The Ontario Securities Commission

OSC Bulletin

August 7, 2009

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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

AUGUST 7, 2009

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
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20 Queen Street West
Toronto, Ontario
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Paulette L. Kennedy	—	PLK
David L. Knight, FCA	—	DLK
Patrick J. LeSage	—	PJL
Carol S. Perry	—	CSP

SCHEDULED OSC HEARINGS

August 10, 2009 1:00 P.M. August 11-14, August 21, 2009 9:00 a.m. August 17, 2009 1:00 p.m.	**Shane Suman and Monie Rahman** s. 127 and 127(1) C. Price in attendance for Staff Panel: JEAT/PLK
August 10, 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: JEAT
August 18, 2009 2:30 p.m.	**Paul Iannicca** s. 127 H. Craig in attendance for Staff Panel: LER
August 18, 2009 2:30 p.m.	**Tulsiani Investments Inc. and Sunil Tulsiani** s. 127 A.Sonnen in attendance for Staff Panel: JEAT
August 18, 2009 3:30 p.m.	**Prosporex Investments Inc., Prosporex Forex SPV Trust, Anthony Diamond, Diamond+Diamond, and Diamond+Diamond Merchant Banking Bank** s. 127 H. Daley in attendance for Staff Panel: MGC/CSP

August 19, 2009 10:00 a.m.	**Lehman Cohort Global Group Inc., Anton Schnedl, Richard Unzer, Alexander Grundmann and Henry Hehlsinger** s. 127 H. Craig in attendance for Staff Panel: CSP
August 19, 2009 11:00 a.m.	**Andrew Keith Lech** s. 127(10) J. Feasby in attendance for Staff Panel: MGC/CSP
August 20, 2009 10:00 a.m.	**Gold-Quest International, Health and Harmoney, Iain Buchanan and Lisa Buchanan** s. 127 H. Craig in attendance for Staff Panel: CSP
August 20, 2009 10:00 a.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: CSP
August 24, 2009 9:00 a.m.	**Goldbridge Financial Inc., Wesley Wayne Weber and Shawn C. Lesperance** s. 127 J. Feasby in attendance for Staff Panel: TBA
August 31, 2009 10:00 a.m.	**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
September 1, 2009 2:30 p.m.	**Teodosio Vincent Pangia** s. 127 J. Feasby in attendance for Staff Panel: TBA
September 1, 2009 3:00 p.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: TBA
September 3, 4, and 9, 2009 9:30 a.m.	**MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric** s. 127 and 127(1)
September 8, 2009 10:00 a.m.	D. Ferris in attendance for Staff Panel: PJL/CSP
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 8-11, 2009 10:00 a.m.	**Imagin Diagnostic Centres Inc., Patrick J. Rooney, Cynthia Jordan, Allan McCaffrey, Michael Shumacher, Christopher Smith, Melvyn Harris and Michael Zelyony** s. 127 and 127.1 J. Feasby in attendance for Staff Panel: MGC/MCH
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: TBA
September 10, 2009 10:00 a.m.	**Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman** s. 127(7) and 127(8) M. Boswell in attendance for Staff Panel: DLK
September 10, 2009 10:30 a.m.	**Abel Da Silva** s. 127 M. Boswell in attendance for Staff Panel: DLK
September 11, 2009 10:00 a.m.	**M P Global Financial Ltd., and Joe Feng Deng** s. 127 (1) M. Britton in attendance for Staff Panel: JEAT
September 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
September 21-28, September 30 – October 2, 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: TBA
September 29, 2009 2:30 p.m.	**Adrian Samuel Leemhuis, Future Growth Group Inc., Future Growth Fund Limited, Future Growth Global Fund limited, Future Growth Market Neutral Fund Limited, Future Growth World Fund and ASL Direct Inc.** s. 127(5) K. Daniels/A. Sonnen in attendance for Staff Panel: TBA
September 29, 2009 2:30 p.m.	**Paladin Capital Markets Inc., John David Culp and Claudio Fernando Maya** s. 127 C. Price 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 6, 2009 2:30 p.m.	**Nest Acquisitions and Mergers and Caroline Frayssignes** s. 127(1) and 127(8) C. Price in attendance for Staff Panel: TBA
October 6, 2009 2:30 p.m.	**IMG International Inc., Investors Marketing Group International Inc., and Michael Smith** s. 127 C. Price in attendance for Staff Panel: TBA
October 8, 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
October 8, 2009 10:00 a.m.	**Global Energy Group, Ltd. and New Gold Limited Partnerships** s. 127 H. Craig in attendance for Staff Panel: DLK
October 14, 2009 10:00 a.m.	**Axcess Automation LLC, Axcess Management, LLC, Axcess Fund, L.P., Gordon Alan Driver and David Rutledge** s. 127 M. Adams 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
November 24, 2009 2:30 p.m.	**W.J.N. Holdings Inc., MSI Canada Inc., 360 Degree Financial Services Inc., Dominion Investments Club Inc., Leveragepro Inc., Prosporex Investment Club Inc., Prosporex Investments Inc., Prosporex ltd., Prosporex Inc., Networth Financial Group Inc., Networth Marketing Solutions, Dominion Royal Credit Union, Dominion Royal Financial Inc., Wilton John Neale, Ezra Douse, Albert James, Elnonieth "Noni" James, David Whitely, Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Trudy Huynh, Dorlan Francis, Vincent Arthur, Christian Yeboah, Azucena Garcia and Angela Curry** s. 127 H. Daley in attendance for Staff Panel: TBA
November 30, 2009 2:00 p.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
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
February 5, 2010 10:00 a.m.	**Hillcorp International Services, Hillcorp Wealth Management, Suncorp Holdings, 1621852 Ontario Limited, Steven John Hill, John C. McArthur, Daryl Renneberg and Danny De Melo** s. 127 A. Clark 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	**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: TBA

TBA

Gregory Galanis

s. 127

P. Foy in attendance for Staff

Panel: TBA

TBA

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

s. 127

C. Price in attendance for Staff

Panel: TBA

TBA

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: TBA

TBA

Global Partners Capital, Asia Pacific Energy Inc., 1666475 Ontario Inc. operating as "Asian Pacific Energy", Alex Pidgeon, Kit Ching Pan also known as Christine Pan, Hau Wai Cheung, also known as Peter Cheung, Tony Cheung, Mike Davidson, or Peter McDonald, Gurdip Singh Gahunia also known as Michael Gahunia or Shawn Miller, Basis Marcellinius Toussaint also known as Peter Beckford, and Rafique Jiwani also known as Ralph Jay

s. 127

M. Boswell in attendance for Staff

Panel: TBA

TBA

FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun

s. 127

A. Sonnen in attendance for Staff

Panel: TBA

TBA.

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

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

ADJOURNED SINE DIE

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

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 CSA Staff Notice 31-312 – The Exempt Market Dealer Category under NI 31-103 Registration Requirements and Exemptions

CSA STAFF NOTICE 31-312

THE EXEMPT MARKET DEALER CATEGORY
UNDER NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS AND EXEMPTIONS

National Instrument 31-103 *Registration Requirements and Exemptions* (**NI 31-103**) expands the requirement to register to include exempt market dealers (**EMDs**). In Ontario and in Newfoundland and Labrador, the EMD category replaces the category of limited market dealer (**LMD**). In all other jurisdictions, this is a new category of registration. NI 31-103 is expected to come into force on September 28, 2009 (the **Implementation Date**).

This notice summarizes the key requirements and transition process for the new EMD category. The information contained in this notice is applicable to: 1) LMDs registered under the existing registration regime in Ontario and Newfoundland and Labrador, 2) firms trading in reliance on the registration exemptions in National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**) prior to the Implementation Date in jurisdictions other than Ontario and Newfoundland and Labrador, and 3) EMDs seeking registration after the Implementation Date under the new registration regime set out under NI 31-103. This notice is not intended to be a substitute for reading NI 31-103, which was published on July 17, 2009. We encourage you to read NI 31-103 thoroughly and to seek legal advice when necessary.

1. Key requirements for EMDs under NI 31-103

a) Requirement to register as an EMD

Under NI 31-103, a business trigger replaces the trade trigger for registration. A person or company *in the business of* trading or holding themselves out as being in the business of trading will be required to register, unless an exemption applies. The business trigger is explained in more detail in section 1.3 of the Companion Policy to NI 31-103.

Individuals

The categories of registration for individuals are set out in Part 2 of NI 31-103. The relevant categories of registration for individuals acting on behalf of an EMD are dealing representative, ultimate designated person and chief compliance officer.

Firms

The categories of registration for firms are set out in Part 7 of NI 31-103. The EMD category restricts an individual or firm to acting as a dealer in the "exempt market". Specifically, a firm registered as an EMD is permitted to engage in the following activities set out under paragraph 7.1(2)(d):

(i) act as a dealer by trading a security that is distributed under an exemption from the prospectus requirement, whether or not a prospectus was filed in respect of the distribution

(ii) act as a dealer by trading a security that, if the trade were a distribution, would be exempt from the prospectus requirement

(iii) receive an order from a client to sell a security that was acquired by the client in a circumstance described in subparagraph (i) or (ii), and may act or solicit in furtherance of receiving such an order, and

(iv) act as an underwriter in respect of a distribution of securities that is made under an exemption from the prospectus requirement

Exemptions

Currently, most of the dealer registration exemptions are located in NI 45-106. As of March 28, 2010, the registration exemptions in NI 45-106 will no longer be available. All registration exemptions will be set out in Part 8 of NI 31-103, or in local rules or blanket orders. See CSA Notice *Notice of Repeal and Replacement of National Instrument 45-106 Prospectus and Registration Exemptions and Related Forms and Companion Policy* published on July 17, 2009 for more information.

The securities regulators in Alberta, British Columbia, Manitoba, the Northwest Territories, Nunavut and the Yukon Territory (the **Northwestern jurisdictions**) intend to issue local orders exempting individuals and firms from the dealer registration requirement when they trade in securities in certain circumstances (the **Northwestern exemption orders**). These orders will be

issued when the registration exemptions in NI 45-106 expire on March 27, 2010. They will exempt from registration persons or companies who trade in securities distributed under one or more of the following prospectus exemptions (the **capital raising exemptions**) set out in NI 45-106:

- Section 2.3 - accredited investor
- Section 2.5 - family, friends and business associates
- Section 2.9 - offering memorandum
- Section 2.10 - minimum $150,000 purchase of a security in one transaction

The Northwestern exemption orders will contain a number of conditions that restrict the availability of the exemption. If an individual or firm does not meet any of the following conditions, it must register as an EMD. An individual or firm must:

- not be registered in any category of registration in any jurisdiction
- not provide suitability advice about the trade to the purchaser
- except in British Columbia, not otherwise provide financial services to the purchaser
- not hold or have access to the purchaser's assets
- provide risk disclosure in the prescribed form to the purchaser, and
- file an information report with the securities regulatory authority

For more information on the Northwestern exemption orders:

- British Columbia: British Columbia published its local order and a companion policy along with advance notice of NI 31-103. Please refer to BC Notice 2009/12 *Advance Notice of National Instrument 31-103 Registration Requirements and Exemptions*.
- For all other Northwestern jurisdictions: Please refer to Appendix D of the Notice to NI 31-103 or contact CSA staff.

Saskatchewan is considering whether it will adopt this exemption and will release a separate notice when it has made its decision.

b) Transition provisions

Part 16 of NI 31-103 contains a number of transition provisions for EMDs and individual representatives of EMDs. These transition provisions apply only to firms that are: 1) registered as LMDs in Ontario or in Newfoundland or Labrador, or 2) trade in reliance on the registration exemptions in NI 45-106 on the Implementation Date in all other jurisdictions. You can find more detailed information about transition timelines in Appendix B of CSA Staff Notice 31-311 *Proposed NI 31-103 Registration Requirements and Exemptions – Transition into the new registration regime* published on June 12, 2009.

Market participants in Ontario and Newfoundland and Labrador

Under the existing registration regime, a firm that acts as a dealer in the exempt market in Ontario or in Newfoundland and Labrador must register as an LMD. Section 16.3 of NI 31-103 provides that firms that are registered as LMDs on the Implementation Date will be automatically registered in the new EMD category. For firms that intend to start acting as a dealer in the exempt market *after the Implementation Date*, the firm must register as an EMD before carrying on business (i.e. no transition period is available).

Market participants in all other jurisdictions

Under the existing registration regime, a firm that acts as a dealer in the exempt market in jurisdictions other than Ontario and Newfoundland and Labrador may rely on the various registration exemptions in NI 45-106. Section 16.7 of NI 31-103 provides a one year transition period for EMDs active prior to the Implementation Date to apply for registration unless an exemption is available. Accordingly, under NI 31-103, a firm acting as a dealer in the exempt market prior to the Implementation Date must either comply with the conditions of the Northwestern exemption orders (as described above) when the NI 45-106 exemptions expire on March 27, 2010, or apply for registration as an EMD on or before September 28, 2010.

Firms that start acting as a dealer in the exempt market in jurisdictions other than Ontario and Newfoundland and Labrador after the Implementation Date should consider whether they will have to register as an EMD when the NI 45-106 exemptions expire on March 27, 2010. As of March 28, 2010, if such a firm cannot rely on the Northwestern exemption orders (as described above), it must cease operations until it becomes registered as an EMD.

Note: To the extent that a firm is required to register as an EMD before carrying on business, the firm must be able to demonstrate that it meets all of the requirements in NI 31-103 that apply to EMDs at the time of application for registration.

c) Proficiency, financial and operational requirements

Under NI 31-103, EMDs are subject to proficiency, financial, operational and client relationship requirements. The table below summarizes the key requirements and any applicable transition information. References to transition periods are from the Implementation Date. All section references are to NI 31-103.

Proficiency requirements	**Reference**	**Transition**	**Reference**
Exempt market dealer – dealing representative An individual must: 1) pass the Canadian Securities Course Exam 2) pass the Exempt Market Products Exam, or 3) satisfy the proficiency requirements of an advising representative of a portfolio manager	3.9	Individuals who are registered in ON or NL as a dealing representative of an EMD on September 28, 2009 must satisfy the proficiency requirements within one year.	16.10(3)
Exempt market dealer – chief compliance officer An individual must: 1) pass the PDO Exam (the Officers', Partners' and Directors' Exam or the Partners, Directors and Senior Officers Course Exam) and either the Canadian Securities Course Exam or Exempt Market Products Exam, or 2) satisfy the proficiency requirements of a chief compliance officer of a portfolio manager	3.10	All registered firms must apply for the registration of a chief compliance officer through the National Registration Database (**NRD**) within three months. If an individual applies to be registered as the chief compliance officer of an EMD in ON or NL within three months of September 28, 2009, the individual has one year to satisfy the proficiency requirements.	16.9(1) 16.9(4)
Financial requirements	**Reference**	**Transition**	**Reference**
Working capital The minimum capital is $50,000 for a registered dealer.	12.1-12.2	Sections 12.1 [*capital requirements*] and 12.2 [*notifying the regulator of a subordination agreement*] do not apply for one year to existing LMDs in ON or NL who convert to the category of EMD.	16.3(4)

Insurance A registered dealer must maintain bonding or insurance that: 1. Contains the required bonding and insurance clauses set out in Appendix A [*bonding and insurance clauses*] and in the highest of the following amounts for each clause: (a) $50,000 per employee, agent and dealing representative or $200,000, whichever is less (b) one per cent of the total client assets that the dealer holds or has access to, as calculated using the dealer's most recent financial records, or $25,000,000, whichever is less (c) one per cent of the dealer's total assets, as calculated using the dealer's most recent financial records, or $25,000,000, whichever is less, or (d) the amount determined to be appropriate by a resolution of the dealer's board of directors, or individuals acting in a similar capacity for the firm 2. Provides for a double aggregate limit or a full reinstatement of coverage	12.3-12.7	Sections 12.3 [*insurance – dealer*] and 12.7 [*notifying the regulator of a change, claim or cancellation*] do not apply for six months to existing LMDs in ON and NL who convert to the category of EMD.	16.3(5)
Audits A registered firm must direct its auditor in writing to conduct any audit or review required by the regulator during its registration and must submit a copy of the direction to the regulator.	12.8-12.9	No transition period.	n/a
Financial reporting A registered dealer must deliver the following no later than the 90th day after the end of its financial year: 1. Its annual audited financial statements for the financial year 2. A completed Form 31-103F1 *Calculation of Excess Working Capital*	12.10-12.14	No transition period.	n/a
Operational requirements	**Reference**	**Transition**	**Reference**
Compliance	11.1-11.4		
• **Compliance system.** Registered firms must establish, maintain and apply policies and procedures that establish a system of controls and supervision.	11.1	No transition period.	n/a
• **Designating an ultimate designated person.** Registered firms must designate an ultimate designated person, who must fulfil specific responsibilities.	11.2 5.1	All registered firms must apply for the registration of an ultimate designated person through NRD within three months.	16.8 16.9(1)
• **Designating a chief compliance officer.** Registered firms must designate a chief compliance officer, who must fulfil specific responsibilities. Proficiency requirements apply.	11.3 5.2 3.10	All registered firms must apply for the registration of a chief compliance officer through NRD within three months.	

Books and records Registered firms must maintain records.	11.5-11.6	No transition period.	n/a
Certain business transactions Registered firms must not engage in tied settling of securities transactions or tied selling. Registrants must give notice if they acquire a registered firm's securities or assets. Registered firms must also give notice if its securities are acquired.	11.7-11.10	No transition period.	n/a
Client relationship requirements	**Reference**	**Transition**	**Reference**
Know your client and suitability Registrants must comply with certain know your client and suitability obligations.	13.1-13.3	No transition period.	n/a
Conflicts of interest Registered firms must have certain polices and procedures to handle conflicts of interest.	13.4-13.6	No transition period.	n/a
Referral arrangements Registrants may participate in a referral arrangement under certain conditions.	13.7-13.11	Division 3 [*referral arrangements*] of Part 13 does not apply for six months to a person or company that is a registrant on September 28, 2009.	16.15
Loans and margin Registrants are restricted from lending to clients. Registrants must provide certain disclosure to clients when recommending the use of borrowed money.	13.12-13.13	No transition period.	n/a
Complaints Registered firms must have a system for handling complaints. Registered firms in Québec comply with sections 168.1.1 to 168.1.3 of the Québec *Securities Act*.	13.14-13.16	Section 13.16 [*dispute resolution service*] does not apply for two years to a person or company that is a registered firm on September 28, 2009. No transition period in Québec.	16.16
Disclosure to clients Registered firms must make certain disclosure to clients.	14.2-14.5	Section 14.2 [*relationship disclosure information*] does not apply for one year to a person or company that is a registrant on September 28, 2009.	16.14
Client assets A registered firm may only hold client assets as prescribed.	14.6-14.9	No transition period.	n/a
Client accounts A registered firm must provide certain disclosure when selling or assigning client accounts.	14.10-14.11	No transition period.	n/a
Account activity reporting A registered dealer must provide certain trade confirmations and client statements.	14.12-14.14	No transition period.	n/a

2. Frequently asked questions about transition

Q: What do LMDs have to do to become registered in the new EMD category?

A: LMDs will be converted to the new EMD category automatically. They do not have to make an application. However, all LMD firms registered in the new EMD category (including the individuals acting on behalf of it) must comply with the new requirements under NI 31-103 before the expiry of the transition periods.

Q: My firm is registered as an LMD in Ontario and/or Newfoundland and Labrador today but is also acting as an EMD in another jurisdiction of Canada (e.g. Québec). Will my firm automatically be registered in that other jurisdiction?

A: No. An LMD registered in Ontario and/or Newfoundland but operating in another jurisdiction is required to apply for registration in the other jurisdiction by September 28, 2010.

Q: My firm is registered as an LMD in Ontario and/or Newfoundland and Labrador today but is also acting as an EMD in the Northwestern jurisdictions. Can it rely on their local exemptions from dealer registration?

A: No. The Northwestern exemption orders are not available to registrants.

Q: My firm manages a private investment fund in the Northwestern jurisdictions. Can it avoid EMD registration by selling units only to accredited investors in the Northwestern jurisdictions?

A: No. If your firm is required under NI 31-103 to register as an investment fund manager, it must also register as an EMD to trade in units in that fund. The Northwestern exemptions are not available to registrants, even if all registerable activity is confined to those jurisdictions.

Q: I am registered as a representative of a firm that has been converted from the LMD category to the new EMD category. How do I notify the regulator that I have satisfied the proficiency requirements for a dealing representative or chief compliance officer of an EMD?

A: Your firm must notify the regulator through NRD. We will be requesting proof of successful completion of courses on a random basis.

Q: What if my firm or an individual acting on behalf of my firm is unable to meet the new requirements under NI 31-103 within the transition period?

A: Your firm or the individual acting on behalf or your firm should cease conducting registerable activities until the requirements are met. Notify the regulator immediately.

Questions

Please refer your questions to any of the following CSA staff:

Alberta

David McKellar
Director, Market Regulation
Alberta Securities Commission
Tel: 403-297-4281
david.mckellar@asc.ca

British Columbia

Karin R. Armstrong
Registration Supervisor
British Columbia Securities Commission
Tel: 604-899-6692
Toll free: 1-800-373-6393
karmstrong@bcsc.bc.ca

Manitoba

Isilda Tavares
Registration Officer, Deputy Director
Manitoba Securities Commission
Tel: 204-945-2560
isilda.tavares@gov.mb.ca

New Brunswick

Kevin Hoyt
Director, Regulatory Affairs & Chief Financial Officer
New Brunswick Securities Commission
Tel: 506-643-7691
kevin.hoyt@nbsc-cvmnb.ca

Newfoundland & Labrador

Craig Whalen
Manager of Licensing, Registration and Compliance
Financial Services Regulation Division
Securities Commission of Newfoundland and Labrador
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cwhalen@gov.nl.ca

Northwest Territories

Donn MacDougall
Deputy Superintendent of Securities, Legal & Enforcement
Department of Justice
Government of the Northwest Territories
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Nova Scotia

Brian W. Murphy
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Nova Scotia Securities Commission
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Yan Kiu Chan
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Ontario Securities Commission
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ychan@osc.gov.on.ca

Prince Edward Island

Katharine Tummon
Superintendent of Securities
Prince Edward Island Securities Office
Tel: 902-368-4542
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Québec

Sophie Jean
Conseillère en réglementation
Service de la réglementation et des pratiques professionnelles et commerciales
Autorité des marchés financiers
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Saskatchewan

Dean Murrison
Deputy Director, Legal/Registration
Saskatchewan Financial Services Commission
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dean.murrison@gov.sk.ca

Yukon

Fred Pretorius
Superintendent of Securities
Government of Yukon
Tel: 876-667-5225
fred.pretorius@gov.yk.ca

August 7, 2009

1.1.3 Notice of Correction – NI 31-103 Registration Requirements and Exemptions (July 17, 2009, Supplement 2) – Appendix A of CSA Notice

There is an error in Appendix A of CSA Notice – Notice of National Instrument 31-103 *Registration Requirements and Exemptions*, published in the OSC Bulletin, Volume 32, Issue 29, Supplement 2 on July 17, 2009.

On page 23, under the heading "Representatives of EMDs", it reads:

> We received several comments on the requirement that EMD representatives pass the Canadian Securities Course (CSC) examination. We have added the IFSE Institute *Exempt Market Products Exam* as an alternative to the CSC examination for these representatives, with an extended transition period of 24 months' for passing either of these examinations. We will assess new examinations submitted to us for approval and will amend the Rule if and when we approve new examinations.

