.

17. To the extent the investment arrangement involves an investment in a Fund, Shares will be distributed in Ontario to the CPP Investment Board or a Subsidiary (as the case may be) on a private placement basis. The distribution of Shares to the CPP Investment Board or a Subsidiary shall:

(a) be made through a registered dealer under the Act;

(b) be in accordance with the Act and the regulations and rules pursuant thereto, including the requirements under NI 45-106;

(c) meet all the filing requirements required when making a private placement; and

(d) meet the applicable participation fees requirements.

18. In addition to this Application, Universa has also applied to the Commission for relief from the adviser registration requirement in the CFA when it acts as an adviser, with respect to Contracts, for the CPP Investment Board and/or the Subsidiaries in connection with certain assets of the CPP.

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

IT IS RULED, pursuant to subsection 74(1) of the Act, that the International Advisers shall not be subject to the adviser registration requirement in the Act where the International Advisers act as an adviser in respect of securities for the CPP Investment Board and/or the Subsidiaries in connection with managing certain assets of the CPP, provided that, at the relevant time:

(a) the International Adviser is unable to rely on any of the existing exemptions contained in Part 7 of Rule 35-502;

(b) the CPP Investment Board and the Subsidiaries are crown corporations or, directly or indirectly, wholly owned entities of the Government of Canada that meet the proposed definition of "permitted client" as set out in paragraph (g) of the definition of "permitted client" under section 1.1(1) of NI 31-103;

(c) the International Adviser:

(i) has its head office or principal place of business in a foreign jurisdiction;

(ii) is registered, or is exempt from registration, under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located in a category of registration that permits it to carry on the activities in that jurisdiction that a registered adviser is permitted to carry on in the local jurisdiction;

(iii) engages in the business of an adviser in the foreign jurisdiction in which its head office or principal place of business is located;

(iv) during its most recent fiscal year, derived less than ten percent of the aggregate consolidated gross revenue of the International Adviser, its affiliates and its affiliated partnerships from the portfolio management activities of the International Adviser, its affiliates and its affiliated partnerships in Canada;

(v) before advising the CPP Investment Board and/or any of the Subsidiaries,

(A) will notify the CPP Investment Board or the Subsidiaries (as the case may be):

(I) that it is not registered in Canada;

(II) its jurisdiction of residence;

(III) the name and address of its agent for service of process in Ontario; and

(IV) that there may be difficulty enforcing legal rights against it because the International Adviser is resident outside Canada and all or substantially all of its assets are situated outside Canada; and

(B) will deliver to the Commission a submission to jurisdiction and appoints an agent for service in a form acceptable to the Commission; and

(vi) does not advise clients in Canada with respect to securities of Canadian issuers, unless providing advice on securities of a Canadian issuer is incidental to its providing advice on Foreign Securities;

(d) this Ruling, in respect of each International Adviser, will terminate upon the earlier of:

(i) the International Adviser being registered as an adviser under the Act;

(ii) the coming into force of NI 31-103 containing a rule or provision as contemplated by the International Adviser Exemption;

(iii) 90 days after the Commission publishes in its Bulletin a notice or a statement to the effect that it does not propose to make NI 31-103; or

(iv) 90 days after the coming into force of NI 31-103 if NI 31-103 does not contain a rule or provision substantially similar to the International Adviser Exemption.

May 29, 2009

“Margot C. Howard”
Commissioner
Ontario Securities Commission

“Mary Condon”
Commissioner
Ontario Securities Commission

SCHEDULE "A"

Name	Jurisdiction of Registration	Regulator	Category of Registration
Universa Investments L.P.	U.S.A.	United States Securities and Exchange Commission	Investment adviser
		U.S. Commodity Futures Trading Commission	Commodity trading adviser Exempt from registration as a commodity trading operator
		U.S. National Futures Association	Member
Keywise Capital Management (HK) Limited	Hong Kong	The Securities & Futures Commission, Hong Kong	Investment adviser

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Sunwide Finance Inc. et al.

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

AND

IN THE MATTER OF
SUNWIDE FINANCE INC., SUN WIDE GROUP,
SUN WIDE GROUP FINANCIAL INSURERS &UNDERWRITERS,
BRYAN BOWLES, ROBERT DRURY, STEVEN JOHNSON,
FRANK R. KAPLAN, RAFAEL PANGILINAN,
LORENZO MARCOS D. ROMERO AND
GEORGE SUTTON
REASONS AND DECISION

Hearing:	November 19, 2008		
Decision:	May 28, 2009		
Panel:	James E. A. Turner	–	Vice-Chair and Chair of the Panel
	Suresh Thakrar	–	Commissioner
	Carol S. Perry	–	Commissioner
Counsel:	Cullen Price	–	For the Ontario Securities Commission

No one appeared for any of the Respondents.

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REASONS AND DECISION

1. OVERVIEW

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), to consider whether Sunwide Finance Inc. (a.k.a. Sun Wide Finance Inc., Sunwide Financial Inc., Sun Wide Financial Inc.) ("**Sunwide**"), Sun Wide Group, Sun Wide Group Financial Insurers & Underwriters ("**Sun Wide Insurers**"), Bryan Bowles ("**Bowles**"), Robert Drury ("**Drury**"), Steven Johnson ("**Johnson**"), Frank R. Kaplan ("**Kaplan**"), Rafael Pangilinan ("**Pangilinan**"), Lorenzo Marcos D. Romero ("**Romero**") and George Sutton ("**Sutton**") (collectively referred to as the "**Respondents**") breached the Act and acted contrary to the public interest, and to consider appropriate sanctions and costs.

[2] A temporary cease trade order was issued in this matter on November 19, 2007 and a Notice of Hearing was issued on November 21, 2007. Four Commission orders (dated December 3, 2007, March 4, 2008, July 22, 2008 and September 4, 2008) were issued that extended the temporary cease trade order until the completion of the hearing on the merits. A hearing on the merits was held on November 19, 2008.

[3] A Statement of Allegations and a second Notice of Hearing were filed by Staff of the Commission ("**Staff**") on August 21, 2008. The Statement of Allegations named three respondents not previously named in the temporary cease trade order and the first Notice of Hearing, namely Drury, Romero and Pangilinan, and removed Wi-Fi Framework Corporation as a respondent.

[4] In oral submissions, Staff withdrew allegations with respect to sections 53 and 126.1 of the Act. The remaining allegations of breaches of the Act in this proceeding are as follows:

(a) it is alleged that the Respondents have breached Ontario securities law by:

(i) trading and advising in securities without registration or an appropriate exemption from the registration requirements contrary to section 25 of the Act. Specifically, these breaches include:

(1) causing investors to purchase a "refundable vendors bond" (the "**Vendors Bond**"), a security pursuant to sub-definition (e) of the definition of "security" in subsection 1(1) of the Act, and purporting to guarantee the re-purchase of shares, which was an act in furtherance of the sale of the Vendors Bond;

(2) the solicitation of investors to "exercise" warrants and to direct to Sunwide payments with the promise of re-purchase at a substantial premium; and

(3) advising investors in respect of the sale and purchase of securities without being registered to do so; and

(ii) making prohibited representations to re-purchase securities contrary to section 38 of the Act. The representations of the Respondents as to the repurchase of securities constituted prohibited representations under section 38 of the Act because of the offer to re-purchase and the undertaking as to the future value of the shares and warrants; and

(b) the Respondents' conduct was contrary to the public interest and harmful to the integrity of the Ontario capital markets.

[5] On November 19, 2008, we heard evidence and submissions on the merits and on sanctions and costs in this matter. None of the Respondents were present or represented by legal counsel. Only Pangilinan, by way of an affidavit sent to Staff by e-mail on November 18, 2008, provided any evidence.

[6] The following are our reasons and decision in this matter.

2. THE RESPONDENTS

[7] Sunwide purports to be an Ontario financial services company. Sunwide's only address known to Staff is a business service centre located at 20 Bay Street, Toronto, Ontario (the "**Virtual Office**"). Sunwide is not incorporated under the laws of Ontario or Canada.

[8] Sun Wide Group and Sun Wide Insurers purport to be companies that guarantee the obligations of Sunwide to purchase shares from investors pursuant to agreements of purchase and sale entered into by Sunwide with investors. Neither Sun Wide Group nor Sun Wide Insurers is incorporated under the laws of Ontario or Canada.

[9] Bowles, Drury, Johnson and Sutton appear to be sales representatives of Sunwide.

[10] Kaplan purports to be the president of Sun Wide Group.

[11] Pangilinan is the holder of a credit card that was used to pay the fees for the Virtual Office. Pangilinan appears to reside in the Philippines.

[12] Romero purports to be a representative of Sunwide and is Sunwide's contact that dealt with the service provider of the Virtual Office in its dealings with Sunwide. Romero appears to reside in the Philippines.

[13] None of the Respondents are registered in any capacity with the Commission.

[14] None of the individual Respondents appear to reside in Canada and, based on the evidence submitted to us, none of them appear to have ever been in Ontario in connection with the conduct that is the subject matter of this proceeding.

3. PRELIMINARY ISSUES

A. The Failure of the Respondents to Appear at the Hearing

[15] As noted above, none of the Respondents were represented or appeared at the hearing. Subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**") provides that a tribunal may proceed in the absence of a party when that party has been given adequate notice:

> Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing; the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

[16] Staff also referred us to the following passage from *Administrative Law in Canada*:

> Where a party who has been given proper notice fails to respond or attend, the tribunal may proceed in the party's absence and the party is not entitled to further notice. All that the tribunal need establish, before proceeding in the absence of the party, is that the party was given notice of the date and place of the hearing. The tribunal need not investigate the reasons for the party's absence.
>
> (Sara Blake, *Administrative Law in Canada*, 4th ed. (Markham, Ont.: LexisNexis Butterworths, 2006) at p. 35)

[17] Staff submitted evidence in the form of an Affidavit of Service of Louisa Tong, dated November 14, 2008, to establish that Staff took reasonable steps to give the Respondents notice of this proceeding and to serve the Respondents with the order dated September 4, 2008 setting this proceeding down for a hearing on November 19, 2008.

[18] We are satisfied that Staff gave adequate notice of this proceeding to the Respondents and that we are entitled to proceed in their absence in accordance with subsection 7(1) of the SPPA.

B. The Use of Hearsay Evidence

[19] The Staff investigator found a number of documents at the Virtual Office which were tendered into evidence at the hearing. Much of the evidence relied on by Staff in this proceeding was hearsay evidence. Staff sought to introduce various forms of hearsay evidence, including the Staff investigator's testimony as to two telephone conversations he had with certain of the investors, and copies of e-mails, faxes and documents that he testified were forwarded to him by those investors. The reason Staff used and relied upon such hearsay evidence was the fact that all of the investors involved in this matter were residents of countries in Europe. None of those investors testified before us or provided affidavit evidence.

[20] Subsection 15(1) of the SPPA states:

> Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
>
> (a) any oral testimony; and
>
> (b) any document or other thing,
>
> relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[21] In *The Law of Evidence in Canada*, it is stated that:

> In proceedings before most administrative tribunals and labour arbitration boards, hearsay evidence is freely admissible and its weight is a matter for the tribunal or board to decide, unless its receipt would amount to a clear denial of natural justice. So long as such hearsay evidence is relevant it can serve as the basis for the decision, whether or not it is supported by other evidence which would be admissible in a court of law.
>
> (John Sopinka, Sidney N. Lederman & Alan W. Bryant, *The Law of Evidence in Canada*, 2d ed. (Markham, Ont.: LexisNexis Butterworths, 1999) at p. 308)

[22] Although hearsay evidence is admissible under the SPPA, the weight to be accorded to such evidence must be determined by the panel. Care must be taken to avoid placing undue reliance on uncorroborated evidence that lacks sufficient indicia of reliability (*Starson v. Swayze*, [2003] 1 S.C.R. 722 at para. 115). In the circumstances, we admitted the hearsay evidence tendered by Staff, subject to our consideration of the weight to be given to that evidence.

[23] There was documentary evidence introduced by Staff that corroborated or was consistent with the hearsay evidence given by the Staff investigator. This documentary evidence included a copy of notes taken by one investor, copies of e-mails and faxes from certain of the Respondents referring to conversations with investors and copies of legal documents referring to transactions purportedly discussed between certain of the Respondents and investors. All of this documentary evidence was itself hearsay evidence but, taken as a whole, the totality of the evidence is corroborative and consistent.

[24] One of the concerns with respect to the introduction of hearsay evidence is that it may infringe on the rights of a party to cross-examine a witness or to introduce contradictory evidence. This engages the rules of procedural fairness. In the case before us, none of the Respondents appeared before us, were represented or present to object to the use of the hearsay evidence, to cross-examine on it or to introduce contradictory evidence of their own. As a result, the Respondents have waived their rights to do so. As stated in *Violette v. New Brunswick Dental Society*, [2004] 267 N.B.R. (2d) 205 (C.A.) at para. 80:

> In conclusion, I am of the view that the appellant's informed decision not to participate in the hearing before the Discipline Committee constitutes abandonment, leading to waiver of possible breaches of the rules of procedural fairness. This conclusion is hardly surprising. He who seeks fairness must act fairly by raising timely objections. This necessarily requires the affected party's participation.

[25] Accordingly, we have concluded that admitting the hearsay evidence in this matter does not undermine the requirement for procedural fairness to the Respondents.

C. The Appropriate Standard of Proof

[26] Staff also made submissions as to the appropriate standard of proof applicable in Commission proceedings.

[27] In *F.H. v. McDougall*, [2008] 3 S.C.R. 41, a recent Supreme Court of Canada decision, it is stated at paragraph 49 that:

> … in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

At paragraph 46, it is further stated that:

> …evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency… If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

[28] We must decide this matter on the balance of probabilities. In doing so, we must be satisfied that there is sufficient clear, convincing and cogent evidence to support our findings. While the evidence before us is primarily hearsay evidence, it is corroborated by documents submitted to us and we believe that the evidence is clear, convincing and cogent and provides a sufficient basis for our conclusions set out below. We are satisfied that the events described in these reasons are more likely than not to have occurred.

4. ISSUES

[29] Based on the Statement of Allegations and oral submissions by Staff, the issues in this matter are:

(a) Did the Respondents trade in securities in breach of subsection 25(1)(a) of the Act?

(b) Did the Respondents advise in connection with trading in securities in breach of subsection 25(1)(c) of the Act?

(c) Did the Respondents make prohibited representations in breach of subsection 38(1) of the Act?

(d) Did the Respondents act in a manner that was contrary to the public interest and harmful to the integrity of Ontario capital markets?

5. EVIDENCE

[30] Staff submitted to us an Evidence Brief and a Supplemental Evidence Brief and called as witnesses a Staff investigator and an individual who was employed by the service provider that provided the Virtual Office and its services to Sunwide. Staff stated that they were aware of nine investors solicited with respect to the investment scheme described below, although Staff introduced evidence respecting only four of those investors. To protect the privacy of those investors, we will refer to those four investors as Investors 1, 2, 3 and 4.

A. The Investment Scheme

[31] This proceeding relates to the following investment scheme. Investors who owned shares of apparently defunct companies were contacted by telephone by individuals who said they were representatives of Sunwide and who indicated that a client of Sunwide was in the process of making a take-over bid for the shares of those companies. Most, if not all, of the companies were defunct and the shares, if they were trading at all, were trading at a nominal price. The representatives of Sunwide offered to purchase the investors' shares at a substantial premium to the market price. There was no evidence as to how the investors came to own the shares or how Sunwide learned of their ownership. Purportedly in order to protect the confidentiality of the take-over bid, investors were asked to sign a non-disclosure agreement.

[32] Investors were also told that in order to sell their shares, they were required to first obtain and pay for a "refundable vendors bond" (which we refer to in these reasons as the "Vendors Bond") to be issued by Sun Wide Group, the purported purpose of which appears to have been to guarantee the completion of the transaction by the investor. No copy of the Vendors Bond was submitted to us. There are indications in the evidence that the fee paid for the Vendors Bond was to be held by an unidentified escrow agent whose purported role was to hold the money separate from Sunwide. Representatives of Sunwide represented to the investors that upon the completion of the share purchase transaction, the escrow agent would return the fee for the Vendors Bond to them.

[33] After the investors paid the fee for the Vendors Bond, but before Sunwide completed the purchase of their shares, investors were informed by representatives of Sunwide that the investors also owned warrants issued by the relevant companies, which were exercisable for additional shares (the "**warrant shares**"). The Sunwide representatives indicated that if investors exercised the warrants and paid the exercise price to Sunwide, then Sunwide would purchase all of the warrant shares

that were issued at the same substantial premium to the market price as was to be paid for their other shareholdings. The investors were not aware that they owned any such warrants and it appears that no such warrants actually existed.

[34] If investors agreed to either or both of these transactions, a representative of Sunwide would telephone them yet again, stating that Sunwide had encountered problems with the United States tax authorities. In order for an investor's profit on the sale of the shares to be paid to them, they would have to pay up front all U.S. capital gains tax (that also suggests that the relevant transactions were taking place in the United States and not in Canada). Investors were asked to forward to Sunwide the purported amount of capital gains that would be owing as calculated by Sunwide.

[35] It appears that these misrepresentations were made by Sunwide and its representatives for the sole purpose of obtaining and appropriating monies from the investors through the fee for the Vendors Bond, the exercise price of the alleged warrants and the amount purported to be payable by investors as U.S. capital gains on the transactions.

[36] The investors who agreed to participate in these transactions sent funds as follows:

(a) Investor 1, who resides in Austria, wired US $6,075 to HSBC Bank in New York and that amount was then forwarded by wire to Credit Corp Bank in Panama for the account of Century Management Division Inc. ("Century Management");

(b) Investor 2, who resides in the U.K., wired US $11,369 to HSBC in Hong Kong for the account of Sunwide Finance Inc. Investor 2 also wired a payment of US $16,443 to Credit Corp Bank in Panama for the account of Century Management;

(c) Investor 3, who also resides in the U.K., wired US $2,205 to HSBC Bank in New York and that amount was then forwarded by wire to Credit Corp Bank in Panama for the account of Century Management; and

(d) Investor 4, who also resides in the U.K., wired US $2,676.32 to HSBC Bank in New York and that amount was then forwarded by wire to Credit Corp Bank in Panama for the account of Century Management.

There is no evidence that funds were wired by any investor to any bank or bank account in Canada.

[37] Based on the evidence submitted to us, no shares were ever purchased by Sunwide from the investors and none of the amounts paid by investors were ever returned to them.

B. The Virtual Office

[38] The investors understood that Sunwide, Sun Wide Group and Sun Wide Insurers were carrying on business in Toronto and they thought they were dealing with individuals and companies located in Canada. The Virtual Office appears to have been established for the sole purpose of misleading investors into believing that this was the case.

[39] As noted above, Sunwide, Sun Wide Group and Sun Wide Insurers are not incorporated in Ontario or Canada. Staff's best information is that the individuals representing Sunwide are residents of the Philippines. In any event, they are not residents of Canada. Romero arranged for the establishment of the Virtual Office but there is no evidence that in doing so he came to Canada.

[40] The Virtual Office provided Sunwide a telephone answering service, a mailing address and, if requested, conference facilities for meetings. A person calling a representative of Sunwide would call the telephone number of the Virtual Office, which would be answered using Sunwide's name, and a message could be left for any of the Sunwide representatives identified on a list provided by Romero to the Virtual Office service provider. The message would then be passed on to the relevant Sunwide representative. Similarly, investors would send documents and correspondence to Sunwide at the Toronto address of the Virtual Office. Those documents would then be forwarded to Sunwide. The various documents prepared by Sunwide and sent to investors identified Sunwide using the Virtual Office address or referred to Sunwide in Toronto. It was not apparent to investors that they were dealing with a Virtual Office. Investors believed they were dealing with individuals or companies located in Toronto and carrying on business at the address of the Virtual Office. This gave some comfort to investors and some credibility to the representatives of Sunwide.

[41] The Virtual Office was set up by Romero who paid the service fees for the Virtual Office using a credit card issued to Pangilinan. There was no other evidence before us as to Pangilinan's direct involvement in the investment scheme. Pangilinan filed an affidavit saying that he had no knowledge whatsoever of the investment scheme and that he did not know any of the other Respondents or have any business connections whatsoever with them. He did not explain the use of his credit card except to say that in the past he had allowed another individual to use his credit card when he was short of cash occasionally. The credit card appears to have been used for a period of 11 months in paying the monthly fee for the Virtual Office.

[42] Accordingly, we are dealing with circumstances in which the only Ontario connection to the purported securities transactions was the Virtual Office. All of the individuals involved, whether investors or representatives of Sunwide or the other corporate Respondents, all appear to be located outside Canada, all of the purported securities transactions were to occur outside Canada, no payments by investors were made to anyone in Ontario or to any bank in Ontario and none of the representatives of Sunwide or the other corporate Respondents appear to have ever been in Ontario. Any representations made to investors were made by representatives of Sunwide who were located outside Canada to investors who were also outside Canada.

6. ANALYSIS

A. Was there a Breach of Subsection 25(1)(a) of the Act?

i. The Applicable Law

[43] Subsection 25(1)(a) of the Act states that:

> No person or company shall,
>
> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer …
>
> and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[44] Subsection 1(1) of the Act defines a "trade" as including:

> (a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,
>
> …
>
> (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

[45] The Commission has held that an act in furtherance of a trade is itself a trade for purposes of the Act (*Re Lett* (2004), 27 O.S.C.B. 3215 at para. 64). Accordingly, if an act in furtherance of a trade in a security occurs in Ontario, even though the actual trade occurs outside of Ontario, that act constitutes trading in securities in Ontario for purposes of the Act. It is not necessary for there to be a completed trade in order for someone to be trading in a security (*Re First Federal Capital (Canada) Corp.* (2004), 27 O.S.C.B. 1603 ("*Re First Federal*") at paras. 46, 51). For a particular act to be an act in furtherance of a trade, there must be sufficient proximity between the act and an actual or potential trade (*Re Costello* (2003), 26 O.S.C.B. 1617 at para. 47 and *Re First Federal*, *supra* at para. 51).

ii. Analysis

[46] In this case, Sunwide was purporting to solicit and enter into transactions that if they had occurred in Ontario would have constituted trading in securities. In analysing the investment scheme from a securities law perspective we recognize the likelihood that the scheme was a complete sham and fabrication and that Sunwide never intended to complete a purchase of a security as represented to investors.

[47] The acts with respect to the investment scheme that occurred in Ontario were the establishment of the Virtual Office and the use of that office to pass on to the Respondents telephone messages received by the Virtual Office and documents mailed, couriered or faxed to Sunwide at the address of the Virtual Office. In our view, the establishment and use of the Virtual Office in this manner was an integral part of the investment scheme intended to mislead investors into believing they were dealing with persons or companies in Ontario. In our view, the establishment and use of the Virtual Office in this manner had sufficient proximity to purported trades in securities with investors so as to constitute acts in furtherance of trades in securities that occurred in Ontario. Accordingly, any Respondent that used the Virtual Office for that purpose committed an act in furtherance of a trade in Ontario and was therefore trading in a security in Ontario within the meaning of the Act.

[48] We note that a purchase of a security is expressly excluded from the definition of "trade" in the Act. The transactions solicited by Sunwide ultimately purported to involve a purchase by Sunwide or its client of outstanding shares, including the warrant shares that were to be issued pursuant to the exercise of the warrants. In our view, the actions of Sunwide and its representatives involved a solicitation of the sale of the relevant shares and the making of various misrepresentations to induce those sales. Those actions constitute acts in furtherance of a trade and not the mere purchase of a security.

[49] Staff characterized the issue of the Vendors Bond and the payment of the fee for that bond as a transaction involving the issue of and payment for a security. The exact terms of the Vendors Bond and the nature of that instrument were not, however, clear based on the evidence before us. The only certainty is that investors paid a fee for the Vendors Bond. In reality, the Vendors Bond was simply an artifice to mislead investors into paying that fee.

iii. Conclusions

Sun Wide

[50] Based on the evidence before us, Sunwide initiated and carried out the investment scheme. Sunwide established and arranged payment for the Virtual Office and used that office and its address in communications with Investors 1, 2, 3 and 4. All of the agreements of purchase and sale were entered into by Sunwide with investors using the address of the Virtual Office and the individual Respondents, other than Pangilinan, held themselves out as representatives of Sunwide.

[51] Accordingly, we have concluded that Sunwide engaged in acts in furtherance of trades in securities in Ontario within the meaning of the Act. Sunwide was not registered in any capacity with the Commission and no registration exemption was available. Sunwide therefore violated subsection 25(1)(a) of the Act.

Sun Wide Group and Sun Wide Insurers

[52] Based on the evidence before us, Sun Wide Group entered into a Share Purchase Guarantee with Investors 1 and 3 and Sun Wide Insurers appears to have guaranteed the purchase of shares by Sunwide pursuant to the Share Purchase Guarantees sent to Investors 1, 3 and 4. Each of Sun Wide Group and Sun Wide Insurers used or referred to the Virtual Office in communications with investors. These actions were carried out in furtherance of the investment scheme. Accordingly, we have concluded that Sun Wide Group and Sun Wide Insurers engaged in acts in furtherance of trades in securities in Ontario within the meaning of the Act. Neither company is registered in any capacity with the Commission and no registration exemption was available. Accordingly, they have each violated subsection 25(1)(a) of the Act.

Bowles

[53] Based on the evidence before us, we have concluded that Bowles participated in the carrying out of the investment scheme and engaged in acts in furtherance of trades in securities in Ontario within the meaning of the Act. There is evidence before us that Bowles acted as follows:

(a) Bowles discussed with Investor 1, on the telephone, the purchase of warrant shares by Sunwide from Investor 1.