The transition period is 12 months; the paragraph should read:

> We received several comments on the requirement that EMD representatives pass the Canadian Securities Course (CSC) examination. We have added the IFSE Institute *Exempt Market Products Exam* as an alternative to the CSC examination for these representatives, with an extended transition period of 12 months' for passing either of these examinations. We will assess new examinations submitted to us for approval and will amend the Rule if and when we approve new examinations.

1.2 Notices of Hearing

1.2.1 Hillcorp International Services 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
HILLCORP INTERNATIONAL SERVICES,
HILLCORP WEALTH MANAGEMENT,
SUNCORP HOLDINGS,
1621852 ONTARIO LIMITED,
STEVEN JOHN HILL, JOHN C. MCARTHUR,
DARYL RENNEBERG AND DANNY DE MELO

AMENDED NOTICE OF HEARING
Sections 127(7) & 127(8)

WHEREAS the Ontario Securities Commission (the "Commission") issued a temporary cease trade order on July 21, 2009 (the "Temporary Order") and an amended temporary cease trade order on July 24, 2009 (the Amended 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 the following:

1. that all trading in any securities by Hillcorp International Services ("Hillcorp International"), Hillcorp Wealth Management ("Hillcorp Wealth"), Suncorp Holdings and 1621852 Ontario Limited ("162 Limited") or their agents or employees shall cease;

2. that all trading in securities by Steven John Hill ("Hill"), John C. McArthur ("McArthur"), Daryl Renneberg ("Renneberg") and Danny De Melo ("De Melo") shall cease;

3. that the exemptions contained in Ontario securities law do not apply to Hillcorp International, Hillcorp Wealth, Suncorp Holdings and 162 Limited or their agents or employees; and

4. that the exemptions contained in Ontario securities law do not apply to Hill, McArthur, Renneberg and De Melo.

TAKE NOTICE THAT the Commission will hold a hearing pursuant to subsections 127(7) and 127(8) of the Act at the offices of the Commission, 17th Floor, 20 Queen Street West, Toronto, commencing on August 5, 2009 at 11:00 am 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 Amended Order pursuant to subsections 127(7) and 127(8) of the Act until the conclusion of the hearing or until such further time as considered necessary by the Commision; and

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

BY REASON OF the facts recited in the Temporary Order and the Amended 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 proceeding may be represented by counsel at the hearing;

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

Dated at Toronto this 24th day of July, 2009

"Daisy Aranha"
per: John Stevenson
Secretary

1.3 News Releases

1.3.1 OSC Cautions Investors about the International Organization of Securities Commission

FOR IMMEDIATE RELEASE
July 31, 2009

OSC CAUTIONS INVESTORS ABOUT THE INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSION

TORONTO – The Ontario Securities Commission (OSC) cautions investors about an organization called the International Organization of Securities Commission (IOSC), which is not to be confused with the International Organization of Securities Commissions (IOSCO) or the Organisation internationale des commissions de valeurs (OICV).

The IOSC website, which may no longer be active as a result of action by securities regulators, used the logos and shields of U.S. agencies, such as the United States Department of Justice and the Federal Trade Commission, without the authorization of those agencies. IOSC stated that it is a securities regulator operating in the U.S. for the benefit of U.S. citizens, which is false.

The IOSC website appears to have been part of a scheme that solicits investors who own shares that have decreased dramatically in value. In this type of scheme, called an "advance fee scheme", the perpetrators generally claim they can redeem or exchange the worthless shares at an attractive price if the investors pay a fee up front, the "advance fee". As soon as the fees have been paid, the perpetrators of the scheme disappear.

To appear to be legitimate, the IOSC site featured a section on regulatory matters that claimed to be U.S. legislation, but which contained excerpts from Canadian policies and regulations that have been changed to look like U.S. law. The section on exemptions contained names that are identical or similar to Canadian companies that have no association whatsoever with IOSC.

The OSC is working with other IOSCO members to determine whether Canadians have been solicited by IOSC representatives. Members of the public who have information about IOSC are urged to contact the OSC Inquiries and Contact Centre.

The OSC reminds investors that they should be very cautious when a firm offers to buy shares from them, but request a fee up front before doing so.

For further information, read the Investment Fraud Checklist and the Protect your Money brochure, both available on the OSC website. If you believe you have been approached by a scam artist, contact the OSC Inquiries and Contact Centre at 1 877-785-1555.

The Ontario Securities Commission administers and enforces securities legislation in the province of Ontario. The OSC's statutory mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

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

Laurie Gillett
Manager, Public Affairs
416-595-8913

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

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

1.4 Notices from the Office of the Secretary

1.4.1 Euston Capital Corp. and George Schwartz

FOR IMMEDIATE RELEASE
July 30, 2009

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

AND

IN THE MATTER OF
EUSTON CAPITAL CORP. AND
GEORGE SCHWARTZ

TORONTO – Following a hearing held on March 19, 2009 and April 1, 2009, the Commission issued its Reasons and Decision in the above noted matter.

A copy of the Reasons and Decision dated July 29, 2009 and an Order dated July 29, 2009 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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& Public Affairs
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Laurie Gillett
Manager, Public Affairs
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1-877-785-1555 (Toll Free)

1.4.2 Goldbridge Financial Inc. et al.

FOR IMMEDIATE RELEASE
July 29, 2009

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

AND

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

TORONTO – The Commission issued an Order today which provides that the October Order is continued until the completion of the Hearing on the Merits or until further order of the Commission and that this matter shall be adjourned to August 24, 2009, at 9:00 a.m.

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

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1-877-785-1555 (Toll Free)

1.4.3 Lyndz Pharmaceuticals Inc. et al.

FOR IMMEDIATE RELEASE
July 29, 2009

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

AND

IN THE MATTER OF
LYNDZ PHARMACEUTICALS INC.,
LYNDZ PHARMA LTD., JAMES MARKETING LTD.,
MICHAEL EATCH AND RICKEY MCKENZIE

TORONTO – Following a hearing held today, the Commission issued an Order which provides that (1) pursuant to s. 127(8) of the Act, the Temporary Order is continued to September 2, 2009 or until further order of the Commission; and (2) this matter is adjourned to September 1, 2009 at 3:00 p.m.

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

OFFICE OF THE SECRETARY
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For investor inquiries: OSC Contact Centre
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1-877-785-1555 (Toll Free)

1.4.4 Hillcorp International Services et al.

FOR IMMEDIATE RELEASE
July 30, 2009

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

AND

IN THE MATTER OF
HILLCORP INTERNATIONAL SERVICES,
HILLCORP WEALTH MANAGEMENT,
SUNCORP HOLDINGS,
1621852 ONTARIO LIMITED,
STEVEN JOHN HILL, JOHN C. MCARTHUR,
DARYL RENNEBERG AND DANNY DE MELO

TORONTO – The Office of the Secretary issued an Amended Notice of Hearing on July 24, 2009 setting the matter down to be heard on August 5, 2009 at 11:00 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 Amended Notice of Hearing dated July 24, 2009 and Amended Temporary Order dated July 24, 2009 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Scotia Securities Inc. and Scotia Mortgage Income Fund

Headnote

National Policy 11-203 – Process for Exemptive Relief Application in Multiple Jurisdictions – Mortgage fund granted relief from subsections 2.3(b) and (c) of NI 81-102 provided fund complies National Policy Statement 29 (NP29), other than (i)requirement to invest in mortgages with a loan-to-value ratios up to 75% unless mortgage insured or guaranteed (75% LTV Requirement) and (ii) prohibition on holding mortgages in which related parties of the fund have an interest as mortgagor – Fund unable to rely on section 20.4 of NI 81-102 due to exemption sought from NP29 – Restriction on loan-to-value ratios in NP 29 was intended to mirror requirements in the Bank Act (Canada) – Bank Act and Trust and Loan Companies Act (Canada) amended in 2007 to permit Banks and trust companies to grant mortgages with loan-to-value ratio up to 80% without requiring insurance or guarantee – mortgages selected for investment by fund solely on pre-determined criteria including yield and term provided by portfolio manager to Scotia Mortgage Corp. (SMC) – Neither SMC nor fund's portfolio knows any details of mortgagors, including name and employment information at time of purchase – manual process to exclude related party mortgages from consideration is time-consuming and expensive – fund's independent review committee must approve policies and procedures create to deal with related party mortgages held by the fund – relief from 75% LTV requirement terminates if mortgage provisions in the Bank Act or Trust and Loan Companies Act are further amended.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.3(b), 2.3(c), 19.1, 20.4.
National Policy Statement 29 Mutual Funds Investing in Mortgages, ss. III(2.1)(f), III(2.1)(i).
National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions.

July 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
SCOTIA SECURITIES INC. (SSI) AND
SCOTIA MORTGAGE INCOME FUND (the Fund)
(SSI and the Fund are collectively referred to herein as the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for an exemption, pursuant to section 19.1 of National Instrument 81-102 *Mutual Funds* (**NI 81-102**), from subsections 2.3(b) and (c) of NI 81-102, provided that the Fund complies with National Policy Statement 29 (**NP 29**) except for:

(a) the prohibition contained in paragraph III(2.1)(f) of NP 29, which prohibits a mutual fund from investing in mortgages an amount which is more than 75% of the fair market value of the property securing the mortgage, except under certain circumstances (the **75% LTV Requirement**), and

(b) the prohibition contained in paragraph III(2.1)(i) of NP 29, which prohibits a mutual fund from investing in mortgages on property in which

(i) any senior officer, director or trustee of the mutual fund, its management company or distribution company, or

(ii) any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company, or

(iii) any associate or affiliate of persons or institutions mentioned in subparagraphs (i) or (ii), except in the case of a mortgage on a single family dwelling for less than $75,000, has an interest as mortgagor

(the **Related Party Mortgages Prohibition**)

(the 75% LTV Requirement and the Related Party Mortgages Prohibition are collectively, the **Exemption Sought**).

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

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

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

Interpretation

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

Representations

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

1. SSI is a corporation governed under the laws of the province of Ontario and has its head office located in Toronto, Ontario.

2. SSI is the manager and trustee of the Fund.

3. The Fund is an open-end mutual fund established under the laws of the province of Ontario and is qualified for distribution in each of the provinces and territories of Canada under a simplified prospectus and annual information form dated November 3, 2008, as amended. The Fund is a reporting issuer under the securities legislation of each of the provinces and territories of Canada.

4. The Filers and the Funds are not in default of any requirements of applicable securities legislation.

5. SSI has appointed an independent review committee (**IRC**) for the Fund pursuant to National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**).

6. SSI has appointed Scotia Cassels Investment Counsel Limited (the **Portfolio Manager**) to provide portfolio management and investment advisory services to the Fund.

7. The Portfolio Manager of the Fund is a corporation governed by the laws of the province of Ontario and is registered as an investment counsel and portfolio manager in each of the provinces and territories of Canada.

8. The investment objective of the Fund is to provide regular interest income. It invests primarily in high quality mortgages on residential properties in Canada. These mortgages are:

   a) insured or guaranteed by Canadian federal or provincial governments, or their agencies, or

   b) conventional first mortgages with loan-to-value ratios (**LTV Ratio**) of no more than 75%, unless the excess is insured by an insurance company registered or licensed under federal or provincial legislation.

9. The Fund currently has relief (the **Existing Relief**) from section 4.2 of NI 81-102, and the Portfolio Manager has relief from section 118 of the Regulations to the *Securities Act* (Ontario), and comparable provisions in the securities legislation of the applicable Remaining Jurisdictions, to permit the Fund to purchase and sell mortgages to and from Scotia Mortgage Corporation (**SMC**), an affiliate of The Bank of Nova Scotia (**BNS**), and to and from BNS, and other affiliates. BNS is the ultimate parent company of SSI and SMC.

10. BNS has agreed to repurchase from the Fund any mortgage purchased from SMC, BNS or an affiliate, if the mortgage is in default or is not a valid first mortgage or is not in compliance with the LTV Ratio (the **BNS Guarantee**).

11. Subsections 2.3(b) and (c) of NI 81-102 prohibit a mutual fund from purchasing a mortgage, other than a guaranteed mortgage, and from purchasing a guaranteed mortgage if, immediately after the purchase, more than 10 percent of the net assets of the mutual fund, taken at market value at the time of the purchase, would consist of guaranteed mortgages.

12. Section 20.4 of NI 81-102 provides an exemption from subsections 2.3(b) and (c) to a mutual fund that has adopted fundamental investment objectives to permit it to invest in mortgages in accordance with NP 29 if, among other conditions, the mutual fund complies with NP 29.

Insurance of Mortgages over 75% LTV Ratio

13. Paragraph III(2.1)(f) of NP 29 prohibits a mutual fund from investing in mortgages an amount which is more than 75% of the fair market value of the property securing the mortgage, except when

a) such mortgage is insured under the *National Housing Act* (Canada) or any similar act of a province, or

b) the excess over 75% is insured by an insurance company registered or licensed under the *Canadian and British Insurance Companies Act* (Canada), the Foreign Insurance Companies Act (Canada) or insurance acts or similar acts of a Canadian province or territory.

14. BNS and SMC are the originators of the mortgages contained in the Fund. BNS, as a chartered bank, is subject to the provisions of the *Bank Act* (Canada) (the **Bank Act**) and SMC is subject to the *Trust and Loan Companies Act* (Canada) (the **TLC Act**).

15. When subsection III(2.1) of NP 29 was originally implemented, it mirrored the prohibition contained in the Bank Act against lending an amount in excess of 75% of the LTV Ratio of the property securing the mortgage, unless the excess was covered by insurance, as outlined in paragraph III(2.1)(f)(ii) of NP 29.

16. On April 20, 2007, each of the Bank Act and the TLC Act was amended to increase the LTV Ratio applicable to companies subject to the legislation from 75% to 80%. Subsection 418(1) of each of the Bank Act and the TLC Act now provides that a company subject to the legislation shall not make a loan in Canada on the security of residential property in Canada for the purpose of purchasing … that property …, if the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, would exceed 80 per cent of the value of the property at the time of the loan, except in respect of, among other things:

a) a loan made or guaranteed under the National Housing Act or any other Act of Parliament by or pursuant to which a different limit on the value of property on the security of which the bank may make a loan is established, or

b) a loan if repayment of the amount of the loan that exceeds the maximum amount set out in subsection (1) is guaranteed or insured by a government agency or a private insurer approved by the Superintendent [of Financial Institutions]…

(subsection 418(1) of the Bank Act and the TLC Act is, the **New LTV Ratio**).

17. Accordingly, pursuant to the amended Bank Act and the amended TLC Act, BNS and SMC are no longer required to obtain mortgage default insurance for properties that fall within the 75.01% to 80% loan-to-value range (**LTV Prohibited Mortgages**).

18. Absent the 75% LTV Requirement in NP 29, the Fund would be permitted to invest in the LTV Prohibited Mortgages, provided that such investments constitute a small percentage of the Fund, such that the Fund remains primarily invested in high quality mortgages on residential properties in Canada.

19. As the Fund currently acquires mortgages that are issued by either BNS or SMC, but is prohibited by the 75% LTV Requirement in NP 29 from acquiring any LTV Prohibited Mortgages, the Fund has had to monitor each of the BNS-originated and SMC-originated mortgages presented to it, in order to ensure compliance with NP 29.

20. The Fund uses a manual process to identify and exclude LTV Prohibited Mortgages. This process is time consuming and expensive.

21. In addition, in situations where there is a shortage of appropriate mortgages for the Fund's portfolio, eliminating the LTV Prohibited Mortgages from the available investment options may result in the Fund's potential investment options being limited in certain circumstances, to the detriment of the Fund.

22. The BNS Guarantee ensures that there is no increased risk of default to the Fund from holding LTV Prohibited Mortgages.

Investment in Related Party Mortgages

23. Paragraph III(2.1)(i) of NP 29 prohibits a mutual fund from investing in mortgages on a property in which:

a) any senior officer, director or trustee of the mutual fund, its management company or distribution company, or

b) any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company, or

c) any associate or affiliate of persons or institutions mentioned in subparagraphs (i) or (ii), except in the case of a mortgage on a single family dwelling for less than $75,000,

has an interest as mortgagor (**Related Party Mortgages**).

24. When the Portfolio Manager determines which mortgages to include in the Fund, it does so on the basis of identifying a pre-defined set of criteria

related to interest rate yield and duration. The Portfolio Manager provides these instructions to SMC and SMC randomly selects mortgages which meet these pre-defined criteria.

25. SMC does not know the name or employment position of the mortgagor(s) when it selects mortgages for presentation to the Portfolio Manager.

26. The name or employment position of the mortgagor is also unknown to the Portfolio Manager and SSI at the time the decision is made to include the mortgage in the portfolio and accordingly is not a factor in determining whether to include a particular mortgage in the Fund's portfolio.

27. Similarly, the holder of a mortgage which is selected by the Portfolio Manager for inclusion in the Fund's portfolio, does not know that the Fund has purchased their mortgage.

28. Accordingly, it is possible that a Related Party Mortgage could be presented to the Fund for inclusion in the portfolio without the knowledge of SMC, SSI, the Portfolio Manager or the mortgagor.

29. If such situation were to arise, absent relief from the Related Party Mortgages Prohibition, the Fund would be prohibited from purchasing Related Party Mortgages, pursuant to paragraph III(2.1)(i) of NP 29.

30. Investments by the Fund in Related Party Mortgages would only be made in accordance with the fundamental investment objective and investment strategies of the Fund.

31. Neither SSI nor the Portfolio Manager has any role in administering the mortgages purchased for the Fund, and the Fund is not the originator of any mortgages held in its portfolio. Accordingly, there is no financial or other benefit to a mortgagor if the Fund's portfolio holds a Related Party Mortgage.

32. SSI believes that it is in the best interests of the Fund for investments to be made in mortgages that conform to the yield and timeframe requirements of the Fund's investment objectives without consideration of the identity or employment position of the individual mortgagors.

33. The inclusion of LTV Prohibited Mortgages and Related Party Mortgages in the Fund's portfolio will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

34. The IRC of the Fund will consider the policies and procedures of the Fund and will provide its approval on whether the purchase of any Related Party Mortgage by the Fund achieves a fair and reasonable result for the Fund in accordance with subsection 5.2(2) of NI 81-107.

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 Fund's fundamental investment objectives permit the Fund to invest in mortgages in accordance with NP 29, and,

   (a) a National Instrument replacing NP 29 has not come into force;

   (b) the Fund complies with NP 29, except for the Exemption Sought;

2. with respect to the Exemption Sought:

   (a) the purchase or sale is consistent with, or is necessary to meet, the investment objectives of the Fund;

   (b) the IRC of the Fund has approved the transaction in accordance with subsection 5.2(2) of NI 81-107;

   (c) SSI, as manager of the Fund, complies with section 5.1 of NI 81-107;

   (d) SSI, as manager of the Fund, and the IRC of the Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC receives in connection with the transactions;

   (e) the Fund keeps the written records required by paragraph 6.1(2)(g) of NI 81-107, and

3. provided that this Decision, as it pertains to the Exemption Sought from the 75% LTV Requirement only, shall terminate if the New LTV Ratio in the Bank Act or the TLC Act is amended at any time.

"Rhonda Goldberg"
Manager, Investment Funds
Ontario Securities Commission

2.1.2 Fiera Capital Inc. and Fiera Private Wealth Income Fund

Headnote

NP 11-203 – Relief from mutual fund self-dealing investment restrictions – restriction prohibiting a mutual fund from knowingly making an investment in any person or company in which the mutual fund, alone or together with one or more related mutual funds, is a "substantial security holder" – restriction prohibiting a mutual fund from knowingly making an investment in an issuer in which any officer, director or substantial security holder of a mutual fund, its management company or its distribution company has a "significant interest" – Relief granted subject to certain conditions.

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., ss. 111(2)(b), 111(2)(c), 113.

July 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
FIERA CAPITAL INC.
(the Filer)

AND

FIERA PRIVATE WEALTH INCOME FUND
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Fund and other mutual funds as may be established and managed by the Filer from time to time (the **Fiera Funds**) for a decision, under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**), exempting the Fiera Funds from:

(a) the investment restriction contained in the Legislation, which prohibits a mutual fund knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder;

(b) the investment restriction contained in the Legislation, which prohibits a mutual fund from knowingly making or holding an investment in an issuer in which,

(i) any officer or director of the mutual fund, its management company or distribution company or an associate of any of them, or

(ii) any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company,

has a significant interest; and

(c) the investment restriction contained in the Legislation, which prohibits a mutual fund or its management company or its distribution company to knowingly hold an investment described in (a) or (b) above.

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

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-202 *Passport System* ("**MI 11-202**") is intended to be relied upon in Alberta.

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.

Centria LPs means each of Centria Capital Construction Fund LP, Centria Capital Development Fund LP and Centria Capital Start-Up Fund LP, each a limited partnership managed by Centria Capital Management Inc. and any other limited partnership managed by Centria Capital Management Inc.;

Diversified Lending Fund means Fiera Diversified Lending Fund;

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

Private Wealth Trust Agreement means the amended and restated master trust agreement governing the Fund dated October 31, 2007.

Representations

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

The Filer

1. The Filer is a corporation formed under the laws of Canada with its head office in Montreal, Quebec.

2. The Filer is registered as an adviser in the categories of investment counsel and portfolio manager (or equivalent) in all provinces of Canada, is registered as a limited market dealer and commodity trading manager in Ontario and is registered as a limited market dealer in Newfoundland and Labrador.

The Funds

3. The Fund is an open-ended trust established on November 29, 2006 under the laws of the Province of Ontario and governed by the Private Wealth Trust Agreement.

4. RBC Dexia Investor Services Trust acts as a trustee of the Fund and the Filer acts as the manager and portfolio manager of the Fund pursuant to the Private Wealth Trust Agreement.

5. The Fund has an investment objective of achieving a high level of income and modest capital appreciation primarily through investment in a diversified portfolio of income producing assets. To achieve its investment objectives, the Fund allocates its portfolio among various types of investment classes including an allocation of up to 30% to mortgages, loans, infrastructure and private placements.

6. The Fund is not in default under the Legislation.

7. The Diversified Lending Fund is an open-ended trust established on March 28, 2008 under the laws of the Province of Quebec, by the seventeenth supplemental trust agreement to the master trust agreement dated June 21, 2004 (the "**Diversified Lending Trust Agreement**").

8. Desjardins Trust Inc. acts as a trustee of the Diversified Lending Fund and the Filer acts as the manager and portfolio manager of the Diversified Lending Fund pursuant to the Diversified Lending Trust Agreement.

9. The Diversified Lending Fund has an investment objective that requires it to invest mainly in the Centria LPs in such combinations as the Filer will determine in its absolute discretion from time to time.

The Centria LPs

10. Currently, there are three Centria LPs but in the future additional limited partnerships may be created by Centria Capital Management Inc. The Centria LPs are each open-end Quebec limited partnerships which provide interim financing to general contractors and developers. Centria Capital Management Inc. is the manager of the Centria LPs pursuant to an administrative agreement with each general partner of each Centria LP.

11. Each of the general partners to the Centria LPs, Centria Capital Management Inc. (the manager of the Centria LPs) and the Filer is directly or indirectly controlled by DJM Capital Inc., a private investment company indirectly controlled by Jean-Guy Desjardins and Jean C. Monty.

12. Jean-Guy Desjardins indirectly owns 41.9% of the Filer and Jean C. Monty indirectly owns 10.5% of the Filer. Accordingly, Jean-Guy Desjardins is a "substantial security holder" (as those words are defined in the Legislation) of the Filer.

13. In addition, Jean-Guy Desjardins is an officer and director of the Filer.

14. In addition, Jean-Guy Desjardins beneficially owns, indirectly, 7% of the units of one of the Centria LPs. In the future, it is possible that Jean-Guy Desjardins or another officer or director of the Filer may own more than 10% of the units of a Centria LP, which would amount to a "significant interest" (as those words are defined in the Legislation) in the Centria LPs.

The Funds' Investment in the Centria LPs

15. As a result of its investment objective of investing mainly in the Centria LPs, the Diversified Lending Fund currently owns and may continue to own more than 20% of the outstanding units of each of the Centria LPs.

16. It is now proposed that the Fund will invest a portion of its assets in the Centria LPs. It is expected that the Fund may own more than 20% of the outstanding units of one or more Centria LPs.

17. The amount invested in a Centria LP by the Fund together with the amount invested by the Diversified Lending Fund is likely to exceed 20% of the outstanding units of each Centria LP.

18. As a result, it is expected that the Fiera Funds will be substantial security holders (as those words are defined in the Legislation) of each Centria LP, either together or alone, as they may hold more than 20% of the outstanding units of a Centria LP.

19. The Fiera Funds are or will be sold in Canada to investors on a continuous basis pursuant to available exemptions from the prospectus and dealer registration requirements in accordance with NI 45-106.

20. The Funds are not and will not be reporting issuers in the Jurisdiction.

21. Offering memoranda are not produced for all Fiera Funds as certain of these funds are sold only to managed account clients. Where an offering memorandum is produced in respect of a Fiera Fund, it will be available to investors of that Fiera Fund.

22. Unitholders of the Fiera Funds will have access to copies of the Fiera Funds' interim financial statements and audited annual financial statements which will include disclosure of the Centria LPs' investments.

23. The arrangements between or in respect of each of the Fiera Funds and the Centria LPs are such as to avoid the duplication of management fees and incentive fees. Each Centria LP pays Centria Capital Management Inc. a management fee. The Fiera Funds do not pay the Filer a management fee; instead, each client directly pays the Filer a fee based upon the assets under administration.

24. In the absence of the Exemption Sought, the Fiera Funds would be precluded from purchasing or holding units of the Centria LPs due to the investment restrictions contained in the Legislation.

25. The investments by the Fiera Funds in units of the Centria LPs are or will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fiera Funds.

Decision

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

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

(a) the securities of the Fiera Funds are distributed in Canada only pursuant to exemptions from the prospectus requirements in accordance with NI 45-106;

(b) no management or incentive fees are payable by the Fiera Funds that, to a reasonable person, would duplicate a fee payable by the Centria LPs for the same service;

(c) no sales or redemption fees are payable by the Fiera Funds in relation to its purchase or redemptions of units of the Centria LPs that, to a reasonable person, would duplicate a fee payable by an investor in the Fiera Funds;

(d) the Fiera Funds do not vote the units of the Centria LPs that are held by the Fiera Funds, unless the Fiera Funds are the sole owner of Centria LP units at the time of the meeting or effective date of the written resolution; and

(e) the offering memorandum of the Fiera Funds (if any) will disclose:

  (i) that the Fiera Funds may purchase units of the Centria LPs; and

  (ii) the approximate or maximum percentage of the net assets of the Fiera Funds that is dedicated to the investment in units of the Centria LPs.

"Mary G. Condon"
Commissioner
Ontario Securities Commission

"Lawrence E. Ritchie"
Commissioner
Ontario Securities Commission

2.1.3 Galileo Funds Inc. and Galileo Global Equity Advisors Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval granted for indirect change of control of a mutual fund manager. 1354033 Alberta Ltd. (formerly Northland Bancorp Inc.) has agreed to purchase 80.4% of the outstanding common shares of Galileo Global Equity Advisors Inc., the parent company of Galileo Funds Inc. Prior to closing, share purchase agreement will be assigned by 1354033 Alberta Ltd. to Northland Bancorp Inc. (formerly 1445251 Alberta Ltd.), a related entity – Change of control will not have any adverse affect on the management and administration of the Galileo Funds.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, s. 5.5(2).

July 24, 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
GALILEO FUNDS INC.
(the Filer)

AND

GALILEO GLOBAL EQUITY ADVISORS INC.
(GGEA)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for approval sought pursuant to subsection 5.5(2) of National Instrument 81-102 – *Mutual Funds* (**NI 81-102**) of the indirect change of control of the Filer as a result of the proposed acquisition of a controlling interest in GGEA, the sole shareholder of the Filer, by 1354033 Alberta Limited (**1354033**) (the **Approval Sought**).

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

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

(b) 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, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Northwest Territories, Yukon and Nunavut.

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* and MI 11-102 have the same meaning in this decision unless they are otherwise defined.

Representations

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

GGEA and the Filer

1. GGEA is a corporation incorporated under the laws of Ontario and its head office is located in Toronto, Ontario.

2. GGEA is the parent company of the Filer and owns 100% of the issued and outstanding shares of the Filer.

3. The Filer is a corporation incorporated under the laws of Ontario, and its head office is located in Toronto, Ontario. The Filer is the manager of the Galileo High Income Plus Fund and Galileo Small/Mid Cap Fund (the **Funds**).

4. GGEA is registered in: (a) Ontario as a limited market dealer, investment counsel and portfolio manager; (b) Alberta as an investment counsel and portfolio manager; (c) British Columbia as a portfolio manager; (d) Nova Scotia as investment counsel and portfolio manager; and (e) Manitoba as portfolio manager. GGEA is the portfolio manager of the Funds.

5. The Funds are reporting issuers in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Northwest Territories, Yukon and Nunavut (collectively with the Jurisdiction, the **Jurisdictions**).

6. Securities of the Funds are qualified for distribution in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick and Prince Edward Island by a consolidated simplified prospectus dated November 11, 2008, as amended (the **SP**) and an annual information form dated November 11, 2008, as amended (the **AIF**).

7. The Filer and the Funds are not in default of the requirements of applicable securities legislation in the Jurisdictions.

1354033 and Northland

8. 1354033 was incorporated under Alberta law on October 3, 2007 as "1354033 Alberta Ltd." It amended its articles of incorporation on December 18, 2008 to change its name to "Northland Bancorp Inc." and further amended its articles of incorporation on May 12, 2009 to change its name back to "1354033 Alberta Ltd."

9. 1354033 is a Calgary-based real estate and private equity boutique active in the public and private equity and the debt markets. It is seeking to is expand into the financial services industry by acquiring mutual fund management companies and investment advisory firms. Cliff Johnson is the sole shareholder of 1354033.

10. 1445251 Alberta Ltd. (Northland), was incorporated under Alberta law on January 1, 2009. On June 23, 2009, Northland amended its articles of incorporation to change its name to

    "Northland Bancorp Inc." The majority of the issued and outstanding common shares of Northland are beneficially owned by Cliff Johnson and members of his family. The remaining issued and outstanding common shares of Northland are beneficially owned by senior officers of Northland.

The Transaction and Change of Control

11. Michael Waring, the majority shareholder of GGEA, entered into a share purchase agreement dated May 12, 2009 with 1354033, pursuant to which it agreed to buy from Michael Waring 80.5% of the issued and outstanding common shares of GGEA (the **Transaction**). Following completion of the Transaction, Michael Waring will continue to hold 15.4% of the issued and outstanding common shares of GGEA. The remaining 4.1% will be held by other shareholders.

12. The Transaction will result in an indirect change of control of the Filer. The completion of the Transaction is subject to the satisfaction of closing conditions, including regulatory approvals.

13. Prior to the closing of the Transaction, 1354033 will assign the share purchase agreement to its related entity, Northland. As a result, Northland will ultimately be the holder of 80.5% of the issued and outstanding common shares of GGEA, following the completion of the Transaction.

14. The directors and senior officers of the Filer and GGEA following the closing of the Transaction are expected to be a combination of the existing directors and senior officers of the Filer, GGEA and Northland.

15. 1354033 and Northland do not anticipate any significant changes respecting management and administration of the Funds in the short term following the closing of the Transaction. While there will be some changes to the management of GGEA and the Filer, the majority of the Filer's management and employees should not be affected by the indirect change in ownership of the Filer.

16. Michael Waring will remain a director and a senior officer of both the Filer and GGEA, and portfolio manager of the Funds following the closing of the Transaction. Michael Waring was one of the founders of the Filer and has been a director and senior officer ever since. He has also been a primary source of the Filer's strategic direction and management during that time.

17. The Transaction will not affect the ability of the Filer or GGEA to comply with all applicable regulatory requirements or its ability to satisfy its obligations to the Funds. To the extent that any changes are made following completion of the Transaction which constitute "material changes" in relation to the Funds, within the meaning of National Instrument 81-106 *Investment Fund Continuous Disclosure*, amendments will be made to the Funds' SP and AIF, as appropriate.

18. Pursuant to National Instrument 81-107 *Independent Review Committee for Investment Funds*, the Filer intends to reappoint the existing members of the Funds' independent review committee following completion of the Transaction.

19. The proposed Transaction constitutes a "material change" with respect to the Funds. In connection therewith the Filer has:

    (a) filed on SEDAR a press release dated May 12, 2009 describing the Transaction;

    (b) filed on SEDAR a material change report dated May 15, 2009 in connection with the Transaction; and

    (c) filed on SEDAR an amendment to the Funds' AIF dated May 21, 2009.

20. Pursuant to section 5.8 of NI 81-102, the Filer delivered notice of the Transaction to the Funds' securityholders (the **Notice**) on May 22, 2009 and has confirmed that the Transaction will not close less than 60 days following delivery of the Notice.

Decision

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

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

"Darren McKall"
Assistant Manager, Investment Funds Branch

2.1.4 Claymore Investments, Inc. et al.

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 prohibition on purchases of silver, custodial provisions to allow Brinks and Via Mat to act as sub-custodians of the fund, 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 Instruments 41-101 Prospectus Contents – Non-Financial Matters and 81-102 Mutual Funds.

Applicable Legislative Provisions

National Instrument 41-101 Prospectus Contents – Non-Financial Matters, ss. 14.2, 14., 19.1.
National Instrument 81-102 Mutual Funds, ss. 2.3(c), 6.1(2), 6.2, 6.3, 9.1, 9.4(2), 10.2, 10.3, 14.1, 19.1.

July 14, 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 SILVER BULLION TRUST
(the "Fund")

AND

IN THE MATTER OF
THE BANK OF NOVA SCOTIA
(the "Custodian")

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. Section 14.2(1) of National Instrument 41-101 – *General Prospectus Requirements* ("**NI 41-101**") to permit an entity not listed in Section 14.2(1) to act as a sub-custodian for portfolio assets of the Fund held in Canada;

2. Section 14.2(2) of NI 41-101 to permit an entity not listed in Section 14.2(2) to act as a sub-custodian for portfolio assets of the Fund held outside of Canada;

(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 redeemable, transferable trust units of the Fund, after Conversion.

"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.

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

Representations

This decision is based on the following facts represented by the Filer, the Fund and the Custodian.

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 of the Fund was filed on SEDAR under project no. 01435591 on April 21, 2009 and a final long form prospectus (the "**Final Prospectus**") was filed on SEDAR and a receipt for such was issued on June 30, 2009. The Fund is a reporting issuer under the securities legislation of each province and territory of Canada. The Final Prospectus qualifies 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 offices of the Filer and the Fund are 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 silver bullion, less the Fund's expenses and fees. The Fund is not actively managed. The Fund does not anticipate making regular distributions.

6. The Fund has been created to provide holders of Fund Units and Common Units with an exposure to physical silver 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 silver bullion. Given that silver 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 silver bullion in 1,000 troy ounce international bar sizes; and

   (b) for working capital purposes, the Fund may hold no more than 10% of its net assets in 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 and hold the portfolio of the Fund which includes physical silver bullion, together with any cash or other assets purchased by the Fund (the "**Portfolio**") in accordance with the investment objective, strategy, policies and restrictions of the Fund.

The Fund Units and Warrants

9. The Filer has applied and received conditional approval from the Toronto Stock Exchange (the "**TSX**") for the listing of the Fund Units and Warrants, subject to the Filer fulfilling all of the listing requirements of the TSX on or before September 18, 2009.

10. Commencing in 2010, Fund Units may be surrendered annually for redemption during the period from June 1 until 5:00 p.m. (Toronto time) on the 20th business day before the last business day in July 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 July 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 daily. After Conversion, on any trading day, Unitholders may exchange the Prescribed Number of Common Units (or an integral multiple thereof) for baskets of physical silver 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 silver bullion will be held on an allocated basis by the Bank of Nova Scotia, a Canadian Schedule I chartered bank (the "**Custodian**") or an affiliate or a division thereof, or a sub-custodian. The Custodian will act through its ScotiaMocatta division, which is a division of the Custodian that specializes in precious metals trading, financing and physical metal distribution, as well as the provision of custodial services relating thereto. The Custodian has advised the Fund that due to physical storage capacity constraints, having regard to the amount of silver bullion which the Fund anticipates acquiring in connection with the Offering, as well as in contemplation of the exercise of any Warrants (silver requires approximately sixty times the storage space of the equivalent dollar amount of gold), the Fund will be required to store and hold the physical silver bullion in the vault facilities of the Custodian or an affiliate or a division thereof or a sub-custodian, in Canada, London, and New York. The custody arrangements between the Fund and the Custodian will be governed by the terms of a custodian agreement (the "**Custodian Agreement**").

16. As a result of the foregoing, the Custodian has advised the Fund that, in order to accommodate the objectives of the Fund, the Custodian will be

required to use the services of sub-custodians. The Custodian has advised the Fund that it proposes to use The Brinks Company ("**Brinks**"), a public company listed on the NYSE (acting through a subsidiary) and Via Mat International Ltd. ("**Via Mat**") as sub-custodians for the silver bullion of the Fund held in Canada, London and New York.

17. Brinks and Via Mat are leading providers of secure logistics for valuables, including diamonds, jewellery, precious metals, securities, currency and secure data, serving banks, retailers, governments, mines, refiners, metal traders, diamantaires. Brinks and Via Mat are also authorized depositories for NYMEX/COMEX or have vault facilities that are accepted as warehouses for the London Bullion Market Association.

18. The number of entities in Canada which are eligible to act as sub-custodians for the physical storage of silver bullion is limited. Of these eligible entities, some already have exclusive relationships with other investment funds for storage purposes who have first right to any additional capacity whereas others simply do not have the excess capacity needed to store the amount of physical silver bullion contemplated by the Offering and have advised that they would be required to secure additional space through the vaulting facilities of Brinks and/or Via Mat or such other equivalent service provider. These capacity constraints have been intensified due to the relatively recent run-up in demand for physical commodities and the corresponding need to arrange for safe-keeping.

19. In all instances, the relationship between the Custodian and either Brinks or Via Mat is primarily one whereby the Custodian is sub-contracting the vault facilities of these service providers for the purposes of storing physical silver bullion. The Custodian remains responsible for (i) ensuring that adequate safeguards are in place, including satisfactory insurance arrangements and (ii) indemnifying the Fund for any losses that may occur in connection with any material that is stored at such facilities.

20. The Fund, the Manager and the Custodian believe that both Brinks and Via Mat are appropriate sub-custodians for the silver bullion held in the Portfolio of the Fund. The activities of Brinks and Via Mat will be limited to holding the silver bullion of the Fund and the Custodian will be responsible for all cash holdings.

21. Pursuant to the Custodian Agreement, in carrying out its duties, the Custodian is required to exercise: (i) the degree of care, diligence and skill that a reasonably prudent custodian of property would exercise in the circumstances; or (ii) at least the same degree of care which it gives to its own property of a similar kind under its custody, if this is a higher degree of care than in paragraph (i) above.

22. Prior to using the custody services of any sub-custodians, and periodically after engaging those services, the Custodian engages in a review of the facilities, procedures, records and creditworthiness of each sub-custodian. The Fund will not have the ability to engage in these services and relies upon the Custodian, who is in the business of precious metals storage, to satisfy itself as to the appropriateness of the use of any potential sub-custodian.

23. All silver bullion purchased by the Fund will be certified by the relevant vendor as either "LBMA Good Delivery" or "COMEX Good Delivery".

24. The Fund does not insure its silver. Allocated silver bullion owned by the Fund is stored in the vaults of the Custodian or an affiliate or a division or a sub-custodian thereof once it is delivered to the Custodian and/or the sub-custodian. The Custodian and/or sub-custodian maintain insurance as the Custodian and/or sub-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 and/or sub-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.

25. The Custodian is one of the largest providers of precious metals trading and custodial services in the world. 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 silver storage and custodial services;

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

    (c) The Custodian shall indemnify 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 sub-custodian or sub-sub-custodian; and

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

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

27. As the Custodian is in the silver storage business, it 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 silver bullion.

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

29. The Custodian has also advised the Fund and the Manager that, pursuant to the terms of their existing relationship, each of Brinks and Via Mat have arranged for sufficient insurance coverage in respect of any material held by the Custodian through the facilities of these entities. The Manager has discussed with the Custodian the level of insurance coverage obtained by Brinks and Via Mat and the risks insured against by these sub-custodians and believes that the level of insurance will be sufficient.

30. The Fund's auditors will be present and will verify the physical count of all of the Fund's silver bullion held by the Custodian and/or any sub-custodian at least once every year. The Fund and its auditors will have the ability, with sufficient advance notice to the Custodian and any sub-custodians, to attend at the vaults of the Custodian or any sub-custodian to verify the silver bullion held by the Custodian or any sub-custodian on behalf of the Fund.

31. The Custodian Agreement provides that, in addition to any other rights of the Fund thereunder, the Custodian shall indemnify and hold harmless 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 in respect of the services contemplated thereunder, provided however, that the liability for any loss, damage or expense to which the above indemnity would apply shall be limited to losses, damages or expenses as follows:

(a) in the case of the loss of silver bullion or any other property of the Fund, such silver bullion or other property shall be replaced where commercially practicable and reasonably feasible; provided, however, that, in the context of silver bullion, the replacement silver which is to be provided by the Custodian shall be of the same fineness and shall be in the same form as the allocated silver actually delivered and then held by the Custodian at the time of the incurrence of the relevant loss (and, in such respect, the Custodian's opinion shall be determinative as to such fineness and form);

(b) where replacement of such silver bullion or other property is not commercially practicable and reasonably feasible, the Fund shall be paid the market value of such silver bullion based upon fineness and the form of the allocated silver actually delivered and then held by the Custodian at the time of the incurrence of the relevant loss (and, in such respect, the Custodian's opinion shall be determinative as to such fineness and form) or other property at the time the loss is discovered; and

(c) in any other case, the amount of any interest or income to which the Fund is entitled, but which is not received by the Fund, shall be paid to it.

32. The Custodian Agreement provides that if the Fund suffers a loss as a result of any act or omission of a subcustodian, or of any other agent appointed by the Custodian (rather than appointed by the Manager) and if such loss is directly attributable to the failure of such agent to comply with its standard of care in the provision of any service to be provided by it under the Custodian Agreement, then the Custodian shall assume liability for such loss directly, and shall reimburse the Fund accordingly.

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 silver 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 sections 14.2(1) and 14.2(2), the Fund and the Custodian are limited to using The Brinks Company and Via Mat International Ltd. and their subsidiaries as sub-custodians for the silver bullion of the Fund which will be held only in Canada, London and New York; and

(c) In respect of the compliance reports to be prepared by the Custodian pursuant to sections 14.6(1)(b), 14.6(1)(c)(ii) and 14.6(2)(c), as such sections will not be applicable given the nature of the relief granted herein, the Custodian shall include a statement in such reports in respect of the completion of the Custodian's review process for the sub-custodian of the Fund and that the Custodian is of the view that such sub-custodians continue to be appropriate entities for the safekeeping of the Fund's silver bullion.

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

2.1.5 Claymore Investments, Inc. and Claymore Silver Bullion Trust

Headnote

MI 11-102 and NP 11-203 – Exemptive relief granted to closed-end fund convertible into exchange-traded fund for initial and continuous distribution of units upon conversion, including: relief from dealer registration requirements to permit promoter to disseminate sales communications promoting the Fund subject to compliance with Part 15 of NI 81-102, relief to permit the Fund's prospectus to not contain an underwriter's certificate, and relief from take-over bid requirements in connection with normal course purchases of units on the Toronto Stock Exchange as the declaration of trust provides that no unitholder can exercise voting rights beyond the 20% threshold.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 59(1), 74(1), 95, 96, 97, 98, 100, 104(2)(c), 147.

Rules Cited

National Instrument 81-102 Mutual Funds, Part 15.

June 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
CLAYMORE INVESTMENTS, INC.
(the "Filer")

AND

IN THE MATTER OF
CLAYMORE SILVER BULLION TRUST
(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:

1. The dealer registration requirement does not apply to the Filer in connection with the

dissemination of sales communications relating to the distribution of Common Units (as defined below) of the Fund;

2. In connection with the distribution of Common Units of the Fund pursuant to a prospectus or any renewal prospectus, the Fund be exempt from the requirement that its prospectus or renewal prospectus contain a certificate of the underwriter or underwriters who are in a contractual relationship with the issuer whose securities are being offered; and

3. Purchasers of Common Units of the Fund be exempted from the Take-over Bid Requirements, (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

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

The following terms shall also have the meanings ascribed below:

"Common Units" means the Fund Units of the Fund, after Conversion.

"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 the Filer from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

"Take-over Bid Requirements" means the requirements of the Legislation relating to take-over bids, including the requirement to file a report of a take-over bid and the accompanying fee in with each applicable jurisdiction, in respect of take-over bids for the Fund.

"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

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 of the Fund was filed on SEDAR under project no. 01435591 on June 10, 2009. Once a final prospectus is filed and a receipt is obtained, the Fund will be a reporting issuer under the securities legislation of each province and territory of Canada. The final prospectus will qualify the issuance of redeemable, transferrable 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 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 offices of the Filer and the Fund are 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.

5. The Filer has applied to list the Fund Units and Warrants on the Toronto Stock Exchange (the "**TSX**"). The Filer will not file a final prospectus for the Fund until the TSX has conditionally approved the listing of the Fund Units and Warrants.

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

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

8. The Fund has been created to provide holders of Units with an exposure to physical silver 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 silver bullion. Given that silver bullion is priced in USD, the Fund will hedge substantially all of the Fund's USD currency value back to the Canadian dollar.

9. Commencing in 2010, Fund Units may be surrendered annually for redemption during the period from June 1 until 5:00 p.m. (Toronto time) on the 20th business day before the last business day in July 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 July 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.

10. 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.

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**"). 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.

12. 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.

13. In the event of the Conversion of the Fund to an ETF such annual redemptions will no longer be available and Unitholders will be able to exchange and redeem their Common Units daily. After Conversion, on any trading day, Unitholders may exchange the Prescribed Number of Common Units (or an integral multiple thereof) for baskets of physical silver 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.

14. 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 silver bullion (where a "basket of silver bullion" represents a preset amount of silver 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 silver 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 silver bullion than is represented by a basket of physical silver bullion and cash, as determined by the Manager, in an amount sufficient so that the value of the physical silver 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 final 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 silver 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, silver settlement fees, income taxes and withholding taxes and extraordinary expenses.

(j) No investment dealers will act as principal distributors for the Funds in connection with the distribution of Common Units. The Underwriters will not receive any commission or payment from the Fund or the Filer in connection with the distribution of Common Units. As a result, the Filer will be the only entity desiring to foster market awareness and promote trading in the Common Units through the dissemination of sales communications.