(b) Bowles discussed with Investor 2, on the telephone, the purchase of warrant shares by Sunwide from Investor 2. Bowles then sent Investor 2 a letter relating to the capital gains that Investor 2 would have to pay on the purchase. Investor 2 later sent Bowles, as a representative of Sunwide, a letter regarding her capital gains tax invoice.

(c) Bowles sent Investor 4 a fax relating to the purchase of warrant shares by Sunwide from Investor 4. In an e-mail sent to Investor 4 from Sunwide, Investor 4 was instructed to "Return For the attention of Mr. Bowles" the warrant acceptance form signed by Investor 4.

[54] In communicating with investors, Bowles made use of the Virtual Office.

[55] Accordingly, we have concluded that Bowles engaged in acts in furtherance of trades in securities in Ontario within the meaning of the Act. Bowles was not registered in any capacity with the Commission and no registration exemption was available. He has therefore violated subsection 25(1)(a) of the Act.

Drury

[56] Based on the evidence before us, we have concluded that Drury participated in carrying out the investment scheme and engaged in acts in furtherance of a trade in securities in Ontario within the meaning of the Act. There is evidence before us

that Drury discussed the purchase of shares with Investor 3 by telephone. Drury also made use of the Virtual Office in communicating with Investor 3.

[57] Accordingly, we have concluded that Drury engaged in acts in furtherance of a trade in securities in Ontario within the meaning of the Act. Drury was not registered in any capacity with the Commission and no registration exemption was available. He has therefore violated subsection 25(1)(a) of the Act.

Sutton

[58] Based on the evidence before us, we have concluded that Sutton participated in carrying out the investment scheme and engaged in acts in furtherance of trades in securities in Ontario within the meaning of the Act. There is evidence before us that Sutton acted as follows:

(a) Sutton discussed both the purchase of shares and the purchase of warrant shares with Investor 1 by telephone and e-mail.

(b) Sutton sent Investor 4 a fax relating to the purchase of warrant shares on behalf of Sunwide. In an e-mail sent to Investor 4 from Sunwide, Investor 4 is reminded of his "telephone conversation with Mr. George Sutton".

[59] In communicating with investors, Sutton made use of the Virtual Office.

[60] Accordingly, we have concluded that Sutton engaged in acts in furtherance of trades in securities in Ontario within the meaning of the Act. Sutton was not registered in any capacity with the Commission and no registration exemption was available. He has therefore violated subsection 25(1)(a) of the Act.

Romero

[61] Based on the evidence before us, Romero facilitated the carrying out of the investment scheme. He established the Virtual Office, signed the license agreement as the "Principal" of Sunwide, gave instructions to the Virtual Office service provider as to the names of individuals for whom messages should be accepted, acted as the contact person for the Virtual Office and was invoiced for the services. Accordingly, we have concluded that, in doing so, Romero engaged in acts in furtherance of trades in securities in Ontario within the meaning of the Act. Romero was not registered in any capacity with the Commission and no registration exemption was available. He has therefore violated subsection 25(1)(a) of the Act.

Pangilinan

[62] Pangilinan's credit card was used to pay the fees for the Virtual Office. He states in an affidavit that he did not know any of the other Respondents, that he had no business connections with them and that he was not involved in and had no knowledge of the investment scheme. We reject that evidence on the basis that, for a period of 11 months, the monthly fee for the Virtual Office was paid by him through the use of his credit card. Accordingly, we have concluded that, by paying the fees for the Virtual Office, Pangilinan engaged in acts in furtherance of trades in securities in Ontario within the meaning of the Act. Pangilinan was not registered in any capacity with the Commission and no registration exemption was available. He has therefore violated subsection 25(1)(a) of the Act.

Johnson and Kaplan

[63] There was some evidence before us that Johnson and Kaplan were involved in carrying out the investment scheme. However, the documents before us upon which the names of Johnson and Kaplan appear (which consist primarily of copies of faxes and e-mails) are not confirmed by any evidence or testimony of the parties to those documents or by conversations by the Staff investigator with investors. We have concluded that there is insufficient evidence to make a finding against them. Accordingly, we dismiss the allegations against them.

B. Was there a Breach of Subsection 25(1)(c) of the Act?

i. The Applicable Law

[64] Subsection 25(1)(c) of the Act states that:

No person or company shall,

(c) act as an adviser unless the person or company is registered as an adviser, or is registered as a representative or as a partner or as an officer of a registered adviser and is acting on behalf of the adviser,

> and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

ii. Analysis

[65] Staff alleged that the investment scheme involved Sunwide advising investors as to the purchase or sale of a security in breach of section 25 of the Act. An "adviser" is defined in subsection 1(1) of the Act as "a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities."

[66] If any investment advice within the meaning of subsection 25(1)(c) of the Act was given, it is reasonably clear that such advice was given by persons located outside Canada to investors also located outside Canada. Similarly, if any holding out occurred, that holding out was by a person located outside Canada to a person also located outside Canada. Accordingly, it appears that no advice was given, or holding out occurred, directly or indirectly, by or to a person in Ontario. There is no concept in the Act of a person engaging in acts in furtherance of advising under subsection 25(1)(c) of the Act. As a result, in our view, the provisions of the Act relating to advising do not apply to the activities that occurred in this case.

[67] This conclusion is consistent with the legal authorities. For instance, in *Regina v. W. McKenzie Securities Limited, West and Dubros*, [1966] 56 D.L.R. (2d) 56 (Man. C.A.) at para. 19, the Court stated:

> It seems clear that the true nature of the provincial statutes above considered, no less than *The Securities Act* of our own province, is to provide protection to the public through a system of regulating and supervising the conduct of persons who engage in trading activities in securities within the province. The *Securities Act* of Manitoba is not designed to reach out beyond provincial borders and to restrain conduct carried on in other parts of Canada or elsewhere. Its operation is effective within Manitoba, and nowhere else. For a person to become subject to its restraint he must trade in securities in Manitoba. This is not to say that a non-resident of Manitoba can never become subject to the controls of the statute. If the activities of such a non-resident can fairly and properly be construed as constituting trading within the province, then they fall within the purview of the Act.
>
> (See also *Gregory & Co. v. Quebec (Securities Commission)*, [1961] S.C.R. 584.)

iii. Conclusion

[68] For the reason discussed above, we are not satisfied that any of the Respondents breached subsection 25(1)(c) of the Act.

C. Was there a Breach of Subsection 38(1) of the Act?

i. The Applicable Law

[69] Subsection 38(1) of the Act states that:

> No person or company, with the intention of effecting a trade in a security, other than a security that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase, shall make any representation, written or oral, that he, she or it or any person or company,
>
> (a) will resell or repurchase; or
>
> (b) will refund all or any of the purchase price of,
>
> such security.

ii. Analysis

[70] Staff alleged that certain of the Respondents made representations that the purchase price of the Vendors Bond would be returned to investors. Those representations were alleged to breach subsection 38(1) of the Act.

[71] Whatever representations were made, it is reasonably clear that such representations were made by persons located outside Canada to investors who were also located outside Canada. Accordingly, it appears that no representations were made, directly or indirectly, by or to a person in Ontario. There is no concept in the Act of a person engaging in acts in furtherance of an

illegal representation under subsection 38(1) of the Act. As a result, in our view, section 38 does not apply to any representations that may have been made in this case.

iii. Conclusion

[72] For the reason discussed above, we are not satisfied that any of the Respondents breached subsection 38(1) of the Act.

D. Was there Conduct Contrary to the Public Interest and Harmful to the Integrity of the Ontario Capital Markets?

i. The Applicable Law

[73] Under section 1.1 of the Act, the Commission's mandate is to:

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

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

[74] Subsection 127(1) of the Act permits the Commission to make a wide range of orders if it finds that doing so is in the public interest. That broad public interest jurisdiction permits the Commission to take action to prevent harm to Ontario investors and Ontario capital markets.

ii. Analysis

[75] It appears that the sole reason for establishing the Virtual Office was to mislead investors located outside Canada. Those investors believed that they were dealing with reputable persons and companies resident and carrying on business in Ontario. In fact, this was not the case. We have a public interest in ensuring that Ontario capital markets are not used in this way to perpetrate sham transactions and to misappropriate investor funds, wherever those investors may be located. That behaviour undermines the integrity of Ontario capital markets and their reputation in the rest of the world for fairness and integrity.

iii. Conclusion

[76] Accordingly, in our view, Sunwide, Sun Wide Group, Sun Wide Insurers, Bowles, Drury, Sutton, Romero and Pangilinan in using or facilitating the use of the Virtual Office in connection with the investment scheme have acted contrary to the public interest within the meaning of the Act.

7. SANCTIONS

A. Sanctions Requested by Staff

[77] Staff requested that we issue an order imposing the following sanctions on the Respondents:

(a) a permanent cease trade order;

(b) a permanent prohibition on the acquisition of securities by the Respondents;

(c) an order providing that exemptions contained in Ontario securities law do not apply to the Respondents permanently;

(d) the Respondents be permanently prohibited from becoming or acting as directors or officers of any issuer, registrant, investment fund manager or promoter in the province of Ontario; and

(e) the Respondents pay an administrative penalty in the amount of $50,000.00.

B. Staff's Submissions on Appropriate Sanctions

[78] Staff submitted that the conduct of the Respondents in carrying out the investment scheme and misleading investors into believing they were dealing with persons in Ontario is egregious behaviour that should not be tolerated. Staff submitted that the behaviour of the Respondents is such that strong action should be taken to prevent further harm to Ontario capital markets by the Respondents.

C. The Law on Sanctions and Relevant Considerations in Imposing Sanctions

[79] The Commission must impose sanctions that protect the integrity of Ontario capital markets, that protect investors in Ontario and that deter similar conduct by these Respondents and others from occurring in the future.

[80] The sanctions imposed by us must be proportional to the circumstances before us. In determining the appropriate sanctions, we have considered a number of the factors identified in the case law that bear on the sanctions that may be imposed (see: *Re M.C.J.C. Holdings and Michael Cowpland* (2002), 25 O.S.C.B. 1133 and *Re Belteco Holdings Inc et al.* (1998), 21 O.S.C.B. 7743). In this case, we considered:

(a) the seriousness of the conduct; the carrying out of an investment scheme the object of which appears to have been misappropriating money from innocent investors located outside Canada;

(b) the harm to such investors;

(c) the misrepresentations made to investors;

(d) the Respondents' activities in Ontario and the effect of those activities on the integrity and reputation for integrity of Ontario capital markets;

(e) whether or not the sanctions imposed may deter others from engaging in similar conduct; and

(f) the effect that the sanctions imposed may have on the ability of a Respondent to participate in the future, without check, in Ontario capital markets.

D. Appropriate Sanctions in this Case

[81] Our primary objectives in this case are to (i) prevent the future use of Ontario capital markets to perpetrate sham investment schemes occurring primarily outside Canada that harm investors, wherever they may be located, and (ii) prevent future harm to Ontario investors from the activities in Ontario of the Respondents who we have concluded breached the Act and acted contrary to the public interest. If the Respondents and/or the investors in this matter had been located in Ontario, we would have imposed substantial financial sanctions. That is not, however, the case. All of the investors and the Respondents are located outside Canada, all of the misrepresentations made to investors were made outside Canada and the purported securities transactions were all to occur outside Canada. The only connection to Ontario was the location and use of the Virtual Office to assist in perpetrating the investment scheme.

[82] In the circumstances, we consider the appropriate sanctions to be to permanently bar, from future participation in Ontario capital markets, the Respondents who we have concluded breached the Act and acted contrary to the public interest. In our view, such sanctions will deter the Respondents and other like minded individuals from engaging in similar conduct in Ontario and will protect Ontario investors from the future conduct of these Respondents. As stated by the Commission in *Re Momentas* (2007), 30 O.S.C.B. 6475 at para. 52:

> In order to promote both general and specific deterrence we found it necessary to impose severe sanctions including permanent cease trade orders, permanent exclusions from exemptions, and a permanent prohibition from acting as an officer or director of a reporting issuer.

[83] The Supreme Court has recognized the importance of protecting the public and removing from the capital markets those that breach securities law and engage in conduct contrary to the public interest. In *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43, the Supreme Court stated:

> […] the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by *removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets* […]. [Emphasis added]

In this case, we consider it appropriate to permanently bar from future participation in Ontario capital markets those Respondents who we have concluded breached the Act and acted contrary to the public interest. In our view, such sanctions are appropriate and proportional to the conduct that occurred here.

[84] Accordingly, we order that:

(i) pursuant to paragraph 2 of subsection 127(1) of the Act, each of Sunwide, Sun Wide Group, Sun Wide Insurers, Bowles, Drury, Sutton, Romero and Pangilinan permanently cease trading in securities;

(ii) pursuant to paragraph 2.1 of subsection 127(1) of the Act, each of the Respondents referred to in clause (i) above be permanently prohibited from acquiring any security;

(iii) pursuant to paragraph 3 of subsection 127(1) of the Act, the exemptions contained in Ontario securities law not apply permanently to the Respondents referred to in clause (i) above; and

(iv) pursuant to paragraphs 8, 8.2, 8.4 and 8.5 of subsection 127(1) of the Act, each of Bowles, Drury, Sutton, Romero and Pangilinan be permanently prohibited from becoming or acting as a director or officer of any issuer, registrant, investment fund manager or promoter in the province of Ontario.

8. COSTS

[85] Staff requested that the Respondents pay the amount of $5,000 towards the costs of or related to the investigation of this matter and the hearing incurred by or on behalf of the Commission. It is clear based on the evidence submitted to us that the Commission incurred costs well in excess of that amount. Accordingly, we order that the Respondents against whom we have made the orders in paragraph 84 of these reasons, jointly and severally pay costs of $5,000 to the Commission.

[86] In the circumstances, we would encourage Staff to bring this decision and the circumstances before us to the attention of securities regulators in those jurisdictions in which the Respondents against whom we have made orders may be resident or carrying on business.

[87] We will issue a separate order giving effect to our decision on sanctions and costs.

Dated at Toronto this 28th day of May, 2009.

“James E. A. Turner”

“Suresh Thakrar”

“Carol S. Perry”

3.1.2 Luis German Olea – s. 26(3)

IN THE MATTER OF
THE REGISTRATION OF LUIS GERMAN OLEA

OPPORTUNITY TO BE HEARD BY THE DIRECTOR
SUBSECTION 26(3) OF THE SECURITIES ACT, R.S.O. 1990, C. S.5

Date of decision: June 2, 2009

Director: Erez Blumberger
Manager, Registrant Regulation
Ontario Securities Commission

Written Submissions by: Rebecca Stefanec, Registration Officer
Michael Denyszyn, Legal Counsel
For staff of the Ontario Securities Commission

Luis German Olea
For the Registrant

Background

[1] Luis German Olea (the **Registrant**) has been registered under the *Securities Act*, R.S.O. 1990, c. S.5 (the **Act**) as a mutual fund salesperson for PFSL Investments Canada Ltd. (**PFSL**) since February 13, 2004.

[2] On February 12, 2009, PFSL submitted a financial disclosure change notice to the Ontario Securities Commission (**OSC**) indicating that the Registrant had filed a consumer proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, on February 5, 2009.

[3] On March 27, 2009, OSC staff sent a letter to the Registrant and to PFSL proposing terms and conditions for monthly close supervision reporting, be imposed on the registration of the Registrant.

[4] The Director may restrict a registration by imposing terms and conditions under section 26 of the Act, but must provide the registrant with the opportunity to be heard by the Director.

[5] The Registrant requested an opportunity to be heard through written submissions. The Registrant's submission was received on April 17, 2009. The submission of OSC staff was sent to the Registrant in a letter dated May 6, 2009.

Submissions

Summary of the Registrant's submissions

[6] The Registrant asked that his registration not be cancelled or suspended so that he can continue working and servicing his clients at PSFL. He noted that he feels very optimistic about his future with PSFL.

[7] The Registrant explained that it was his marriage breakdown that led to his financial situation, resulting in his decision to file a consumer proposal.

Summary of staff's submissions

[8] OSC staff recommended to the Director that the registration of the Registrant be subject to close supervision, as the filing for a consumer proposal has a bearing on the Registrant's financial solvency because there is a risk that the Registrant may engage in self-interested activities at the expense of clients.

[9] It is OSC staff's practice to impose close monthly supervisory terms and conditions on the registration of an individual who has filed a consumer proposal.

Analysis

Suitability for registration

[10] The fit and proper standard for registration is both an initial and an ongoing requirement for registrants. The fit and proper standard is based on three well established criteria that have been identified by the OSC:

> The [Registrant Regulation] section administers a registration system which is intended to ensure that all Applicants under the *Securities Act* and the *Commodity Futures Act* meet appropriate standards of integrity, competence and financial soundness …
>
> (Ontario Securities Commission, Annual Report 1991, Page 16)

[11] When analyzing these criteria staff consider:

- **integrity** – honesty and good faith, particularly in dealings with clients, and compliance with Ontario securities law;
- **competence** – prescribed proficiency and knowledge of the requirements of Ontario securities law; and
- **financial soundness** – an indicator of a firm's capacity to fulfill its obligations and can be an indicator of the risk that an individual will engage in self-interested activities at the expense of clients.

[12] In this case neither the Registrant's integrity nor his competence are in question. However, filing for a consumer proposal raises concern regarding the financial soundness of the Registrant. To mitigate the potential increased risk concerning self-interested activities by the Registrant, staff recommended that terms and conditions for monthly close supervision reporting be imposed on the registration of the Registrant.

[13] It is OSC staff practice to impose terms and conditions for monthly close supervision reporting on an individual's registration should that person file for bankruptcy, receive a garnishment, receive a requirement to pay overdue taxes, or file for a consumer proposal. The terms and conditions are removed when the financial obligations resulting from the event have been satisfied. This practice is consistent with the investor protection mandate of the OSC.

Decision

[14] I find that the filing for a consumer proposal does have a negative impact on the Registrant's financial soundness. While I am sympathetic to the Registrant's personal circumstances which led to his filing for a consumer proposal, I am mindful of the investor protection mandate of the OSC. Accordingly, based on the submissions filed and the reasons set out above, it is my decision to impose the terms and conditions as set out in Exhibit A on the registration of Luis German Olea.

June 2, 2009

"Erez Blumberger"
Manager, Registrant Regulation

EXHIBIT "A"

Proposed Conditions For Registration

of

Luis German Olea

Monthly Close Supervision Reports are to be completed on the registrant's sales activities and dealings with clients. The supervision reports are to be retained with the sponsoring firm and must be made available for review upon request.

These terms and conditions are to continue until the obligation has been satisfied and acceptable evidence has been provided to the OSC. These terms and conditions will be removed unless the Director has reason to believe that the registrant is not suitable for unconditional renewal of registration at that time.

Approved Officer for PFSL Investments Canada Ltd.	Luis German Olea
Print Name of Signatory Above	
Date	Date

EXHIBIT "A" (cont.)

Standard Monthly Close Supervision Report*

Luis German Olea

I hereby certify that supervision has been conducted for the month ending _____ of the trading activities of Luis German Olea, by the undersigned. I further certify the following:

1. All orders from the salesperson were reviewed and approved by a compliance officer or branch manager of PFSL Investments Canada Ltd.

2. There were no client complaints received during the preceding month. If there were complaints, a description of the complaint and follow-up action initiated by the company is attached.

3. All payments for the purchase of the investments were made payable to the dealer. There were no cash payments accepted.

4. The transactions of the salesperson were reviewed during the preceding month to ensure compliance with the policies and procedures of the dealer, including the suitability of investments for clients. If there were any violations, a description of the violation and follow-up action is attached.

_____
Signature
Compliance Officer/Branch Manager of PFSL Investments Canada Ltd.
Printed name of signatory above:

_____
Date

* In the case of violations or client complaints, the regulator must be notified within five business days.

3.1.3 Denise Marie Camden – s. 26(3)

IN THE MATTER OF
THE REGISTRATION OF DENISE MARIE CAMDEN

OPPORTUNITY TO BE HEARD BY THE DIRECTOR
SUBSECTION 26(3) OF THE SECURITIES ACT, R.S.O. 1990, C. S.5

Date of decision: June 2, 2009

Director: Erez Blumberger
Manager, Registrant Regulation
Ontario Securities Commission

Written Submissions by: Rebecca Stefanec, Registration Officer
Michael Denyszyn, Legal Counsel
For staff of the Ontario Securities Commission

Denise Marie Camden
For the Registrant

Background

[1] Denise Marie Camden (the **Registrant**) has been registered under the *Securities Act*, R.S.O. 1990, c. S.5 (the **Act**) as a mutual fund salesperson for PFSL Investments Canada Ltd. (**PFSL**) since August 15, 2007.

[2] On March 18, 2009, PFSL submitted a financial disclosure change notice to the Ontario Securities Commission (**OSC**) indicating that the Registrant had filed an assignment in bankruptcy under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, on December 9, 2008.

[3] On March 27, 2009, OSC staff sent a letter to the Registrant and to PFSL proposing terms and conditions for monthly close supervision reporting, be imposed on the registration of the Registrant.

[4] The Director may restrict a registration by imposing terms and conditions under section 26 of the Act, but must provide the registrant with the opportunity to be heard by the Director.

[5] The Registrant requested an opportunity to be heard through written submissions. The Registrant's initial submission was received on April 16, 2009. The submission of OSC staff was sent to the Registrant in a letter dated May 7, 2009. A further submission from the Registrant was received on May 20, 2009.

Submissions

Summary of the Registrant's submissions

[6] The Registrant asked that her registration be allowed to continue without terms and conditions. She noted that PFSL would no longer continue to sponsor her registration as a mutual fund salesperson if there are terms and conditions imposed on her registration.

[7] The Registrant wished to be able to keep her mutual fund license as she is the sole income provider in her household since her husband is disabled. She explained that she had overextended her credit during a period of high gas prices to meet her day to day obligations because her income was insufficient to cover her household bills and the cost of her courier business.

[8] The Registrant notes that she has always done what is in her clients' best interest and that she has developed a client base at PFSL that she services regularly. She also notes that she has not had any client complaints.

Summary of staff's submissions

[9] OSC staff recommended to the Director that the registration of the Registrant be subject to close supervision, as the filing of personal bankruptcy has a bearing on the Registrant's financial solvency because there is a risk that the Registrant may engage in self-interested activities at the expense of clients.

[10] It is OSC staff's practice to impose close monthly supervisory terms and conditions on the registration of an individual who has filed for personal bankruptcy.

Analysis

Suitability for registration

[11] The fit and proper standard for registration is both an initial and an ongoing requirement for registrants. The fit and proper standard is based on three well established criteria that have been identified by the OSC:

> The [Registrant Regulation] section administers a registration system which is intended to ensure that all Applicants under the *Securities Act* and the *Commodity Futures Act* meet appropriate standards of integrity, competence and financial soundness …
>
> (Ontario Securities Commission, Annual Report 1991, Page 16)

[12] When analyzing these criteria staff consider:

- **integrity** – honesty and good faith, particularly in dealings with clients, and compliance with Ontario securities law;
- **competence** – prescribed proficiency and knowledge of the requirements of Ontario securities law; and
- **financial soundness** – an indicator of a firm's capacity to fulfill its obligations and can be an indicator of the risk that an individual will engage in self-interested activities at the expense of clients.

[13] In this case neither the Registrant's integrity nor her competence are in question. However, filing for bankruptcy raises concern regarding the financial soundness of the Registrant. To mitigate the potential increased risk concerning self-interested activities by the Registrant, OSC staff recommended that terms and conditions for monthly close supervision reporting be imposed on the registration of the Registrant.

[14] It is OSC staff practice to impose terms and conditions for monthly close supervision reporting on an individual's registration should that person file for bankruptcy, receive a garnishment, receive a requirement to pay overdue taxes, or file for a consumer proposal. The terms and conditions are removed when the financial obligations resulting from the event have been satisfied. This practice is consistent with the investor protection mandate of the OSC.

Decision

[15] I find that the filing for personal bankruptcy does have a negative impact on the Registrant's financial soundness. Based on the submissions filed and the reasons set out above, it is my decision to impose the terms and conditions as set out in Exhibit A on the registration of Denise Marie Camden.

June 2, 2009

"Erez Blumberger"
Manager, Registrant Regulation

EXHIBIT "A"

Proposed Conditions For Registration

of

Denise Marie Camden

Monthly Close Supervision Reports are to be completed on the registrant's sales activities and dealings with clients. The supervision reports are to be retained with the sponsoring firm and must be made available for review upon request.

These terms and conditions are to continue until six months after discharge and the certificate of discharge has been provided to the OSC.

Approved Officer for PFSL Investments Canada Ltd.	Denise Marie Camden
Print Name of Signatory Above	
Date	Date

EXHIBIT "A" (cont.)

Standard Monthly Close Supervision Report*

Denise Marie Camden

I hereby certify that supervision has been conducted for the month ending _____ of the trading activities of Denise Marie Camden, by the undersigned. I further certify the following:

1. All orders from the salesperson were reviewed and approved by a compliance officer or branch manager of PFSL Investments Canada Ltd.

2. There were no client complaints received during the preceding month. If there were complaints, a description of the complaint and follow-up action initiated by the company is attached.

3. All payments for the purchase of the investments were made payable to the dealer. There were no cash payments accepted.

4. The transactions of the salesperson were reviewed during the preceding month to ensure compliance with the policies and procedures of the dealer, including the suitability of investments for clients. If there were any violations, a description of the violation and follow-up action is attached.

_____
Signature
Compliance Officer/Branch Manager of PFSL Investments Canada Ltd.
Printed name of signatory above:

_____
Date

* In the case of violations or client complaints, the regulator must be notified within five business days.