(k) Because Underwriters will not receive any remuneration for distributing Common Units, and because Underwriters will change from time to time, it is not practical to require an underwriters' certificate in the prospectus of the Fund.

(l) 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.

15. Although Common Units will trade on the TSX, and the acquisition of Common Units can therefore be subject to the Take-over Bid Requirements:

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

of the Filer and also will ensure that a Unitholder cannot exercise the votes attached to Common Units which represent 20% or more of the votes attached to all outstanding Common Units;

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

(c) the way in which Common Units will be priced deters anyone from either seeking to acquire control, or offering to pay a control premium, for outstanding Common Units because Common Unit pricing will be dependent upon the performance of the Portfolio of the Fund as a whole.

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) In respect of the relief granted from the dealer registration requirement, the Filer complies with Part 15 of NI 81-102; and

(b) The purchase of Common Units by a person or company in the normal course through the facilities of the TSX is exempt from the Take-over Bid Requirements from the time the Fund becomes and for so long as the Fund remains an ETF.

"Lawrence Ritchie"
Commissioner
Ontario Securities Commission

"James Turner"
Commissioner
Ontario Securities Commission

2.1.6 Claymore Investments, Inc. et al.

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 prohibition on purchases of silver, custodial provisions to allow Brinks and Via Mat to act as sub-custodians of the fund, 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 Instruments 41-101 Prospectus Contents – Non-Financial Matters and 81-102 Mutual Funds.

Applicable Legislative Provisions

National Instrument 41-101 Prospectus Contents – Non-Financial Matters, ss. 14.2, 14.3, 19.1.
National Instrument 81-102 Mutual Funds, ss. 2.3(c), 6.1(2), 6.2, 6.3, 9.1, 9.4(2), 10.2, 10.3, 14.1, 19.1.

July 14, 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 SILVER BULLION TRUST
(the "Fund")

AND

IN THE MATTER OF
THE BANK OF NOVA SCOTIA
(the "Custodian")

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. Section 2.3(f) 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 silver bullion in 1,000 troy ounce international bar sizes;

2. Section 6.1(2) of NI 81-102 to permit the Fund's silver bullion to be acquired, stored and held outside of Canada by a custodian or sub-custodian for purposes other than facilitating portfolio transactions of the Fund outside of Canada;

3. Section 6.1(3)(b) of NI 81-102 to permit the Custodian to appoint an entity that is not listed in Section 6.2 of NI 81-102 to act as a sub-custodian;

4. Section 6.2 of NI 81-102 to permit an entity not listed in Section 6.2 of NI 81-102 to act as a sub-custodian for portfolio assets of the Fund held in Canada;

5. Section 6.3 of NI 81-102 to permit an entity not listed in Section 6.3 of NI 81-102 to act as a sub-custodian for portfolio assets of the Fund held outside of Canada;

6. 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 "**Exchange**");

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

8. 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

9. 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 redeemable, transferable trust units of the Fund, after Conversion.

"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

This decision is based on the following facts represented by the Filer, the Fund and the Custodian.

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 of the Fund was filed on SEDAR under project no. 01435591 on April 21, 2009 and a final long form prospectus (the "**Final Prospectus**") was filed on SEDAR and a receipt for such was issued on June 30, 2009. The Fund is a reporting issuer under the securities legislation of each province and territory of Canada. The Final Prospectus qualifies 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 offices of the Filer and the Fund are 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 silver bullion, less the Fund's expenses and fees. The Fund is not actively managed. The Fund does not anticipate making regular distributions.

6. The Fund has been created to provide holders of Fund Units and Common Units with an exposure to physical silver 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 silver bullion. Given that silver 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 silver bullion in 1,000 troy ounce international bar sizes; and

   (b) for working capital purposes, the Fund may hold no more than 10% of its net assets in 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 and hold the portfolio of the Fund which includes physical silver bullion, together with any cash or other assets purchased by the Fund (the "**Portfolio**") in accordance with the investment objective, strategy, policies and restrictions of the Fund.

The Silver Bullion of the Fund

9. The Fund and the Manager believe that, assuming normal market conditions, the silver market is liquid enough that generally, the amount of silver to be acquired and held by the Fund (assuming the maximum Offering) can be bought and/or sold without adversely impacting the market price of silver (e.g. increasing or depressing the price). Relative to the gold market, the silver market is extremely small, with higher volatility and tighter demand. However, according to statistics published by the London Bullion Market Association ("**LBMA**"), the daily average amount of silver (in ounces) cleared through London wholesale bullion market in May was approximately five times that of gold.

10. The Fund and the Manager believe that investing substantially all of the assets of the Fund in physical silver bullion will not impact the Fund's ability to satisfy redemptions of Fund Units and Common Units.

The Fund Units and Warrants

11. The Filer has applied and received conditional approval from the Exchange for the listing of the Fund Units and Warrants, subject to the Filer fulfilling all of the listing requirements of the Exchange on or before September 18, 2009.

12. Commencing in 2010, Fund Units may be surrendered annually for redemption during the period from June 1 until 5:00 p.m. (Toronto time) on the 20th business day before the last business day in July 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 July 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.

13. 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

14. 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.

15. 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.

16. 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 daily. After Conversion, on any trading day, Unitholders may exchange the Prescribed Number of Common Units (or an integral multiple thereof) for baskets of physical silver 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 Exchange on the effective day of the redemption.

The Fund's Bullion Custody Arrangements

17. All of the Fund's physical silver bullion will be held on an allocated basis by the Bank of Nova Scotia, a Canadian Schedule I chartered bank (the "**Custodian**") or an affiliate or a division thereof, or a sub-custodian. The Custodian will act through its ScotiaMocatta division, which is a division of the Custodian that specializes in precious metals trading, financing and physical metal distribution, as well as the provision of custodial services relating thereto. The Custodian has advised the Fund that due to physical storage capacity constraints, having regard to the amount of silver bullion which the Fund anticipates acquiring in connection with the Offering, as well as in contemplation of the exercise of any Warrants (silver requires approximately sixty times the storage space of the equivalent dollar amount of gold), the Fund will be required to store and hold the physical silver bullion in the vault facilities of the Custodian or an affiliate or a division thereof or a sub-custodian, in Canada, London, and New York. The custody arrangements between the Fund and the Custodian will be governed by the terms of a custodian agreement (the "**Custodian Agreement**").

18. As a result of the foregoing, the Custodian has advised the Fund that, in order to accommodate the objectives of the Fund, the Custodian will be required to use the services of sub-custodians. The Custodian has advised the Fund that it proposes to use The Brinks Company ("**Brinks**"), a public company listed on the NYSE (acting through a subsidiary) and Via Mat International Ltd. ("**Via Mat**") as sub-custodians for the silver bullion of the Fund held in Canada, London and New York.

19. Brinks and Via Mat are leading providers of secure logistics for valuables, including diamonds, jewellery, precious metals, securities, currency and secure data, serving banks, retailers, governments, mines, refiners, metal traders, diamantaires. Brinks and Via Mat are also authorized depositories for NYMEX/COMEX or have vault facilities that are accepted as warehouses for the London Bullion Market Association.

20. The number of entities in Canada which are eligible to act as sub-custodians for the physical storage of silver bullion is limited. Of these eligible entities, some already have exclusive relationships with other investment funds for storage purposes who have first right to any additional capacity whereas others simply do not have the excess capacity needed to store the amount of physical silver bullion contemplated by the Offering and have advised that they would be required to secure additional space through the vaulting facilities of Brinks and/or Via Mat or such other equivalent service provider. These capacity constraints have been intensified due to the relatively recent run-up in demand for physical commodities and the corresponding need to arrange for safe-keeping.

21. In all instances, the relationship between the Custodian and either Brinks or Via Mat is primarily one whereby the Custodian is sub-contracting the vault facilities of these service providers for the purposes of storing physical silver bullion. The Custodian remains responsible for (i) ensuring that adequate safeguards are in place, including satisfactory insurance arrangements and (ii) indemnifying the Fund for any losses that may occur in connection with any material that is stored at such facilities.

22. The Fund, the Manager and the Custodian believe that both Brinks and Via Mat are appropriate sub-custodians for the silver bullion held in the

Portfolio of the Fund. The activities of Brinks and Via Mat will be limited to holding the silver bullion of the Fund and the Custodian will be responsible for all cash holdings.

23. Pursuant to the Custodian Agreement, in carrying out its duties, the Custodian is required to exercise: (i) the degree of care, diligence and skill that a reasonably prudent custodian of property would exercise in the circumstances; or (ii) at least the same degree of care which it gives to its own property of a similar kind under its custody, if this is a higher degree of care than in paragraph (i) above.

24. Prior to using the custody services of any sub-custodians, and periodically after engaging those services, the Custodian engages in a review of the facilities, procedures, records and creditworthiness of each sub-custodian. The Fund will not have the ability to engage in these services and relies upon the Custodian, who is in the business of precious metals storage, to satisfy itself as to the appropriateness of the use of any potential sub-custodian.

25. All silver bullion purchased by the Fund will be certified by the relevant vendor as either "LBMA Good Delivery" or "COMEX Good Delivery".

26. The Fund does not insure its silver. Allocated silver bullion owned by the Fund is stored in the vaults of the Custodian or an affiliate or a division or a sub-custodian thereof once it is delivered to the Custodian and/or the sub-custodian. The Custodian and/or sub-custodian maintain insurance as the Custodian and/or sub-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 and/or sub-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.

27. The Custodian is one of the largest providers of precious metals trading and custodial services in the world. 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 silver storage and custodial services;

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

    (c) The Custodian shall indemnify 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 sub-custodian or sub-sub-custodian; and

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

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

29. As the Custodian in the silver storage business, it 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 silver bullion.

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

31. The Custodian has also advised the Fund and the Manager that, pursuant to the terms of their existing relationship, each of Brinks and Via Mat have arranged for sufficient insurance coverage in respect of any material held by the Custodian through the facilities of these entities. The Manager has discussed with the Custodian the level of insurance coverage obtained by Brinks and Via Mat and the risks insured against by these sub-custodians and believes that the level of insurance will be sufficient.

32. The Fund's auditors will be present and will verify the physical count of all of the Fund's silver bullion held by the Custodian and/or any sub-custodian at least once every year. The Fund and its auditors will have the ability, with sufficient advance notice to the Custodian and any sub-custodians, to attend at the vaults of the Custodian or any sub-custodian to verify the silver bullion held by the Custodian or any sub-custodian on behalf of the Fund.

33. The Custodian Agreement provides that, in addition to any other rights of the Fund

thereunder, the Custodian shall indemnify and hold harmless 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 in respect of the services contemplated thereunder, provided however, that the liability for any loss, damage or expense to which the above indemnity would apply shall be limited to losses, damages or expenses as follows:

(a) in the case of the loss of silver bullion or any other property of the Fund, such silver bullion or other property shall be replaced where commercially practicable and reasonably feasible; provided, however, that, in the context of silver bullion, the replacement silver which is to be provided by the Custodian shall be of the same fineness and shall be in the same form as the allocated silver actually delivered and then held by the Custodian at the time of the incurrence of the relevant loss (and, in such respect, the Custodian's opinion shall be determinative as to such fineness and form);

(b) where replacement of such silver bullion or other property is not commercially practicable and reasonably feasible, the Fund shall be paid the market value of such silver bullion based upon fineness and the form of the allocated silver actually delivered and then held by the Custodian at the time of the incurrence of the relevant loss (and, in such respect, the Custodian's opinion shall be determinative as to such fineness and form) or other property at the time the loss is discovered; and

(c) in any other case, the amount of any interest or income to which the Fund is entitled, but which is not received by the Fund, shall be paid to it.

34. The Custodian Agreement provides that if the Fund suffers a loss as a result of any act or omission of a subcustodian, or of any other agent appointed by the Custodian (rather than appointed by the Manager) and if such loss is directly attributable to the failure of such agent to comply with its standard of care in the provision of any service to be provided by it under the Custodian Agreement, then the Custodian shall assume liability for such loss directly, and shall reimburse the Fund accordingly.

Arrangements From and After a Conversion

35. 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 Exchange. 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 Exchange 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 silver bullion (where a "basket of silver bullion" represents a preset amount of silver 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 silver 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 silver bullion than is represented by a basket of physical silver bullion and cash, as determined by the Manager, in an amount sufficient so that the value of the physical silver 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 Exchange. 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 Exchange, 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 silver 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 Exchange 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, silver 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 silver 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 silver bullion as payment for the issue price of Common Units is made in accordance with paragraph 9.4(2)(b);

(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;

(d) In respect of the relief granted from sections 6.1(2), 6.1(3)(b), 6.2 and 6.3, the Fund and the Custodian are limited to using The Brinks Company and Via Mat International Ltd. and their subsidiaries as sub-custodians for the silver bullion of the Fund which will be held only in Canada, London and New York; and

(e) In respect of the compliance reports to be prepared by the Custodian pursuant to sections 6.7(1)(b), 6.7(1)(c)(ii) and 6.7(2)(c), as such sections will not be

applicable given the nature of the relief granted herein, the Custodian shall include a statement in such reports in respect of the completion of the Custodian's review process for the sub-custodian of the Fund and that the Custodian is of the view that such sub-custodians continue to be appropriate entities for the safekeeping of the Fund's silver bullion.

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

2.1.7 BMO Harris Investment Management Inc. et al.

Headnote

National Policy 11-203 – relief granted from requirement to obtain securityholder approval of mergers under National Instrument 81-102 Mutual Funds and approval granted for two mutual fund mergers – securities of the mutual funds only available for purchase by unitholders who have entered into discretionary investment management agreements giving full discretionary authority to manager – convening unitholder meetings would represent an unnecessary expense – regulatory approval of mergers required because mergers do not meet the criteria for pre-approved reorganizations and transfers in National Instrument 81-102 – one continuing fund has different investment objectives than terminating fund – both mergers not "qualifying exchanges" or tax-deferred transactions under Income Tax Act – both mergers will not be approved by securityholders of terminating funds at unitholder meetings and meeting materials will not be delivered.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.1(f), 5.5(1)(b), 5.6, 19.1.

July 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 HARRIS INVESTMENT MANAGEMENT INC.
(the Filer or BMO Harris)

AND

BMO HARRIS OPPORTUNITY BOND PORTFOLIO
AND
BMO HARRIS INCOME OPPORTUNITY
BOND PORTFOLIO (each, a Terminating Fund
and collectively, the Terminating Funds)

DECISION

Background

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

(a) exempting the Terminating Funds from subsection 5.1(f) of NI 81-102, which requires a mutual fund to obtain the prior approval of its unitholders before the mutual fund undertakes a reorganization with, or transfers its assets to, another mutual fund (the **Unitholder Meeting Relief**); and

(b) approving the mergers of the Terminating Funds into the applicable Continuing Funds as set out in paragraph 9 below pursuant to subsection 5.5(1)(b) of NI 81-102 (the **Merger Approval**)

(collectively, the Unitholder Meeting Relief and the Merger Approval are referred to as the **Requested Relief**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meanings in this decision unless they are defined in this decision. The following additional terms shall have the following meanings:

BMO Harris Funds means collectively the Funds and other funds managed by the Filer;

Continuing Funds means BMO Harris Canadian Total Return Bond Portfolio and BMO Harris Canadian Bond Income Portfolio;

Current Simplified Prospectus means the simplified prospectus and annual information form dated November 4, 2008 that qualifies the BMO Harris Funds 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;

NI 81-102 means National Instrument 81-102 *Mutual Funds*;

NI 81-106 means National Instrument 81-106 *Investment Fund Continuous Disclosure*;

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 Filer:

The Filer

1. The Filer is a corporation established under the laws of Ontario. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is the manager and investment manager of the Funds. An affiliate of the Filer, BMO Trust Company, is the trustee of the Funds.

3. The Filer, an indirect, wholly-owned subsidiary of Bank of Montreal, is registered in the categories of investment counsel and portfolio manager or the equivalent in all of the provinces and territories of Canada.

The Funds

4. Each of the Funds is an open-ended mutual fund trust established under the laws of the Province of Ontario by declaration of trust.

5. Units of the Funds are qualified for sale in each jurisdiction in Canada by the Current Simplified Prospectus and each of the Funds is subject to NI 81-102.

6. The Funds are reporting issuers under the applicable securities legislation of each jurisdiction in Canada and are not on the list of defaulting reporting issuers maintained under such securities legislation.

7. 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 jurisdiction in Canada.

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

9. BMO Harris intends to merge the Terminating Funds into the corresponding Continuing Fund as set out below:

   (a) BMO Harris Opportunity Bond Portfolio into BMO Harris Canadian Total Return Bond Portfolio (**Merger 2**); and

   (b) BMO Harris Income Opportunity Bond Portfolio into BMO Harris Canadian Bond Income Portfolio (**Merger 3**)

(Merger 2 and Merger 3 are collectively referred to as the "**Mergers**").

Unitholder Meeting Relief

10. The Filer offers fully discretionary investment management services to clients in each jurisdiction in Canada, including all of the investors in the Funds.

11. The BMO Harris Funds were established as an efficient and cost effective means of providing discretionary investment management services to many of the Filer's clients, including all of the investors in the Funds, as an alternative to segregated account management.

12. The Filer believes that the Mergers are in the best interests of each Fund's unitholders, as the Mergers would result in unitholders being invested in larger Continuing Funds that have increased economies of scale and increased portfolio diversification opportunities, and in the case of each Terminating Fund, there will be a savings in brokerage charges over a straight liquidation of its portfolio on a wind-up of the Fund.

13. The proposed Mergers are neutral to the unitholders of each of the Funds from a fee and expense perspective.

14. Clause 5.1(f) of NI 81-102 requires that the approval of the unitholders of a mutual fund be obtained before the mutual fund undertakes a reorganization with, or transfers its assets to, another mutual fund.

15. Units of the Terminating Funds are only available for purchase by investors who have entered into a discretionary investment management agreement with the Filer.

16. The Filer is authorized under its discretionary investment management agreement with each client who is an investor in a Fund to make any investment on behalf of the client (provided such investment is consistent with the mandate established by that client). This includes buying and selling any securities (including securities of a Fund) without obtaining the client's approval.

17. Under its discretionary investment management agreement with each client, the Filer is authorized to receive all securityholder materials relating to the securities held in the client's account, and to vote on behalf of the client on any matters relating to the securities held in the client's account (provided that such vote is in the best interests of the client).

18. The unitholders of each Fund are relying entirely on the Filer to make investment decisions for them and, in these circumstances, the Mergers are analogous to the Filer changing a client's investment from one BMO Harris Fund to another. As such investment changes do not require client approval, the Filer has determined that it is appropriate to effect the Mergers without obtaining unitholder approval.

19. As every investor in the Terminating Funds has entered into a discretionary investment management agreement with the Filer, the Filer believes that sending meeting materials and convening unitholder meetings for the purpose of obtaining unitholder approval to effect the Mergers is not desirable and represents an unnecessary cost and inconvenience to the Filer and the unitholders of the Terminating Funds.

20. Prior to, or shortly following, the implementation of the Mergers, the Filer will communicate with each client that holds units of the Terminating Funds to explain the changes to their account that will occur as a result of the Mergers.

Merger Approval

21. BMO Harris has presented the terms of the Mergers to the IRC for its approval. The IRC reviewed the proposed Mergers, determined that the Mergers would achieve a fair and reasonable result for each of the Funds and has provided its approval in respect of the Mergers.

22. Upon the approval of the Mergers by the board of directors of BMO Harris, a press release was issued and a material change report and amendment to the Current Simplified Prospectus in respect of the Mergers was filed on SEDAR under SEDAR Project Numbers 1327804, 1440175 and 1440176 in connection with each of the Mergers in accordance with the Funds' continuous disclosure obligations set forth in Part 11 of NI 81-106.

23. Units of each of the Terminating Funds will continue to be available for sale until the close of business on September 23, 2009, following which time the distribution of new units will cease, except under a continuous savings plan or similar systematic plan established prior to September 23, 2009.

24. No sales charges will be payable in connection with the issuance of units of a Continuing Fund in exchange for the investment portfolio of an applicable Terminating Fund.

25. The portfolio 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.

26. Unitholders of a 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 Mergers.

27. BMO Harris will bear the costs and expenses associated with the Mergers, including all brokerage expenses incurred in respect of any required sale of portfolio assets of the Terminating Funds.

28. Each of the Terminating Funds will merge into the applicable Continuing Funds on or about September 25, 2009.

29. Pursuant to the Mergers, holders of units of BMO Harris Opportunity Bond Portfolio will receive units of BMO Harris Canadian Total Return Bond Portfolio and holders of units of BMO Harris Income Opportunity Bond Portfolio will receive units of BMO Harris Canadian Bond Income Portfolio.

30. Following each of the Mergers, the Continuing Funds will continue as publicly offered open-ended mutual funds and the Terminating Funds will be wound up as soon as reasonably practicable.

31. Regulatory approval of the Mergers is required because neither of the Mergers satisfy all of the criteria for pre-approved reorganizations and transfers as set out in section 5.6 of NI 81-102 because:

    (a) neither Merger will be structured as a "qualifying exchange" or a tax-deferred transaction in accordance with the Tax Act as contemplated in subsection 5.6(1)(b) of NI 81-102;

    (b) in the case of Merger 3, the fundamental investment objectives of the Continuing Fund is not, or may be considered not to be, "substantially similar" to the investment objectives of the corresponding Terminating Fund as contemplated in subsection 5.6(1)(a)(ii) of NI 81-102;

    (c) the Mergers will not be approved by the unitholders of the Terminating Funds as contemplated in subsection 5.6(1)(e)(i) of NI 81-102; and

    (d) meeting materials will not be delivered to unitholders of the Terminating Funds in connection with such unitholder meetings as contemplated in subsection 5.6(1)(f) of NI 81-102 since no unitholder meetings will be held in connection with the Mergers.

32. The Filer has determined that implementing the Mergers on a taxable basis will enable each Continuing Fund to retain its tax losses. As investors in the Terminating Funds will become investors in the Continuing Funds, this preserves a tax benefit for all investors by reducing the tax liability of any gains from an investment in the Continuing Funds.

33. BMO Harris will, except as noted above, comply with all of the other criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted.

"Rhonda Goldberg"
Manager, Investment Funds
Ontario Securities Commission

2.1.8 MD Physician Services Inc. et al.

Headnote

Multilateral Instrument 11-102 Passport System – Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 33-109 Registration Information (NI 33-109) – relief from certain filing requirements of NI 33-109 in connection with a bulk transfer of business locations and registered and non-registered individuals under a merger.

Multilateral Instruments Cited

Multilateral Instrument 11-102 Passport System.

National Instruments Cited

National Instrument 33-109 Registration Information.

July 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
MD PHYSICIAN SERVICES INC. (MDPS),
MD PRIVATE INVESTMENT MANAGEMENT INC.
(MDPIM) AND
MD FUNDS MANAGEMENT INC. (MDFM)
(the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of Ontario (the **Legislation**) for relief pursuant to section 7.1 of National Instrument 33-109 *Registration Information* (**NI 33-109**) to allow the bulk transfer of all of the registered individuals and all of the locations of each of MDPIM and MDFM to a new merged entity, MD Physician Services Inc. (as described below) (the **Bulk Transfer**), on or about July 31, 2009 in accordance with section 3.1 of the companion policy to NI 33-109 (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

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

Interpretation

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

Representations

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

MDPIM

1. MDPIM was incorporated under the *Canada Business Corporations Act* (**CBCA**) and is directly owned by MD Private Trust Company, which in turn is directly owned by MDFM. MDFM is directly owned by CMA Holdings Incorporated (**CMAH**), which is in turn owned by The Canadian Medical Association (**CMA**). The head office of MDPIM is in Ottawa, Ontario.

2. MDPIM is registered as a dealer in the category of limited market dealer under the *Securities Act* (Ontario) and as an adviser in the category of investment counsel and portfolio manager (or its equivalent) in all of the provinces and territories of Canada.

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

MDFM

4. MDFM was incorporated under the CBCA and is directly owned by CMAH. The head office of MDFM is in Ottawa, Ontario.

5. MDFM is registered as an adviser in the category of investment counsel and portfolio manager under the *Securities Act* (Ontario). MDFM advises mutual funds managed by it.

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

MDPS

7. Effective on or about July 31, 2009 and following an intermediate step, each of MDPIM, MDFM, Practice Solutions Ltd. (**PSL**) and CMAH will become amalgamated (the **Merger**). The corporation resulting from the Merger will be MDPS. A newly incorporated entity will be inserted into the chain of ownership between the

CMA and MDPS and will be named CMA Holdings Incorporated.

8. Neither PSL nor CMAH are currently registered in any of the Jurisdictions. PSL is directly owned by CMAH.

9. Effective on July 31, 2009, all of the current registrable activities of MDPIM and MDFM will become the responsibility of MDPS. MDPS will assume all of the existing registrations and approvals for all of the registered individuals and all of the locations of MDPIM and MDFM. 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 MDPS should be able to advise and trade (where applicable) on behalf of such clients immediately after the Merger.

10. MDPS will continue to be registered in the same categories of registration as MDPIM and MDFM, together, are registered immediately prior to the Merger in the respective Jurisdictions, and will be subject to, and will comply with, all applicable securities laws.

11. MDPS will carry on the same securities business of MDPIM and MDFM in substantially the same manner with essentially the same personnel.

12. MDPIM and MDFM propose to transfer a total of 42 employees registered in one or more of the Jurisdictions, and 12 locations, to MDPS.

13. The Exemption Sought will not be contrary to the public interest and will have no negative consequences on the ability of MDPS 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 MDPIM and MDFM, it would be extremely difficult to transfer each individual to MDPS in accordance with the requirements of NI 33-109 if the Exemption Sought is not granted.

15. On August 4, 2009, the Filers will post to their websites an announcement advising the public of the creation of MDPS. Clients of MDPIM will be provided information about the creation of MDPS in their first account statements to be issued subsequent to the Merger.

16. The head office of MDPS will be 1870 Alta Vista Drive, Ottawa, Ontario, K1G 6R7.

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.

July 30, 2009

"Erez Blumberger"
Manager, Registrant Regulation
Ontario Securities Commission

2.1.9 BMO Investments Inc. and BMO International Equity Fund

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-approval – The merger is not a "qualifying exchange" or a tax-deferred transaction under Income Tax Act – securityholders of terminating fund provided with timely and adequate disclosure regarding the merger.

Applicable Legislative Provisions

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

July 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 JURISDICTION

AND

IN THE MATTER OF
BMO INVESTMENTS INC.
(the Filer or BMO)

AND

BMO INTERNATIONAL EQUITY FUND
(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 (the **Legislation**) approving the merger (the **Merger**) of the Terminating Fund into BMO International Value Class (the **Continuing Fund**) pursuant to subsection 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) (the **Requested Relief**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning in this decision unless they are defined in this decision.

Representations

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

1. BMO is a corporation governed by the laws of Canada and is the manager of each of the Terminating Fund and the Continuing Fund (each a **Fund** and collectively, the **Funds**).

2. The Terminating Fund is an open-end mutual fund trust established under the laws of the Province of Ontario by declaration of trust dated May 14, 1992, as amended on February 25, 1999, March 31, 2000 and September 12, 2007 and as amended and restated into the Master Declaration of Trust dated November 6, 2007, together with amended and restated Schedule A dated February 4, 2009.

3. The Continuing Fund is a class of special shares of BMO Global Tax Advantage Funds Inc., a mutual fund corporation incorporated by articles of incorporation under the laws of Canada dated September 5, 2000, as amended on September 28, 2000, October 25, 2000, November 28, 2003, October 1, 2004, April 30, 2007, January 25, 2008, May 9, 2008, September 30, 2008 and October 23, 2008.

4. 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.

5. 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.

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

7. Series A securities, series I securities and BMO Guardian International Equity Fund Series F securities of the Terminating Fund and series A securities and series I securities of the Continuing

Fund are offered for sale pursuant to a simplified prospectus dated May 8, 2009.

8. BMO Guardian International Value Class Advisor Series securities, BMO Guardian International Value Class Series F securities and BMO Guardian International Value Class Series H securities of the Continuing Fund are offered for sale pursuant to a simplified prospectus dated October 29, 2008.

9. As required by National Instrument 81-107, an Independent Review Committee (the **IRC**) has been appointed for the Funds. BMO presented the terms of the Merger to the IRC for a recommendation. The IRC reviewed the proposed Merger and recommended that it be put to securityholders of the Funds for their consideration on the basis that the Merger would achieve a fair and reasonable result for the Funds.

10. A press release, material change report and amendments to the current simplified prospectuses of the Funds have been filed on SEDAR under SEDAR project #s 1402935 and 1322437 on July 8, 2009 in connection with the Merger in accordance with the Funds' continuous disclosure obligations set forth in Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.

11. Securityholders of the Terminating Fund and securityholders of the Continuing Fund will be asked to approve the Merger at special meetings of securityholders each scheduled to be held on or about July 30, 2009.

12. A management information circular in connection with the Merger was filed on SEDAR on July 8, 2009 under SEDAR #s 1402935 and 1322437 and was otherwise mailed to securityholders of each Fund on or about July 3, 2009.

13. BMO will pay all costs and expenses relating to the solicitation of proxies and the holding of the securityholder meetings in connection with the Merger.

14. Subject to the required approval of the principal regulator and securityholder of each of the Funds, the Merger is expected to occur on or about July 31, 2009, or such later date as may be determined by BMO (which shall be no later than December 31, 2009).

15. The Merger 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 merging into it.

16. Securities of the Terminating Fund will continue to be available for sale until the close of business on July 24, 2009, following which time the distribution of new securities will cease, except under a continuous savings plan or similar systematic plan established prior to July 24, 2009.

17. Securityholders of the 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 business day immediately preceding the effective date of the Merger.

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 as soon as reasonably practicable.

19. Pursuant to the Merger, securityholders of series A securities and series I securities of the Terminating Fund will receive series A securities and series I securities of the Continuing Fund, respectively. Securityholders of BMO Guardian International Equity Fund Series F securities of the Terminating Fund will receive BMO Guardian International Value Class Series F securities of the Continuing Fund (offered pursuant to a separate simplified prospectus). No sales charge will be payable in connection with such BMO Guardian International Value Class Series F securities.

20. Regulatory approval of the Merger is required because the Merger does not satisfy all of the criteria for pre-approval reorganizations and transfers as set out in section 5.6 of NI 81-102 because the Merger will not be structured as a "qualifying exchange" or a tax-deferred transaction in accordance with the Income Tax Act (Canada) as contemplated in subsection 5.6(1)(b) of the NI 81-102.

21. The Filer has determined that the loss of tax losses by the Terminating Fund is not a material consideration for unitholders.

22. Following the liquidation of certain assets, if necessary, the portfolio of assets of the Terminating Fund to be acquired by the Continuing Fund arising from the Merger will be acceptable to the portfolio adviser of the Continuing Fund prior to the effective date of the Merger and will be consistent with the respective investment objectives of the Continuing Fund.

23. The following steps will be carried out to effect the Merger:

    (a) prior to the date of the Merger, the Terminating Fund will sell any securities in its portfolio that do not meet the investment objectives and investment strategies of the Continuing Fund. As a result, the Terminating Fund may temporarily hold cash or money market instruments and may not be fully invested

in accordance with its investment objectives for a brief period of time prior to the Merger;

(b) the value of the Terminating Fund's portfolio and other assets will be determined at the close of business on the effective date of the Merger in accordance with its declaration of trust;

(c) the Continuing Fund will acquire the portfolio assets and other assets of the Terminating Fund in exchange for securities of the Continuing Fund;

(d) the Continuing Fund will not assume the liabilities of the Terminating Fund and the Terminating Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the date of the Merger;

(e) the securities of the Continuing Fund received by the Terminating Fund will have an aggregate net asset value equal to the value of the Terminating Fund's portfolio assets and other assets that the Continuing Fund is acquiring, which securities will be issued at the applicable series net asset value per security as of the close of business on the effective date of the Merger;

(f) the Terminating Fund will distribute a sufficient amount of its income and capital gains, if any, to ensure that the Terminating Fund will not be liable for income tax. Currently, it is not expected that distributions will be required;

(g) immediately thereafter, the securities of the Continuing Fund received by the Terminating Fund will be distributed to securityholders of the Terminating Fund on a dollar for dollar and series by series basis in exchange for their securities in the Terminating Fund; and

(h) as soon as reasonably possible following the Merger, the Terminating Fund will be wound up.

24. On October 14, 2003, in connection with a prior fund merger, BMO received exemptions from the requirement to deliver:

(a) the current simplified prospectus of the continuing fund to securityholders of terminating funds in connection with all future mergers of mutual funds managed by BMO (the **Future Mergers**) pursuant to paragraph 5.6(1)(f)(ii) of NI 81-102; and

(b) the most recent annual and interim financial statements of the continuing fund to securityholders of the terminating funds in connection with all Future Mergers pursuant to paragraph 5.6(1)(f)(ii) of NI 81-102.

(The relief outlined in (a) and (b) is collectively referred to as the **Prospectus and Financial Statement Delivery Relief**.)

25. In accordance with the Prospectus and Financial Statement Delivery Relief, the material that will be sent to securityholders of the Terminating Fund will include a tailored simplified prospectus consisting of:

(a) the current Part A of the simplified prospectus of the Continuing Fund, and

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

26. In accordance with the Prospectus and Financial Statement Delivery Relief:

(a) the management information circular sent to securityholders provides sufficient information about the Merger to permit securityholders to make an informed decision about the Merger;

(b) the management information circular sent to securityholders with respect to the Merger prominently discloses that securityholders can obtain the financial statements of the applicable continuing fund by accessing the SEDAR website at www.sedar.com, by accessing BMO's or its affiliate's website, by calling BMO's or its affiliate's toll-free telephone numbers servicing securityholders both in English and French or by submitting (by fax or mail) a request to BMO;

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

(d) each of the Terminating Fund and Continuing Fund has an unqualified audit report in respect of its last completed financial period.

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.

"Rhonda Goldberg"
Manager, Investment Funds
Ontario Securities Commission

2.1.10 Precious Metals Bullion Trust

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from National Instrument 81-106 Investment Fund Continuous Disclosure to permit an investment fund that uses specified derivatives to calculate its 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).

July 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
PRECIOUS METALS BULLION TRUST
(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 Section 14.2(3)(b) of National Instrument 81-106 – *Investment Fund Continuous Disclosure* (NI 81-106) which provides 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, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

Interpretation

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

Representations

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

1. The Fund was established pursuant to a declaration of trust dated as of March 27, 2009.

2. Brompton Funds Management Limited is the manager of the Fund (the Manager). The head office of the Manager is located in Ontario.

3. The investment objective of the Fund is to provide holders (the Unitholders) of redeemable, transferable units of the Fund (the Units) with a secure, low cost and convenient method of investing in gold, silver and platinum bullion on a Canadian dollar-hedged basis. The fund does not anticipate making regular distributions.

4. A preliminary long-form prospectus (the Preliminary Prospectus) was filed with respect to the offering (the Offering) of Combined Units at a price of $12.00 per Combined Unit. Each Combined Unit consists of one Unit and one transferrable warrant of the Fund (the Warrants). Each Warrant entitles the holder thereof to purchase one Unit at a subscription price of $12.00 on or before 5:00 p.m. (Toronto time) on January 31, 2010.

5. The net proceeds of the Offering will be used to purchase approximately equal dollar amounts of each of physical gold, silver and platinum bullion as soon as practicable following closing of the Offering in accordance with the investment objective and restrictions of the Fund.

6. Substantially all of the value of the Fund's portfolio will be hedged to the Canadian dollar. The Fund will use specified derivatives only for purposes of this hedging.

7. Units may be redeemed on a quarterly basis on the second last business day of each of January, April, July and October in each year commencing in April, 2010 (such a date being a Quarterly Redemption Date). Unitholders whose Units are redeemed on a Quarterly Redemption Date will receive a redemption price in an amount equal to 100% of the Net Asset Value per Unit (less any costs and expenses associated with the redemption). A Unitholder may elect to receive their pro rata share of the proceeds of a redemption in respect of a Quarterly Redemption Date in physical bullion provided that the redemption proceeds payable to the redeeming Unitholder is at least $1.5 million, or such other amount as may be determined and announced by the Manager from time to time.

8. In addition to the quarterly redemption right, Units may also be redeemed on the last business day of each month (other than in the months of January, April, July and October) (such a date being a Monthly Redemption Date). Unitholders whose Units are redeemed on a Monthly Redemption Date will receive a redemption price equal to 94% of the diluted Net Asset Value per Unit on the Monthly Redemption Date less any costs and expenses associated with the redemption.

9. The Toronto Stock Exchange (the TSX) has conditionally approved the listing of the Units and the Warrants subject to the Fund fulfilling all of the requirements of the TSX on or before September 18, 2009.

10. The Fund filed the Preliminary Prospectus in accordance with Form 41-101F2 of National Instrument 41-101 – *General Prospectus Requirements* and does not intend on being in continuous distribution.

11. Under section 14.2(3)(b) of NI 81-106, an investment fund that is a reporting issuer that uses or holds specified derivatives, such as the Fund intends to do, must calculate its net asset value on a daily basis.

12. The Fund proposes to calculate the 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 (a Valuation Date).

13. The Fund will calculate a basic Net Asset Value per Unit on each Valuation Date, and, in the event that the closing market price of the Units exceeds the subscription price per Unit for any Units issuable upon the exercise of any outstanding rights, warrants, options or other similar securities issued by the Fund on a Valuation Date, the Fund will also calculate a diluted Net Asset Value per Unit. If a diluted Net Asset Value per Unit is calculated, the Manager will make both the basic and the diluted Net Asset Value per Unit available to the financial press for publication, and will post both (a) the basic and diluted Net Asset Value per Unit, and (b) an explanation of the difference between the basic and diluted Net Asset Value per Unit, on its website.

14. The Preliminary Prospectus discloses, and the final prospectus of the Fund will disclose, that the basic Net Asset Value per Unit (and the diluted Net Asset Value per Unit, if applicable) will be calculated and made available to the financial press for publication on a weekly basis and that

the Manager will post the basic and/or diluted Net Asset Value per Unit on its website.

15. The Fund is not in default of the securities legislation of any province or territory of Canada.

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 Units are listed on the TSX; and

(b) the Fund calculates the Net Asset Value per Unit (and the diluted Net Asset Value per Unit, if applicable) at least weekly.

"Rhonda Goldberg"
Manager, Investment Funds
Ontario Securities Commission

2.1.11 Goodman & Company, Investment Counsel Ltd.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Coordinated Review – The relief provides an exemption, pursuant to section 233 of Regulation 1015 (the Regulation) made under the Securities Act (Ontario) from the prohibition in section 227(2)(b)(ii) of the Regulation. The prohibition prevents a registrant, when acting as a portfolio manager with discretionary authority, from providing advice with respect to a client's account to purchase and/or sell the securities of a related issuer or a connected issuer of the registrant, unless the registrant (i) secures the specific and informed written consent of the client once in each twelve month period and (ii) provides the client with its statement of policies.

Statutes Cited

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

August 5, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, NEW BRUNSWICK, NOVA SCOTIA 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
GOODMAN & COMPANY,
INVESTMENT COUNSEL LTD.
(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**) exempting the Filer from the prohibition that a registrant shall not act as an adviser in respect of securities of the registrant or of a related issuer of the registrant or, in the course of a distribution, in respect of securities of a connected issuer of the registrant (the **Related/Connected Issuer Prohibition**) unless, before acquiring discretionary authority and once within each twelve month period thereafter, (i) a statement of policies of the registrant is provided to the client (the

Statement of Policies Requirement), and (ii) the specific and informed written consent of the client to invest in related or connected issuers of the registrant has been obtained (the **Annual Consent Requirement**) in the case of the Filer acting as a portfolio manager where the Filer purchases or sells, under its discretionary authority in connection with its managed account programs, securities of The Bank of Nova Scotia (**Scotiabank**) for the client's managed account (the **Exemptive Relief Sought**).

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

(a) the Ontario Securities Commission (the OSC) 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 incorporated under the laws of the Province of Ontario. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is registered under the *Securities Act* (Ontario) (the **Act**) as an adviser in the categories of investment counsel and portfolio manager, and is also registered in equivalent categories in British Columbia, Alberta, Manitoba, Québec, New Brunswick and Nova Scotia.

3. The Filer is not in default of securities legislation in any Jurisdiction.

4. Goodman Private Wealth Management (**GPWM**), the investment counsel division of the Filer, offers investment management services to institutional and high net worth clients.

5. Clients whose investments are managed by GPWM (each a **Client**) will enter into an investment management agreement (the **Investment Management Agreement**) with GPWM that authorizes GPWM to manage their investments on a discretionary basis.

6. The Investment Management Agreement authorizes the Filer to exercise discretion in managing the Client's investments by investing in a variety of securities, and such securities may include securities of Scotiabank. Under the Investment Management Agreement, clients have the ability to set constraints regarding the securities that may or may not be purchased for the client's account.

7. The Related/Connected Issuer Prohibition prohibits a registrant, such as the Filer, from acting as an adviser of securities of the registrant, or of a related issuer of the registrant, or in the course of a distribution in respect of securities of a connected issuer of the registrant.

8. The Annual Consent Requirement and the Statement of Policies Requirement, to the extent applicable, exempts a registrant from the Related/Connected Issuer Prohibition.

9. The Filer is an indirect wholly-owned subsidiary of DundeeWealth Inc. (**DundeeWealth**), a corporation incorporated under the laws of Ontario with securities listed for trading on the TSX. Dundee Corporation, a corporation existing under the laws of Ontario with securities listed for trading on the TSX, owns approximately 60% of the voting securities in DundeeWealth.

10. Scotiabank is a related issuer to the Filer by virtue of the fact that, for so long as Scoitabank holds Series F shares (non-voting shares), it shall be entitled to nominate three members to the Board of DundeeWealth, representing 25% of the Board. Scotiabank holds approximately 18.6% voting interest in DundeeWealth. Further, pursuant to a shareholder agreement dated September 28, 2007 with Dundee Corporation, so long as Scotiabank holds a minimum of 10% of the voting shares of DundeeWealth, it has the right to nominate two members to the Board of DundeeWealth. In addition, so long as Scotiabank holds Series F shares in the capital of DundeeWealth it is entitled to propose one additional nominee to the Board of DundeeWealth. Scotiabank is currently a holder of Series F shares.

11. As a result of this relationship, the Filer is prohibited from acting as an adviser in respect of securities of Scotiabank for Clients, unless the Filer complies with the Annual Consent Requirement and the Statement of Policies Requirement. Clients thereby may be prevented from investing in securities of Scotiabank, even where the inclusion of these securities would be in the best interests of the Client.

12. All Clients of GPWM will receive a statement of policies when they enter into an Investment Management Agreement that lists the related and connected issuers of the Filer, including Scotiabank. In the event of a significant change in its statement of policies, GPWM will provide to each Client a copy of the revised version of, or amendment to, its statement of policies.

13. The Filer will disclose, in writing, to each of its Clients who enters into an Investment Management Agreement, the relationship between the Filer, GPWM and Scotiabank.

14. Under the Investment Management Agreement, Clients will specifically authorize the Filer to invest in securities of Scotiabank.

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 to the Filer provided that:

(a) GPWM has secured the specific and informed written consent of the Client in advance of the exercise of discretionary authority on behalf of the Client in respect of securities of Scotiabank;

(b) GPWM has previously provided its Clients with a statement of policies of the Filer which identifies the relationship between the Filer, GPWM and Scotiabank and, in the event of a significant change in the statement of policies, will provide to each of its Clients a copy of the revised version of, or amendment to, such statement of policies; and

(c) all investment decisions of the Filer to invest in securities of Scotiabank are uninfluenced by considerations other than the best interest of the Client.

"Lawrence E. Ritchie"
Commissioner
Ontario Securities Commission

"Mary G. Condon"
Commissioner
Ontario Securities Commission

2.2 Orders

2.2.1 Euston Capital Corp. and George Schwartz – ss. 127(1), 127(10)

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

AND

**IN THE MATTER OF
EUSTON CAPITAL CORP. AND
GEORGE SCHWARTZ**

**ORDER
(Pursuant to subsections 127(1) and 127(10))**

WHEREAS on May 1, 2006, the Ontario Securities Commission ordered pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5., as amended (the "Act"), that all trading in securities of Euston Capital Corp. ("Euston") cease, trading in securities by Euston and George Schwartz ("Schwartz") (together, "the Respondents") cease, and any exemptions contained in Ontario securities law do not apply to Euston and Schwartz (the "Temporary Order");

AND WHEREAS on May 2, 2006, the Commission issued a Notice of Hearing and Statement of Allegations in this matter;

AND WHEREAS on May 11, 2006, on consent of Euston and Schwartz, the Commission adjourned the hearing to consider whether to extend the Temporary Order to June 9, 2006 at 10:00 a.m., peremptory to the respondents;

AND WHEREAS on May 11, 2006, the Commission continued the Temporary Order until the June 9, 2006 hearing or until further order of the Commission;

AND WHEREAS on May 11, 2006, the Commission ordered that any materials upon which Euston and Schwartz intended to rely would be served and filed no later than May 24, 2006;

AND WHEREAS on June 9, 2006, on consent of Euston and Schwartz, the Commission adjourned the hearing to consider whether to extend the Temporary Order to October 19, 2006 at 10:00 a.m., peremptory to the respondents;

AND WHEREAS on June 9, 2006, on consent of Euston and Schwartz, the Commission continued the Temporary Order until the October 19, 2006 hearing or until further order of the Commission;

AND WHEREAS on June 9, 2006, the Commission ordered that any materials upon which Euston and Schwartz intended to rely would be served and filed no later than October 11, 2006;

AND WHEREAS on October 17, 2006, on consent of Euston and Schwartz, the Commission adjourned the hearing to consider whether to extend the Temporary Order to December 4, 2006 at 2:00 p.m., peremptory to the respondents;

AND WHEREAS on October 17, 2006, on consent of Euston and Schwartz, the Commission continued the Temporary Order until the December 4, 2006 hearing or until further order of the Commission;

AND WHEREAS Euston and Schwartz undertook to keep investors advised of the status of this proceeding through notices, updates, news releases and a link to the Commission website to be displayed prominently on the home page of Euston's website at www.eustoncapital.com by June 19, 2006 and displayed continually until further order of the Commission;

AND WHEREAS on December 4, 2006 the Commission ordered that the hearing be adjourned pending the delivery of the decision of the Court of Appeal for Saskatchewan in an appeal by Euston and Schwartz of a decision of the Saskatchewan Financial Services Commission dated February 9, 2006, and that Staff of the Commission and counsel for the respondents attend at the earliest opportunity before the Commission after the decision of the Court of Appeal for Saskatchewan to set a date for the continuation of the hearing, and further that the Temporary Order be continued until the next attendance, or until further order of the Commission;

AND WHEREAS an Amended Statement of Allegations was issued by Staff on February 20, 2009;

AND WHEREAS an Amended Notice of Hearing was issued by the Commission on February 20, 2009;

AND WHEREAS a hearing in this matter took place on March 19, 2009, with Staff and counsel for Euston and Schwartz in attendance, but was not completed. On March 20, 2009, the Commission ordered that the hearing be adjourned to April 1, 2009 and that the Temporary Order be continued until April 2, 2009;

AND WHEREAS on April 1, 2009 this hearing continued, with Staff and counsel for Euston and Schwartz in attendance, and the Temporary Order was extended until the conclusion of this proceeding;

AND WHEREAS the Commission finds that the respondents are subject to orders made by securities regulatory authorities in other jurisdictions;

AND WHEREAS the Commission finds that it is in the public interest to make an order pursuant to subsections 127(1) and 127(10) of the Act;

IT IS ORDERED THAT:

1. pursuant to subsection 127(1)2. trading in any securities by or of the Respondents shall cease for a period of ten years from the date of this order;

2. pursuant to subsection 127(1)2.1 the acquisition of any securities by the Respondents is prohibited for a period of ten years from the date of this order;

3. pursuant to subsection 127(1)3. any exemptions contained in Ontario securities laws do not apply to the Respondents for a period of ten years from the date of this order;

4. pursuant to subsection 127(1)7. Schwartz shall resign any position he holds as a director or officer of an issuer; and,

5. pursuant to subsection 127(1)8. Schwartz is prohibited from becoming or acting as a director or officer of any issuer for a period of ten years from the date of this order.