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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
PharmEng International Inc.	20 May 09	01 June 09	01 June 09	
Tele-Find Technologies Corp.	19 May 09	01 June 09	01 June 09	
Production Enhancement Group, Inc.	03 June 09	15 June 09		
OnePak, Inc.	05 Aug 08	15 Aug 08	15 Aug 08	01 June 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
Sprylogics International Corp.	02 June 09	15 June 09			
Outlook Resources Inc.	31 Mar 09	13 Apr 09	13 Apr 09	03 June 09	
In-Touch Surveys Systems Ltd.	04 May 09	15 May 09	15 May 09	02 June 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	03 June 09	
Synergex Corporation	02 Apr 09	14 Apr 09	14 Apr 09		
Goldstake Explorations Inc.	08 Apr 09	20 Apr 09	20 Apr 09		
In-Touch Surveys Systems Ltd.	04 May 09	15 May 09	15 May 09	02 June 09	
Wedge Energy International Inc.	04 May 09	15 May 09	15 May 09		
Airesurf Networks Holdings Inc.	07 May 09	19 May 09	19 May 09		
Newlook Industries Corp.	07 May 09	19 May 09	19 May 09		
Archangel Diamond Corporation	08 May 09	20 May 09	20 May 09		
First Metals Inc.	13 May 09	25 May 09	25 May 09		
Sprylogics International Corp.	02 June 09	15 June 09			

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
05/12/2009	1	Ameristar Casinos, Inc. - Notes	1,133,700.00	N/A
05/20/2009	33	Argus Metals Corp. - Units	307,000.00	3,070,000.00
05/13/2009	27	Atikwa Mineral Corporation - Common Shares	412,500.00	8,250,000.00
03/30/2009	6	Autoliv, Inc. - Common Shares	5,652,406.40	280,600.00
05/18/2009	1	BB&T Corporation - Common Shares	8,253,000.00	350,000.00
05/15/2009	7	Canadian Arrow Mines Limited - Units	117,500.00	N/A
05/13/2009	15	Cempra Holdings LLC - Preferred Shares	25,499,999.57	23,642,415.00
04/30/2009	21	Crowflight Minerals Inc. - Units	7,820,000.00	46,000,000.00
05/13/2009	3	Delta Petroleum Corporation - Common Shares	3,456,250.00	1,975,000.00
05/06/2009	4	Dynamic Fuel Systems Inc. - Units	540,000.00	5,400,000.00
05/07/2009 to 05/15/2009	10	Element Four Technologies Inc. - Common Shares	93,000.00	68,667.00
05/12/2009	13	Exploration Amesco Itee - Units	120,000.00	N/A
05/12/2009 to 05/14/2009	3	First Leaside Fund - Trust Units	106,226.00	106,226.00
05/12/2009 to 05/19/2009	2	First Leaside Fund - Trust Units	180,000.00	180,000.00
05/15/2009	1	First Leaside Premier Limited Partnership - Units	49,999.01	42,462.00
05/15/2009	1	First Leaside Visions II Limited Partnership - Units	40,000.00	40,000.00
05/13/2009	1	Fission Energy Corp. - Common Shares	209,940.00	583,166.00
05/15/2009	1	Genco Resources Ltd. - Common Shares	500,000.16	N/A
04/29/2009	10	Glenmore & Centre Registered Capital Ltd. - Bonds	162,500.00	N/A
04/29/2009	11	Glenmore & Centre Registered Investments Ltd. - Common Shares	162.50	1,625.00
04/29/2009	6	Glenmore & Centre Registered Investments Ltd. - Notes	162,500.00	162,500.00
01/11/2008 to 12/31/2008	105	Good Opportunities Fund - Units	9,442,722.00	N/A
05/18/2009	2	Great Plains Energy Incorporated - Units	1,621,675.00	27,500.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
05/11/2009	2	International Game Technology - Notes	116,600.00	100,000.00
05/14/2009	2	Kivalliq Energy Corp. - Units	400,000.00	2,000,000.00
05/05/2009	2	La Camera Mining Inc. - Common Shares	75,000.00	187,500.00
05/07/2009	1	Li & Fung Limited - Common Shares	862,500.00	250,000.00
07/03/2007 to 01/22/2009	72	Maple Leaf Investment Fund Corp. - Bonds	3,271,000.00	N/A
05/06/2009	1	Mawson Resources Limited - Units	750,000.00	1,500,000.00
02/17/2009	8	Mead Johnson Nutrition Company - Common Shares	12,611,080.80	417,000.00
05/14/2009	4	MGM Mirage - Notes	18,249,838.00	N/A
05/13/2009	10	Morgan Stanley - Common Shares	109,072,488.00	3,890,000.00
05/16/2009	21	Nelson Financial Group Ltd. - Notes	1,005,150.68	21.00
05/11/2009	29	Network Exploration Ltd. - Units	250,000.00	12,500,000.00
05/08/2009 to 05/12/2009	5	Newport Canadian Equity Fund - Units	195,000.00	1,763.10
05/08/2009 to 05/14/2009	53	Newport Fixed Income Fund - Units	3,450,757.69	33,519.90
05/08/2009 to 05/12/2009	3	Newport Global Equity Fund - Units	45,000.00	802.54
05/08/2009 to 05/14/2009	34	Newport Yield Fund - Units	828,770.80	8,270.55
05/01/2009	3	North American Financial Group Inc. - Debt	55,000.00	3.00
05/13/2009	1	Northern Shield Resources Inc. - Common Shares	549,000.00	6,100,000.00
05/13/2009	10	Plasco Energy Group Inc. - Units	1,950,000.00	129,999.00
04/29/2009	4	Platinum 5 Acres and a Mule Limited Partnership - Limited Partnership Units	150,000.00	6.00
05/07/2009	17	Plazacorp - Shediac Limited Partnership - Limited Partnership Units	1,718,000.00	1,718,000.00
05/20/2009	2	Podium Capital Corporation - Common Shares	165,000.00	550,000.00
05/19/2009	1	Seafield Resources Ltd. - Common Shares	237,000.00	6,771,429.00
02/01/2009 to 04/01/2009	3	Spectrum San Diego Inc. - Common Shares	94,816.00	11,200.00
03/31/2009	6	Spectrum San Diego Inc. - Common Shares	448,056.00	50,800.00
04/24/2009	3	Spectrum San Diego Inc. - Common Shares	121,968.00	14,400.00
05/14/2009	1	Speedway Motorsports Inc. - Notes	3,406,435.51	N/A
05/13/2009	1	Swedbank AB - Notes	29,185,000.00	N/A

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
05/05/2009	257	Teck Resources Limited - Notes	4,717,704,398.00	N/A
05/15/2009	11	The Bank of New York Mellon Corporation - Common Shares	36,511,601.62	1,080,740.00
05/22/2009	18	Treasury Metals Inc. - Units	853,500.00	4,267,500.00
05/14/2009	23	UBS AG - Notes	3,450,000.00	3,450,000.00
05/08/2009	10	UMH Energy Partnership - Bonds	200,000,000.00	N/A
05/04/2009	5	United States Steel Corporation - Common Shares	36,951,106.50	23,600,000.00
05/04/2009	4	United States Steel Corporation - Notes	2,002,770.00	N/A
05/15/2009	34	U.S. Bancorp - Common Shares	164,598,859.58	7,778,480.00
05/15/2009	14	Walton AZ Sawtooth Investment Corporation - Common Shares	316,040.00	31,604.00
05/15/2009	3	Walton AZ Sawtooth Limited Partnership - Limited Partnership Units	363,487.02	31,214.00
05/20/2009	21	Walton GA Arcade Meadows 2 Investment Corporation - Common Shares	582,200.00	58,220.00
05/15/2009	16	Walton GA Arcade Meadows 2 Investment Corporation - Common Shares	332,370.00	33,237.00
05/20/2009	2	Walton GA Arcade Meadows Limited Partnership 2 - Limited Partnership Units	663,287.59	57,254.00
05/15/2009	3	Walton GA Arcade Meadows Limited Partnership 2 - Limited Partnership Units	681,709.95	58,541.00
05/20/2009	18	Walton TX Amble Way Investment Corporation - Common Shares	324,190.00	32,419.00
05/05/2009	12	Western Wind Energy Corp. - Units	4,560,205.00	7,015,700.00
05/19/2009	1	Xtra-Gold Resources Corp. - Common Shares	6,566.67	8,000.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
AltaGas Income Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Base Shelf Prospectus dated May 27, 2009
NP 11-202 Receipt dated May 27, 2009
Offering Price and Description:
$500,000,000.00 - Trust Units Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1426840

Issuer Name:
Andina Minerals Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 1, 2009
NP 11-202 Receipt dated June 1, 2009
Offering Price and Description:
$13,500,000.00 - 9,000,000 Common Shares Price: $1.50 per Common Shares
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Canaccord Capital Corporation
Haywood Securities Inc.
Paradigm Capital Inc.
Clarus Securities Inc.
RBC Dominion Securities
Promoter(s):
-
Project #1431502

Issuer Name:
BURCON NUTRASCIENCE CORPORATION
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated May 27, 2009
NP 11-202 Receipt dated May 28, 2009
Offering Price and Description:
$ * - * Common Shares Price: $ * per Share
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
BMO Nesbitt Burns Inc.
Haywood Securities Inc.
Promoter(s):
-
Project #1427484

Issuer Name:
Canadian Real Estate Split Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 25, 2009
NP 11-202 Receipt dated May 27, 2009
Offering Price and Description:
$ * - * Capital Shares and * Preferred Shares Prices: $15.00 per Capital Share and $10.00 per Preferred Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
TD Securities Inc.
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Blackmont Capital Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Raymond James Ltd.
Wellington West Capital Market Inc.
Promoter(s):
Scotia Managed Companies Administration Inc.
Project #1426853

Issuer Name:
Central GoldTrust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Base Shelf Prospectus dated May 29, 2009
NP 11-202 Receipt dated June 1, 2009
Offering Price and Description:
U.S.$800,000,000
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1430942

Issuer Name:
CIBC Managed Monthly Income Balanced Portfolio
(Class T6 and T8 Units)
CIBC Managed Income Plus Portfolio
CIBC Managed Income Portfolio
CIBC U.S. Dollar Managed Income Portfolio
(Class T4 and T6 Units)
CIBC Managed Balanced Portfolio
CIBC Managed Balanced Growth Portfolio
CIBC Managed Growth Portfolio
CIBC Managed Aggressive Growth Portfolio
CIBC U.S. Dollar Managed Balanced Portfolio
CIBC U.S. Dollar Managed Growth Portfolio
(Class T4, T6 and T8 Units)
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated May 28, 2009
NP 11-202 Receipt dated May 29, 2009
Offering Price and Description:
Class T4, T6 and T8 Units
Underwriter(s) or Distributor(s):
CIBC Securities Inc.
CIBC Securities Inc.
Promoter(s):
Canadian Imperial Bank of Commerce
Project #1429250

Issuer Name:
Connacher Oil and Gas Limited
Principal Regulator - Alberta
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated May 26, 2009
NP 11-202 Receipt dated May 27, 2009
Offering Price and Description:
$150,075,000.00 - 166,750,000 Common Shares Price: $0.90
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Credit Suisse Securities (Canada) Inc.
TD Securities Inc.
Scotia Capital Inc.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Macquarie Capital Markets Canada Ltd.
Raymond James Ltd.
Promoter(s):
-
Project #1423262

Issuer Name:
Cott Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Base Shelf Prospectus dated May 29, 2009
NP 11-202 Receipt dated June 1, 2009
Offering Price and Description:
U.S. $300,000,000.00 - Debt Securities, Guarantees of Debt Securities, Preferred Shares, Common Shares, Depositary Shares, Warrants to Purchase Debt Securities, Warrants to Purchase Common Shares, Warrants to Purchase Preferred Shares, Warrants to Purchase Depositary Shares, Stock Purchase Contracts and Stock Purchase Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1431232

Issuer Name:
Denison Mines Corp. (formerly International Uranium Corporation)
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 1, 2009
NP 11-202 Receipt dated June 1, 2009
Offering Price and Description:
$82,000,000.00 - 40,000,000 Common Shares Price: $2.05 per Common Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Cormark Securities Inc.
Canaccord Capital Corporation
Scotia Capital Inc.
CIBC World Markets Inc.
Raymond James Ltd.
Promoter(s):
-
Project #1431817

Issuer Name:
Franco-Nevada Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 2, 2009
NP 11-202 Receipt dated June 2, 2009
Offering Price and Description:
$322,000,000.00 -10,000,000 Units Price: $32.20 per Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
GMP Securities L.P.
CIBC World Markets Inc.
UBS Securities Canada Inc.
RBC Dominion Securities Inc.
HSBC Securities (Canada) Inc.
Merrill Lynch Canada Inc.
National Bank Financial Inc.
Scotia Capital Inc.
Genuity Capital Markets
Paradigm Capital Inc.
Wellington West Capital Markets Inc.
Promoter(s):
-
Project #1432876

Issuer Name:
Gabriel Resources Ltd.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated May 27, 2009
NP 11-202 Receipt dated May 28, 2009
Offering Price and Description:
$58,275,000.00 - 25,900,000 Common Shares Price: $2.25 per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
RBC Dominion Securities Inc.
Canaccord Capital Corporation
Promoter(s):
-
Project #1426189

Issuer Name:
Genworth MI Canada Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 29, 2009
NP 11-202 Receipt dated May 29, 2009
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.,
Goldman Sachs Canada Inc.,
Scotia Capital Inc.
Promoter(s):
-
Project #1429080

Issuer Name:
Global Uranium Fund Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated May 25, 2009
NP 11-202 Receipt dated May 27, 2009
Offering Price and Description:
$ * - Class B Warrants to Subscribe for up to * Equity Shares at a Subscription Price of $ *
Underwriter(s) or Distributor(s):
-
Promoter(s):
Brompton Funds Management Limited
Project #1426719

Issuer Name:
Horizons BetaPro Double Gold Bullion Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Long Form dated May 26, 2009
NP 11-202 Receipt dated May 27, 2009
Offering Price and Description:
US$ * - * Class U and Cdn$ - * C Units Price: U.S.$10.00 per Class U Unit Cdn$10.00 per Class C Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Macquarie Capital Markets Canada Ltd.
Scotia Capital Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
UBS Securities Canada Inc.
Blackmont Capital Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
Raymond James Ltd.
Desjardins Securities Inc.
Haywood Securities Inc.
MGI Securities Inc.
Research Capital Corporation
Wellington West Capital Markets Inc.
Promoter(s):
BetaPro Management Inc.
Project #1423515

Issuer Name:
Iberian Minerals Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated May 27, 2009
NP 11-202 Receipt dated May 27, 2009
Offering Price and Description:
$40,001,000.00 - 76,925,000 Common Shares issuable upon the exercise of outstanding Special Warrants Price: $0.52 per Special Warrant
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Canaccord Capital Corporation
Wellington West Capital Markets Inc.
Paradigm Capital Inc.
Promoter(s):
-
Project #1426737

Issuer Name:
MagIndustries Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 1, 2009
NP 11-202 Receipt dated June 1, 2009
Offering Price and Description:
$30,000,000.00 - * Common Shares Price: $ * per Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
BMO Capital Markets Corp.
Paradigm Capital Inc.
Canaccord Capital Corporation
Jennings Capital Inc.
Promoter(s):
-
Project #1431477

Issuer Name:
MagIndustries Corp.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated June 2, 2009
NP 11-202 Receipt dated June 2, 2009
Offering Price and Description:
$26,103,000.00 - 62,150,000 Common Shares Price: $0.42 per Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
BMO Capital Markets Corp.
Paradigm Capital Inc.
Canaccord Capital Corporation
Jennings Capital Inc.
Promoter(s):
-
Project #1431477

Issuer Name:
Magma Energy Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated June 1, 2009
NP 11-202 Receipt dated June 1, 2009
Offering Price and Description:
Cdn.$ * * Shares Price: Cdn.$ * per Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Cormark Securities Inc.
Canaccord Capital Corporation
National Bank Financial Inc.
Dundee Securities Corporation
Jacob & Company Securities Inc.
Wellington West Capital Markets Inc.
Promoter(s):
Ross J. Beaty
Project #1431631

Issuer Name:
Nexen Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Base Shelf Prospectus dated May 28, 2009
NP 11-202 Receipt dated May 28, 2009
Offering Price and Description:
U.S.$3,500,000,000.00:
Common Shares
Class A Preferred Shares
Senior Debt Securities
Subordinated Debt Securities
Subscription Receipts
Warrants to Purchase Equity Securities
Warrants to Purchase Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1427803

Issuer Name:
Paladin Labs Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated May 27, 2009
NP 11-202 Receipt dated May 27, 2009
Offering Price and Description:
$51,000,000.00 - 3,000,000 Common Shares Price: $17.00 per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
GMP Securities L.P.
Desjardins Securities Inc.
TD Securities Inc.
Promoter(s):
-
Project #1426795

Issuer Name:
Platinum Group Metals Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated May 27, 2009
NP 11-202 Receipt dated May 27, 2009
Offering Price and Description:
$ * - * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
Thomas Weisel Partners Canada Inc.
RBC Dominion Securities Inc.
Promoter(s):
-
Project #1426931

Issuer Name:
Platinum Group Metals Ltd.
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated May 29, 2009
NP 11-202 Receipt dated June 1, 2009
Offering Price and Description:
$31,923,220.00 -22,802,300 Units Price: $1.40 per Unit
Underwriter(s) or Distributor(s):
Thomas Weisel Partners Canada Inc.
RBC Dominion Securities Inc.
Promoter(s):
-
Project #1426931

Issuer Name:
RBC Advisor Canadian Bond Fund
RBC Asian Equity Fund

Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated May 26, 2009
NP 11-202 Receipt dated May 27, 2009
Offering Price and Description:
Series O Units
Underwriter(s) or Distributor(s):
Royal Mutual Funds Inc.
RBC Direct Investing Inc.
Royal Mutual Funds Inc.
RBC Asset Management Inc.
RBC Dominion Securities Inc.
Royal Mutual Funds Inc./RBD Direct Investing Inc.
Royal Mutual Funds Inc./RBC Direct Investing Inc.
Promoter(s):
RBC Asset Management Inc.
Project #1426251

Issuer Name:
Sherritt International Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated May 29, 2009
NP 11-202 Receipt dated May 29, 2009
Offering Price and Description:
$500,000,000.00:
Debt Securities
Common Shares
Subscription Receipts
Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1430089

Issuer Name:
Angle Energy Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated June 2, 2009
NP 11-202 Receipt dated June 2, 2009
Offering Price and Description:
$30,000,258.00 - 6,666,724 Common Shares issuable on exercise of outstanding Special Warrants PRICE: $4.50 PER SPECIAL WARRANT
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Acumen Capital Finance Partners Limited
Dundee Securities Corporation
FirstEnergy Capital Corp.
Haywood Securities Inc.
National Bank Financial Inc.
Tristone Capital Inc.
Wellington West Capital Markets Inc.
Promoter(s):
-
Project #1426163

Issuer Name:
AQUILINE RESOURCES INC
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated May 28, 2009
NP 11-202 Receipt dated May 28, 2009
Offering Price and Description:
$16,200,000.00 - 7,200,000 Common Shares $2.25 per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
BMO Nesbitt Burns Inc.
Dundee Securities Corporation
Haywood Securities Inc.
Promoter(s):
-
Project #1423924

Issuer Name:
Burgundy American Equity Fund
Burgundy Balanced Income Fund
Burgundy Bond Fund
Burgundy Canadian Equity Fund
Burgundy Compound Reinvestment Fund
Burgundy EAFE Fund
Burgundy European Equity Fund
Burgundy European Foundation Fund
Burgundy Focus Asian Equity Fund
Burgundy Focus Canadian Equity Fund
Burgundy Foundation Trust Fund
Burgundy Money Market Fund
Burgundy Partners' Balanced RSP Fund
Burgundy Partners' Equity RSP Fund
Burgundy Partners' Global Fund
Burgundy Total Return Bond Fund
Burgundy U.S. Money Market Fund
Type and Date:
Final Simplified Prospectuses dated May 27, 2009
Receipted on June 1, 2009
Offering Price and Description:
Mutal Fund Units @ Net Asset Value
Underwriter(s) or Distributor(s):
BURGUNDY ASSET MANAGEMENT LTD.
Burgundy Asset Management Ltd.
Promoter(s):
BURGUNDY ASSET MANAGEMENT LTD.
Project #1406215

Issuer Name:
Canadian Banc Capital Securities Trust
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 27, 2009
NP 11-202 Receipt dated May 28, 2009
Offering Price and Description:
Price: $25.00 per Class A Unit and $25.00 per Class F Unit - Maximum Offering: $100,000,000 (4,000,000 Class A Units and/or Class F Units); Minimum Offering: $40,000,000 (1,600,000 Class A Units and/or Class F Units)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
National Bank Financial Inc.
TD Securities Inc.
HSBC Securities (Canada) Inc.
Richardson Partners Financial Limited
Dundee Securities Corporation
Wellington West Capital Markets Inc.
Blackmont Capital Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
GMP Securities L.P.
Manulife Securities Incorporated
Raymond James Ltd.
Research Capital Corporation
Promoter(s):
Connor, Clark & Lunn Capital Markets Inc.
Project #1405234

Issuer Name:
Cogeco Cable Inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Base Shelf Prospectus dated May 27, 2009
NP 11-202 Receipt dated May 27, 2009
Offering Price and Description:
Debt Securities - $500,000,000.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1423953

Issuer Name:
Connacher Oil and Gas Limited
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated May 28, 2009
NP 11-202 Receipt dated May 28, 2009
Offering Price and Description:
$150,075,000.00 - 166,750,000 Common Shares at $0.90 per common shares
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Credit Suisse Securities (Canada) Inc.
TD Securities Inc.
Scotia Capital Inc.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Macquarie Capital Markets Canada Ltd.
Raymond James Ltd.
Promoter(s):
-
Project #1423262

Issuer Name:
Cyberplex Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated May 28, 2009
NP 11-202 Receipt dated May 28, 2009
Offering Price and Description:
$15,000,000.00 - 9,375,000 Common Shares Price: $1.60 per Common Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Paradigm Capital Inc.
M Partners Inc.
Genuity Capital Markets
Scotia Capital Inc.
Thomas Weisel Partners Canada Inc.
Promoter(s):
-
Project #1424055

Issuer Name:
Fortis Global Equity Exposure Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated May 22, 2009 to the Simplified Prospectus and Annual Information Forms dated February 25, 2009
NP 11-202 Receipt dated May 28, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Fortis Investment Management Canada Ltd.
Promoter(s):
Fortis Investment Management Canada Ltd.
Project #1366411

Issuer Name:
GHJ Capital Inc.
Type and Date:
Final Long Form Non-Offering Prospectus dated May 28, 2009
Receipted on May 29, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1405154

Issuer Name:
GrowthWorks Commercialization Fund Ltd.
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated May 27, 2009 to the Long Form Prospectus dated October 30, 2008
NP 11-202 Receipt dated May 29, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
GrowthWorks Capital Ltd.
Promoter(s):
GrowthWorks WV Management Ltd.
Project #1329602

Issuer Name:
IESI-BFC Ltd. (formerly BFI Canada Ltd.)
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus (NI 44-102) dated May 27, 2009
NP 11-202 Receipt dated May 27, 2009
Offering Price and Description:
US$400,000,000.00:
Common Shares
Debt Securities
Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1421475

Issuer Name:
Class A and Class F Units of:
imaxx Money Market Fund
imaxx Canadian Bond Fund
imaxx Canadian Fixed Pay Fund
imaxx Canadian Equity Growth Fund
imaxx Canadian Equity Value Fund
imaxx Canadian Balanced Fund
imaxx Canadian Dividend Fund
imaxx Canadian Small Cap Fund
imaxx US Equity Growth Fund
imaxx US Equity Value Fund
imaxx Global Equity Value Fund
imaxx Global Equity Growth Fund
Class A Units of:
imaxx TOP Conservative Portfolio
imaxx TOP Income Portfolio
imaxx TOP Balanced Portfolio
imaxx TOP Growth Portfolio
imaxx TOP Aggressive Growth Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated May 28, 2009
NP 11-202 Receipt dated June 1, 2009
Offering Price and Description:
Class A and Class F Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
AEGON Fund Management Inc.
Project #1406032

Issuer Name:
Mackenzie Saxon Money Market Fund (formerly Saxon Money Market Fund)
(Investor Series and B-Series Units)
Mackenzie Saxon Bond Fund (formerly Saxon Bond Fund)
(Investor Series, B-Series, Advisor Series and F-Series Units)
Mackenzie Saxon Balanced Fund (formerly Saxon Balanced Fund)
(Investor Series, B-Series, Advisor Series, F-Series, Series A, Series F, Series F8, Series I, Series O, Series T6 and Series T8 Units)
Mackenzie Saxon High Income Fund (formerly Saxon High Income Fund)
(Investor Series, B-Series, Advisor Series, F-Series, Series I and Series O Units)
Mackenzie Saxon Stock Fund (formerly Saxon Stock Fund)
(Investor Series, B-Series, Advisor Series, F-Series, Series I and Series O Units)
Mackenzie Saxon Small Cap Fund (formerly Saxon Small Cap)
(Investor Series, B-Series, Advisor Series, F-Series, Series F, Series I and Series O Units)
Mackenzie Saxon Microcap Fund (formerly Saxon Microcap Fund)
(Investor Series, B-Series, Advisor Series, F-Series, Series I and Series O Units)
Mackenzie Saxon U.S. Equity Fund (formerly Saxon U.S. Equity Fund)
(Investor Series, B-Series, Advisor Series, F-Series, Series I and Series O Units)
Mackenzie Saxon U.S. Small Cap Fund (formerly Saxon U.S. Small Cap Fund)
(Investor Series, B-Series, Advisor Series and F-Series Units)
Mackenzie Saxon International Equity Fund (formerly Saxon International Equity Fund)
(Investor Series, B-Series, Advisor Series, F-Series, Series I and Series O Units)
Mackenzie Saxon World Fund (formerly Saxon World Growth)
(Investor Series, B-Series, Advisor Series, F-Series, Series I and Series O Units)
Mackenzie Saxon Global Small Cap Fund (formerly Saxon Global Small Cap Fund)
(Investor Series, B-Series, Advisor Series and F-Series Units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated May 25, 2009
NP 11-202 Receipt dated May 28, 2009
Offering Price and Description:
Mutual fund trust units at net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Mackenzie Financial Corporation
Project #1409977