DATED at Toronto this 29th day of July, 2009

"Wendell S. Wigle"

"Suresh Thakrar"

2.2.2 Goldbridge Financial Inc. et al. – ss. 127(1), 127(8)

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

AND

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

**TEMPORARY ORDER
Sections 127(1) & 127(8)**

WHEREAS on October 10, 2008, the Commission issued a temporary order pursuant to section 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that all trading in securities by Goldbridge Financial Inc. ("Goldbridge"), Wesley Wayne Weber ("Weber") and Shawn C. Lesperance ("Lesperance") shall cease, and that the exemptions contained in Ontario securities law do not apply to Goldbridge, Weber and Lesperance (the "Temporary Order");

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

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

AND WHEREAS it was further ordered on October 28, 2008, that notwithstanding the foregoing order, Goldbridge may trade solely as principal in one account ("the account") in accordance with the following conditions:

a. the account shall be at E*TRADE Canada ("E*Trade");

b. the account shall be in the name of Goldbridge Financial Inc.;

c. the account shall contain only funds belonging to Goldbridge contributed by Weber or Lesperance, and shall not be used directly or indirectly to trade on behalf of any other person or company;

d. Goldbridge shall provide Staff with particulars of the account, including the account number, within 7 days of the date of this Order;

e. Goldbridge shall instruct E*Trade to provide copies of all trade confirmation notices with respect to the account directly to Staff at the same time that such notices are provided to Goldbridge;

f. securities traded in the account shall consist solely of securities listed or quoted on the New York Stock Exchange ("NYSE") or the National Association of Securities Dealers Automated Quotations ("NASDAQ"); and

g. the Respondents shall immediately take steps to remove from the internet all advertising and postings on behalf of the Respondents offering to provide investment services and lessons in day trading.

AND WHEREAS the October Order was to expire at the close of business on January 20, 2009, unless extended by the Commission;

AND WHEREAS on January 19, 2009, the October Order was extended by the Commission until the close of business on March 21, 2009;

AND WHEREAS on March 20, 2009, the October Order was extended by the Commission until the close of business on May 4, 2009;

AND WHEREAS on May 1, 2009, the October Order was extended by the Commission until the close of business on June 30, 2009;

AND WHEREAS on June 29, 2009, the October Order was extended by the Commission until the close of business on July 30, 2009;

AND WHEREAS the Commission held a hearing on July 29, 2009;

AND WHEREAS Staff of the Commission ("Staff"), Weber and counsel for Lesperance appeared at the hearing but Goldbridge did not appear;

AND WHEREAS Staff, Weber and counsel for Lesperance made submissions at the hearing;

AND WHEREAS Weber and counsel for Lesperance have consented to the extension of the October Order and to the setting down of a Hearing on the Merits starting February 8, 2010 through to February 12, 2010;

AND WHEREAS counsel for Lesperance consented to the setting down of a Settlement Hearing on August 24, 2009;

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

IT IS ORDERED that the October Order is continued until the completion of the Hearing on the Merits or until further order of the Commission;

IT IS FURTHER ORDERED that a Settlement Hearing in respect of Lesperance shall take place on August 24, 2009, at 10:00 a.m.;

IT IS FURTHER ORDERED that a Hearing on the Merits in respect of this matter shall commence on February 8, 2010, at 10:00 a.m. and continue through to February 12, 2010 or such other date as the parties may agree and the Office of the Secretary shall determine;

IT IS FURTHER ORDERED that this matter shall be adjourned to August 24, 2009, at 9:00 a.m. to receive a status update on the Statement of Allegations and Notice of Hearing and to address any other pre-hearing matters to ensure the Hearing on the Merits proceeds as scheduled.

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

"Carol S. Perry"

2.2.3 Lyndz Pharmaceuticals Inc. et al.. – ss. 127(1), 127(8)

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

AND

IN THE MATTER OF
LYNDZ PHARMACEUTICALS INC.,
LYNDZ PHARMA LTD., JAMES MARKETING LTD.,
MICHAEL EATCH AND RICKEY MCKENZIE

TEMPORARY ORDER
Section 127(1) & 127(8)

WHEREAS on December 4, 2008, the Ontario Securities Commission (the "Commission") ordered pursuant to sections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that immediately for a period of 15 days from the date thereof: (a) all trading in securities of Lyndz Pharmaceuticals Inc. shall cease; (b) all trading in securities by the Respondents shall cease; and (c) the exemptions contained in Ontario securities law do not apply to the Respondents (the "Temporary Order");

AND WHEREAS on December 8, 2008, the Commission issued a Notice of Hearing, accompanied by Staff's Statement of Allegations;

AND WHEREAS on December 17, 2008, the Temporary Order was continued to February 13, 2009;

AND WHEREAS on February 13, 2009, the Temporary Order was continued to April 22, 2009;

AND WHEREAS on April 21, 2009, the Temporary Order was continued to July 7, 2009;

AND WHEREAS on July 6, 2009, the Temporary Order was continued to July 30, 2009;

AND WHEREAS on July 29, 2009, a hearing was held in this matter;

AND WHEREAS counsel for Staff of the Commission ("Staff") advised that counsel for Rickey McKenzie and James Marketing Ltd. consented to the continuation of the Temporary Order, although counsel did not attend the hearing;

AND WHEREAS Staff advised that Michael Eatch consented to the extension of the Temporary Order, although he did not attend the hearing;

AND WHEREAS Lyndz Pharmaceuticals Inc. and Lyndz Pharma Ltd. did not appear, although they were given proper notice of the hearing;

AND UPON RECEIVING submissions from Staff;

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

IT IS ORDERED THAT pursuant to s. 127(8) of the Act, the Temporary Order is continued to September 2, 2009 or until further order of the Commission; and

IT IS FURTHER ORDERED THAT this matter is adjourned to September 1, 2009, at 3:00pm.

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

"Carol S. Perry"

2.2.4 Hillcorp International Services 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
HILLCORP INTERNATIONAL SERVICES,
HILLCORP WEALTH MANAGEMENT,
SUNCORP HOLDINGS,
1621852 ONTARIO LIMITED,
STEVEN JOHN HILL, JOHN C. MCARTHUR,
DARYL RENNEBERG AND DANNY DE MELO

AMENDED TEMPORARY ORDER
Sections 127(1) & 127(5)

WHEREAS it appears to the Ontario Securities Commission (the "Commission") that:

1. 1621852 Ontario Limited ("162 Limited") is a corporation registered in the Province of Ontario;

2. Hillcorp International Services ("Hillcorp International") is a registered business name assigned to 162 Limited;

3. Hillcorp Wealth Management ("Hillcorp Wealth") represents itself as a division of Hillcorp International;

4. Suncorp Holdings appears to be operating the same business from the same premises as Hillcorp International and Hillcorp Wealth;

5. 162 Limited, Hillcorp International, Hillcorp Wealth and Suncorp Holdings (together, the "Corporate Respondents") are not registered with the Commission in any capacity;

6. Steven John Hill ("Hill") is the sole director of 162 Limited;

7. John C. McArthur ("McArthur") has identified himself as the "Vice President, International Wealth Management" of Hillcorp Wealth;

8. Daryl Renneberg ("Renneberg") has been identified as a representative of Hillcorp International;

9. Danny De Melo ("De Melo") has identified himself as the "Senior Investment Advisor (C.F.O.)" of Hillcorp Wealth;

10. Hill, McArthur, Renneberg and De Melo (together, the "Individual Respondents") are not registered with the Commission in any capacity;

11. The Individual Respondents have been soliciting investors to provide funds to the Corporate Respondents for investment;

12. Ontario investors have, in fact, provided funds to the Corporate Respondents for investment;

13. Staff of the Commission are conducting an investigation into the activities of the Corporate Respondents;

14. The Commission is of the opinion that the time required to conclude a hearing could be prejudicial to the public interest; and

15. The Commission is of the opinion that it is in the public interest to make this order;

AND WHEREAS by Commission order made June 24, 2009 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, David L. Knight, Carol S. Perry and Patrick J. LeSage acting alone, is authorized to make orders under section 127 of the Act;

IT IS ORDERED pursuant to clause 2 of subsection 127(1) and subsection 127(5) of the Act that all trading in any securities by 162 Limited, Hillcorp International, Hillcorp Wealth, Suncorp Holdings or their agents or employees shall cease;

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 Hill, McArthur, Renneberg and De Melo shall cease;

IT IS FURTHER ORDERED pursuant to clause 3 of subsection 127(1) and subsection 127(5) of the Act that the exemptions contained in Ontario securities law do not apply to 162 Limited, Hillcorp International, Hillcorp Wealth and Suncorp Holdings or their agents or employees;

IT IS FURTHER ORDERED pursuant to clause 3 of subsection 127(1) and subsection 127(5) of the Act that the exemptions contained in Ontario securities law do not apply to Hill, McArthur, Renneberg and De Melo; and

IT IS FURTHER ORDERED pursuant to subsection 127(6) of the Act that this order shall take effect immediately and shall expire on August 5, 2009 unless extended by order of the Commission.

Dated at Toronto this 24th day of July, 2009

"W. David Wilson"

2.2.5 Chi-X Canada ATS Limited – s. 15.1 of NI 21-101 Marketplace Operation and s. 6.1 of Rule 13-502 Fees

Headnote

Section 15.1 of National Instrument 21-101 Marketplace Operation (21-101) and section 6.1 of OSC Rule 13-502 Fees (13-502) – exemption granted from the requirement in paragraph 6.4(2) of 21-101 to file an amended to Form 21-101F2 45 days prior to implementation of a fee change and from the requirements in Appendix C (item E(1) and item E(2)(a)) of 13-502 to pay fees related to CHI-X's exemption application.

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

AND

IN THE MATTER OF
CHI-X CANADA ATS LIMITED

ORDER
(Section 15.1 of National Instrument 21-101
(NI 21-101) and section 6.1 of Rule 13-502 Fees)

UPON the application (the "Application") of Chi-X Canada Limited (the "Applicant") to the Director for an order pursuant to section 15.1 of NI 21-101 exempting the Applicant from the requirement in paragraph 6.4(2) to file an amendment to the information previously provided in Form 21-101F2 (the "Form F2") regarding Exhibit G(4) (fees) 45 days before implementation of the fee changes (the "45 day filing requirement");

AND UPON the Applicant filing an updated Form F2 on July 28, 2009, describing a fee change to be implemented on or about August 10, 2009 plus certain anticipated fee changes to be implemented upon further consultation with the industry (the "Fee Change");

AND UPON the application by the Applicant (the "Fee Exemption Application") to the Director for an order pursuant to section 6.1 of Rule 13-502 exempting the Applicant from the requirement to pay an activity fee of (a) $5,000 in connection with the Application in accordance with section 4.1 and item E(1) of Appendix C of Rule 13-502, and (b) $1,500 in connection with the Fee Exemption Application (Appendix C, item E(2)(a));

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

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

1. The Applicant is carrying on business as an alternative trading system in Ontario with its head office in Toronto;

2. The Applicant has consulted with industry participants prior to arriving at the new fee model and plans to provide notice to the industry prior to implementation of the resulting fee schedule changes;

3. The current multi-market trading environment requires frequent changes to the fees and fee model to remain competitive and it has become unduly burdensome to delay 45 days before responding to participants' needs and/or competitors' initiatives; and

4. Given that the notice period was created prior to multi-markets becoming a reality, and in light of the current competitive environment and the limited and highly technical nature of the exemption being sought, it would be unduly onerous to pay fees in these circumstances;

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

IT IS ORDERED by the Director:

(a) pursuant to section 15.1 of NI 21-101 that the Applicant is exempted from the 45 day filing requirement for the Fee Change, and

(b) pursuant to section 6.1 of Rule 13-502 that the Applicant is exempted from:

(i) paying an activity fee of $5,000 in connection with the Application, and

(ii) paying an activity fee of $1,500 in connection with the Fee Exemption Application.

DATED this 30th day of July, 2009

"Susan Greenglass"
Acting Director
Ontario Securities Commission

2.3 Rulings

2.3.1 ValuEngine, Inc. – s. 74(1)

Headnote

Subsection 74(1) of the Securities Act (Ontario) – Adviser exempted from the adviser registration requirement in section 25(1)(c) of the Securities Act where such adviser will provide general investment advice in the form of research and analysis to be displayed on websites, and will not give investment advice that is, or purports to be, tailored to the needs of anyone receiving the advice – Terms and conditions on exemption ruling correspond to the relevant terms and conditions on the comparable exemption from the adviser registration requirement available to providers of general investment advice in the form of publications or other media set out in proposed Schedule 26 of the Budget Measures Act, 2009 – Exemption also subject to a "sunset clause" condition.

Statutes Cited

Budget Measures Act, 2009, S.O. 2009, c. 18, Sch. 26, s. 5.
Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1)(c), 74(1)

Instruments Cited

National Instrument 45-106 Prospectus and Registration Exemptions, s. 3.7(b).

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

AND

IN THE MATTER OF
VALUENGINE, INC.

RULING
(Subsection 74(1) of the Act)

UPON the application (the **Application**) of ValuEngine, Inc. (the **Applicant**) 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 Applicant (including its respective directors, officers, representatives and employees acting as advisers on its behalf) where the Applicant provides published advice that is not, and does not purport to be, tailored to the needs of specific clients, 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;

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

"Schedule 26" means Schedule 26 of the *Budget Measures Act, 2009*.

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 Applicant having represented to the Commission that:

The Applicant

1. The Applicant is a corporation incorporated under the laws of the State of Delaware, United States of America (**U.S.**), with its head office in Princeton, New Jersey, U.S.

2. The Applicant is in the business of financial research and provides research reports on a large number of U.S. and Canadian public companies. The Applicant currently offers generic "buy," "sell" or "hold" recommendations, not tailored to the needs of specific clients.

3. The Applicant provides published advice with respect to a large number of U.S. and Canadian public companies, but does not exercise control over clients' funds or securities, and does not give investment advice that is, or purports to be, tailored to the needs of specific clients.

4. The Applicant proposes to publish such advice in the form of research and analysis to be displayed on websites accessible by the public at no charge to the public.

5. The Applicant is not registered in any capacity under the Act.

Advising by the Applicant

6. By providing its published advice, the Applicant triggers the adviser registration requirement in the Act and, in the absence of an exemption, is required to register under the Act.

7. The Applicant is not able to rely on the exemptions from the adviser registration requirement in the Act available under NI 45-106. For example, the Applicant cannot rely on subsection 3.7(b) of NI 45-106, because it is not "a publisher or a writer for a newspaper, news magazine or business or financial journal or periodical, however delivered, that is of general and regular paid circulation, and only available to subscribers for value, or purchasers of it."

8. Under amendments to section 34 of the Act contained in Schedule 26 (the **Amended Section 34**), the Applicant would be able to act as an adviser in respect of securities without having to obtain registration under the Act as an adviser.

9. The Amended Section 34 provides that an adviser is exempt from the adviser registration requirement in the Act if the adviser provides only general investment advice in the form of publications or other media without any representation that the advice is tailored to the needs of anyone who receives it.

10. In accordance with the Amended Section 34, the Applicant:

    (a) will provide general investment advice in the form of research and analysis to be displayed on websites; and

    (b) will not give investment advice that is, or purports to be, tailored to the needs of specific clients.

11. The Amended Section 34 has the effect of removing the existing category of "securities adviser" as a category of registration under the Act.

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 Applicant shall not be subject to the adviser registration requirement in the Act where the Applicant provides published advice, provided that, at the relevant time:

(a) the Applicant is unable to rely on the existing exemptions contained in NI 45-106;

(b) the Applicant:

    (i) provides only general investment advice in the form of publications or other media; and

    (ii) does not make any representation that the advice is tailored to the needs of anyone who receives it; and

(c) this Ruling, in respect of the Applicant, will terminate upon the earlier of:

(i) the Applicant being registered as an adviser under the Act;

(ii) the day on which Schedule 26 of the *Budget Measures Act, 2009* is proclaimed in force;

(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 an amendment to Section 34 of the Act; or

(iv) 90 days after the coming into force of Schedule 26 of the *Budget Measures Act, 2009* if Schedule 26 of the *Budget Measures Act, 2009* does not contain an amendment or provision substantially similar to the Amended Section 34, as defined and described in this Order.

July 31, 2009

"Kevin J. Kelly"
Commissioner
Ontario Securities Commission

"Margot C. Howard"
Commissioner
Ontario Securities Commission

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Euston Capital Corp. and George Schwartz – s. 127

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

AND

IN THE MATTER OF
EUSTON CAPITAL CORP. AND
GEORGE SCHWARTZ

REASONS AND DECISION
Section 127 of the Securities Act, R.S.O. 1990, c. S.5

Hearing:	March 19 and April 1, 2009		
Decision:	July 29, 2009		
Panel:	Wendell S. Wigle, Q.C.	–	Commissioner (Chair of the Panel)
	Suresh Thakrar	–	Commissioner
Counsel:	Yvonne Chisholm	–	for Staff of the Ontario Securities Commission
	Julia Dublin	–	for Euston Capital Corp. and George Schwartz

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REASONS AND DECISION

I. OVERVIEW

A. Background

[1] This was a hearing before the Ontario Securities Commission (the "Commission") on March 19 and April 1, 2009 pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") to consider whether it is in the public interest to make an order imposing certain sanctions against Euston Capital Corp. ("Euston") and George Schwartz ("Schwartz") (together, the "Respondents").

[2] This matter arose out of a temporary order issued by the Commission on May 1, 2006, which ordered that all trading in securities of Euston cease, that any trading in securities by Euston and Schwartz cease, as well as that any exemptions contained in Ontario securities law do not apply to the Respondents (the "Temporary Order").

[3] A Notice of Hearing was issued by the Commission on May 2, 2006, in relation to a Statement of Allegations issued by Staff of the Commission ("Staff") on the same date.

[4] The Temporary Order was subsequently extended on May 11, June 9, and October 17, 2006. On December 4, 2006, the Temporary Order was extended until the next appearance and the hearing was adjourned pending the delivery of a decision by the Saskatchewan Court of Appeal, in an appeal by the Respondents of a decision of the Saskatchewan Financial Services Commission ("SFSC") dated February 9, 2006.

[5] On February 14, 2008 the Saskatchewan Court of Appeal released its decision, which allowed the Respondents' appeal in part, deciding that the SFSC failed to provide sufficient reasons for its sanctions decision, but took no objection to its evidentiary findings, and remitted the matter back to the SFSC for reconsideration, *Euston Capital Corp. v. Saskatchewan Financial Services Commission*, 2008 SKCA 22. The SFSC released its decision on March 27, 2008.

[6] An Amended Statement of Allegations was issued by Staff on February 20, 2009, followed by an Amended Notice of Hearing issued by the Commission on February 20, 2009 setting down the hearing for March 19, 2009.

[7] Staff and counsel for the Respondents were in attendance at this hearing on March 19, 2009. In order to allow the parties to complete their submissions, an order was made on March 20, 2009 adjourning the hearing and extending the Temporary Order until April 1, 2009.

[8] At the conclusion of this hearing on April 1, 2009, the Temporary Order was extended until the release of this decision.

B. The Respondents

[9] Euston was incorporated in Ontario on August 21, 2001. Its registered office is located in Toronto at 1267A St. Clair Avenue West, Suite 600. Euston is neither a reporting issuer nor a registrant in Ontario and has never filed a prospectus with the Commission. Euston was previously a reporting issuer in Nova Scotia, but has been in default since June 30, 2005.

[10] Schwartz is an Ontario resident, and was the President, Secretary, and sole director of Euston. Schwartz has never been registered with the Commission.

C. Issues

[11] Staff allege that the Respondents violated subsections 25(1)(a) and 53(1) of the Act, and seek final orders against the Respondents pursuant to section 127 of the Act.

[12] In addition to section 127 generally, Staff relies upon paragraph 4 of subsection 127(10) of the Act, which provides that the Commission may make an order under subsection 127(1) or (5) "in respect of a person or company if … [t]he person or company is subject to an order made by a securities regulatory authority in any jurisdiction imposing sanctions, conditions, restrictions or requirements on the person or company".

[13] We consider whether a sanctions order should be made against the Respondents below.

[14] Staff seek the following order against the Respondents:

(a) that pursuant to subsection 127(1)2. trading in any securities by or of the Respondents cease for a period of ten years;

(b) that pursuant to subsection 127(1)2.1 the acquisition of any securities by the Respondents is prohibited for a period of ten years;

(c) that pursuant to subsection 127(1)3. any exemption contained in Ontario securities laws do not apply to the Respondents for a period of ten years;

(d) that pursuant to subsection 127(1)7. Schwartz resign any position he holds as a director of officer of an issuer; and,

(e) that pursuant to subsection 127(1)8. Schwartz is prohibited from becoming or acting as a director or officer of any issuer for a period of ten years.

D. Evidence

[15] Staff did not conduct a full investigation in this matter, and called a limited amount of evidence during this hearing. Instead, pursuant to the Commission's public interest jurisdiction under section 127 and pursuant subsection 127(10) of the Act, Staff rely on orders made against the Respondents by the SFSC on March 27, 2008, the Alberta Securities Commission ("ASC") on May 31, 2007, *Re Euston Capital Corp*, 2007 ABASC 338, and by the Northwest Territories Office of the Superintendent of Securities ("NTOSS") on December 16, 2005. Staff also rely on an order made by the Manitoba Securities Commission ("MSC") on January 22, 2008 against Euston, and an order made by the British Columbia Securities Commission ("BCSC") against Schwartz on July 15, 2008, *Re Schwartz*, 2008 BCSECCOM 403.

[16] Staff filed written submissions in May, 2006 and March, 2009, and provided oral submissions during the hearing. The Respondents filed written submissions in November, 2006, and March, 2009, and counsel for the Respondents provided oral submissions during the hearing.