Issuer Name:
Marret High Yield Strategies Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 28, 2009
NP 11-202 Receipt dated May 28, 2009
Offering Price and Description:
Maximum $250,000,000.00 Units; (Maximum 25,000,000 Units)
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
GMP Securities L.P.
CIBC World Markets Inc.
Scotia Capital Inc.
Dundee Securities Corporation
Canaccord Capital Corporation
Raymond James Ltd.
Blackmont Capital Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
Manulife Securities Incorporated
Wellington West Capital Markets Inc.
Research Capital Corporation
Promoter(s):
Marret Asset Management Inc.
Project #1406831

Issuer Name:
Marret HYS Trust
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 28, 2009
NP 11-202 Receipt dated May 29, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Marret Asset Management Inc.
Project #1416554

Issuer Name:
Series A Shares of:
Middlefield Canadian Growth Class (also Series F Shares)
Middlefield Equity Index Class
Middlefield Income Plus Class
Middlefield Resource Class (also Series F Shares)
Middlefield Uranium Focused Metals Class
Middlefield Canadian Balanced Class
Middlefield Short-Term Income Class
Middlefield Precious Metals Class (also Series F Shares)
Middlefield Global Agriculture Class
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated May 26, 2009
NP 11-202 Receipt dated May 27, 2009
Offering Price and Description:
Series A Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
Middlefield Capital Corporation
Promoter(s):
Middlefield Fund Management Limited
Project #1409112

Issuer Name:
Sino-Forest Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated June 1, 2009
NP 11-202 Receipt dated June 1, 2009
Offering Price and Description:
$330,000,000.00 - 30,000,000 Common Shares at $11.00 Common Share
Underwriter(s) or Distributor(s):
Credit Suisse Securities (Canada) Inc.
Dundee Securities Corporation
Merrill Lynch Canada Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #1425017

Issuer Name:
Student Transportation of America Ltd.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated May 28, 2009
NP 11-202 Receipt dated May 28, 2009
Offering Price and Description:
$42,000,000.00 - 12,000,000 Common Shares Price: $3.50 per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
Wellington West Capital Markets Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Promoter(s):
-
Project #1424343

Issuer Name:
Tonbridge Power Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated May 29, 2009
NP 11-202 Receipt dated May 29, 2009
Offering Price and Description:
$5,002,500.00 - 21,750,000 Common Shares PRICE: $0.23 per Common Share
Underwriter(s) or Distributor(s):
Clarus Securities Inc.
Promoter(s):
-
Project #1425196

Issuer Name:
ZARGON ENERGY TRUST
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated May 29, 2009
NP 11-202 Receipt dated May 29, 2009
Offering Price and Description:
$32,250,000.00 - 2,150,000 Trust Units Price: $15.00 per Trust Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Scotia Capital Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
FirstEnergy Capital Corp.
Peters & Co. Limited
Raymond James Ltd.
Promoter(s):
-
Project #1424326

Issuer Name:
Zenith Industries Corp.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated May 29, 2009
NP 11-202 Receipt dated June 2, 2009
Offering Price and Description:
$3,500,000.00 - Public Offering of 28,000,000 Common Shares at $0.125 each
Underwriter(s) or Distributor(s):
Wellington West Capital Inc.
Promoter(s):
-
Project #1419112

Issuer Name:
IESI-BFC Ltd. (Formerly, BFI Canada Ltd)
Principal Regulator - Ontario
Type and Date:
Final Short Form Base Shelf Prospectus dated May 27, 2009
NP 11-202 Receipt dated May 27, 2009
Offering Price and Description:
US$400,000,000.00:
Common Shares
Debt Securities
Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1421475

Issuer Name:
frontierAlt Quebec 2009 Flow-Through Limited Partnership
Principal Jurisdiction - Ontario
Type and Date:
Preliminary Long Form Prospectus dated February 24, 2009
Withdrawn on May 29, 2009
Offering Price and Description:
Maximum Offering: $15,000,000 (600,000 Units)
Minimum Offering: $3,000,000 (120,000 Units)
Subscription Price: $25 per
Unit Minimum Subscription: $2,500
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Desjardins Securities Inc.
Laurentian Bank Securities Inc.
Scotia Capital Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Wellington West Capital Markets Inc.
Industrial Alliance Securities Inc.
Manulife Securities Incorporated
Promoter(s):
FrontierAlt Quebec 2009 Inc.
FrontierAlt Funds Management Limited
Allyson Taylor Partners Inc.
Project #1379200

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: ING Clarion Real Estate Securities, L.P. To: ING Clarion Real Estate Securities, LLC	International Adviser (Investment Counsel & Portfolio Manager)	March 31, 2009
Consent to Suspension (Rule 33-501 Surrender of Registration)	Stanford Group Company	International Dealer	May 28, 2009
New Registration	PENN Capital Management Company, Inc.	International Adviser (Investment Counsel & Portfolio Manager)	May 29, 2009.
Consent to Suspension (Rule 33-501 Surrender of Registration)	Sprott Asset Management Inc.	Investment Dealer	June 1, 2009
New Registration	Morgan Stanley Smith Barney LLC.	Limited Market Dealer International Dealer International Adviser (Investment Counsel and Portfolio Manager)	June 1, 2009
New Registration	Sprott Asset Management LP	Limited Market Dealer, Investment Counsel and Portfolio Manager	June 1, 2009
New Registration	Sprott Private Wealth LP	Investment Dealer	June 1, 2009
New Registration	Blackbay Wealth Management Ltd.	Limited Market Dealer, Investment Counsel & Portfolio Manager and Commodity Trading Manager	June 2, 2009
New Registration	Trez Capital Corporation	Limited Market Dealer	June 2, 2009

Type	Company	Category of Registration	Effective Date
New Registration	Fairbank Investment Management Limited	Investment Counsel & Portfolio Manager	June 2, 2009

Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 Notice and Request for Comment – ICE Futures U.S. Application for Exemption from Recognition and Registration as an Exchange and Related Registration Relief

A. Background

ICE Futures U.S. has applied to the Commission for an exemption from the requirement to be registered as an exchange pursuant to section 15 of the *Commodity Futures Act* (Ontario)(CFA) and the requirement to be recognized as an exchange pursuant to section 21 of the *Securities Act* (Ontario)(OSA).

ICE Futures U.S. is designated as a contract market (Designated Contract Market or DCM) by the United States Commodity Futures Trading Commission (CFTC), pursuant to section 5 of the U.S. Commodity Exchange Act. As a DCM, ICE Futures U.S. offers both electronic trading and floor trading of a variety of agricultural or soft commodity futures contracts and options on futures contracts as well as futures contracts and options on futures contracts on certain financial and equity indices and currencies (collectively, ICE Futures U.S. Contracts). ICE Futures U.S. proposes to offer direct electronic access to trading in ICE Futures Contracts to certain Ontario residents (Ontario Participants).

As ICE Futures U.S. will be carrying on business in Ontario, it is required to be recognized as an exchange under the OSA and registered as an exchange under the CFA or apply for exemptions from both requirements. ICE Futures U.S. has applied for an exemption from the registration and recognition requirements on the basis that it is already subject to regulatory oversight by the CFTC.

In assessing the ICE Futures U.S. application, staff followed the process set out in OSC Staff Notice 21-702 *Regulatory Approach for Foreign-Based Stock Exchanges*. As discussed in that notice, a similar approach is applicable to commodity futures exchanges as well.

B. Related Relief

ICE Futures U.S. expects that the potential Ontario Participants will be (i) dealers that are engaged in the business of trading commodity futures and commodity options in Ontario (Futures Commission Merchants or FCMs) and (ii) commercial enterprises that are exposed to risks attendant upon fluctuations in the price of an agricultural commodity or certain financial indices (Hedgers, as defined in section 1 of the CFA). ICE Futures is requesting exemptive relief from the registration requirements under section 22 of the CFA for trades in ICE Futures U.S. Contracts by the Hedgers, in order for Hedgers to be able to access ICE Futures U.S. directly and not “through a dealer” as required under the existing CFA exemption.

C. Draft Recognition Order

In the application, ICE Futures U.S. has outlined how it meets each of the criteria for exemption from recognition and from registration. Subject to comments received, staff intend to recommend that the Commission grant an exemption order with terms and conditions based on the proposed draft order attached.

The draft exemption order requires that ICE Futures U.S. notify staff of the Commission of any material changes to the facts in its application and establishes terms and conditions in the following areas:

1. Regulation of ICE Futures
2. Access
3. Submission to Jurisdiction and Agent for Service
4. Disclosure
5. Filing Requirements
6. Financial Viability
7. Information Sharing

D. Comment process

The Commission is publishing for comment the application of ICE Futures U.S. and the proposed draft exemption order. We are seeking comment on all aspects of ICE Futures U.S.' application for an exemption, as well as the draft exemption order.

You are asked to provide your comments in writing and delivered on or before **July 6, 2009** to the following address:

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario, M5H 3S8
Fax: (416) 593-8145
e-mail: jstevenson@osc.gov.on.ca

We request that you email an electronic copy of your submission. The confidentiality of submissions cannot be maintained as a summary of written comments received during the comment period will be published.

Questions may be referred to:

Barbara Fydell
Senior Legal Counsel, Market Regulation
(416) 593-8253
email: bfydell@osc.gov.on.ca

Yves Cloutier
Trading and Derivatives Specialist, Market Regulation
(416) 204-8988
email: ycloutier@osc.gov.on.ca

Dirk de Lint
Senior Legal Counsel, Registrant Legal Services
(416) 593-8090
e-mail: ddelint@osc.gov.on.ca

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

Jacob Sadikman
Direct Dial: 416.862-4931
jsadikman@osler.com
Our Matter Number: 1101855

May 15, 2009
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, ON M5H 3S8

Attention: Barbara Fydell, Senior Legal Counsel, Market Regulation

Dear Sirs and Mesdames:

ICE Futures US – Application for Exemption from Recognition as a Stock Exchange and Registration as a Commodity Futures Exchange

We are acting as counsel to and are filing this application with the Ontario Securities Commission (the "OSC") on behalf of ICE Futures U.S., Inc. (the "Applicant" or "ICE Futures U.S."), formerly known as the Board of Trade of the City of New York, Inc. ("NYBOT"), for the following decisions (collectively, the "Requested Relief"):

(a) a decision under Section 147 of the *Securities Act* (Ontario) (the "OSA") exempting the Applicant from the requirement to be recognized as a stock exchange under Section 21 of the OSA;

(b) a decision under Section 80 of the *Commodity Futures Act* (Ontario) (the "CFA") exempting the Applicant from the requirement to be registered as a commodity futures exchange under Section 15 the CFA; and

(c) a decision under Section 38 of the CFA exempting trades in contracts on ICE Futures U.S. by "hedgers" (as defined in Section 1 of the CFA) from the registration requirement under Section 22 of the CFA (the "Hedger Relief").

The OSA, CFA and all regulations, rules, policies and notices of the OSC made thereunder are collectively referred to as the "Legislation".

Approval Criteria

OSC Staff has prescribed criteria that it will apply when considering applications by foreign-based commodity futures exchanges for registration (or exemption from registration) under Section 15 of the CFA. These criteria are similar to those prescribed in OSC Staff Notice 21-702 *Regulatory Approach for Foreign Based Stock Exchanges* ("Staff Notice 21-702") in relation to applications for recognition (or exemption from recognition) by foreign stock exchanges under Section 21 of the OSA. For convenience, this Application is divided into the following Parts, Part II of which describes how the Applicant satisfies OSC Staff's criteria for registration (or exemption from registration) of foreign-based commodity futures exchanges.

Part I Background

Part II Application of Approval Criteria to the Applicant

1. Regulation and Oversight
2. Corporate Governance
3. Fees
4. Regulation of Products
5. Access

6. Rulemaking

7. Systems And Technology

8. Financial Viability

9. Clearing And Settlement

10. Trading Practices

11. Compliance, Surveillance and Enforcement

12. Information Sharing and Oversight Arrangements

13. IOSCO Principles

Part III Submissions

Part IV Other Matters

Background

1. The Applicant is a Delaware corporation, designated as a contract market by the United States Commodity Futures Trading Commission (the "CFTC") pursuant to Section 5 of the U.S. Commodity Exchange Act (the "CEA"). The Applicant is owned by the IntercontinentalExchange, Inc. (“ICE, Inc.”) in accordance with a merger agreement consummated on January 12, 2007. ICE, Inc. is a public company governed by the laws of the State of Delaware and listed on the New York Stock Exchange. ICE Inc. and its affiliates are collectively referred to as the “ICE Group”.

2. The Applicant is, in turn, the sole shareholder of ICE Clear U.S., Inc. (formerly known as the New York Clearing Corporation or NYCC) (“ICE Clear U.S.”), the New York Futures Exchange, Inc. (“NYFE”) and eCOPS, LLC.

3. ICE Clear U.S. is a New York corporation and is a registered derivatives clearing organisation ("DCO") as set forth in Section 5b of the CEA. As such, ICE Clear U.S. is subject to the regulatory oversight of the CFTC and must remain in compliance with all of the core principles of Section 5b of the CEA (the "DCO Core Principles"). ICE Clear U.S. clears the trades executed on ICE Futures U.S.

4. ICE Futures U.S. traces its history to 1870, when the New York Cotton Exchange (“NYCE”) was founded in 1882, when the Coffee Exchange of New York City (“Coffee Exchange”) was founded. In 1914 the Coffee Exchange began trading sugar futures (currently ICE Futures U.S.’s largest market) and in 1916 became the New York Coffee and Sugar Exchange. In 1925, the New York Cocoa Exchange was founded to trade cocoa futures, and merged with the New York Coffee and Sugar Exchange in 1979 to form the Coffee, Sugar & Cocoa Exchange, Inc. (“CSCE”). In 1998, the CSCE and the NYCE formed the Board of Trade of the City of New York, Inc. (“NYBOT”) as their parent company. In 2004, the two exchanges merged formally into NYBOT, thereby establishing one exchange known as the Board of Trade of the City of New York, Inc., a not-for-profit membership organization. On September 14, 2006, ICE, Inc. announced that it had entered into an agreement to acquire NYBOT for consideration of approximately $1 billion. On December 11, 2006, the merger was approved by the members of NYBOT and on January 12, 2007, the merger was consummated and NYBOT became a wholly-owned subsidiary of ICE, Inc.

5. As a Designated Contract Market (a “DCM”), the Applicant offers a variety of agricultural or soft commodity futures contracts and options on futures contracts as well as futures contracts and options on futures contracts on certain financial and equity indices and currencies (collectively, “ICE Futures U.S. Contracts”). Historically the Applicant only offered trading of its contracts via open outcry floor trading. In 2007, the Applicant continued to offer floor trading, but also commenced electronic trading on a platform owned and operated by ICE, Inc. (known as the “ICE Platform”) in its core agricultural futures products alongside traditional open outcry access. The contract terms of contracts available for electronic trading are the same as the contract terms of their equivalent floor traded contracts, and therefore fully fungible. Since that time the Applicant has continued to transition more of its contracts towards electronic trading. Although the Applicant has either commenced or will be commencing electronic trading for most of its commodity futures contracts, the applicant continues to maintain a floor trading operation for open outcry trading in respect of all of its listed commodity futures options contracts as well as with respect to certain of its less liquid commodity futures contracts. In addition to being a DCM in the United States, the Applicant has secured relevant regulatory approvals or statements of non-objection, or has satisfied itself that it does not require regulatory approvals, to allow direct access to ICE Futures U.S. over the ICE Platform from Australia, Bermuda, Canada (Provinces of British Columbia and Manitoba, application in process in Alberta), Columbia, China, the Czech Republic, Denmark, France, Germany, Gibraltar, Iceland,

Ireland, Japan, Latvia, Luxembourg, Malta, Mexico, Poland, Singapore, South Africa, Spain, Switzerland and the United Kingdom. No jurisdiction has denied a request by the Applicant for an approval or a statement of non-objection of this type.

6. The Applicant proposes to offer direct electronic access to trading in ICE Futures U.S. Contracts through the ICE Platform to prospective participants in Ontario ("Ontario Participants"), either by way of (i) membership in ICE Futures U.S., (ii) via direct access sponsored by a member of ICE Clear U.S. (a "Clearing Member") (such non-Clearing Member participants "Direct Access Users"), or (iii) through order-routing arrangements where orders are routed through a Clearing Member onto the exchange.

7. The Applicant expects that potential Ontario Participants that may seek to become members, Direct Access Users or order-routing clients of a Clearing Member will be (i) dealers that are engaged in the business of trading commodity futures and commodity options in Ontario and (ii) commercial enterprises that are exposed to risks attendant upon fluctuations in the price of an agricultural commodity or certain financial indices, including financial institutions.

8. By offering ICE Futures U.S. membership and providing direct trading access to Ontario Participants, the Applicant may be carrying on business in Ontario as a stock exchange for the purposes of Section 21 of the OSA and as a commodity futures exchange for the purposes of Section 15 of the CFA.

9. The Applicant does not require relief from the requirement under Section 33 of the CFA, which prohibits trading in all contracts (other than by hedgers) except contracts that are (a) traded on a registered or recognized commodity futures exchange, (b) qualified by prospectus under the OSA or (c) traded on an exchange situated outside of Ontario as a result of an unsolicited order placed by a dealer that does not carry on business in Ontario, as a result the Rule entitled *In the Matter of Trading in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges in the United States of America*.

Application of Approval Criteria to ICE Futures U.S.

1. REGULATION AND OVERSIGHT

1.1 Regulation of the Exchange – The Exchange is regulated in an appropriate manner in another jurisdiction by a Foreign Regulator. The regulatory scheme of the Foreign Regulator is transparent and generally comparable to that in Ontario.

1.1.1 The Applicant is regulated as a DCM by the CFTC. The Applicant has never been declared to be in breach of its regulatory responsibilities by the CFTC.

1.1.2 The CFTC has access to all trade information, compliance data and other operational information as it relates to the Applicant's operations. The CFTC's Division of Market Oversight, Market Compliance Section conducts regular in-depth reviews of each DCM's ongoing compliance with the CFTC regulations in order to enforce its rules, prevent market manipulation and customer and market abuses, and to ensure the recording and safe storage of trade information. The results of these rule enforcement reviews (RERs) are in most cases summarized in reports by the CFTC which are made available to the public and posted on the CFTC's website. The Applicant's most recent RER was completed in October of 2005 and the CFTC's report of such RER did not identify any material deficiencies.

1.2 Authority of the Foreign Regulator – The Foreign Regulator has the appropriate authority and procedures for oversight of the Exchange. This oversight includes regular, periodic regulatory examinations of the Exchange by the Foreign Regulator.

1.2.1 The CFTC has been charged with administering and enforcing the CEA. Accordingly, the CFTC is the U.S. government agency that has direct regulatory and oversight responsibility over DCMs. To implement the CEA, the CFTC has promulgated regulations and guidelines (the "CFTC Regulations") that further interpret the DCM Core Principles (described below) and govern the conduct of U.S. DCMs, such as ICE Futures U.S. The CFTC monitors trading on ICE Futures U.S. and receives daily transaction and other reports from the Applicant. The CFTC also undertakes periodic in-depth audits or "rule reviews" of the Applicant's compliance with certain of the statutory Core Principles.

1.2.2 ICE Futures U.S. was (and its predecessor exchanges, CSCE and NYCE, were) designated as a contract market for each of the particular commodity futures contracts and options contracts they traded, pursuant to the CEA. Prior to the 2000 amendments to the CEA, such designations were made on a contract by contract basis upon receipt of specific approval from the CFTC to list each contract. Today, pursuant to the Commodity Futures Modernization Act of 2000 ("CFMA"), an entity is designated as a DCM under the CEA and may thereafter introduce new contracts without prior CFTC approval by a process of self-certification by the DCM in respect of such new contracts. The contract market designation criteria contained in the CFMA reflect the types of factors that the CFTC formerly took into consideration in

deciding whether to approve a particular futures contract for trading upon application by an exchange. These designation criteria are set forth in Section 5(b) of the CEA as interpreted and implemented by the CFTC in Part 38 (Designated Contract Markets) of the CFTC Regulations. The criteria for designation include demonstrating that the exchange has the capacity to prevent market manipulation; can ensure fair and equitable trading; has the capacity to detect, investigate and discipline any person that violates its rules; can ensure the financial integrity of transactions entered into through its facilities; and has the authority to obtain any necessary information to perform its regulatory functions, including the capacity to carry out international information-sharing agreements.

1.2.3 The Applicant is required to demonstrate its compliance with various core principles (the "DCM Core Principles") applicable to all U.S. DCMs. The statutory core principles are described in Section 5 of the CEA and include requirements that the Applicant monitor and enforce compliance with its Rules; only list contracts that are not readily susceptible to manipulation; monitor trading to prevent manipulations, price distortion and disruptions of the delivery or cash-settlement process; adopt position limitations or position accountability for speculators, where necessary and appropriate; make available to the regulators, market participants and the public certain market information; provide a competitive, open and efficient mechanism for executing transactions; create and maintain necessary records; establish rules to ensure the financial integrity of its contracts and the financial integrity of the brokers and the protection of customer funds; protect market participants from abusive practices; provide dispute resolution as appropriate for market participants and intermediaries; establish and enforce appropriate fitness standards; minimize conflicts of interest in the decision-making process and establish a process for resolving such conflicts; and avoid anti-competitive actions.

1.2.4 The CEA, the CFTC Regulations, the CFMA and particularly the Core Principles reflect standards set by the International Organisation of Securities Commissions ("IOSCO"), such as "Objective and Principles of Securities Regulation" (1998 and 2002) and "Report on Co-operation between Market Authorities and Default Procedures" as well as the "Standards for Regulated Markets" published by the Forum of European Securities Commissions in December 1999.

2. CORPORATE GOVERNANCE

2.1 Fair Representation – The governance structure of the Exchange provides for:

i. appropriate, fair and meaningful representation on its Board and any committee thereof; and

ii appropriate representation by independent directors on the Board and any committee thereof.

2.1.1 The Applicant has a Board of Directors (the "Board"), whose organisation and constitution is governed by the ICE Futures U.S. By-Laws, in particular Article IV of the Applicant's amended by-laws. The ICE Futures U.S. By-Laws, along with all of the Applicant's rules and regulations governing the operation of ICE Futures U.S. (the "ICE Futures U.S. Rules") are available on the Applicant's website at www.theice.com. Chapter 3 of ICE Futures U.S. Rules (Committees) governs the organization and constitution of all operating committees of the Applicant. The ICE Futures U.S. By-Laws and the ICE Futures U.S. Rules help ensure the integrity and competence of the Board, and prevent breaches of any relevant law, regulation or code of practice.

2.1.2 The size and composition of the Board has been reviewed by the CFTC in the context of Core Principle 14 (Governance Fitness Standards), which regulates governance fitness requirements and with which the Applicant's Board structure complies. The CFTC is interested in ensuring that the Board is large enough to deal with conflicts as required by the Core Principles and has the ability to act independently. The CFTC recently adopted practices for minimising conflicts of interest in decision-making by DCMs under Core Principle 15, which are intended to recognise their public-interest responsibilities as self-regulatory organisations. These acceptable practices require 35% of the directors of a DCM's Board, or any committee having similar powers, meet a "public director" test that prohibits any person having a material relationship with the DCM from being deemed a public director. Bylaw Section 4.1 requires that four of the Applicant's nine-person Board meet the CFTC's definition of a "public director".

2.1.3 Sections 6(a) and 8(a)(1) of the CEA give the CFTC the authority to review the organisation and structure of ICE Futures U.S., including the ICE Futures U.S. By-Laws establishing the corporate governance and composition of the Board to ensure that ICE Futures U.S. will be able to comply with U.S. statutory standards. Through ICE Futures U.S. By-Law Section 4.3 and Article IX of the ICE Futures U.S. By-Laws, the Board and senior management, respectively, are empowered with all the powers and duties of managers of a Delaware corporation and are able to delegate those powers.

2.1.4 The Applicant's Board is comprised of nine directors, including the chief executive officer and chief financial officer of ICE, the President of the Applicant, two members who served on NYBOT's board of governors prior to the merger and who are designated by ICE to serve on the ICE board of directors, referred to as "ICE Futures U.S. designees," and

four directors who qualify as "public directors" under the CFTC Core Principles and who, to the extent possible, were initially selected from the previous public governors on NYBOT's board of governors. The CFTC's definition of "Public Director" is set out in Regulation 1.64(b)(1)(ii) of the CEA[1]. According to the CFTC, "Public Directors" are persons who have no ''material relationship'' with their DCM, i.e., any relationship which could reasonably affect their independent judgment or decision making. Given that the Applicant is wholly owned by ICE, Inc. and no longer member-owned, the fact that more than 75% of the Applicant's directors are not associated with ICE, Inc. and are all otherwise qualified and experienced professionals in the exchange-traded derivatives industry suggests that the Applicant's Board provides appropriate, fair and meaningful representation to all those with an interest in the stewardship of the Applicant. The Applicant does not currently have any plans to change the composition of its board following the second anniversary of the merger between NYBOT and ICE.

2.2 Appropriate Provisions for Directors and Officers – There are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors and officers.

2.2.1 The remuneration of directors and officers of the Applicant is reviewed on an annual basis by the Compensation Committee of ICE, Inc., which is comprised entirely of directors that are independent of ICE, Inc. and the Applicant.

2.2.2 The ICE Group's global insurance program provides professional indemnity and directors and officers coverage to all directors and executive officers of the Applicant. The Applicant and ICE, Inc. hold quarterly insurance review meetings during which such issues are discussed with the ICE Group's insurance brokers.

2.3 Fitness – The Exchange takes reasonable steps to ensure that each officer and director is a fit and proper person and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

2.3.1 Section 5 of the CEA requires that the Applicant establish and enforce appropriate fitness standards for directors. Accordingly, the CFTC reviews the fitness requirements applicable to the Applicant's directors. A director also has fiduciary duties set forth under Delaware state law. Fitness and qualifications are addressed in further detail by Core Principle 14 (Governance Fitness Standards) of Section 5 of the CEA and Part 38 (Designated Contract Markets) of CFTC Regulations. All of the members of the Board are over the age of majority and are of sound mind. All of the members of the Board have experience in the field of the provision of futures exchange services, and are regarded in the market as being persons with integrity and competence. Section 8(a) of the CEA provides for statutory disqualification criteria with respect to Commission registrants. CFTC Regulation 1.63 separately provides, in general, that a person who has been the subject of disciplinary proceedings brought by the CFTC, an exchange or other self-regulatory organisation is barred (either permanently or for a prescribed period) from serving on an exchange's board of directors or any of its disciplinary or arbitration panels. ICE Futures U.S. Rule 6.40 reflects the provisions of CFTC Regulation 1.63.

2.3.2 In addition, ICE Futures U.S. Rule 6.40 provides that any ICE Futures U.S. member who has been found guilty of rule violations or has settled charges relating to, or arising from, trades subject to the ICE Futures U.S. Rules which resulted in an expulsion suspension or a fine which equals or exceeds the maximum fine which may be imposed by the Applicant 's disciplinary committee or $25,000, whichever is less, may not serve on any ICE Futures U.S. disciplinary or arbitration committee. In December 2005, the Applicant adopted a Board of Governors Code of Ethics and Professionalism as Standing Resolution R-5. Standing Resolution R-5 obligates Board members to discharge their duties as members of the Board in compliance with all applicable laws, rules and regulations and with the highest standards of professional ethics. Standing Resolution R-5 provides general guidance on such issues as participation in decision-making, loyalty, confidentiality and conflicts of interest. Persons found to be in violation of the Code may be subject to appropriate action under the Applicant's Disciplinary Rules and/or removal from the Board.

2.3.3 All employees and officers of the Applicant are subject to detailed pre-employment screening which is conducted by an external, independent agency and includes, *inter alia*, credit review, verification of academic qualifications and employment history and a review of the information supplied in support of the individual's application (including references). In addition, senior management appointees are subject to further checks on their professional memberships, qualifications and directorships and, where appropriate, checks of any criminal records.

1 This section requires that the director not be: a member of the DCM; an employee of a member of the DCM; not primarily performing services for the DCM in a capacity other than as a member of the organization's governing board; or an officer, principal or employee of a firm which holds a membership at the DCM either in its own name or through an employee on behalf of the firm.

2.4 Conflicts of Interest – The Exchange has appropriate conflict of interest provisions for all directors, officers and employees.

2.4.1 No Director may take any action on any matter that involves a Named Party in Interest (as defined in the CFTC Regulations), if that Director is a Named Party in Interest, is an employee of a Named Party in Interest, or has a business or family relationship with a Named Party in Interest. ICE Futures U.S. Rules 6.05 and 6.06 contain the provisions concerning conflicts of interest involving Named Parties in Interest (ICE Futures U.S. Rule 6.05) and involving emergency and other significant actions (ICE Futures U.S. Rule 6.06). The provisions apply to members of the Board and to members of all ICE Future U.S. committees which are authorised to take action for and in the name of the Applicant, for example, the Business Conduct Committee or the Membership Committee.

3. FEES

3.1 The Exchange's process for setting fees is fair, transparent and appropriate. Any and all fees imposed by the Exchange on its participants are equitably allocated, do not have the effect of creating barriers to access and are balanced with the criteria that the Exchange has sufficient revenues to satisfy its responsibilities.

3.1.1 The Applicant's trading fees are established based on an ongoing business analysis by the Board considering the implications of such fees on its customers and its volume-driven business. The Board considers various factors in the setting of fees including the fees of its competitor exchanges, the Applicant's own costs, the amount of volume and open interest in the applicable product, the temper and reactions of market participants and the impact of fee changes on the Applicant's various incentive programs set out in Annex B of the Applicant's By-Laws.

3.1.2 The Board may from time to time adopt resolutions that impose fees or charges for each commodity contract purchased or sold on ICE Futures U.S. In fixing the amount of any such fees or charges, the Board may establish different rates for transactions in different commodity contracts, or for different types of transactions involving the same commodity contract. The Board may also omit any fees or charges with respect to any type of transaction or may establish different rates based on such other factors as the Board may determine are appropriate (Section 4(a) of Annex A to the By-laws). A full list of transaction charges, subscriptions, entrance fees and other relevant charges is located on ICE's website at www.theice.com.

3.1.3 The Applicant was required to charge a $1 surcharge (the "$1 Surcharge") on electronic trades of physical delivery "core products" that were listed for trading on ICE Futures U.S. at the time of the completion of the merger between NYBOT and ICE, Inc. The $1 Surcharge does not apply, however, to fees related to bona fide market making programmes (Section 4(b) of Annex A to the By-laws). The term "core products" refers to the commodity contracts that were traded on the NYBOT immediately prior to the completion of the merger.

3.1.4 However, Section 1 of Annex B to the By-laws provides for the elimination of the $1 Surcharge in the event that: (i) certain competing exchanges, or any of their respective affiliates, introduce a cash-settled contract after September 14, 2006 that has the same contract terms as a core product except that it is cash-settled (other than any immaterially different terms); or (ii) the board of directors of ICE requests that the public directors of the Applicant, by a supermajority vote, determine whether the introduction of a physical delivery contract by a competing exchange is a "competitive contract" with respect to a core product and the public directors by a "supermajority vote of the public directors" determine that such contract is a competitive contract.

3.1.5 After September 14, 2006, certain competing exchanges introduced "cash-settled" contracts that having the same contract terms as six of the Applicant's core products except that said contracts are "cash-settled". Therefore, in accordance with Section 1 of Annex B to the By-laws, the $1.00 Surcharge for electronic trading was eliminated when the Applicant introduced electronic trading. However, as of August 1, 2007, the Applicant commenced imposing a 25¢ surcharge on all trades executed electronically.

3.1.6 The Applicant is required to offer a 20% discount on exchange and clearing fees for proprietary trading by ICE Futures U.S. Members that are issued trading rights on ICE Futures U.S. and firms that were member firms of ICE Futures U.S. at the time of the merger ("ICE Futures U.S. Member Firms") for transactions in contracts traded on ICE Futures U.S. at the time the merger agreement was signed (other than for prices charged with respect to bona fide market making programs). These ICE Futures U.S. Members and Member Firms are entitled to such discount for as long as such contracts continue to be traded on ICE Futures U.S. Subject to certain exceptions, the right to receive this discount for electronic trading will terminate upon the transfer by such ICE Futures U.S. Member of his or her trading rights in ICE Futures U.S. (subject in each case to certain exceptions) (Section 4(a) of Annex B to the By-laws).

3.1.7 Former ICE Futures U.S. members and permit holders who have been issued new trading memberships and trading permits, as well as ICE Futures U.S. Member Firms and lessees will also benefit from a "most-favoured-nation" status that entitle them to pay the lowest fees payable to the Applicant for electronic transactions in contracts traded on ICE

Futures U.S. at the time of the signing of the merger agreement (other than for fees related to bona fide market making programs). They are entitled to this “most-favoured-nation” status for as long as such contracts continue to be traded on ICE Futures U.S. Subject to certain exceptions, the right to receive this “most favoured nation” status terminates upon the first transfer by such ICE Futures U.S. member or permit holder of his or her trading rights in ICE Futures U.S. (subject in each case to certain exceptions) (Section 4(b) of Annex B to the By-laws).

4. REGULATION OF PRODUCTS

4.1 Approval of Products – The products traded on the Exchange are approved by the appropriate authority.

4.1.1 Part 40 of the CFTC Regulations require that a DCM which seeks to list a new product for trading, list a product for trading that has become dormant, or accept for clearing a product that is not traded on a DCM or a registered derivatives transaction execution facility without prior CFTC approval, may do so only if the following conditions have been met: (1) it has filed its submission electronically with the CFTC and at the regional office having local jurisdiction over the registered entity, in a format specified by the CFTC; (2) the CFTC has received the submission at its headquarters by close of business on the business day preceding the product's listing or acceptance for clearing, and; (3) the submission includes: (i) a copy of the submission cover sheet completed in accordance with CFTC Regulations; (ii) a copy of the product's rules, including all rules related to its terms and conditions, or the rules establishing the terms and conditions of the listed product that make it acceptable for clearing; (iii) the intended listing date; and (iv) a certification by the registered entity that the product to be listed complies with the CEA and regulations thereunder.

4.1.2 A DCM is required to provide, if requested by CFTC staff, additional evidence, information or data relating to whether the contract meets, initially or on a continuing basis, any of the requirements of the CEA or the regulations or CFTC policies thereunder which may be beneficial to the CFTC in conducting a due diligence assessment of the product and the entity's compliance with these requirements.

4.1.3 Part 40 of the CFTC Regulation provides that a DCM may request under Section 5c(c)(2) of the CEA that the CFTC approve new products. A submission requesting approval must include certain information, including an explanation, if not self-evident from the rules, as to how the specific terms and conditions satisfy the "acceptable practices" set forth in CFTC Guideline No. 1, Appendix A to Part 40. For physical delivery contracts, a DCM is required to provide an explanation as to how the terms and conditions as a whole will result in a deliverable supply such that the contract will not be conducive to price manipulation or distortion and that the deliverable supply reasonably can be expected to be available to short traders and saleable by long traders at its market value in normal cash marketing channels. For cash settled contracts, an explanation is required as to how the cash settlement of the contract reflects the underlying cash market, will not be subject to manipulation or distortion, and is based on a cash price series that is reliable, acceptable, publicly available and timely together with a brief description of the cash market for the commodity, instrument, index or interest that underlies the contract. Materials considered by the CFTC include studies by industry trade groups, academics, governmental bodies or other entities, reports of consultants, or other materials, which provide a description of the underlying cash market. Any agreements or contracts entered into with other parties that enable the DCM to carry out its responsibilities, such as agreements with index data producers, must be supplied.

4.2 Product Specifications – The terms and conditions of trading the products are in conformity with normal commercial business practices for the trade in the product.

4.2.1 Extensive market consultation and Board approval processes to which all ICE Futures U.S. Contracts are subject ensures that the terms and conditions of ICE Futures U.S. Contracts are in conformity with normal business practices for trades in such products, that they meet the needs of the relevant commodity sector and have widely acceptable specifications.

4.3 Risks Associated with Trading Products – The Exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the Exchange, including, but not limited to, margin requirements, intra-day margin calls, daily trading limits, price limits, position limits, and internal controls.

4.3.1 Core Principle 11 (Financial Integrity of Contracts) of the CEA requires that an exchange provide for the financial integrity of contracts traded on its contract market and ensure the financial integrity of intermediaries trading on its system. The Applicant must also demonstrate that other risks relating to market manipulation, price distortions or trading abuses, systems security and trade execution must be assessed and controlled in order to remain in compliance with U.S. law.

4.3.2 All ICE Futures U.S. Contracts are cleared and settled by ICE Clear U.S., which is recognized by the CFTC as a DCO under Section 5b of the CEA. ICE Clear U.S. acts as counterparty and guarantor to each transaction executed on ICE Futures U.S. The Applicant therefore cooperates with ICE Clear U.S. when developing new ICE Futures U.S. Contracts to ensure that all potential risks have been thoroughly evaluated and can be managed. ICE Clear U.S. sets margin

requirements for and makes margin calls of ICE Futures U.S. Members that are also members of ICE Clear U.S. ("ICE Futures U.S. Clearing Members"). Registered DCO's are subject to their own set of core principles promulgated by the CFTC (the "DCO Core Principles"). In relation to ICE Clear U.S.'s responsibility for risk management, DCO Core Principle D (Risk Management) provides that a DCO must have the ability to manage the risks associated with discharging the responsibilities of a DCO through the use of appropriate tools and procedures.

4.3.3 The Compliance arm of the Applicant's Market Regulation Department has a unit devoted to member firm financial surveillance. This group is responsible for conducting special audits and reviewing member financial reports and subordinated loan agreements. It also performs ongoing daily surveillance of member firms to identify those firms with potential financial difficulties.

4.3.4 The surveillance conducted by the Applicant includes regular review of pay and collect data, price movements and market volatility; monitoring of member firms identified as high-risk. Separately, ICE Clear U.S. undertakes clearing member surveillance to monitor the financial soundness of ICE Futures U.S. Clearing Members. Risk and capital-based position limits are established for each firm pursuant to ICE Clear U.S. By-Laws. Positions established on ICE Clear U.S. are margined (collateralised) daily (and, depending on market movements, intra-day). Variation margin is required based on any adverse changes in market price. ICE Clear U.S. also has the necessary authority (under ICE Clear U.S. By-Law 5.6) to require an ICE Futures U.S. Clearing Member to reduce or transfer positions or post additional collateral if they determine that market integrity requires it. ICE Clear U.S. generally requires enough original margin to cover 97% of the daily market movements of the previous 10, 30 or 60 day period (depending on historical volatility). Original margin requirements are reviewed daily by ICE Clear U.S. and the Applicant's staff and can be altered to address rapidly changing market conditions or a risk from a particular clearing member. Acceptable collateral includes cash, US government securities and letters of credit.

5. ACCESS

5.1 Fair Access – The requirements of the Exchange relating to access to the facilities of the Exchange, the imposition of limitations or conditions on access and denial of access are approved by the Foreign Regulator and are fair and reasonable, including in respect of notice, an opportunity to be heard or make representations, the keeping of records, the giving of reasons and the provisions for appeals.

5.1.1 Pursuant to Core Principle 14, the Applicant is required to establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the DCM, and any other persons with direct access to the facility (including any parties affiliated with any of the persons described in this paragraph). To ensure that access to ICE Futures U.S. is subject to criteria designed to protect the orderly functioning of its market and the interests of investors the Applicant has developed a rigorous membership approval process supervised by its Member Services Department, the details of which are outlined in Section 5.2 below. This process is designed to ensure that all ICE Futures U.S. Members are appropriately identified, are qualified to trade in commodity futures in their jurisdiction, have adequate financial resources and have exhibited proper conduct in other capital markets activities.

5.1.2 The Member Services Department reviews each application and either approves the application or refers it to the Membership Committee. Membership applications must be referred to the Membership Committee whenever the application contains, or the Applicant learns of, information that is the type specified in the ICE Futures U.S. Rules as constituting a condition for denial or the applicant is a suspended or expelled Member seeking reinstatement. The determination of whether or not the applicant may become a member of ICE Futures U.S. is based on objective and discretionary criteria. The Membership Committee's determination is the final determination of the Applicant (ICE Futures U.S. Membership Rule 2.07). If the Member Services Department refers the application to the Membership Committee, the applicant is given notice of the referral and the reasons. The applicant may request an opportunity to be heard by the Membership Committee, or a subcommittee of the Membership Committee designated for this purpose by the chairman of the Membership Committee, and present evidence as to why his application should not be denied (Exchange Membership Rule 2.07). If the final determination is to deny membership to the applicant, the applicant may appeal the finding to the CFTC.

5.2 Details of Access Criteria – In particular, the Exchange

i. has written standards for granting access to trading on its facilities to ensure users have appropriate integrity and fitness;

ii. has and enforces financial integrity standards for those persons who enter orders for execution on the system, including, but not limited to, credit or position limits and clearing membership;

iii. does not unreasonably prohibit or limit access by a person or company to services offered by it;

iv. keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access; and

v. restricts access to adequately trained system users who have demonstrated competence in the functions that they perform.

ICE Futures U.S. Membership

5.2.1 ICE Futures U.S. Membership Rules 2.01 et seq. set forth the qualifications, requirements and duties of ICE Futures U.S. Members. ICE Futures U.S. Rule 2.01 provides that all members must be "a natural person, twenty-one (21) years of age, of good character, reputation and business integrity with adequate finances to assume the responsibilities and privileges of Membership." Individuals wishing to become members are required to complete and submit a membership application. The Member Services Department then conducts an investigation into the business reputation and financial standing of all applicants. When the application and investigation are complete, the Member Services Department reviews each application and determines whether or not the applicant may become a Member or refers the application to the Membership Committee.

5.2.2 Once a member, the individual may decide that he wishes to obtain direct access to the trading floor and become a member with floor trading privileges or "Floor Member" (ICE Futures U.S. Membership Rules 2.18 to 2.21). To qualify as a Floor Member, the member must be registered with the CFTC as a floor broker or trader, be sponsored by two (2) Floor Members, attend an ethics course as required by the CFTC and successfully complete the Applicant's Floor Trading Course administered by the Floor Trading Privileges Committee. The Floor Trading Privileges Committee assesses the technical competence of members in determining whether or not the Member has the adequate experience to warrant floor trading privileges and become a Floor Member. Floor Member Applicants must attend classroom session during which trading rules are discussed by experienced Floor Members and compliance staff. In addition, they must participate in mock floor trading sessions at which the applicant practices the art of open outcry trading. After attending the required sessions, the applicant must pass the written exam and show competence at a mock trading session. Every Floor Member granted access to the trading floor is required to have an agreement with an approved Clearing Member guarantor (ICE Futures U.S. Rule 2.16). The agreement obligates the Clearing Member guarantor to: (i) accept for clearance any trade executed by the Floor Member on ICE Futures U.S.; and (ii) timely pay (A) any claim by an ICE Futures U.S. Member against the guaranteed Floor Member arising from any order or trade executed, or to be executed, on ICE Futures U.S. and (B) any claim by the Applicant or ICE Clear U.S. against the Floor Member arising under the rules, except for assessments, dues or disciplinary fines imposed pursuant to ICE Futures U.S Disciplinary Rules.

5.2.3 ICE Futures U.S. Membership Rule 2.08 lists the conditions for which the Applicant may deny membership to an applicant. These conditions are that the applicant: (a) does not meet any of the qualifications for membership, or does not follow the procedures for application, set forth in the ICE Futures U.S. Membership Rules; (b) has been denied registration or whose registration has been revoked or is currently suspended by the CFTC or by the Securities and Exchange Commission; (c) has been convicted of any felony or misdemeanour; (d) has been enjoined by order, judgment or decree of any court of competent jurisdiction or of the CFTC or the Securities and Exchange Commission or of any state securities authority or agency from engaging in or continuing any conduct or practice in connection with the purchase or sale of any Commodity, security, option or similar instrument; (e) is or has been subject to an order of the CFTC denying trading privileges on any contract market to the applicant, or suspending or expelling the applicant from membership on any contract market; (f) has ever been or is suspended or expelled from any commodity or securities exchange, related clearing organisation, the National Futures Association, the National Association of Securities Dealers, Inc., or any other self-regulatory organisation or other business or professional association for violation of any rule of such organisation; (g) has accumulated a disciplinary or arbitration record at any exchange, association or similar tribunal which record is judged by the Membership Committee to be such that membership for the applicant would not be in the best interests of the Exchange; (h) is subject to any material unsatisfied liens or judgments; (i) has made any false statement in or in connection with any application filed with the Exchange; (j) has been individually, or as a Principal of a Firm that has been, subject to any liquidation, arrangement, reorganisation, receivership, assignment for the benefit of creditors or other bankruptcy or insolvency proceeding, under state or federal law, within the past ten (10) years; (k) has engaged in an established pattern of failure to pay just debts; or (l) fails to meet such other qualifications as the Board may from time to time determine are in the best interests of the Applicant.

5.2.4 Each ICE Futures U.S. Member conducting customer business as either a futures commission merchant (“FCM”) or an introducing broker (“IB”) on ICE Futures U.S., is required to be a member of a “Designated Self-Regulatory Organisation” which undertakes periodic financial and sales practice audits of its members to ensure that they are properly handling their customer business and acting in compliance with CFTC and U.S. commodity law requirements. There is also a CFTC registration process in place for employees who work for FCMs and IBs and who handle customer business to ensure fitness. Under this regulatory scheme, each FCM and IB must have processes,

procedures and controls in place to ensure that each individual employee is properly supervised. In addition, there is a CFTC registration process for floor brokers and floor traders to ensure fitness for those who transact business on the floor of exchanges.

5.2.5 All ICE Futures U.S. Members must be clearing members of ICE Clear U.S. or have entered into clearing arrangements with an ICE Futures U.S. Clearing Member. The compliance arm of the Applicant's Market Regulation Department has a unit devoted to member firm financial surveillance. This group is responsible for conducting special audits and reviewing member firm financial reports and subordinated loan agreements. It also performs ongoing daily surveillance of member firms to identify those firms with potential financial difficulties. The surveillance conducted by the Applicant includes:

5.2.5.1 **Daily Review of Pay and Collect Data -** the Applicant uses a computerised report, known as the Members Early Warning System ("MEWS") to monitor clearing members' pay and collect data on a daily basis. ICE Futures U.S. Clearing Members whose net pay to the Applicant is 20% or more of their adjusted net capital are identified and contacted to determine material undermargined or deficit accounts.

5.2.5.2 **Daily Review of Price Movements and Market Volatility** - The net change in the settlement price of the Exchange's futures contracts are reviewed on an ongoing basis during each day. A volatile market is deemed to have occurred (and resulting risk management steps are taken) when the price for a contract has moved up or down by a number equal to the contract's maintenance margin divided by the contract's tick value (defined as the minimum price fluctuation) and in this instance, staff will input the price move into a computerized Position Risk Report ("PRR"). The clearing members whose loss is 20% or more of their adjusted net capital are then contacted by the Applicant to determine material undermargined or deficit accounts.

5.2.5.3 **Monitoring of Member Firms Identified as High-Risk** - A member-FCM is considered "high risk" if any of the following circumstances exist or events have occurred: (a) failure to meet minimum capital requirements; (b) adjusted net capital below the early warning level; (c) failure to meet CFTC segregation requirements; (d) failure to maintain current books and records; (e) other conditions considered by the Applicant to indicate potential problems. Where a member is deemed to be "high risk," the Applicant will obtain the following additional data relating to the member via facsimile on a daily basis in order to perform more surveillance: (a) total amount of funds required to be segregated and in CFTC Regulation 30.7 separate accounts; (b) total amount of funds in segregated accounts and CFTC Regulation 30.7 separate accounts; (c) total amount of unsecured debit balances and deficit balances in customer and non-customer accounts; and (d) aggregate proprietary futures and options trading losses since the previous financial report.

5.2.5.4 **Clearing Member Surveillance by ICE Clear U.S.** - ICE Clear U.S. only admits as ICE Futures U.S. Clearing Members firms that meet certain objective financial standards (ICE Clear U.S. By-Law Section 5.2). The financial soundness of ICE Futures U.S. Clearing Members is reviewed, updated and monitored on a regular basis. Risk and capital-based position limits are established for each firm pursuant to ICE Clear U.S. By-Laws. Positions established on ICE Futures U.S. are margined (collateralised) daily (and, depending on market movements, intra-day). Variation margin is required based on any adverse changes in market price. ICE Clear U.S. also has the necessary authority (pursuant to ICE Clear U.S. By-Law Section 5.6) to require an ICE Futures U.S. Clearing Member or other market participant to reduce or transfer positions or post additional collateral if determined to be necessary for market integrity purposes.

5.2.6 In addition to non-clearing ICE Futures U.S. Members, a market participant that is not an ICE Futures U.S. Member may seek to obtain direct access to ICE Futures U.S. via the ICE Platform by obtaining authorization from and entering into clearing arrangements with an ICE Futures U.S. Clearing Member. For each user for whom a clearing member has authorized direct access (whether such user is an ICE Futures U.S. Member or not), the clearing member must execute a Clearing Member Guaranty Agreement. The Clearing Member Guaranty Agreement obligates the clearing member to accept for clearance all trades effected by the user on any day on the ICE Platform. For non-member users for whom the clearing member has authorized direct access, the clearing member must (i) provide the user with information concerning the use of the ICE Platform and the ICE Futures U.S. Rules and obtain a written agreement from the non-member user that the use of the ICE Platform is governed by such ICE Futures U.S. Rules and that the non-member user is subject to the jurisdiction of the Applicant; (ii) take any and all actions requested or required by the Applicant with respect to such non-member user, including but not limited to, assisting the Applicant in any investigation into potential violations of ICE Futures U.S. Rules or the CEA and require such user to produce documents and provide information; and suspend or terminate the non-member user's direct access if the Applicant determines that the actions of such user threaten the integrity or liquidity of any ICE Futures U.S. Contract, violate ICE Futures U.S. Rules or the CEA or if such user fails to cooperate in any investigation.

5.2.7 Rather than seeking direct access to ICE Futures U.S. via the ICE Platform, market participants may seek to access trading on ICE Futures U.S. indirectly by becoming an order-routing client of an ICE Futures U.S. Clearing Member. Under this approach, clients' orders are routed to ICE Futures U.S. via the trader mnemonic (or "eBadge") of a responsible individual registered with the applicable ICE Futures U.S. Clearing Member (a "Responsible Individual"). The applicable ICE Futures U.S. Clearing Member takes responsibility for such trades and accepts all contingent liabilities for those orders when routed onto the ICE Platform. The ICE Futures U.S. Clearing Member must conduct its own due diligence of prospective order-routing clients to ensure that they satisfy relevant regulatory, financial resource, risk and anti-money laundering standards.