II. ANALYSIS

[17] Staff have not conducted a full investigation in this matter, and primarily rely on findings and orders made in other jurisdictions. Staff submit that the Commission may make a final order against the Respondents based on findings made in other jurisdictions, pursuant to section 127 of the Act generally or pursuant to the inter-jurisdictional enforcement regime contemplated by subsection 127(10) of the Act.

[18] Accordingly, Staff have not called any evidence aside from an affidavit sworn by Staff's investigation counsel in this matter, which outlines the following background information in regards to the Respondents.

[19] Euston issued a private offering memorandum for the sale of Euston shares from the treasury to accredited investors at a price of $3.00 per share on August 26, 2002. The offering memorandum was filed with the Commission in November, 2002.

[20] Euston also filed 45-501F1 forms with the Commission between October 2002 and November 2004. Euston's filings with the Commission indicate that 956,129 Euston shares were sold, resulting in proceeds of $2,868,527. According to a shareholders list dated April 19, 2006 obtained from Euston's transfer agent, Capital Transfer Agency Inc., Euston had over 500 shareholders. The majority of the shares were sold to residents of Saskatchewan, Alberta, Manitoba, Ontario, and British Columbia. Some shares were also sold to residents of the Northwest Territories, and to those residing in countries other than Canada.

[21] In particular, according to Euston's filings, 116,258 shares were sold to over 100 residents of Ontario in exchange for $384,774.

[22] Euston and Schwartz purported to rely on the accredited investor exemption in OSC Rule 45-501 and Multilateral Instrument 45-103.

A. Proceedings in other jurisdictions

[23] There have been numerous proceedings against the Respondents in other jurisdictions, in regards to related conduct which took place during the same time period.

Saskatchewan

[24] The SFSC held a hearing on February 1 and 2, 2006, and heard from Schwartz, as well as six Euston investors. In proceedings before the SFSC, Schwartz and Euston admitted that between September 2003 and November 2004, Euston, through its sales representatives, sold shares to Saskatchewan residents using a telemarketing campaign based in Toronto which resulted in approximately 53 Saskatchewan investors purchasing more than 73,000 Euston shares for at total of $220,440, and that Schwartz's actions in developing and overseeing the execution of the scheme of distribution of Euston securities to investors in Saskatchewan were acts directly or indirectly in furtherance of trades of Euston securities. Schwartz also admitted that he was responsible for all activities engaged in by Euston.

[25] The SFSC released its decision on February 9, 2006, and found that Euston and Schwartz were not entitled to rely on the accredited investor exemption as claimed. The SFSC found that "at no time, during discussions over the telephone with the possible investor, did the salesman endeavor to determine whether the possible investor could meet the test to qualify as an Accredited Investor". None of the investors who testified qualified as accredited investors, and all of them stated that they were not asked by representatives of Euston if they qualified as such.

[26] The SFSC also found that "[t]he only attempt to satisfy the Accredited Investor requirement was in the Purchase Agreement which, as we hold, was submitted to the Purchaser after the fact of the purchase having been made and therefore too late to satisfy the exemption requirements".

[27] As a result of the SFSC's finding that Euston and Schwartz traded in shares of Euston without a prospectus and without being registered, and because insufficient steps were taken to allow them to rely on the accredited investor exemption, the SFSC found that they had engaged in illegal distributions.

[28] The SFSC's finding that neither the exemption from registration nor the exemption from the prospectus requirements imposed by the Saskatchewan *Securities Act*, 1988, S.S. 1988-89, c. S-42.2 were available to Euston and Schwartz, was upheld by the Saskatchewan Court of Appeal. However, the Saskatchewan Court of Appeal did find that the SFSC erred by failing to provide reasons explaining why it imposed the sanctions it did, and remitted the matter back to the SFSC.

[29] On March 27, 2008 the SFSC released a second decision providing reasons for its sanctions decision. It made the same sanctions order as in its first decision, and ordered that Euston and Schwartz cease trading in all securities for ten years, that the exemptions provide for in section 134(1)(a) of the Saskatchewan Securities Act do not apply to Euston and Schwartz for ten years, and that Euston and Schwartz each pay an administrative penalty of $50,000. In its February 9, 2006 decision the SFSC ordered Schwartz to pay costs in the amount of $14,622.40.

Alberta

[30] The ASC held a hearing from May 15 to May 18, 2006, and released its decision on February 14, 2007. It found through the efforts of Schwartz and salespersons for Euston, securities in Euston were sold to 314 Alberta residents in exchange for approximately $1.4 million, purportedly in reliance on the accredited investor exemption provided for in what was then Multilateral Instrument 45-103.

[31] The ASC found that several Alberta residents did not qualify as accredited investors, and that Euston took no reasonable steps to ensure that the investors met the income or assets threshold to qualify for the exemption. Consequently the ASC found that Euston could not rely on the accredit investor exemption. Euston and Schwartz were not registered to trade securities in Alberta, and Euston had not received a receipt for a prospectus.

[32] The ASC also found that Schwartz was the guiding mind behind the distribution of Euston securities, and that he authorized the selling activities undertaken by salespersons for Euston. Finally, the ASC found that Schwartz and Euston's salespersons made prohibited representations that Euston's securities would be listed on an exchange, and that Euston and Schwartz filed untrue reports with the ASC.

[33] The ASC held a separate sanctions hearing on March 23, 2007, and released its decision on May 31, 2007. The ASC ordered that Euston cease trading in securities until it files a prospectus and receives a receipt from the ASC, and that Schwartz cease trading securities for 10 years, that none of the exemptions under the Alberta Securities Act, R.S.A. 2000, c. S-4, apply to him for 10 years, that he be prohibited from acting as a director or officer for 10 years, and that he pay an administrative penalty of $50,000. The ASC also ordered Euston to pay costs in the amount of $10,000, and Schwartz to pay costs in the amount of $20,000.

Manitoba

[34] The MSC held a hearing and rendered a decision on January 8, 2008, which found the following:

> Eight witnesses who had bought shares in Euston testified. All of them were or had been involved in small businesses, many of them in small towns and rural areas of Manitoba. Generally, each had been contacted by telephone by a representative of Euston, and solicited to purchase shares in the company. Usually several calls were made to each prospective investor, sometimes by more than one representative of Euston. Evidence suggested that the callers were persuasive in promoting the company. The amount invested varied from one purchaser to another, although the price per share was a constant $3.00.
>
> No one from Euston had explained the definition of an accredited investor, nor explained the reason for the financial requirements, nor canvassed the investors whether they qualified under the definition. During the hearing, each witness was asked if he or she met the definition, and all denied it.

[35] The MSC also found that once the trades were completed, usually several weeks later, the investors received a Purchase Agreement and were instructed to sign it and return it to Euston. Schedule "B" of the Purchase Agreement

represented that the securities were being sold pursuant to the accredited investor exemption under what was then Multilateral Instrument 45-101.

[36] In regards to Schwartz the MSC found that he "was willfully blind in not making inquiries when he should have [in regards to whether the investors qualified for the accredited investor exemption], because he wished to remain ignorant of prospective investors' true financial situation. Quite simply put, the requirements of the Instrument were not met, the exemption was unavailable and clearly the investment was not suitable for these investors".

[37] Consequently the MSC ordered that Euston is not entitled to the exemptions from registration under Manitoba's Securities Act, *The Securities Act*, R.S.M 1988, c. S50, for a period of ten years, that Euston pay an administrative penalty of $15,000 and costs of $20,325.56, and that Euston compensate five investors for a total of $48,000.

British Columbia

[38] The BCSC made a reciprocal order under the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418, based on the ASC's decision. It ordered that Schwartz cease trading aside from trading in his name by a registered dealer, that he is prohibited from acting as a director or officer, from acting in a management or consultative capacity in connection with activities in the securities market, and that he is prohibited from engaging in investor relations activities, all for a period of ten years from the date of the ASC's decision.

Northwest Territories

[39] Euston and Schwartz are also subject to an order by the NTOSS, dated December 16, 2005, prohibiting them from trading in securities.

B. Section 127 of the Act

[40] Staff have taken the position that we have the authority to make a final order against the Respondents under our general public interest jurisdiction pursuant to section 127 of the Act. Staff have referred us to *Re Biller* (2005), 28 O.S.C.B. 10131 ("*Biller*"), *Re Woods* [1997] 8 BCSC Weekly Summary 22 ("*Woods*"), and *Re Foreign Capital Corp.* (2005), 28 OSCB 4221 ("*Foreign Capital*"), as support for their position.

[41] In *Biller* the Commission made an order permanently prohibiting the respondent from trading in securities and from acting as a director or officer of a registrant or issuer. In making its order the Commission relied primarily on the decision of the British Columbia Supreme Court, which found that the respondent was guilty of securities-related fraud contrary to section 380(1) of the *Criminal Code* and the misappropriation of funds contrary to section 334(a) of the *Criminal Code*, though it also considered the decision of the B.C. Securities Commission. The Commission also heard evidence that following his prison sentence the respondent planned to come to Ontario and participate in the capital markets.

[42] In *Biller* at paras. 32-33 and 35-36, the panel considered the Commission's jurisdiction over the respondent, given that his illegal conduct was carried out in British Columbia and not Ontario:

> 32 A transactional nexus to Ontario is not a necessary pre-condition to the Commission's public interest jurisdiction. Rather a connection to Ontario is only one of a number of factors to be considered in the exercise of its discretion under section 127 of the Act.
>
> 33 In *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 ("*Asbestos*"), the Supreme Court of Canada had to decide whether the Commission had to be satisfied that a sufficient Ontario nexus or connection to Ontario had been established as a pre-requisite to exercising its jurisdiction. At paragraph 51, the Supreme Court stated:
>
> > I agree with Laskin J.A. that "the Commission did not set up any jurisdictional preconditions to the exercise of its discretion" (p. 273). *In my view, the erection of such a jurisdictional barrier by the OSC is inconsistent with its having fought in the earlier proceedings for the recognition of its jurisdiction to hear this matter.* Furthermore, in its reasons in the present case, the OSC clearly rejected the idea that the transactional connection factor could act as a jurisdictional barrier to the exercise of its public interest discretion. At para. 63, the OSC quoted the decision of McKinlay J.A. in the earlier proceedings rejecting a transactional connection with Ontario as an implied precondition to the exercise of its s. 127 jurisdiction. The OSC then continued, at para. 64:

> . . . we regard this statement as a refusal to impose a "sufficient Ontario connection" as a jurisdictional requirement which must be satisfied in any clause 127(1)3 proceedings before the Commission's discretion arises, thus leaving it to the Commission to make the necessary discretionary determination unencumbered by any a priori requirement imposed by the court as a matter of interpretation of the statutory provision. (Emphasis added)
>
> …
>
> 35 **Accordingly, an Ontario connection is not a pre-condition to the exercise of the Commission's jurisdiction. It is however, a factor considered in *Asbestos* and can be considered by the Commission in this case in exercising its discretion.**
>
> 36 Biller's conduct in Eron was so egregious and the losses to investors so significant that investor confidence in the Ontario capital markets would be damaged if this panel could not consider and, if it thought to be in the public interest to do so, make an order against Biller under section 127 of the Act.
>
> [Emphasis added]

[43] In *Foreign Capital* the Commission made a sanctions order against the Respondent after considering his past criminal conduct in a securities-related matter. The Commission stated at paragraph 26 that a "respondent's past criminal conduct may be an important indicator of the need for protective action". The Commission relied on transcripts from the respondent's criminal hearing before the Ontario Superior Court of Justice, in which the respondent was found guilty of defrauding 128 investors contrary to section 380(1)(a) and 334(a) of the *Criminal Code of Canada*.

[44] In *Woods* the B.C. Securities Commission relied on the findings of the Ontario courts that the respondent had breached the Act, by trading in securities with knowledge of a material fact or material change that had not been generally disclosed. The respondent was sentenced to imprisonment for 30 days. No other evidence was put before the panel. The B.C. Securities Commission stated the following:

> **We consider it reasonable to rely on the findings of fact made by the courts in Ontario and accordingly we adopt the foregoing findings as our own.**
>
> …
>
> Provincial securities litigation in Canada is substantially uniform in most material respects. The Commission is therefore interested in the activities of persons found to have contravened securities legislation in other jurisdictions … For these reasons, applications are made to the Commission from time to time to issue orders on a more or less reciprocal basis to those issue in other jurisdictions. Similarly, applications are made to securities regulators in other jurisdictions to issue these types of orders based on orders made by this Commission in the first instance.
>
> The orderly and credible regulation of the securities market throughout Canada, not to mention common sense, argues strongly that such applications be favourably received. **However, the Commission's responsibility in hearing such applications is no different than in any other case. In each case, the Commission must consider what is in the public interest, and act accordingly.**
>
> [emphasis added]

[45] In *Biller, Woods*, and *Foreign Capital* the respective panels considered the appropriate sanctions separately; the findings made by the courts served only to establish that a sanctions order should be made.

[46] Accordingly, we conclude that we can make an order against the Respondents pursuant to our public interest jurisdiction under section 127 of the Act on the basis of decisions and orders made in other jurisdictions, if we find it necessary in order to protect investors in Ontario and the integrity of Ontario's capital markets.

C. Subsection 127(10) of the Act

[47] On November 27, 2008, subsection 127(10) of the Act came into force. Staff seek to rely upon the inter-jurisdictional enforcement provisions of the Act and in particular, on subsection 127(10) of the Act which provides the following:

Inter-jurisdictional enforcement

127. (10) Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:

1. The person or company has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities.

2. The person or company has been convicted in any jurisdiction of an offence under a law respecting the buying or selling of securities.

3. The person or company has been found by a court in any jurisdiction to have contravened the laws of the jurisdiction respecting the buying or selling of securities.

4. The person or company is subject to an order made by a securities regulatory authority in any jurisdiction imposing sanctions, conditions, restrictions or requirements on the person or company.

5. The person or company has agreed with a securities regulatory authority in any jurisdiction to be made subject to sanctions, conditions, restrictions or requirements.

Does subsection 127(10) operate retrospectively?

[48] Subsection 127(10) of the Act came into force after the various decisions and orders made by other securities regulatory authorities upon which Staff seeks to rely. Staff submits that the fact that subsection 127(10) came into force after the various orders and decisions were made, should not impair their ability to rely on subsection 127(10) in this matter. Specifically, Staff submits that the presumption against retrospectivity is not applicable to subsection 127(10) because it is procedural and not substantive in nature, and because it can only be exercised in the public interest and is not punitive in nature.

[49] In Canadian law, in addition to Charter provisions which restrict the retroactive effect of penal laws, the retrospective application of laws is limited by a presumption that laws only operate prospectively. However, there are exceptions to the presumption. If the purpose of the law is to protect the public rather than to be punitive, or if the law is procedural in nature rather than substantive, the presumption does not apply.

[50] Staff refers us to the Alberta Court of Appeal's decision in *Alberta Securities Commission v. Brost*, 2008 ABCA 326 ("*Brost*"). In *Brost* at para. 57, the Alberta Court of Appeal considered whether or not the increase in the maximum possible administrative penalty under the Alberta *Securities Act*, R.S.A. 2000, c. S-4 was retrospective:

> The Commission was correct to conclude that the presumption against retrospective application did not apply in this case because administrative penalties under the *Act* are not punitive but are instead designed to protect the public: *Brosseau v. Alberta Securities Commission*, [1989] 1 S.C.R. 301, 57 D.L.R. (4th) 458 at 471-3, cited in Re *Morrison Williams Investment Management Ltd.* (2000), 7 ASCS 2888. Moreover, contrary to what Brost and Alternatives suggest, it is well settled that "[e]xcept for criminal law, the retrospectivity and retroactivity of which is limited by s. 11(g) of the *Charter*, there is no requirement of legislative prospectivity embodied in … any provision of our Constitution": *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49, [2005] 2 S.C.R. 473 at para. 69.

[51] The British Columbia Court of Appeal considered the same issue in *Thow v. B.C. (Securities Commission)*, 2009 BCCA 46 at para. 50 ("*Thow*"), and concluded that the presumption against the retrospective application of legislation does apply to the increased maximum possible administrative penalty under the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418.

[52] The divergence of the conclusions reached by the Alberta Court of Appeal and the British Court of Appeal hinges, in part, on their differing interpretations of the Supreme Court of Canada's decision in *Brosseau v. Alberta Securities Commission*, [1989] 1 S.C.R. 301 ("*Brosseau*").

[53] In *Brosseau*, the Supreme Court of Canada considered whether or not new sections in Alberta's *Securities Act*, R.S.A. 1981, c. S-6.1, which gave the Alberta Securities Commission the authority to prohibit individuals from trading in securities and to decide whether or not certain exemptions in the act apply, should attract the presumption against retrospectivity. L'Heureux-Dubé J., writing for the court, cited the following excerpt of the decision by Dickson J. (as he then was) in *Gustavson Drilling (1964) Ltd. v. The Minister of National Revenue*, [1977] 1 S.C.R. 271 at p. 279, as the general principal with respect to the retrospectivity of legislative enactments:

> The general rule is that the statutes are not to be constructed as having retrospective operation unless such a construction is expressly or by necessary implication required by the language of the Act. An amending enactment may provide that it shall be deemed to have come into force on a date prior to its enactment or it may provide that it is to be operative with respect to transactions occurring prior to its enactment. In those instances the statute operates retrospectively.

[54] However, the presumption against retrospectivity does not apply to all types of legislation. In *Brosseau* at paras. 50-51 and 53, L'Heureux-Dubé J., in deciding that the changes to Alberta's *Securities Act* did not attract the presumption against retrospectivity, outlined a rebuttal to the presumption where the goal of the legislation is not to punish, but rather to protect the public. I:

> The so-called presumption against retrospectivity applies only to prejudicial statutes. It does not apply to those which confer a benefit. As Elmer Driedger, Construction of Statutes, 2nd ed. (1983), explains at p. 198::
>
> > ... there are three kinds of statutes that can properly be said to be retrospective, but there is only one that attracts the presumption. First, there are the statutes that attach benevolent consequences to a prior event; they do not attract the presumption. Second, there are those that attach prejudicial consequences to a prior event; they attract the presumption. Third, there are those that impose a penalty on a person who is described by reference to a prior event, but the penalty is not intended as further punishment for the event; these do not attract the presumption.
>
> A subcategory of the third type of statute described by Driedger is enactments which may impose a penalty on a person related to a past event, so long as the goal of the penalty is not to punish the person in question, but to protect the public. This distinction was elaborated in the early case of R. v. Vine (1875), L.R. 10 Q.B. 195 , where Cockburn C.J. wrote at pp. 199-200:
>
> > If one could see some reason for thinking that the intention of this enactment was merely to aggravate the punishment for felony by imposing this disqualification in addition, I should feel the force of Mr. Poland's argument, founded on the rule which has obtained in putting a construction upon statutes – that when they are penal in their nature they are not to be construed retrospectively, if the language is capable of having a prospective effect given to it and is not necessarily retrospective. But here the object of the enactment is not to punish offenders, but to protect the public against public-houses in which spirits are retailed being kept by persons of doubtful character ... the legislature has categorically drawn a hard and fast line, obviously with a view to protect the public, in order that places of public resort may be kept by persons of good character; and it matters not for this purpose whether a person was convicted before or after the Act passed, one is equally bad as the other and ought not to be intrusted with a licence.
> >
> > …
>
> Elmer Dreidger summarizes the point in "Statutes: Retroactive, Retrospective Reflections" (1978), 56 *Can. Bar Rev.* 264, at p. 275:
>
> > In the end, resort must be had to the object of the statute. If the intent is to punish or penalize a person for having done what he did, the presumption applies, because a new consequence is attached to a prior event. But if the new punishment or penalty is intended to protect the public, the presumption does not apply.

[55] The Supreme Court of Canada considered the nature of section 127 in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 ("*Asbestos*") at para. 43:

> … Rather, 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: *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 (Ont. Securities Comm.) …

[56] Based on a plain reading of subsection 127(10) in the context of section 127 as a whole, and after taking into account the Supreme Court of Canada's decisions in *Brosseau* and *Asbestos*, we conclude that the purpose of purpose of subsection

127(10) is to protect the public. Hence, the presumption against retrospectivity is not applicable, and subsection 127(10) may operate retrospectively.

[57] While the courts in *Brost* and *Thow* had to consider the retrospective application of a provision which expanded the sanctioning powers of a securities regulator, subsection 127(10) of the Act does no such thing. Rather, subsection 127(10) of the Act simply allows the Commission to consider any convictions or orders made against an individual in other jurisdictions, when deciding whether or not to make an order under subsection 127(1) or (5) in the public interest.

[58] Moreover, this Commission has considered the conduct of individuals in other jurisdictions in the past when making an order under subsections 127(1) and (5) in the public interest, even before subsection 127(10) came into effect (see our earlier discussion of *Biller* and *Foreign Capital*).

[59] In light of our conclusion that the presumption against retrospectivity is inapplicable to subsection 127(10) of the Act, given that the purpose of the subsection is to protect the public, it is not necessary to consider whether subsection 127(10) of the Act is procedural or substantive in nature.

D. The Necessity of Sanctions

[60] Having determined that we can make an order against the Respondents pursuant to our public interest jurisdiction under section 127 or pursuant to subsection 127(10) of the Act, we now have to determine whether sanctions are necessary, and if so, whether the order proposed by Staff is appropriate in the circumstances.

[61] In deciding whether or not it is in the public interest that an order be made against the Respondents, we are guided by the underlying purposes of the Act, as set out in section 1.1:

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

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

[62] In pursuing the purposes of the Act, we are also guided by the fundamental principles of the Act as enunciated by section 2.1, which include: "the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants"; that "effective and responsive securities regulation requires timely, open and efficient administration and enforcement of this Act by the Commission"; and that the "integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes".

[63] In making an order under section 127 of the Act, the Commission exercises its public interest jurisdiction in a protective and preventative manner. As stated in *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at pp. 1610-1611:

> …, the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In doing so we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.

[64] In view of the various decisions and orders made by securities regulatory authorities in other jurisdictions, we considered the following factors in deciding whether or not sanctions against the Respondents are necessary in order to protect the public interest:

- Euston sold shares in exchange for nearly $2.9 million from investors across Canada, including Ontario, while purportedly relying on the accredited investor exemption;
- Schwartz admitted before the SFSC that he was responsible for the conduct of Euston;
- many of the witnesses who testified at the various hearings in other jurisdictions stated that they were not accredited investors;
- the SFSC and the ASC found that the Respondents did not take reasonable steps to ensure that the investors qualified for the accredited investor exemption;

- the SFSC, the ASC, and the MSC all found that investors received a Purchase Agreement which made representations that they were accredited investors, after the trades had already been completed;

- the ASC found that Euston filed untrue reports, and that Schwartz and Euston made prohibited representations that Euston's securities would be listed on an exchange;

- Euston and Schwartz marketed Euston's securities from an office in Ontario, and according to filings made with the Commission, sold securities to residents of Ontario;

- relying on the various decisions and orders made by securities regulatory authorities in other jurisdictions, represents a timely, open and efficient administration and enforcement of the Act by the Commission (section 2.1 of the Act);

- the terms of the orders made by the various securities regulatory authorities indicate that they viewed the Respondents conduct as a serious threat to the public interest.