5.2.8 Pursuant to the Responsible Individual Registration and Clearing Member Guaranty Agreement, ICE Futures Clearing Members are responsible for all acts and conduct on the ICE Platform of each Responsible Individual registered to it and any person acting through such Responsible Individual. ICE Futures U.S. Rule 27.11 also prohibits a Clearing Member or a non-clearing ICE Futures U.S. Member who is an FCM or introducing broker from accepting an order from, or on behalf of, a customer for entry onto the ICE Platform, unless such customer is first provided with the Uniform Electronic Trading and Order Routing System Disclosure Statement required by the National Futures Association.

5.2.9 Only ICE Futures U.S. Clearing Members and Direct Access Users designate a "responsible individual," sign the ICE Futures U.S. Electronic User Agreement and are responsible for compliance with the Applicant's exchange rules. Order routing clients are the responsibility of ICE Futures U.S. Clearing Members submitting orders for their order routing customers. Order routing customers of ICE Futures U.S. Clearing Members will not be able to obtain *direct access* to the ICE Platform, but rather will be able to send order messages, verbally or electronically, to such ICE Futures U.S. Clearing Members for routing onto ICE Futures U.S. Other than requiring certain electronic formats and specifications for orders, the Applicant does not have any direct involvement with order-routing customers of ICE Futures U.S. Clearing Members. Only ICE Futures U.S. Clearing Members are permitted to provide front-end, *indirect access* to their customers for purposes of those customers routing their orders through the ICE Futures U.S. Clearing Member Firm's connection (using the clearing member firm's "eBadge"). Such customers are specifically identified and known to the Applicant per ICE Futures U.S. Rule 27.09. Where an order routing customer uses electronic applications to send its orders to an ICE Futures U.S. Clearing Member for routing onto the ICE Platform, the Applicant does not impose any specific eligibility criteria for such persons.

5.3 Access for Ontario Persons – The Exchange provides direct access, either through terminals, data feeds or third party provided interfaces, to only those Ontario persons that are duly registered or licensed under Ontario laws.

5.3.1 The Applicant expects that most Ontario Participants seeking ICE Futures U.S. membership and/or to become Direct Access Users will not seek to become ICE Futures U.S. Clearing Members due to the capital and other requirements imposed on applicants for clearing membership of ICE Clear U.S. as described in Section 9.4 below. However, Ontario Participants that satisfy the ICE Clear U.S. membership requirements would be permitted to become ICE Futures U.S. Clearing Members.

5.3.2 The Applicant expects that most Ontario Participants that will be interested in trading on ICE Futures U.S. will be engaged in the business of trading commodity futures or commodity futures options in Ontario and will, therefore, be registered as FCMs under Section 22 of the CFA. However, the Applicant also seeks to provide trading access to non-market intermediary commercial enterprises that are exposed to risks attendant upon fluctuations in the price of a soft commodity, an equity index or a currency product. Therefore, the Applicant has requested exemptive relief from the registration requirement under Section 22 of the CFA for trades in ICE Futures U.S. Contracts by "hedgers" (as defined in Section 1 of the CFA). Submissions in support of our request for the Hedger Relief are set out under "Submissions" below.

6. RULEMAKING

6.1 Purpose of Rules – The Exchange maintains rules, policies and other similar instruments as are necessary or appropriate to govern and regulate all aspects of its business and affairs and that such rules are designed to, in particular,

i. ensure compliance with the rules of the Exchange and securities legislation;

ii. prevent fraudulent and manipulative acts and practices;

iii. promote just and equitable principles of trade;

iv. foster cooperation and coordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, the products traded on the Exchange;

v. provide for appropriate discipline;

vi. ensure a fair and orderly market; and

vii. ensure that the Exchange business is conducted in a manner so as to afford protection to investors.

6.1.1 The Applicant and its members are required to comply with all provisions of the CEA and CFTC Regulations regarding the integrity of its markets. Each ICE Futures U.S. Member has agreed in writing to comply with the ICE Futures U.S. Bylaws and the ICE Futures U.S. Rules. Certain of the ICE Futures U.S. Rules oblige the ICE Futures U.S. Members to comply with CFTC requirements and regulations, such as ICE Futures U.S. Floor Trading Rules 4.01 et seq., which require trades to be executed by open outcry, and which list and describe the procedures for permissible non-competitive transactions such as exchange for physical ("EFP") or transfer trades, and implement the trading standards for floor brokers as required by the CFTC. Separately, ICE Futures U.S. Regulatory Requirement Rules 6.07 through 6.31 require Members to keep and maintain records, file reports and comply with prescribed position limits and accountability. ICE Futures U.S. Membership Rule 2.29 makes it a violation of ICE Futures U.S. Rules to engage in various practices that are prohibited by the CEA.

6.1.2 The ICE Futures U.S. Rules (see ICE Futures U.S. Membership Rule 2.29(b)) prohibit an exchange member from disseminating false or misleading or knowingly inaccurate information concerning a contract, underlying commodity or market information or conditions; from manipulating or attempting to manipulate the market (ICE Futures U.S. Membership Rule 2.29(c)); from entering bids or offers not in good faith or for an improper purpose (ICE Futures U.S. Membership Rule 2.29(o)); from executing non-competitive transactions (ICE Futures U.S. Floor Trading Rule 4.03(a)(i)); from engaging in any conduct or practice that is inconsistent with just and equitable principles of trade (ICE Futures U.S. Membership Rule 2.29(e)); or otherwise from violating the rules or procedures of ICE Futures U.S. or the clearing organisation (ICE Futures U.S. Membership Rule 2.29(e)). ICE Futures U.S. Membership Rules 2.29(j) and (k) prohibit wash trades, and fraudulent or misleading conduct in connection with commodity trading. The ICE Futures U.S. Rules also prohibit trading by employees on the basis of inside information and disclosing non-public information for personal gain. (ICE Futures U.S. Regulatory Requirement Rule 6.47)

6.1.3 The Applicant has extensive disciplinary procedures set forth in its ICE Futures U.S. Rules with respect to disciplining or terminating memberships for violation of its ICE Futures U.S. Rules. The CFTC's Designation Criterion 6 (Disciplinary Procedures) requires the Applicant to establish and enforce disciplinary procedures that authorise the Applicant to discipline, suspend or expel members or market participants that violate the ICE Futures U.S. Rules, and DCM Core Principle 2 (Compliance with Rules) requires that the Applicant monitor and enforce ICE Futures U.S. Rules, including the terms and conditions of any contract to be traded and any limitations on access to ICE Futures U.S. (as further described in Appendix B to Part 38 of the CFTC Regulations). DCO Core Principal H (Rule Enforcement) requires ICE Clear U.S. (i) to maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with the rules applicable to ICE Clear U.S. (the "ICE Clear U.S. Rules") and for the resolution of disputes, and (ii) to have the authority and ability to discipline, suspend or terminate a member's or participant's activities for violations of ICE Clear U.S. Rules, as described further in Appendix A to Part 39 of the CFTC Regulations.

6.2 No Discrimination or Burden on Competition – The rules of the Exchange do not

i. permit unreasonable discrimination among issuers and participants; or

ii. impose any burden on competition that is not reasonably necessary or appropriate.

6.2.1 ICE Futures U.S. Rules apply equally to all ICE Futures U.S. Members, ICE Futures U.S. Clearing Members and any non-member Direct Access Users. They differ for ICE Futures U.S. Clearing Members and ICE Futures U.S. non-clearing members *only* in relation to membership criteria (largely driven by financial resource requirements and clearing arrangements). In addition, floor trading privileges are only available to ICE Futures U.S. Members who satisfy certain proficiency and other requirements in the ICE Futures U.S. Rules.

6.2.2 In addition, DCM Core Principle 18 requires that "unless necessary or appropriate to achieve the purposes of the CEA, the DCM is required to endeavour to avoid: adopting any rules or taking any actions that result in any unreasonable restraints of trade; or imposing any material anticompetitive burden on trading on the contract market."

7. Systems and Technology

7.1 System Capability/Scalability – For each of its systems that support order entry, order routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements, the Exchange:

i. makes reasonable current and future capacity estimates;

ii. conducts capacity stress tests of critical systems to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;

iii. reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;

iv. ensures that safeguards which protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;

v. ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;

vi. maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and

vii. maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

7.1.1 All ICE Futures U.S. Contracts are traded by either (i) open outcry on a trading floor, or by electronic trading on the ICE Platform, which is owned and operated by ICE, Inc, or (ii) by open outcry and electronic trading.

7.1.2 ICE, Inc. developed the ICE Platform technology in compliance with the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of IOSCO.

7.1.3 ICE, Inc. subjects the ICE Platform's critical systems to regular stress tests based on reasonable current and future capacity estimates. The ICE Platform is also tested for a range of externalities which may damage or impair the operation of the system, including, but not limited to, vulnerability to internal and external threats, including physical hazards and natural disasters and safeguarded against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service. The ICE Platform is subject to independent and ongoing audit review by ICE, Inc.'s auditors and an annual Statement of Auditing Standards 70 ("SAS 70") review by an independent auditing firm. These reviews cover the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans, business contingency/disaster recovery arrangements and other matters.

7.1.4 Core Principle 9 (Execution of Transactions) addresses business continuity in the event that an information technology system fails and the CFTC reviews the Applicant's systems to ensure adequate back-up systems are available in the event that the primary system fails. The Applicant leases physical space which houses a managed data centre at a recovery facility owned by a major disaster recovery services provider, Sungard. At this site, which is located in Long Island City, Queens, the Applicant owns and maintains back-up servers to support its business applications and user desk top services and networking gear to maintain its internal and external network. In addition to the data centre, the Applicant also maintains at this location a back-up trading floor to be used in the event of a disruption at the primary site. The back-up site is manned 24/7 by Sungard's security staff, and all ICE Futures U.S. servers and equipment are remotely monitored 24/7 by the Applicant's staff. The back-up site utilizes an emergency diesel generator to ensure the availability of electrical power in the event of an outage. This arrangement with Sungard is not considered by the Applicant to amount to an outsourcing of a material function because the equipment is owned and serviced by the Applicant.

7.2 Information Technology Risk Management Procedures – Procedures are in place that:

i. handle trading errors, trading halts and circuit breakers;

ii. ensure the competence, integrity and authority of system users; and

iii. ensure that the system users are adequately supervised.

7.2.1 ICE Futures U.S. Clearing Members, non-clearing ICE Futures U.S. members and Direct Access Users may connect to the ICE Platform by using a front-end application provided by the Applicant and ICE, Inc., by using an application provided by an independent software vendor ("ISV") which has been approved and authorized by the Applicant or by developing their own application program interface ("API") which has been approved and authorized by the Applicant (ICE Futures U.S. Rule 27.03(d)). All ISVs must execute an ISV Development and Maintenance Agreement prior to being approved and authorized, and Clearing Members, non-clearing ICE Futures U.S. members and Direct Access Users who develop their own API must execute a Direct Access Interface Development and Maintenance Agreement ("DAI"). Prior to gaining access, the ISV or API developer must obtain a Certificate of Conformance, which is issued upon the successful completion of conformance testing, from the Applicant.

7.2.2 As discussed above in paragraph 5.2.8 each ICE Futures U.S. Clearing Member, non-clearing ICE Futures U.S. member and Direct Access User is assigned an "eBadge" by the Applicant which identifies that ICE Futures U.S. Clearing Member and Direct Access User and the "Responsible Individual" for orders and transactions entered into the ICE Platform with that eBadge (ICE Futures Rules 27.02(iii) and (vii) and 27.07). In addition, all individuals utilizing the ICE Platform on behalf of the ICE Futures U.S. Clearing Members and Direct Access Users are assigned a log-in identification (ICE Futures U.S. Rule 27.09).

7.2.3 ICE Futures U.S. Rule 27.11 prescribes the types of orders that may be entered into the ICE Platform. The ICE Platform also uses "Reasonability Limits" to determine if an order is executable. A "Reasonability Limit" is the amount by which the price of a commodity contract may increase or decrease in one trading sequence from the last traded price (ICE Futures U.S. Rule 27.02(vi)). A trade will be executed on the ICE Platform when all of the following conditions occur: (i) one order is a bid and the other order is an offer, (ii) the two orders are for the same commodity contract and delivery month and (iii) the price of the bid (offer) equals or is greater (less) than the price of the offer (bid) (ICE Futures U.S. Rule 27.19). ICE Futures U.S. Rule 27.28 and Appendix I to ICE Futures U.S. Rule 27 describe the Applicant's procedures for invalidating trades and for cancelling trades as a result of a user's error. Those errors that occur within the "No Cancellation Range" may not be cancelled except in extraordinary circumstances as determined by the Applicant's Market Supervision Department (ICE Futures U.S. Rule 27.02(v)). The "No Cancellation Range" is defined as the price range above and below the Anchor Price for each commodity contract within which an error trade may not be cancelled. The "Anchor Price" is defined as the price set by the Applicant based on the front delivery month from which Reasonability Limits and No Cancellation Ranges are determined (ICE Futures U.S. Rule 27.02(i)).

7.2.4 The ICE Futures U.S. Rules impose appropriate sanctions for breaches of any of the applicable trading rule and procedures (whether in respect of floor trading or electronic trading on the ICE Platform).

7.2.5 ICE Inc. provides various training materials and instruction manuals relating to the operation of the ICE Platform and operates an around-the-clock help desk to support customers. The Applicant also operates a market supervision support desk each trading day to support its market participants.

8. FINANCIAL VIABILITY

8.1 The Exchange has sufficient financial resources for the proper performance of its functions.

8.1.1 Designation Criterion 5 of Section 5(b) of the CEA requires that the Applicant ensure the financial integrity of transactions entered into by or through the facilities of ICE Futures U.S. If the CFTC determines that the Applicant has insufficient financial resources to ensure the financial integrity of its marketplace, it will not approve its contract market application. Likewise, once designated, the CEA requires in Core Principle 11 that the Applicant provide for the financial integrity of contracts traded on it in order to maintain its contract market designation. To satisfy this Core Principle, the CFTC does not generally require that the Applicant maintain a particular level of capital or maintain any specific insurance policy, but instead insists, with certain exceptions not relevant here, that all transactions on ICE Futures U.S. be cleared by a derivatives clearing organisation registered and supervised by the CFTC. Appropriate minimum financial standards have been established by ICE Clear U.S. for all ICE Futures U.S. Clearing Members, and the Applicant conducts financial surveillance by routinely reviewing financial and other materials relating to its member firms who are clearing members and/or Futures Commission Merchants.

8.1.2 Section 5b(c)(2)(B) of the CEA requires a designated clearing organisation to demonstrate that it has adequate financial resources to discharge its responsibilities. No specific requirements in terms of ratios between capital, liquid financial assets and operating costs, insurance policies or other protections exist under this regime. However, this is a continuing obligation and is not discharged upon the registration of the clearing organisation with the CFTC.

8.1.3 In order to retain its contract market designation, the Applicant must continuously comply with the Core Principles, including Core Principle 11 relating to ensuring the financial integrity of its contracts and market intermediaries and

customer funds. If due to a change in the Applicant's financial resources it was no longer able to ensure compliance with its obligations as reflected in Core Principle 11, the CFTC could require that the Applicant comply with this Core Principle and if it did not, the CFTC could suspend or revoke its designation. There are no explicit capital requirements, however, applicable to designated contract markets, as there are for Futures Commission Merchants and the clearing members.

8.1.4 The Applicant's accounts are prepared in accordance with U.S. GAAP. Audited accounts of the Applicant are not publicly available. Accounts are required to be published annually pursuant to ICE Futures U.S.'s By-laws, which require the Applicant to present annually audited financial statements to its members. The Applicant's accounts are not subject to CFTC approval or notification. However, ICE Clear U.S.'s accounts are subject to CFTC scrutiny. The profit and loss accounts of the Applicant and ICE Clear U.S. are consolidated. Separate income and expenditure data for the Applicant is therefore not available. For the year ended 31 December 2006, the Applicant recorded an income of $27.6 million, earnings before interest and tax of $13.5 million, a net profit of $14.1 million and had an average of 200 full-time equivalent employees.

9. CLEARING AND SETTLEMENT

9.1 Relationship with Clearing House – The Exchange has a clearing relationship with an established clearing house and all transactions executed on the Exchange are cleared through the Clearing House.

9.1.1 As described in Section 4.3 above, all trades in ICE Futures U.S. Contracts are settled and cleared through ICE Clear U.S. and all Exchange Clearing Members must also be members of ICE Clear U.S. Exchange Non-Clearing Members must have clearing agreements in place with Exchange Clearing Members. ICE Clear U.S. acts as counterparty and guarantor to each transaction executed on the Exchange.

9.1.2 The Applicant is the sole shareholder of ICE Clear U.S.

9.2 Regulation of Clearing House – The Clearing House and direct clearing members are subject to acceptable regulation.

9.2.1 ICE Clear U.S. is recognized by the CEA as a derivatives clearing organization and is subject to the regulation and oversight of the CFTC.

9.3 Authority of the Foreign Regulator – The Foreign Regulator has the appropriate authority and procedures for oversight of the Clearing House. This oversight includes regular, periodic regulatory examinations of the Clearing House by the Foreign Regulator.

9.3.1 The CFTC is also charged with administering and enforcing the CEA as it relates to clearing houses. Accordingly, the CFTC is also the U.S. government agency that has direct regulatory and oversight responsibility over ICE Clear U.S. To implement the CEA, the CFTC has promulgated the DCO Core Principles applicable to DCOs and governing the conduct of all DCOs

9.3.2 ICE Clear U.S. is registered with the CFTC as a DCO pursuant to Section 5b of the CEA. To maintain registration as a DCO, ICE Clear U.S. is required to satisfy the DCO Core Principles set forth in Section 5b(c)(2) of the CEA as interpreted and implemented by the CFTC in CFTC Regulation Part 39 including Appendix A thereof (Application Guidance and Compliance with Core Principles).

9.4 Restrictions on Access to a Foreign Member – Any restrictions on access to the clearing system by a foreign member are adequately disclosed and justified by the legislation of the home jurisdiction, are not anti-competitive and do not unreasonably impose barriers to access.

9.4.1 A foreign applicant seeking membership with ICE Clear U.S. is subject to the same application process and requirements as U.S. applicants, including financial resource, capital, risk management and fitness requirements, as well as requirements to confirm regulatory status and compliance.

9.5 Sophistication of Technology of Clearing House – The Exchange has assured itself that the information technology used by the Clearing House has been adequately reviewed and tested and provides at least the same level of safeguards as required of the Exchange.

9.5.1 Because ICE Clear U.S. and the Applicant are both regulated by the CFTC, the Applicant takes comfort that the CFTC subjects the technology and risk management systems of ICE Clear U.S. to the same degree of scrutiny and oversight to which the technology and risk management systems of ICE Futures U.S. is subject.

9.5.2 One of the DCO Core Principles (DCO Core Principle *I*) specifically relates to system safeguards and requires a DCO to demonstrate that it (i) has established and will maintain a program of oversight and risk analysis to ensure that its automated systems function properly and have adequate capacity and security; and (ii) has established and will maintain emergency procedures and a plan for disaster recovery, and will periodically test back-up facilities sufficient to ensure daily processing, clearing and settlement of transactions.

9.6 Risk Management of Clearing House – The Exchange has assured itself that the Clearing House has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

9.6.1 As described in above, the Applicant takes comfort that the CFTC subjects the risk management systems of ICE Clear U.S., including policies and procedures, contingency plans, default procedures and internal controls, to the same degree of scrutiny and oversight to which the risk management systems of ICE Futures U.S. is subject. Furthermore, DCO Core Principle D requires that a DCO manage the risks associated with discharging the responsibilities of a DCO through the use of appropriate tools and procedures.

10. TRADING PRACTICES

10.1 Trading practices are fair, properly supervised and not contrary to the public interest.

10.1.1 The CFTC has a detailed regulatory scheme designed to protect users of DCMs. It starts with registration of all intermediaries who solicit and accept orders for contracts on DCMs. These intermediaries, referred to as Futures Commission Merchants (FCMs) are subject to specific net capital, disclosure, record-keeping, reporting, sales practices and customer protection regulations. The handling of customer funds is also subject to specific requirements regarding margining, segregation of customer funds from proprietary funds of the FCM, permissible investments and approved depositories. FCMs are subject to oversight and audit by designated self-regulatory organisations and the CFTC. The CFTC also has prohibitions against fraud, manipulation, wash trading, non-competitive trading and other abusive practices. In addition to the oversight over the intermediaries, the CFTC also maintains direct oversight over the Applicant and ICE Clear U.S. The regulations applicable to the Applicant and clearinghouses are further intended to ensure that market participants are fairly treated and that their funds are safeguarded. Statutory and regulatory standards are enforced not only by the self-regulatory organisations, including the Applicant through its disciplinary and compliance staff, but through the Division of Enforcement of the CFTC with substantial enforcement and market surveillance staff in Washington, D.C., Chicago and New York.

10.1.2 Core Principle 12 of Part 38 of the CFTC Regulations requires DCMs to have rules prohibiting conduct that is fraudulent, non-competitive, unfair or abusive, to have rules providing for the discipline of engaging in such conduct and the appropriate systems in place to detect such violations. ICE Futures U.S. Rule 2.29 makes it a violation of Exchange rules for any member to engage in, among other things, market manipulation, wash trading, non-competitive trading and/or fraud. In addition, ICE Futures U.S. Rule Chapter 27 (Electronic Trading) includes various rules and policies regarding abusive trading practices. For instance, ICE Futures U.S. Rule 27.24 provides that participants shall not knowingly enter, or cause to be entered, bids or offers other than in good faith for the purpose of executing bona fide transactions. ICE Futures U.S. Rule Chapter 27 also broadly prohibits participants from: trading against their customers' orders (ICE Futures U.S. Rule 27.20); dual trading or "wash trading" (ICE Futures U.S. Rule 27.23); and engaging in certain pre-execution communications (ICE Futures U.S. Rule 27.22).

10.2 Market Making Provisions – Market making provisions and other provisions to ensure market liquidity, if any, are fair and equitable to all market participants.

10.2.1 No specific U.S. legislative provision requires that the Applicant maintain arrangements to support and encourage market liquidity. However, general principles which protect consumers and the financial safeguards described above serve to preclude plans that would disadvantage customers. The Applicant conducts surveillance for any potential improper "volume pumping activity" by those participating in market maker or other incentive programmes. These arrangements are designed to support competition and be consistent with a reliable, undistorted price-formation process, as required by DCM Core Principle 18 (Antitrust Considerations) and are designed to increase liquidity and the value of the market for all exchange users. ICE Futures U.S. Rule 4.01 et seq. (Floor Trading) detail the requirements and prohibitions for executing trades on the trading floor. ICE Futures U.S. Rule 27 et seq. (Electronic Trading) detail the requirements and prohibitions for executing trades electronically. These rules are designed to promote transparency and give all market participants equal opportunity to participate. ICE Futures U.S. Membership Rule 2.29 prohibits members from engaging in any unlawful trading abuse, such as wash sales ("volume pumping activity"), accommodation trades, fictitious sales or prearranged trades and market manipulation.

10.3 Orders – Rules pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

10.3.1 As discussed in paragraph 4.3.4 above, ICE Clear U.S. has detailed procedures for establishing risk and capital-based position limits for participant firms pursuant to its by-laws. The Applicant has no particular rules limiting the size of an order (that is, the number of contracts in a particular buy or sell order). Particularly large trades, referred to as "Block trades", which are permissible non-competitive trades negotiated off-exchange (see Exchange Rule 4.31, CFTC Regulation 1.38 and Core Principle 9 of Part 38 of the CFTC Regulations.), may be executed as long as the trade size meets certain minimum volume requirements as determined by the Board from time to time and the participants meet the CFTC requirements of an "eligible contract participant" as defined in Section 1a(12) of the CEA.

10.3.2 The Applicant's Market Surveillance Department is responsible for monitoring market prices and trading volumes to prevent price distortion or manipulation, and for monitoring position limits and accountability. To guard against corners or squeezes, the Market Surveillance Department examines total open interest for each ICE Futures U.S. Contract by contract month and a listing of large traders with their respective holdings. The Market Surveillance Department pays particular attention to causes of changes in open interest, inverted markets, spread differentials, the total exposure by a large trader in a given market, the cash price information and the current basis. The Market Surveillance Department also reviews any exchange-for-physical ("EFP") or exchange-for-swap ("EFS") transactions. As contract delivery approaches, the Market Surveillance Department will analyse open positions and contact large speculative traders to determine their intentions. The Market Surveillance Department refers potential problems to the Applicant's Compliance Department for follow-up investigations and possible disciplinary action.

10.3.3 The ICE Platform uses the same trade matching algorithm for all ICE Futures U.S. Contracts. The trading server will match orders on the basis of a price and time priority algorithm. The algorithm is a first-in first-out ("FIFO") system that matches orders in a strict time sequence. The "oldest" order in the system at any time has the highest priority and is filled prior to any subsequently placed orders. Once a standing order is completely filled, the remaining orders will be filled based upon the time of entry of the order, in accordance with the FIFO algorithm. This means that the "best" price will always have the highest order priority. If more than one order is in the market at a specific price then the trading server will give the highest priority to the order that arrived at the trading server first (regardless of volume).

10.3.4 Before a market in respect of an ICE Futures U.S. Contract opens, all limit orders that are in such market are eligible to be part of an uncrossing algorithm. The purpose of this algorithm is to ensure that the market opens in an orderly fashion and that the maximum possible volume of trades is generated upon the opening of the market. The algorithm cycles through all orders in the market identifying the best bid and offer and producing matches where there is price crossing. All orders that are traded within a month, whether fully or partially, as part of the uncrossing algorithm trade at the same trade price, which is determined by a mathematical formula using the limit prices of the eligible orders.

10.4 Transparency – Adequate provision has been made to record and publish details of pricing and trading.

10.4.1 CFTC Designation Criterion 7 (Public Access) and DCM Core Principle 7 (Availability of General Information) and 8 (Daily Publication of Trading Information) regulate the provision of information by the Applicant to enable users of its facilities to monitor their use of the facilities. CFTC Designation Criterion 7 (Public Access) requires that the Applicant provide the public with access to the ICE Futures U.S. Rules, regulations and contract specifications. DCM Core Principle 8 (Daily Publication of Trading Information) mandates that daily information on settlement prices, volume, open interest and opening and closing ranges for contracts be distributed. DCO Core Principle E requires that ICE clear U.S. have the ability to complete settlements on a timely basis and maintain an adequate record of the flow of funds associated with each transaction. The ICE Futures U.S. Rules and the Applicant's procedures and arrangements for monitoring and overseeing the use of its facilities thus provide appropriate information to enable users of its facilities to monitor their use of the facilities. The Applicant's trading system provides to each Floor Member a list of any trades that the Floor Member has transacted and to each ICE Futures U.S. Clearing Member a list of all trades given up to the ICE Futures U.S. Clearing Member for clearing and a list of all trades cleared by such ICE Futures U.S. Clearing Member. The system also collects and distributes price changes and other market information. The Applicant's rulebook and contract specifications are available to the public on its website in accordance with Appendix A to Part 38 of the CFTC's regulations. Settlement Prices, volume, open interest and the opening and closing ranges are available on the Applicant's Daily Market Report ("DMR") which is the official report of the Applicant. The DMR is available after 6:00 pm (New York Time) each business day and is posted on the Applicant's website. Individuals without internet access may request the DMR and contract specifications from the Applicant's staff who will fax or mail the documents to the requestor. In addition, a Time & Sales Report ("TAR") which lists the time and price of every trade executed in seriatim for each commodity contract is available upon request from the Applicant's Compliance Department. The Applicant also makes its price data available in real time by allowing the public to purchase the price data feed through NYBOTLive or through a quote vendor, such as Reuters.

10.5 Market Limits – Market limits have been established as to ensure the integrity of the Exchange during times of volatility.

10.5.1 As discussed above, the position limits and margin requirements imposed by ICE Clear U.S., and the monitoring and enforcement of trading rules and procedures by the Applicant's Market Surveillance Department provide robust safeguards against market distortion, manipulation and failure and are designed to promote and protect market integrity.

11. COMPLIANCE, SURVEILLANCE AND ENFORCEMENT

11.1 Jurisdiction – The Exchange or the Foreign Regulator has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement.

11.1.1 As a DCM, the Applicant is a “front-line regulator” with jurisdiction over its markets and ICE Futures U.S. Members, extending to rulemaking, compliance, market supervision and enforcement. As described in paragraphs 6.1 and 6.2 above, ICE Futures U.S. Rules are applicable to all participants of ICE Futures U.S. without regard to jurisdictional boundaries.

11.2 Member and Market Regulation – The Exchange or its Foreign Regulator maintains appropriate systems, resources and procedures for evaluating compliance with the Exchange and legislative requirements and disciplining participants.

11.2.1 Core Principle 12 (Protection of Market Participants) requires that the Applicant implement measures to prevent the use of its facilities for abusive or improper purposes. Exchange Membership Rules 2.27-2.34 detail the duties of all Members and make certain specified conduct violations of the ICE Futures U.S. Rules. ICE Futures U.S. Floor Trading Rules 4.01 et seq. detail the requirements and prohibitions for executing trades on the trading floor and submitting the trades to the comparison and clearing system. ICE Futures U.S. Regulatory Requirements Rules 6.01 et seq. contain CFTC regulatory requirements, including but not limited to conflict of interest provisions, position limits and various record keeping rules. ICE Futures U.S. Disciplinary Rules 21.00 et seq. provide for the procedures for investigating rule violations and taking disciplinary action. The Applicant's rules, procedures and the arrangements for monitoring and overseeing the use of its facilities include appropriate measures to prevent the use of its facilities for abusive or improper purposes. As a designated contract market, the Applicant maintains a Market Regulation Department, comprised of three subgroups, the Compliance Department, the Market Supervision Department and the Market Surveillance Department, which detect any abusive or improper trading practices, monitor electronic trading on a real-time basis and conduct market surveillance, respectively.

11.2.2 The Compliance Department is responsible for monitoring and investigating trading in ICE Futures U.S. Contracts to detect abusive and improper trading practices, and for prosecuting rule violators before the Applicant's Business Conduct Committee ("BCC"). The Compliance Department maintains an automated surveillance system which identifies suspicious trades and has a team of trained investigators who monitor the market and conduct follow-up investigations relating to suspicious trades. In addition, numerous sophisticated software programs are utilised as a means of detecting and investigating potential trade practice abuses. The systems are able to generate reports which monitor for a variety of trade practice violations, including, but not limited to trading ahead, accommodation trading, large cross trades, direct and indirect cross trading opposite customer accounts, wash trading and money passing. The Compliance Department also reviews error trades, trade adjustments, trade cancellations and block trading.

11.2.3 The Applicant's Market Supervision Department is responsible for monitoring on a real time basis all trades executed electronically. The Market Supervision Department has access to view all trade activities including an order book displaying all order information and a deal book displaying all transactions and the Direct Access Users and applicable ICE Futures U.S Clearing Members from both the buyer’s and seller’s perspective for a given ICE Futures U.S. Contract. Additionally, the department has the ability and responsibility to force Direct Access Users and ICE Futures U.S. Clearing Members off the system when necessary, kill individual orders, send out market notifications and resolve error trades.

11.2.4 The Applicant's Compliance Department, Market Supervision Department and Market Surveillance Department are periodically subject to Rule Enforcement Reviews by the CFTC to ensure the adequacy of the Applicant's affirmative regulatory programs.

11.3 Record Keeping – The Exchange maintains adequate provisions for keeping of books and records, including operations of the Exchange, audit trail information on all trades and compliance and/or violations of the Exchange requirements and securities legislation.

11.3.1 DCM Core Principle 8 (Daily Publication of Trading Information) governs post-trade transparency and mandates that the Applicant make public daily information on settlement prices, volume, open interest and open and closing ranges for its actively traded contracts. As discussed above, the Applicant's settlement prices are available at 6:00 pm in the DMR or in real time through NYBOTLive or a via quote vendors.

11.3.2 The Applicant is obligated to maintain a record of all transactions executed on ICE Futures U.S. which shows for each trade: the contract, date, time, quantity, price or premium, (for options the strike prices, put or call), delivery month or expiration date, the buying and selling floor brokers and the buying and selling clearing members (per CFTC Regulation 1.35(e)). Such records are stored electronically by the Applicant for a period of five years. The Exchange is also obligated to prepare and maintain a record showing all changes in the price of futures and options transactions. (CFTC Reg. 1.35(h)) ICE Futures U.S. Rules 4.26 and 6.08 specifically require exchange members to prepare and maintain trading cards and order tickets, and ICE Futures U.S. Rule 6.07 generally requires all members to make and file with the exchange all reports and maintain all records as required by CFTC regulations.

11.3.3 Records relating to compliance and violations of the ICE Futures U.S. Rules and applicable legislation are kept pursuant to the Applicant's procedures relating to disciplinary matters set out in ICE Futures U.S. Rule 21. A brief summary of the disposition of each investigation undertaken pursuant to ICE Futures U.S. Rule 21, as well as any hearing, appeal, and the imposition of any penalty, are kept permanently in the file of the applicable market participant. The record of any disciplinary hearing, together with all of the papers, including the final decision on any appeal, is retained for a period of five (5) years.

11.4 Availability of Information to Regulator – The Exchange has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory and enforcement purposes is available to the relevant regulatory authorities on a timely basis.

11.4.1 Instances of financial crime or market abuse would result in a disciplinary case against the relevant member or user, as described above. Section 8c of the CEA and CFTC Regulation 9.11 requires the Applicant to notify the CFTC if it takes disciplinary action against an ICE Futures U.S. Member, thus leading to a notification to the CFTC. Furthermore, books and records of the Applicant must be made available to the CFTC and the U.S. Department of Justice pursuant to Section 8c of the CEA. CFTC Interpretative Letter No. 77-4, '77-'80 CCH Dec. 20,405 provides further that the CFTC Division of Enforcement (which is delegated CFTC investigative authority pursuant to CFTC Regulations 11.1 and 11.2) does not need to use a subpoena to obtain immediate and unreserved compliance with a request for access to the books and records of persons required by law to register with the CFTC, such as the Applicant, since such access is required by the broad inspection powers granted to the CFTC under the CEA.

12. INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

12.1 Satisfactory information sharing and oversight agreements exist among the OSC and the Foreign Regulator.

12.1.1 The Applicant is required to provide information about it and its activities to the CFTC pursuant to Section 5c(c) of the CEA and Parts 38 and 40 of the CFTC Regulations, which require that any changes to the Applicant's constitutional provisions, by-laws and rules, including trading protocols, agreements, interpretations or resolutions, must be either certified to the CFTC as being in compliance with the CEA and CFTC Regulations or submitted to the CFTC for its approval. Any emergency action of the Applicant must be immediately reported to the CFTC. The CFTC may investigate any action of the Applicant, alter or supplement its rules, suspend or revoke its registration, direct the Applicant to take whatever action the CFTC determines is necessary to maintain or restore orderly trading in the event of an emergency and suspend, expel or discipline any member of ICE Futures U.S. These requirements thus ensure that the Applicant shares information openly with the CFTC and pursues CFTC enquiries diligently.

12.1.2 The Applicant is not required by U.S. law to participate in international information sharing agreements. CFTC Designation Criterion 8 (Ability to Obtain Information) requires that Filer has the capacity to carry out such international information-sharing agreements as the CFTC may require. The CFTC has required that Applicant sign to the Declaration on Co-operation and Supervision of International Futures Exchanges and Clearing Organisations as amended, March 1998 (commonly known as the "Boca Declaration") and the OSC is a signatory to the Boca Declaration. The Applicant is also a party to the Intermarket Surveillance Group information sharing agreement which calls for the sharing of information among securities and commodities exchanges in the United States and other countries. Further, ICE Futures U.S. Rule 6.50 authorizes the Applicant to disclose information to the regulatory authority of any foreign jurisdiction in which the Applicant has been approved to conduct business to the extent that the consent of Applicant to make such disclosure was a condition of such approval.

13. IOSCO PRINCIPLES

13.1 The Exchange adheres to the IOSCO principles to the extent consistent with the law of the foreign jurisdiction.

13.1.1 The Applicant adheres to IOSCO principles by virtue of the fact that it must comply with the CEA and the CFTC Regulations, which reflects those principles.

Submissions

The Applicant satisfies all criteria for recognition (or exemption from recognition) as an exchange set out in Staff Notice 21-702, as described above under "Application of Approval Criteria to ICE Futures U.S.". Ontario market participants that trade in commodity futures and commodity futures options would benefit from the ability to trade on ICE Futures U.S., as they would have access to a range of exchange-traded commodity derivative products that are not currently available in Ontario. The ICE Platform offers a transparent, efficient and liquid market for Ontario market participants to trade in ICE Futures U.S. Contracts. Stringent CFTC oversight of the Applicant as well as the sophisticated information systems, regulations and compliance functions that have been adopted by the Applicant will ensure that Ontario users of the ICE Platform accessing ICE Futures U.S. are adequately protected in accordance with international standards set by IOSCO. We therefore submit that it would be in the public interest to grant the Requested Relief.

The Applicant seeks the Requested Relief for the following reasons:

Exemption from Recognition and Registration as an Exchange

1. All contracts traded on ICE Futures U.S. fall under the definitions of "commodity futures contract" or "commodity futures option" set out in Section 1 of the CFA. ICE Futures U.S. is therefore considered a "commodity futures exchange" as defined in Section 1 of the CFA and is prohibited from carrying on business in Ontario unless it is registered or exempt from registration under Section 15 of the CFA. ICE Futures U.S. seeks to provide Ontario market participants with direct, electronic access to trading in ICE Futures U.S. Contracts and may therefore be considered to be "carrying on business as a commodity futures exchange" in Ontario.

2. The Applicant is not registered with or recognized by the OSC as a commodity futures exchange under the CFA, and no ICE Futures U.S. Contracts have been accepted by the Director (as defined in the OSA) under the CFA. Therefore, ICE Futures U.S. Contracts are considered "securities" under paragraph (p) of the definition of "security" set out in Section 1(1) of the OSA and the Applicant is therefore considered a "stock exchange" under the OSA and prohibited from carrying on business in Ontario unless it is recognized or exempt from recognition under Section 21 of the OSA. The Applicant seeks to provide Ontario market participants with direct, electronic access to trading in ICE Futures U.S. Contracts and may therefore be considered to be "carrying on business as a stock exchange" in Ontario.

3. We submit that the Requested Relief from the requirements to be recognized as a stock exchange under the OSA and to be registered as an exchange under the CFA is appropriate because the Applicant is regulated as a DCM by the CFTC under the CEA and regulated in its home jurisdiction by the CFTC. OSC Staff acknowledge in Staff Notice 21-702 that, in the case of foreign exchanges, "[f]ull regulation, similar to that applied to domestic exchanges, may be duplicative and inefficient when imposed in addition to the regulation of the home or another jurisdiction." If the OSC were to recognize the Applicant as a stock exchange under the OSA and/or register ICE Futures U.S. as an exchange under the CFA, this type of duplication and inefficiency would likely occur as the OSC would be required to oversee ICE Futures U.S. to the same extent as it oversees domestic exchanges in Ontario. CFTC oversight of ICE Futures U.S. as well as the sophisticated information systems, regulations and compliance functions that have been adopted by the Applicant will ensure that Ontario users of the ICE Platform accessing ICE Futures U.S. are adequately protected in accordance with international standards set by IOSCO. We therefore submit that it would be in the public interest to grant the Requested Relief from the requirements to be recognized and registered under the OSA and CFA respectively.

No Prospectus or Registration Relief under the OSA

4. Provided that the OSC exempts the Applicant from registration as a commodity futures exchange under the CFA, ICE Futures U.S. will be an "exempt exchange" as defined in OSC Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario* ("Rule 91-503") and ICE Futures U.S. Contracts will be "exempt exchange contracts" under Rule 91-503. Therefore, all trades in ICE Futures U.S. Contracts will be exempt from the registration requirement in Section 25 of the OSA and the prospectus requirement in Section 53 of the OSA pursuant to Part II of Rule 91-503 and no registration or prospectus relief will be required under the OSA for trades in ICE Futures U.S. Contracts in Ontario.

Hedger Relief

5. The Applicant seeks to provide direct, electronic access to trading in ICE Futures U.S. Contracts to Ontario Participants. The Applicant expects that many of its potential Ontario Participants will be engaged in the business of trading commodity futures or commodity futures options in Ontario and will, therefore, be registered as FCMs under Section 22 of the CFA. However, the Applicant also seeks to provide access to "hedgers" as defined in Section 1 of the CFA, which may not be registered as FCMs. Section 32(1)(a) of the CFA provides an exemption from registration for trades "by a hedger through a dealer". This exemption will be available for trades in ICE Futures U.S. Contracts by Ontario resident hedgers that route orders to ICE Futures U.S. through ICE Futures U.S. Clearing Members that are dealers, however, this exemption will not be available for trades in ICE Futures U.S. Contracts by Ontario resident hedgers that become Direct Access Users or non-clearing ICE Futures U.S. members since they will have direct electronic access to ICE Futures U.S. and will not send their orders through the trade desk of an ICE Futures U.S. Clearing Member dealer. In order to be granted direct access to ICE Futures U.S., any Ontario resident hedger would have to have an account with ICE Futures U.S. Clearing Member which ICE Futures U.S. Clearing Member would be obligated to settle any trades entered on ICE Futures U.S. by such Direct Access User.

6. We submit that the due diligence screening and account opening process that ICE Futures U.S. Clearing Members will be required to apply to prospective Direct Access Users will ensure that all Ontario resident hedgers that manage to become Direct Access Users will have been subject to appropriate credit checks, suitability analyses, know-your-client, account supervision, anti-money laundering and other anti-fraud procedures in accordance with CFTC and ICE Clear U.S. requirements. Moreover, the potentially significant financial risk that ICE Futures U.S. Clearing Members assume in respect of the trading activity of Direct Access Users they guarantee can be expected to ensure that the Ontario participants they agree to guarantee will have the requisite sophistication and proficiency in the trading of commodity futures to satisfy any investor protection concerns associated with such participants having direct access to ICE Futures U.S.

7. The Applicant also maintains a rigorous due diligence screening process for prospective exchange members. The Applicant maintains detailed membership application requirements which include a requirement for two business references, detailed financial information and regulatory information relating to the applicant all of which is reviewed and considered by the Applicant's Membership Committee pursuant to ICE Futures U.S. Rule 2.

8. ICE Futures U.S. intends to confirm that Ontario applicants that seek to rely on the Hedger Relief are "hedgers" as defined in Section 1 of the CFA by obtaining a representation to that effect from such applicants as a part of their application documentation. The documentation will specify that this representation is deemed to be repeated by the applicant each time it enters an order for an ICE Futures U.S. Contract and that the applicant must be a hedger for the purposes of each trade resulting from such an order.

9. The requested Hedger Relief is needed to allow sophisticated Ontario Participants who meet the definition of "hedgers" under the CFA to become Direct Access Users and gain the benefits of direct access such as improved execution speed, critical to so many traders in current electronic trading environments. Given the sophistication of such Ontario Participants and the fact that responsibility for their trading activity ultimately lies with the ICE Futures U.S. Clearing Members that guarantee their trades, it is not necessary for the protection of investors or the integrity of the market to require such participants to send their orders through a dealer rather than accessing ICE Futures U.S. directly.

Other Matters

10. Enclosed is a certificate of an officer of ICE Futures U.S. certifying the truth of the facts contained herein and authorizing us to prepare and file this Application.

11. The Applicant consents to the publication of this Application for public comment in the OSC Bulletin.

Thank you for your assistance with this matter.

Yours very truly,

Jacob Sadikman
JS:mi
Enclosure

c: Johnathan Short, ICE, Inc.
Jill Fassler/Jason Fusco/Audrey Hirschfeld, ICE Futures U.S.
Ward Sellers/Mark DesLauriers, Osler, Hoskin & Harcourt LLP

DRAFT

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

AND

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

AND

**IN THE MATTER OF
ICE FUTURES U.S., INC.**

**ORDER
(Section 147 of the OSA and
sections 38 and 80 of the CFA)**

WHEREAS ICE Futures U.S., Inc. (the "Applicant" or "ICE Futures U.S.") has filed an application dated May 15, 2009 (Application) with the Ontario Securities Commission (Commission) requesting:

(a) an order pursuant to section 147 of the OSA exempting the Applicant from the requirement to be recognized as a stock exchange under section 21 of the OSA;

(b) an order pursuant to section 80 of the CFA exempting the Applicant from the requirement to be registered as a commodity futures exchange under section 15 of the CFA; and

(c) an order pursuant to section 38 of the CFA exempting trades in contracts on ICE Futures U.S. by "hedgers" from the registration requirement under section 22 of the CFA (Hedger Relief);

AND WHEREAS the term "hedger" has the meaning ascribed to it in section 1(1) of the CFA (Hedger);

AND WHEREAS Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario* exempts trades of commodity futures contracts or commodity futures options made on commodity futures exchanges not registered with or recognized by the Commission under the CFA from sections 25 and 53 of the OSA;

AND WHEREAS the Rule entitled *In the Matter of Trading in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges in the United States of America*, provides that section 33 of the CFA does not apply to trades entered into on commodity futures exchanges designated by the U.S. Commodity Futures Trading Commission under the U.S. Commodity Exchange Act;

AND WHEREAS the Applicant has represented to the Commission that:

1. The Applicant is a Delaware corporation, designated as a contract market by the United States Commodity Futures Trading Commission (the "CFTC") pursuant to Section 5 of the U.S. Commodity Exchange Act (the "CEA"). The Applicant is owned by the IntercontinentalExchange, Inc. ("ICE, Inc.") in accordance with a merger agreement consummated on January 12, 2007. ICE, Inc. is a public company governed by the laws of the State of Delaware and listed on the New York Stock Exchange. ICE Inc. and its affiliates are collectively referred to as the "ICE Group";

2. The Applicant is, in turn, the sole shareholder of ICE Clear U.S., Inc. (formerly known as the New York Clearing Corporation or NYCC) ("ICE Clear U.S."), the New York Futures Exchange, Inc. ("NYFE") and eCOPS, LLC;

3. ICE Clear U.S. is a New York corporation and is a registered derivatives clearing organization ("DCO") as set forth in Section 5b of the CEA. As such, ICE Clear U.S. is subject to the regulatory oversight of the CFTC and must remain in compliance with all of the Core Principles of Section 5b of the CEA (the "DCO Core Principles"). ICE Clear U.S. clears the trades executed on ICE Futures U.S.;

4. ICE Futures U.S. traces its history to 1870 when the predecessor exchanges were founded that would eventually become the Board of Trade of the City of New York, Inc. ("NYBOT"). On September 14, 2006, ICE, Inc. announced that it had entered into an agreement to acquire NYBOT for consideration of approximately $1 billion. On December 11, 2006, the merger was approved by the members of NYBOT and on January 12, 2007, the merger was consummated and NYBOT became a wholly-owned subsidiary of ICE, Inc.;

5. As a Designated Contract Market (a "DCM"), the Applicant offers a variety of agricultural or soft commodity futures contracts and options on futures contracts as well as futures contracts and options on futures contracts on certain financial and equity indices and currencies (collectively, "ICE Futures U.S. Contracts"). Historically the Applicant only offered trading of its contracts via open outcry floor trading. In 2007, the Applicant continued to offer floor trading, but also commenced electronic trading on a platform owned and operated by ICE, Inc. (known as the "ICE Platform") in its core agricultural futures products alongside traditional open outcry access. The contract terms of contracts available for electronic trading are the same as the contract terms of their equivalent floor traded contracts, and therefore fully fungible. Since that time the Applicant has continued to transition more of its contracts towards electronic trading. Although the Applicant has either commenced or will be commencing electronic trading for most of its commodity futures contracts, the applicant continues to maintain a floor trading operation for open outcry trading in respect of all of its listed commodity futures options contracts as well as with respect to certain of its less liquid commodity futures contracts.

6. Pursuant to its regulation by the CFTC, the Applicant is required to demonstrate its on-going compliance with various "Core Principles" applicable to all U.S. DCMs. The statutory Core Principles are described in Section 5 of the CEA and include requirements relating to, among others: fitness and properness; systems and controls; maintenance of an orderly market; investor protection; creation and maintenance of necessary records; the avoidance of anti-competitive actions; minimizing conflicts of interest in the decision-making process and establishing a process for resolving such conflicts; and rule-making and other matters including that the Applicant monitor and enforce compliance with its rules.

7. The CFTC monitors trading on ICE Futures U.S. and receives daily transaction and other reports from the Applicant. The CFTC also undertakes periodic in-depth audits or "rule reviews" of the Applicant's compliance with certain of the statutory Core Principles.

8. The Applicant is required under its regulations to provide to the CFTC on request access to all records. In addition, ICE Futures U.S. Rule 6.50 requires the disclosure of information to the regulatory authority of any foreign jurisdiction in which it has been approved to conduct business, if such disclosure is a condition of approval.

9. The Applicant proposes to offer direct electronic access to trading in ICE Futures U.S. Contracts through the ICE Platform to prospective participants in Ontario ("Ontario Participants"), either by way of (i) membership in ICE Futures U.S., (ii) via direct access sponsored by a member of ICE Clear U.S. (a "Clearing Member") (such non-Clearing Member participants, "Direct Access Users"), or (iii) through order-routing arrangements where orders are routed through a Clearing Member onto the exchange.

10. The Applicant expects that potential Ontario Participants that may seek to become members, Direct Access Users or order-routing clients of a Clearing Member will be (i) dealers that are engaged in the business of trading commodity futures and commodity options in Ontario and (ii) Hedgers.

11. ICE Futures U.S. Contracts fall under the definitions of "commodity futures contract" or "commodity futures option" set out in Section 1 of the CFA. The Applicant is therefore considered a "commodity futures exchange" as defined in Section 1 of the CFA and is prohibited from carrying on business in Ontario unless it is registered or exempt from registration as an exchange under Section 15 of the CFA.

12. The Applicant seeks to provide Ontario Participants with direct, electronic access to trading in ICE Futures U.S. Contracts and as a result, is considered by the Commission to be "carrying on business as a commodity futures exchange" in Ontario.

13. The Applicant is not registered with or recognized by the Commission as a commodity futures exchange under the CFA and no ICE Futures U.S. Contracts have been accepted by the Director (as defined in the OSA) under the CFA, therefore, ICE Futures U.S. Contracts are considered "securities" under paragraph (p) of the definition of "security" set out in Section 1(1) of the OSA and the Applicant is considered a "stock exchange" under the OSA and is prohibited from carrying on business in Ontario unless it is recognized or exempt from recognition under section 21 of the OSA.

14. As above, since the Applicant seeks to provide Ontario Participants with direct, electronic access to trading in ICE Futures U.S. Contracts it is considered by the Commission to be "carrying on business as a stock exchange" in Ontario.

15. The exemption from registration in section 32(1)(a) of the CFA applies for trades "by a hedger through a dealer". This exemption will be available for trades in ICE Futures U.S. Contracts by Ontario resident hedgers that route orders to ICE Futures U.S. through ICE Futures U.S. Clearing Members that are dealers, however, this exemption will not be available for trades in ICE Futures U.S. Contracts by Ontario resident hedgers that become Direct Access Users or non-clearing ICE Futures U.S. members since they will have direct electronic access to ICE Futures U.S. and will not execute trades through dealers.

16. The Applicant maintains rigorous membership criteria that all applicants must satisfy before their applications are considered by its membership committee, including, among others: fitness criteria; suitable qualifications and experience; adequate training and supervision; proper authorizations, or exemptions to trade; and suitable financial standing.

17. All Clearing Members that guarantee a Direct Access User or provide order routing access to ICE Futures U.S. to an Ontario client will be registered futures commission merchants with the CFTC. Such clearing members are subject to the compliance requirements of the CEA, the CFTC and the National Futures Association as they relate to customer accounts, including various know-your-client, suitability, risk-disclosure, anti-money laundering and anti-fraud requirements. These requirements, in conjunction with the ICE Clear U.S. margin requirements that apply to all Clearing Members and subsequently to their clients whose trades they guarantee, ensure that Ontario firms seeking to become Direct Access Users or gain order routing access through a Clearing Member are subjected to appropriate due diligence procedures and fitness criteria. In addition, Direct Access Users are required to sign the ICE Futures U.S. Electronic User Agreement making them responsible for, among other things, compliance with the Applicant's exchange rules.

18. Each applicant for ICE Futures U.S. membership or for status as a Direct Access User of ICE Futures U.S. electronic trading that intends to rely on the Hedger Relief will be required, as part of the application documentation to:

    (a) represent that it is a Hedger;

    (b) acknowledge that the Applicant deems the Hedger representation to be repeated by the applicant each time it enters an order for an ICE Futures U.S. Contract, and that the applicant must be a Hedger for the purposes of each trade resulting from such an order;

    (c) agree to notify the Applicant if the applicant ceases to be a Hedger;

    (d) represent that it will only enter trades for its own account; and

    (e) acknowledge that it is a market participant under the CFA and is subject to applicable requirements.

19. With respect to electronic trading via direct access or order-routing access, the Applicant will ensure that the guidance that it circulates to Clearing Members respecting the granting of such access to Ontario Participants indicates that the Clearing Member is permitted to grant direct access or order routing access to ICE Futures U.S. to an Ontario Participant provided that (i) the Ontario Participant is appropriately registered under the CFA to trade in ICE Futures U.S. Contracts or (ii) the Ontario Participant is a Hedger.

20. Based on the facts set out in the Application, the Applicant satisfies the criteria set out in Schedule "A" to this order;

AND WHEREAS based on the Application and the representations the Applicant has made to the Commission, the Commission has determined that the Applicant satisfies the criteria set out in Schedule "A" and that the granting of exemptions from recognition and registration to the Applicant would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that pursuant to section 147 of the OSA, the Applicant is exempt from recognition as a stock exchange under section 21 of the OSA, and pursuant to section 80 of the CFA, the Applicant is exempt from registration as a commodity futures exchange under section 15 of the CFA;

AND IT IS FURTHER ORDERED by the Commission that, pursuant to section 38 of the CFA, trades in ICE Futures U.S. Contracts by Hedgers who are ICE Futures U.S. Members or Direct Access Users are exempt from the registration requirement under section 22 of the CFA;

PROVIDED THAT the Applicant complies with the terms and conditions attached hereto as Schedule "B".

SCHEDULE "A"

Criteria for Exemption from Recognition/Registration as an Exchange

PART 1 REGULATION AND OVERSIGHT OF THE EXCHANGE

1.1 Regulation of the Exchange

The Exchange is regulated in an appropriate manner in another jurisdiction by a Foreign Regulator. The regulatory scheme of the Foreign Regulator is transparent and generally comparable to that in Ontario.

1.2 Authority of the Foreign Regulator

The Foreign Regulator has the appropriate authority and procedures for oversight of the Exchange. This oversight includes regular, periodic regulatory examinations of the Exchange by the Foreign Regulator.

PART 2 CORPORATE GOVERNANCE

2.1 Fair Representation

The governance structure of the Exchange provides for:

(i) appropriate, fair and meaningful representation on its Board and any committee thereof; and

(ii) appropriate representation by independent directors on the Board and any committee thereof.

2.2 Appropriate Provisions for Directors and Officers

There are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors and officers.

2.3 Fitness

The Exchange takes reasonable steps to ensure that each officer and director is a fit and proper person and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

2.4 Conflicts of Interest

The Exchange has appropriate conflict of interest provisions for all directors, officers and employees.

PART 3 FEES

3.1 Fees

The Exchange's process for setting fees is fair, transparent and appropriate. Any and all fees imposed by the Exchange on its participants are equitably allocated, do not have the effect of creating barriers to access and are balanced with the criteria that the Exchange has sufficient revenues to satisfy its responsibilities.

PART 4 REGULATION OF PRODUCTS

4.1 Approval of Products

The products traded on the Exchange are approved by the appropriate authority.

4.2 Product Specifications

The terms and conditions of trading the products are in conformity with normal commercial business practices for the trade in the product.

4.3 Risks Associated with Trading Products

The Exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the Exchange, including, but not limited to, margin requirements, intra-day margin calls, daily trading limits, price limits, position limits, and internal controls.

PART 5 ACCESS

5.1 Fair Access

The requirements of the Exchange relating to access to the facilities of the Exchange, the imposition of limitations or conditions on access and denial of access are approved by the Foreign Regulator and are fair and reasonable, including in respect of notice, an opportunity to be heard or make representations, the keeping of records, the giving of reasons and the provisions for appeals.

5.2 Details of Access Criteria

In particular, the Exchange

i. has written standards for granting access to trading on its facilities to ensure users have appropriate integrity and fitness;

ii. has and enforces financial integrity standards for those persons who enter orders for execution on the system, including, but not limited to, credit or position limits and clearing membership;

iii. does not unreasonably prohibit or limit access by a person or company to services offered by it;

iv. keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access; and

v. restricts access to adequately trained system users who have demonstrated competence in the functions that they perform.

5.3 Access for Ontario Persons

The Exchange provides direct access, either through terminals, data feeds or third party provided interfaces, to only those Ontario persons that are duly registered or licensed under Ontario.

PART 6 RULEMAKING

6.1 Purpose of Rules

The Exchange maintains rules, policies and other similar instruments as are necessary or appropriate to govern and regulate all aspects of its business and affairs and such rules are designed to, in particular,

i. ensure compliance with the rules of the Exchange and securities legislation;

ii. prevent fraudulent and manipulative acts and practices;

iii. promote just and equitable principles of trade;

iv. foster cooperation and coordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, the products trade on the Exchange;

v. provide for appropriate discipline;

vi. ensure a fair and orderly market; and

vii. ensure that the Exchange business is conducted in a manner so as to afford protection to investors.

6.2 No Discrimination or Burden on Competition

The rules of the Exchange do not

i. permit unreasonable discrimination among issuers, if applicable, and participants; or

ii. impose any burden on competition that is not reasonably necessary or appropriate.

PART 7 SYSTEMS AND TECHNOLOGY

7.1 System Capability/Scalability

For each of its systems that support order entry, order routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements, the Exchange:

i. makes reasonable current and future capacity estimates;

ii. conducts capacity stress tests of critical systems to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;

iii. reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;

iv. ensures that safeguards which protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;

v. ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;

vi. maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and

vii. maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

7.2 Information Technology Risk Management Procedures

Procedures are in place that:

i. handle trading errors, trading halts and circuit breakers;

ii. ensure the competence, integrity and authority of system users; and

iii. ensure that the system users are adequately supervised.

PART 8 FINANCIAL VIABILITY

8.1 Financial Viability

The Exchange has sufficient financial resources for the proper performance of its functions.

PART 9 CLEARING AND SETTLEMENT

9.1 Relationship with Clearing House

The Exchange has a clearing relationship with an established clearing house and all transactions executed on the Exchange are cleared through the Clearing House.

9.2 Regulation of the Clearing House

The Clearing House and direct clearing members are subject to acceptable regulation.

9.3 Authority of the Foreign Regulator

The Foreign Regulator has the appropriate authority and procedures for oversight of the Clearing House. This oversight includes regular, periodic regulatory examinations of the Clearing House by the Foreign Regulator.

9.4 Restrictions on Access to a Foreign Member

Any restrictions on access to the clearing system by a foreign member are adequately disclosed and justified by the legislation of the home jurisdiction, are not anti-competitive and do not unreasonably impose barriers to access.

9.5 Sophistication of Technology of Clearing House

The Exchange has assured itself that the information technology used by the Clearing House has been adequately reviewed and tested and provides at least the same level of safeguards as required of the Exchange.

9.6 Risk Management of Clearing House

The Exchange has assured itself that the Clearing House has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

PART 10 TRADING PRACTICES

10.1 Trading Practices

Trading practices are fair, properly supervised and not contrary to the public interest.

10.2 Market Making Provisions

Market making provisions and other provisions to ensure market liquidity, if any, are fair and equitable to all market participants.

10.3 Orders

Rules pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

10.4 Transparency

Adequate provision has been made to record and publish details of pricing and trading.

10.5 Market Limits

Market limits have been established as to ensure the integrity of the Exchange during times of volatility.

PART 11 COMPLIANCE, SURVEILLANCE AND ENFORCEMENT

11.1 Jurisdiction

The Exchange or the Foreign Regulator has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement.

11.2 Member and Market Regulation

The Exchange or its Foreign Regulator maintains appropriate systems, resources and procedures for evaluating compliance with Exchange and legislative requirements and disciplining participants.

11.3 Record Keeping

The Exchange maintains adequate provisions for keeping books and records, including operations of the exchange, audit trail information on all trades and compliance and/or violations of Exchange requirements and securities legislation.

11.4 Availability of Information to Regulator

The Exchange has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory and enforcement purposes is available to the relevant regulatory authorities on a timely basis.

PART 12 INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

12.1 Information Sharing and Oversight Agreement

Satisfactory information sharing and oversight agreements exist among the OSC and the Foreign Regulator.

PART 13 IOSCO PRINCIPLES

13.1 IOSCO Principles

The Exchange adheres to the IOSCO principles to the extent consistent with the law of the foreign jurisdiction.

SCHEDULE "B"

Terms and Conditions

REGULATION OF ICE FUTURES U.S.

1. The Applicant will maintain its status as a DCM with the CFTC and will continue to be subject to the supervision of the CFTC, or any successor regulatory body, as a DCM, or any successor category of recognition.

2. The Applicant will continue to comply with its ongoing compliance requirements set out in the Core Principles under section 5 of the CEA or any successor compliance requirements.

3. The Applicant will continue to meet the criteria for exemption from registration as an exchange, as set out in Schedule "A".

ACCESS

4. The Applicant will not allow Ontario Participants to become Direct Access Users or ICE Futures U.S. members unless they are appropriately registered to trade in ICE Futures U.S. Contracts or are Hedgers.

5. Each Ontario Participant that intends to rely on the Hedger Relief will be required, as part of the application documentation to:

   (a) represent that it is a Hedger;

   (b) acknowledge that the Applicant deems the Hedger representation to be repeated by the Ontario Participant each time it enters an order for an ICE Futures U.S. Contract and that the Ontario Participant must be a Hedger for the purposes of each trade resulting from such an order;

   (c) agree to notify the Applicant if it ceases to be a Hedger;

   (a) represent that it will only enter trades for its own account; and

   (e) acknowledge that it is a market participant under the CFA and is subject to applicable requirements.

6. The Applicant will require Ontario Participants to notify it if their registration or exemption from registration has been revoked, suspended or amended by the Commission and, following notice from the Ontario Participant or the Commission and subject to applicable laws, the Applicant will promptly restrict the Ontario Participant's access to ICE Futures U.S. if the Ontario Participant is no longer appropriately registered with or exempted by the Commission.

7. ICE Futures makes available to Ontario Participants appropriate training for each person who has access to trade in ICE Futures U.S. Contracts on the ICE Platform.

SUBMISSION TO JURISDICTION AND AGENT FOR SERVICE

8. The Applicant submits to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario, in a proceeding arising out of, related to or concerning or in any other manner connected with the activities of ICE Futures U.S. in Ontario.

9. The Applicant will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the Applicant's activities in Ontario.

DISCLOSURE

10. The Applicant will provide to all Ontario Participants, and also require Ontario Participants that are registered FCMs under the CFA to distribute to Ontario clients, prior to the first trade by each client that is executed through the facilities of ICE Futures U.S., disclosure that states that:

    (a) rights and remedies against the Applicant may only be governed by the laws of the United States, rather than the laws of Ontario and may be required to be pursued in the United States rather than in Ontario;

(b) the rules applicable to trading on ICE Futures U.S. may be governed by the laws of the United States, rather than the laws of Ontario; and

(c) ICE Futures U.S. is regulated by the CFTC, rather than the OSC.

FILING REQUIREMENTS

Prompt Notice

11. The Applicant will promptly notify staff of the Commission of any of the following:

(a) any material change to the information provided in the Application, including, but not limited to:

(i) changes to the regulatory oversight by the CFTC,

(ii) the corporate governance structure of ICE Futures U.S.,

(iii) the access model, including eligibility criteria, for Ontario Participants,

(iv) systems and technology, and

(v) the clearing and settlement arrangements for ICE Futures U.S.;

(b) any change or proposed change in the ICE Futures U.S. rules or regulations or the laws, rules and regulations in the United States relevant to futures and options on futures where such change may materially affect the ability of the Applicant to meet the criteria set out in Schedule "A" to this order;

(c) any known investigations or disciplinary action by the CFTC or any other regulatory authority to which the Applicant is subject relating to the discharge by the Applicant of its regulatory obligations;

(d) any matter known to the Applicant that may affect the financial or operational viability of ICE Futures U.S., including, but not limited to, any significant system failure or interruption;

(e) any default, insolvency or bankruptcy of any ICE Futures U.S. Member, direct access user or Clearing Member known to ICE Futures or its representatives that may have a material, adverse impact upon ICE Futures U.S., ICE Clear U.S. or any Ontario Participant.

Quarterly Reporting

12. The Applicant will maintain the following updated information and submit such information to the Commission on at least a quarterly basis, and at any time promptly upon the request of staff of the Commission:

(a) a current list of all Ontario Participants that are either exchange members or Direct Access Users;

(b) a list of all Ontario Participants that are either exchange members or Direct Access Users against whom disciplinary action has been taken in the last quarter by the Applicant or the CFTC with respect to activities on ICE Futures U.S.;

(c) a list of all investigations by the Applicant relating to Ontario Participants that are either exchange members or Direct Access Users;

(d) a list of all Ontario applicants who have been denied access to ICE Futures U.S.; and

(e) for each ICE Futures U.S. Contract, the total trading volume originating from Ontario Participants that are either exchange members or Direct Access Users and the proportion of worldwide trading volume on ICE Futures U.S. conducted by such Ontario Participants.

Annual Reporting

13. The Applicant will arrange to have the annual SAS 70 for ICE, Inc. filed with the Commission.

FINANCIAL VIABILITY

14. The Applicant will file with the Commission all annual financial statements required to be filed with the CFTC, within the same timeframes as required by the CFTC.

INFORMATION SHARING

15. The Applicant will, subject to applicable laws, share any and all information within the care and control of ICE Futures U.S. and otherwise co-operate wherever reasonable with the Commission or its staff.

13.1.2 MFDA Issues Second Notice of Hearing Regarding Bruce Patrick Schriver

NEWS RELEASE
For immediate release

MFDA ISSUES SECOND NOTICE OF HEARING REGARDING BRUCE PATRICK SCHRIVER

May 29, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") today announced that it has commenced additional disciplinary proceedings against Bruce Patrick Schriver by way of Notice of Hearing dated May 19, 2009. The MFDA had previously commenced a separate proceeding against Mr. Schriver by Notice of Hearing dated March 12, 2009 (MFDA File No. 200901).

MFDA staff alleges in its Notice of Hearing that Mr. Schriver, the Respondent, engaged in the following conduct contrary to the By-laws, Rules or Policies of the MFDA:

> **Allegation #1:** Between December 2000 and June 2004, the Respondent misappropriated approximately $116,316.22 from Client A, thereby failing to deal fairly, honestly and in good faith with Client A and engaging in business conduct that was unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

The first appearance in this matter will take place by teleconference before a Hearing Panel of the MFDA's Atlantic Regional Council on June 2, 2009 at 3:00 p.m. (Atlantic) or as soon thereafter as the appearance can be held. The purpose of the first appearance is to schedule the date for the commencement of the hearing of this matter on its merits and to address any other procedural matters.

The first appearance is open to the public, except as may be required for the protection of confidential matters. Members of the public who want to listen to the teleconference for the first appearance should contact Yvette MacDougall, MFDA Hearings Coordinator, at 416-943-4606 or by email at ymacdougall@mfda.ca on or before June 1, 2009 to obtain particulars. The hearing on the merits will take place at a location in Halifax, Nova Scotia at a time and place to be announced at a later date.

Copies of both Notices of Hearing are 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 149 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 Adjourns Marlene Legare Hearing

NEWS RELEASE
For immediate release

MFDA HEARING PANEL ADJOURNS MARLENE LEGARE HEARING

May 29, 2009 (Toronto, Ontario) – The hearing on the merits in the matter of Marlene Legare, commenced by Notice of Hearing dated June 12, 2008, has been adjourned to a date, time and location to be announced.

The hearing of this matter continued this week on May 25, 2009 and May 28, 2009 at the Wosk Centre for Dialogue in Vancouver, British Columbia. The hearing, once resumed, will be open to the public, except as may be required for the protection of confidential matters.

A copy of the Notice of Hearing is available on the MFDA 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 149 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

13.1.4 MFDA Sets Dates in the Matter of Donald J. Cunningham

NEWS RELEASE
For immediate release

MFDA SETS DATES IN THE MATTER OF DONALD J. CUNNINGHAM

May 29, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of Donald James Cunningham by Notice of Hearing dated March 3, 2009.

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

Among other orders, the Hearing Panel scheduled an appearance in this matter to take place on October 1, 2009 and reserved January 11-15, 2010 for the hearing of this matter on its merits. These appearances will commence at 10:00 a.m. (Eastern) in the hearing room located at the offices of the MFDA at 121 King Street West, Suite 1000, Toronto, Ontario, or as soon thereafter as can be held. The appearances will be open to the public, except as may be required for the protection of confidential matters.

A copy of the Notice of Hearing is available on the MFDA 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 149 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 Amends Notice of Hearing in the Matter of Hill & Crawford Investment Management Group Ltd. and Albert R. Hill

NEWS RELEASE
For immediate release

MFDA AMENDS NOTICE OF HEARING IN THE MATTER OF HILL & CRAWFORD INVESTMENT MANAGEMENT GROUP LTD. AND ALBERT R. HILL

June 1, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced disciplinary proceedings in respect of Hill and Crawford Investment Management Group Ltd. and Albert Rodney Hill by Notice of Hearing dated December 31, 2008.

On May 14, 2009, Staff of the MFDA brought a motion seeking leave from the Hearing Panel to amend the Notice of Hearing to incorporate new facts concerning alleged contraventions of MFDA Rules by the Respondents that came to Staff's attention after the Notice of Hearing was issued. The Hearing Panel granted the relief sought by Order dated May 15, 2009.

The hearing of this matter on its merits is scheduled for June 9-10, 2009. The hearing will be open to the public, except as may be required for the protection of confidential matters, and will take place in the hearing room located at 121 King St. West, Suite 1000, Toronto, Ontario, commencing at 10:00 a.m. (Eastern) or as soon thereafter as the hearing can be held.

Copies of the Hearing Panel's Order dated May 15, 2009 and the Amended Notice of Hearing are 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 149 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

13.1.6 MFDA Issues Notice of Hearing Regarding David W. Irwin

NEWS RELEASE
For immediate release

MFDA ISSUES NOTICE OF HEARING REGARDING DAVID W. IRWIN

June 2, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") today announced that it has commenced disciplinary proceedings against David William John Irwin (the "Respondent").

MFDA Staff alleges in its Notice of Hearing that the Respondent engaged in the following conduct contrary to the By-laws, Rules or Policies of the MFDA:

Allegation #1: In or about June 2004, the Respondent engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by recommending, selling or facilitating the sale of Lighthouse Pointe Limited Partnership units ("Lighthouse LPs") to 24 clients, contrary to MFDA Rule 1.1.1.

Allegation #2: In or about June 2004, the Respondent engaged in another gainful occupation, which was not properly disclosed to and approved by the Member, by recommending, selling or facilitating the sale of Lighthouse LPs to 24 clients, contrary to MFDA Rule 1.2.1(d).

Allegation #3: In or about June 2004, the Respondent recommended, sold or facilitated the sale of Lighthouse LPs to 24 clients without ensuring that:

(a) the clients qualified as accredited investors in accordance with Ontario Securities Commission Rule 45-501 and subsequently National Instrument 45-106, thereby engaging the jurisdiction of the Hearing Panel to impose a penalty on the Respondent pursuant to s. 24.1.1(h) of MFDA By-law No. 1; and

(b) the investments were suitable for the clients and in keeping with their investment objectives, contrary to MFDA Rule 2.2.1.

Allegation #4: Between June 2004 and September 2005, the Respondent failed to comply with the Member's policies and procedures with respect to securities related business, referral arrangements and the disclosure and approval of outside business activities, contrary to MFDA Rules 1.1.2 and 2.5.1, and MFDA Rule 2.1.1.

The first appearance in this matter will take place by teleconference before a Hearing Panel of the MFDA's Central Regional Council in the Hearing Room located at the offices of the MFDA, 121 King Street West, Suite 1000, Toronto, Ontario on September 2, 2009 at 10:00 a.m. (Eastern), or as soon thereafter as the appearance can be held.

The purpose of the first appearance is to schedule the date for the commencement of the hearing on its merits and to address any other procedural matters. The first appearance is open to the public, except as may be required for the protection of confidential matters. Members of the public attending the first appearance will be able to listen to the proceeding by teleconference.

A copy of the Notice of Hearing is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 149 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

13.1.7 MFDA Sets Date for Bruce P. Schriver Hearing in Halifax, Nova Scotia

NEWS RELEASE
For immediate release

MFDA SETS DATE FOR
BRUCE P. SCHRIVER HEARING
IN HALIFAX, NOVA SCOTIA

June 2, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of Bruce Patrick Schriver by Notices of Hearing dated March 12, 2009 and May 19, 2009.

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

The hearing of this matter on its merits has been scheduled to take place at a venue to be announced in Halifax, Nova Scotia on October 6-8, 2009 commencing at 10:00 a.m. (Atlantic) or as soon thereafter as the hearing can be held. The hearing will be open to the public, except as may be required for the protection of confidential matters.

A copy of the Notice of Hearing is available on the MFDA 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 149 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

13.1.8 CDS Rule Amendment Notice – Technical Amendments to CDS Procedures Relating to ATON Participant Procedures

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

ATON PARTICIPANT PROCEDURES

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE CDS PROCEDURE AMENDMENT

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

This procedure amendment is designed to improve the CDS ATON service and processes. CDS has been requested to make changes to the CDS ATON service to add two new fields to CDS 3270 screens, ATON reports and Interlink messages to allow for additional transfer of account details to be reported.

These two new fields will provide additional details for users to identify transfers that require tax reporting information that needs to be sent to the Canada Revenue Agency "CRA". Additionally the fields will allow users to identify transfer of accounts for marriage breakdown, new versus old Ontario LIF account transfers, restricted and normal transfers, therefore allowing for better reconciliation, primarily for any tax reporting a user may have to make to the CRA on behalf of the client.

The first of the two new fields "Marriage Breakdown" will allow users to identify if the transfer of account is a regular transfer of account or if the transfer is as a result of Marriage Breakdown. When the user defines a Request for Transfer "RFT" as related to a Marriage Breakdown the resulting CDSX trades will be created as Marriage Breakdown 'MB' trade type, and not the current Account Transfer 'AT' trade type ATON activity not identified as marriage breakdown will continue to be reported as 'AT' trades.

The second field "Trans Subtype" will allow the user to identify additional details related to the transfer of account. Values that can be used will identify if the transfer is a normal transfer, a restricted transfer, a new Ontario Life Income Fund "LIF" transfer or an old Ontario Life in Income Fund transfer.

In order to allow participants and Service Bureaus sufficient time to make the appropriate changes to their systems, the use of these two new fields will be phased in. To start, it will not be mandatory for users to populate these new fields however a user can use the new fields if they choose to. The Transaction Subtype field will be defaulted to blank, or populated at the user's option with any of the new applicable values. The Marriage Breakdown field will be defaulted to N, or if a user decides to use the new field can be updated with a Y to indicate the transfer is for Marriage Breakdown.

At a future date, when advised by the SDRC Tax Committee overseeing these changes, the fields will become mandatory and all system edits will apply.

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

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

Description of Proposed Amendments

ATON Participant Procedures
Ch 3: Request for transfer (receiver procedures)
- s 3.1 Entering RFTs
- s 3.1.1 Approving a draft
- s 3.2 Inquiring on RFTs

Ch 4 Request for transfer (deliverer procedures), s 4.4 Entering residual RFTs
Ch 6 Field values, s 6.1 RFT screens
CDS Procedure Amendments are reviewed and approved by CDS's Strategic Development Review Committee ("SDRC"). The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by

participants and CDS. The SRDC's membership includes representatives from the CDS Participant community and it meets on a monthly basis.

These amendments were reviewed and approved by the SDRC on April 30, 2009

B. REASONS FOR TECHNICAL CLASSIFICATION

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

C. EFFECTIVE DATE OF THE CDS PROCEDURE AMENDMENT

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

D. QUESTIONS

Questions regarding this notice may be directed to:

Aaron Ferguson
Senior Product Manager, Product Support
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

Telephone: 416-945-8977
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