[65] We also considered the following factors, which we considered to be the most important:

- if the conduct as found to have taken place in Saskatchewan, Alberta, and Manitoba had been found to have taken place in Ontario with Ontario investors, that conduct would have been contrary to the public interest in Ontario, and would have also amounted to violations of subsection 25(1)(a) of the Act for trading in securities without registration and subsection 53(1) of the Act for distributing securities without a prospectus or receipt from the Director;

- the proposed sanctions by Staff correspond with the fundamental principles that the Commission maintain "high standards of fitness and business conduct to ensure honest and responsible conduct by market participants" and that the "integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes". (section 2.1, paragraph 2 of the Act).

[66] Counsel for the Respondents suggested that in considering decisions reached by other securities regulatory authorities, we should "take into account everything that's happened up to this point and review it as … an appeal court … but with powers beyond an appeal court because all securities regulators can review their own decisions, remake their own decisions, with raw discretion". While we agree with counsel's assertion that we are not bound by the decisions of other securities regulatory authorities, we have been given no reason to doubt the veracity of the findings made by the SFSC, the MSC, and the ASC. Furthermore, we note that the Respondents had opportunities to make submissions during those hearings, and did in fact do so; counsel for the Respondents appeared during proceedings before the SFSC and the ASC, and Euston made written submissions to the MSC.

[67] In addition, the Saskatchewan Court of Appeal reviewed the findings of the SFSC, and decided only that the SFSC was required to provide more detailed reasons for its sanctions decision and took no objection to its evidentiary findings.

[68] Counsel for the Respondents also suggested that there should have been a joint hearing amongst the various securities regulatory authorities, rather than multiple separate proceedings. Here we note only that it was the Respondents' actions which resulted in the necessity of proceedings in multiple jurisdictions. In deciding to market and sell securities in multiple jurisdictions, the Respondents must have known or should have known that they would be subject to regulation by multiple authorities.

[69] Schwartz testified during this hearing to show that there has been "no loss of value to investors". He testified that at some point Euston acquired a public shell company named AccessMed for $200,000, which was meant to be the vehicle by which Euston went public. Schwartz testified that once Euston ran into regulatory problems, he attempted to save shareholder value by gifting one share of AccessMed in exchange for each share of Euston held by shareholders. He stated that Euston gave all of its assets and business to AccessMed. Schwartz also stated that he transferred his entire interest in AccessMed of 2 million shares to Uranium 308 Resources Inc. in exchange for 15,000 Euros; the cost of listing AccessMed on the Frankfurt Stock Exchange.

[70] Schwartz testified that he was then approached by a company called Kinti Mining Group that was seeking to list on the Frankfurt Stock Exchange. He stated that Kinti Mining Group performed a reverse takeover of AccessMed to gain access to the Exchange. Schwartz testified that immediately after the reverse takeover, Kinti Mining Group was trading at the approximate value at which Euston shares were purchased.

[71] Schwartz stated the following in regards to the current situation:

> Schwartz: So, yes, today is the stock is about on the -- well, there are two markets, two venues on the Frankfurt Stock Exchange for this Kinti Mining stock. On what's called the Xetra, the X-E-T-R-A market, it's quoted at – which is an electronic market, it's not floor trading, it's an electronic market, it's quoted at, I believe – still quoted at two Euros, but on the – on the floor – on the regular floor trading market it's down to three and a half Euro cents. So it has collapsed since the gifting took place.
>
> …
>
> Schwartz: Because of the – well, primarily, I guess, because if – if I had to put on my handicapper hat, I would say because the market itself has plunged due to the world financial crisis. I do not know how many shareholders were able to cash out while the stock was at the two Euro, but ... I do not know that.

[72] We were shown no evidence that any investors actually cashed in their shares of AccessMed or Kinti Mining Group while it was still trading at two Euros, nor were we provided with an explanation as to why Schwartz was willing to give Uranium 308 Resources Inc. 2 million shares of AccessMed which were ostensibly worth 4 million Euros in exchange for 15,000 Euros. It appears to us that contrary to Schwartz's assertion, over 500 investors have experienced at least a significant loss of their investment, and possibly even a loss of their entire investment of nearly $2.9 million.

[73] As a result of the fact that we were presented with only limited evidence, and heard from no investors resident in Ontario, we are not able to come to the conclusion that the Respondents violated subsections 25(1)(a) or 53(1) of the Act.

[74] However, in light of the reasons listed above, we find that sanctions against the Respondents are necessary in order to protect the public interest.

E. The Appropriate Sanctions

[75] In determining the nature and duration of the appropriate sanctions, the Commission may consider a number of factors including:

(a) the seriousness of the allegations;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been recognition of the seriousness of the improprieties;

(e) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered but any like-minded people from engaging in similar abuses of the capital markets; and

(f) any mitigating factors.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743, at paras. 25-26)

[76] Further, the Supreme Court of Canada in *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 has affirmed that the Commission may properly impose sanctions which are a general deterrent, stating "… it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative".

[77] While we are mindful that in determining the appropriate sanctions in this matter, we must consider the specific circumstances to ensure that the sanctions are proportionate to the conduct involved (see *Re M.C.J.C. Holdings Inc. and Michael Cowpland*, (2002), 25 O.S.C.B. 1133 ("*Re M.C.J.C. Holdings*") at para. 26).

[78] Staff decided to rely on subsection 127(10) of the Act in this matter, and thus presented us with only limited evidence. The limited evidence before us indicates that the Respondents may have been engaged in serious misconduct in Ontario, and their conduct may have harmed a number of Ontario investors. A more thorough presentation of the evidence in regards to the Respondents' conduct in Ontario may have led to more serious sanctions against the Respondents.

[79] Nevertheless, we find that Staff's proposed sanctions further the goals of the Act, and reflect a fair and proportionate outcome relative to the Respondents' known conduct.

III. CONCLUSION

[80] For the aforementioned reasons, we find that it is in the public interest to impose the sanctions against the Respondents recommended by Staff, which we note are similar to those imposed by the SFSC, the ASC, the MSC, and the BCSC.

[81] Pursuant to our public interest jurisdiction under section 127 and pursuant to subsection 127(10) of the Act, we have decided to order:

- that trading in securities by or of the Respondents shall cease for a period of ten years from the date of the order;
- that the Respondents be prohibited from acquiring any securities for a period of ten years from the date of the order;
- that any exemptions contained in Ontario securities laws shall not apply to the Respondents for a period of ten years from the date of the order;
- that Schwartz resign any positions he holds as a director or officer of an issuer; and
- that Schwartz be prohibited from becoming a director or officer of any issuer for a period of ten years from the date of the order.

Accordingly, we have issued our order dated July 29, 2009.

Dated at Toronto this 29th day of July, 2009

“Wendell S. Wigle”

“Suresh Thakrar”

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
LMS Medical Systems Inc.	20 July 09	31 July 09	31 July 09	
Alliance Financing Group Inc.	05 Aug 09	17 Aug 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
Firstgold Corp.	22 July 09	04 Aug 09	04 Aug 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		
Wedge Energy International Inc.	04 May 09	15 May 09	15 May 09		
Sprylogics International Corp.	02 June 09	15 June 09	15 June 09		
Firstgold Corp.	22 July 09	04 Aug 09	04 Aug 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
07/07/2009	219	Alange Corp. - Receipts	140,000,000.00	N/A
07/15/2009	32	Apollo Gold Corporation - Common Shares	13,000,008.60	N/A
07/14/2009 to 07/24/2009	15	Baccalieu Energy Inc. - Common Shares	878,601.00	292,867.00
07/16/2009 to 07/21/2009	46	Calibre Mining Corp. - Common Shares	8,795,025.00	N/A
07/20/2009	2	CapitalSource Inc. - Common Shares	2,343,250.00	515,000.00
07/16/2009	5	Centamin Egypt Limited - Common Shares	29,640,000.00	19,000,000.00
07/17/2009	22	Creston Moly Corp. - Units	1,695,000.00	N/A
06/30/2009	53	Delta Minerals Corporation - Common Shares	2,518,500.00	5,037,000.00
07/16/2009 to 07/22/2009	8	Development Notes Limited Partnership - Units	1,483,147.00	1,483,147.00
06/30/2009	9	Dumont Nickel Inc. - Units	207,500.00	N/A
07/15/2009	3	Element Four Technologies Inc. - Common Shares	53,001.00	35,334.00
07/14/2009	1	FideliSoft Inc. - Preferred Shares	200,000.00	1,333,333.00
07/06/2009	1	First Leaside Visions II Limited Partnership - Units	40,000.00	40,000.00
07/17/2009 to 07/22/2009	2	First Leaside Wealth Management Inc. - Preferred Shares	536,600.00	536,600.00
07/03/2009	2	GC-Global Capital Lending Partners Limited Partnership - Limited Partnership Units	1,000,000.00	100,000.00
07/01/2008 to 06/30/2009	456	GS+A Growth Fund - Limited Partnership Units	51,267,321.30	771,325.66
07/01/2008 to 06/30/2009	401	GS+A Premium Income Fund - Limited Partnership Units	56,843,412.94	409,041.75
01/08/2009 to 06/30/2009	277	GS+A Value Fund - Limited Partnership Units	40,201,207.91	340,250.43
06/29/2009	29	Halo Resources Ltd. - Flow-Through Shares	715,000.00	N/A
07/14/2009 to 07/20/2009	9	IGW Real Estate Investment Trust - Trust Units	79,231.50	79,330.87
07/15/2009 to 07/21/2009	9	IGW Segregated Debt 2 Limited Partnership - Limited Partnership Units	256,000.00	256,000.00
07/07/2009	3	LogMeIn Inc. - Common Shares	167,490.00	7,666,667.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
06/30/2009	1	Marret HYS Trust - Trust Units	11,654,250.00	1,160,284.94
04/15/2009	2	Micron Technology Inc, - Notes	240,760.00	N/A
04/15/2009	5	Micron Technology Inc. - Common Shares	10,466,138.15	2,095,000.00
06/30/2009	8	MicroPlanet Technology Corp. - Notes	715,000.00	N/A
05/29/2009	24	Newport Strategic Yield Fund Limited Partnership - Units	2,357,780.54	212,798.00
06/26/2009	11	Ondine Biopharma Corporation - Units	707,979.94	N/A
07/22/2009	2	ORIX Corporation - Common Shares	13,059,704.00	230,900.00
07/10/2009	2	Pele Mountain Resources Inc. - Units	499,999.92	N/A
07/13/2009	1	Schroder Emerging Markets Fund (Canada) - N/A	95,000,000.00	N/A
07/21/2009	24	ShonePoint Global Brands Inc. - Common Shares	750,000.00	5,000,000.00
07/16/2009	13	Soft Switching Technologies Corporation - Preferred Shares	3,298,988.11	N/A
07/15/2009	9	Tech Link International Entertainment Limited - Notes	625,000.00	N/A
07/03/2009	105	True North Gems Inc. - Units	1,370,000.00	13,700,000.00
07/15/2009	17	Tyhee Development Corp. - Common Shares	2,655,000.00	25,446,000.00
07/21/2009	1	VG Gold Corp. - Units	1,008,585.12	12,594,814.00
06/30/2009	18	Viking Gold Exploration Inc. - Units	325,000.00	4,091,500.00
07/17/2009	32	Walton AZ Sawtooth Investment Corporation - Common Shares	585,510.00	58,551.00
07/17/2009	8	Walton AZ Sawtooth Limited Partnership - Limited Partnership Units	697,860.80	62,309.00
07/17/2009	38	Walton AZ Silver Reef Investment Corporation - Common Shares	779,360.00	77,936.00
07/17/2009	34	Walton GA Arcade Meadows 2 Investment Corporation - Common Shares	717,680.00	71,768.00
07/17/2009	34	Walton TX Garland Heights 1 Investment Corporation - Common Shares	683,620.00	68,362.00
07/17/2009	4	Walton TX Garland Heights Limited Partnership 1 - Limited Partnership Units	750,814.40	67,037.00
07/13/2009	2	Wild Horse Farm & Bio-Energy Corporation - Preferred Shares	1,250,000.00	1,250,000.00
07/15/2009	1	WindTamer Corporation - Common Shares	55,970.00	16,660,000.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Aura Minerals Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated July 29, 2009
NP 11-202 Receipt dated July 30, 2009
Offering Price and Description:
$125,125,000.00 - 45,500,000 (post-Consolidation) Common Shares Issuable upon Conversion of 27,500,000 previously issued Subscription Receipts (on a pre-Consolidation basis) @ $0.55 per Subscription Receipt
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
GMP Securities L.P.
Genuity Capital Markets
Wellington West Capital Markets Inc.
Dundee Securities Corporation
National Bank Financial Inc.
Raymond James Ltd.
Promoter(s):
-
Project #1452522

Issuer Name:
Canadian Oil Sands Limited
Canadian Oil Sands Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Base Shelf Prospectus dated July 31, 2009
NP 11-202 Receipt dated July 31, 2009
Offering Price and Description:
$1,500,000,000.00 - Debt Securities (Unconditionally guaranteed by Canadian Oil Sands Trust)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1453670/1453667

Issuer Name:
EdgePoint Canadian Growth & Income Portfolio
EdgePoint Canadian Portfolio
EdgePoint Global Growth & Income Portfolio
EdgePoint Global Portfolio
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated July 29, 2009
NP 11-202 Receipt dated July 30, 2009
Offering Price and Description:
Series O Units
Underwriter(s) or Distributor(s):
EdgePoint Wealth Management Inc.
Promoter(s):
EdgePoint Wealth Management Inc.
Project #1451403

Issuer Name:
Minera Andes Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated July 30, 2009
NP 11-202 Receipt dated July 31, 2009
Offering Price and Description:
$20,025,000.00 - 26,700,000 Units Price: $0.75 per Unit
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Scotia Capital Inc.
GMP Securities L.P.
Haywood Securities Inc.
Promoter(s):
-
Project #1453311

Issuer Name:
Romarco Minerals Inc
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated July 29, 2009
NP 11-202 Receipt dated July 29, 2009
Offering Price and Description:
$40,040,000.00 - 45,500,000 Common Shares Price: $0.88 per Common Share
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
GMP Securities L.P.
Macquarie Capital Markets Canada Ltd.
Wellington West Capital Markets Inc.
Promoter(s):
-
Project #1451868

Issuer Name:
ScotiaMocatta Physical Copper Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated July 28, 2009
NP 11-202 Receipt dated July 30, 2009
Offering Price and Description:
Maximum US$* (* Units)
Price: US$10.00 per Unit
Minimum Purchase: 100 Units
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Promoter(s):
Scotia Managed Companies Administration Inc.
Project #1452758

Issuer Name:
TransForce Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated July 28, 2009
NP 11-202 Receipt dated July 29, 2009
Offering Price and Description:
$37,440,000.00 - 6,400,00 Common Shares Price: $5.85 per Common Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Cormark Securities Inc.
Promoter(s):
-
Project #1451482

Issuer Name:
Western Canadian Coal Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated July 30, 2009
NP 11-202 Receipt dated July 30, 2009
Offering Price and Description:
$52,110,000.00 - 19,300,000 Common Shares Price: $2.70 per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
GMP Securities L.P.
Canaccord Capital Corporation
Salman Partners Inc.
Promoter(s):
-
Project #1453302

Issuer Name:
BONAVISTA ENERGY TRUST
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated July 29, 2009
NP 11-202 Receipt dated July 29, 2009
Offering Price and Description:
$387,550,000.00 - 23,000,000 Subscription Receipts each representing the right to receive one Trust Unit
$16.85 per Subscription Receipt
Underwriter(s) or Distributor(s):
TD Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
FirstEnergy Capital Corp.
National Bank Financial Inc.
Peters & Co. Limited
HSBC Securities (Canada) Inc.
Tristone Capital Inc.
Promoter(s):
-
Project #1449672

Issuer Name:
Claymore Alternative Energy/Eco ETF
Claymore Broad Emerging Markets ETF (formerly Claymore Frontier Markets ETF)
Claymore Global Infrastructure ETF
Claymore Global Real Estate ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated July 24, 2009
NP 11-202 Receipt dated August 4, 2009
Offering Price and Description:
Mutual fund securities at net asset value
Underwriter(s) or Distributor(s):
Claymore Investments, Inc.
Promoter(s):
-
Project #1437141

Issuer Name:
First Capital Realty Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Base Shelf Prospectus dated July 28, 2009
NP 11-202 Receipt dated July 29, 2009
Offering Price and Description:
$1,000,000,000.00 - Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1449612

Issuer Name:
IAMGOLD Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Base Shelf Prospectus dated July 29, 2009
NP 11-202 Receipt dated July 30, 2009
Offering Price and Description:
US$700,000,000.00
Common Shares
First Preference Shares
Second Preference Shares
Debt Securities
Warrants
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1446477

Issuer Name:
Class W, Class A, Class F and Class I Units of:
Institutional Managed Income Pool (also offering Class Z Units)
Institutional Managed Canadian Equity Pool
Institutional Managed US Equity Pool
Institutional Managed International Equity Pool
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated July 25, 2009
NP 11-202 Receipt dated July 30, 2009
Offering Price and Description:
Class W, Class A, Class F, Class I and Class Z Units @ Net Asset Value
Underwriter(s) or Distributor(s):
ASSANTE FINANCIAL MANAGEMENT LTD.
Assante Capital Management Ltd.
Promoter(s):
United Financial Corporation
Project #1440646

Issuer Name:
J5 Acquisition Corp.
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated July 29, 2009
NP 11-202 Receipt dated July 30, 2009
Offering Price and Description:
$400,000.00 (4,000,000 Common Shares) Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Blackmont Capital Inc.
Promoter(s):
Ronald D. Schmeichel
Project #1448595

Issuer Name:
Westport Innovations Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Shelf Prospectus dated July 28, 2009
NP 11-202 Receipt dated July 29, 2009
Offering Price and Description:
Cdn.$200,000,000.00
Common Shares
Preferred Shares
Subscription Receipts
Warrants
Debt Securities
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1448809

Issuer Name:
Canfe Ventures Ltd.
Principal Jurisdiction - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated April 7, 2009
Withdrawn on July 31, 2009
Offering Price and Description:
Up to $3,000,000.00 - Offering of up to 10,000,000 Units at a price of $0.30 per Unit (each unit consisting of one Class “A” Common Share and one half of one Warrant)
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
Robert Bick
Project #1402430

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: Rockside Capital Management Inc. To: RCM Partners Inc.	Investment Counsel & Portfolio Manager & Limited Market Dealer	July 24, 2009
New Registration	Captus Partners Ltd.	Limited Market Dealer	July 29, 2009
New Registration	Pershing Square Capital Management, L.P.	Limited Market Dealer	July 30, 2009
Amalgamation	Company: MD Private Investment Management Inc. and MD Funds Management Inc. To Form: MD Physician Services Inc.	Investment Counsel and Portfolio Manager Limited Market Dealer	July 31, 2009
New Registration	Osaka Capital Corp.	Limited Market Dealer	July 31, 2009
New Registration	Stoneleigh Capital Partners Inc.	Limited Market Dealer	August 4, 2009
New Registration	Seaquest Capital Management Inc.	Limited Market Dealer, Investment Counsel and Portfolio Manager	August 4, 2009

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 MFDA Schedules Next Appearance in the Matter of ASL Direct Inc. and Adrian S. Leemhuis

NEWS RELEASE
For immediate release

MFDA SCHEDULES NEXT APPEARANCE
IN THE MATTER OF
ASL DIRECT INC. AND ADRIAN S. LEEMHUIS

July 29, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of ASL Direct Inc. and Adrian Samuel Leemhuis by Notice of Hearing dated October 17, 2008.

An appearance by teleconference took place in this proceeding today before a three-member Hearing Panel of the MFDA's Central Regional Council.

Following submissions by the parties respecting scheduling and other procedural matters, the Hearing Panel directed that the next appearance in this proceeding will take place by teleconference on September 15, 2009. The Panel also set aside October 27, 2009 or November 24, 2009 to consider a pre-hearing motion regarding jurisdiction, with the hearing of the matter on its merits scheduled for March 1-5 and 11, 2010. These appearances will commence at 10:00 a.m. (Eastern), or as soon thereafter as required, in the Hearing Room located at the offices of the MFDA at 121 King Street West, Suite 1000, Toronto, Ontario and will be open to the public, except as may be required for the protection of confidential matters.

A copy of the 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 145 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Marco Wynnyckyj
Hearings Coordinator
416-945-5146 or mwynnyckyj@mfda.ca

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Chapter 25

Other Information

25.1.1 Consents

25.1.1 Pet Valu Canada Inc. – s. 4(b) of the Regulation

Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the Business Corporations Act (British Columbia).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 181.
Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 289/00, as am., s. 4(b).

IN THE MATTER OF
R.R.O. 1990, REGULATION 289/00 AS AMENDED
(the Regulation) MADE UNDER THE
BUSINESS CORPORATIONS ACT (ONTARIO)
R.S.O. 1990. c. B.16, AS AMENDED (the OBCA)

AND

IN THE MATTER OF
PET VALU CANADA INC.

CONSENT
(Subsection 4(b) of the Regulation)

UPON the application of Pet Valu Canada Inc. (the Applicant) to the Ontario Securities Commission (the Commission) requesting the consent of the Commission for the Applicant to continue into another jurisdiction pursuant to subsection 4(b) of the Regulation.

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 was continued under the OBCA on May 23, 1993 under the name Pet Valu Inc. by Articles of Amalgamation of the same date and was continued in its current form under the name Pet Valu Canada Inc. by Articles of Arrangement dated April 23, 1996.

2. The Applicant's head and registered office is located at 7300 Warden Avenue, Suite 106, Markham, Ontario L3R 9Z6. Following completion of the Continuance (defined below), the registered office of the Applicant will be located at 1600 Cathedral Place, 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

3. The Applicant has an authorized share capital consisting of an unlimited number of common shares, an unlimited number of non-voting exchangeable shares (exchangeable on a one-for-one basis for common shares of the Applicant's parent company, Pet Valu, Inc., a Delaware company), 7,000,000 Class A convertible preferred non-voting shares, 176,845 Class B convertible preferred non-voting shares and one Class C voting preferred share, of which one common share and 9,853,440 exchangeable shares (the "Exchangeable Shares") were issued and outstanding as of July 24, 2009. The Exchangeable Shares are generally non-voting in the Applicant but carry the right to vote in the Applicant's parent, Pet Valu, Inc., through a voting and exchange trust agreement.

4. The Applicant is an offering corporation under the OBCA and is a reporting issuer under the *Securities Act* (Ontario) (the "Act"). The Applicant is also a reporting issuer or its equivalent under the securities legislation of the provinces of British Columbia, Alberta and Manitoba (together, the "Legislation").

5. The Applicant's one outstanding common share is held by Pet Valu, Inc., and the Exchangeable Shares are listed and posted for trading on the Toronto Stock Exchange (the "TSX") under the symbol "PVC".

6. On July 5, 2009, the Applicant announced that it had entered into an agreement with affiliates of Roark Capital Partners II AIV AG, L.P. ("Roark"), whereby Roark would indirectly acquire all of the issued and outstanding share capital of the Applicant, including the Exchangeable Shares, pursuant to a plan of arrangement transaction to be effected under the laws of British Columbia (the "Announced Transaction"). Under the Announced Transaction, and subject to the terms and conditions thereof, the holders of Exchangeable Shares are to be paid Cdn$13.68 cash for their shares at closing.

7. In order to accommodate tax structuring objectives of the Announced Transaction, the Applicant must be a company continued under the *Business Corporations Act* (British Columbia) (the "BCBCA")

no later than immediately prior to the special meeting of holders of the Exchangeable Shares to consider and, if deemed acceptable, approve the Announced Transaction (the "Meeting"). The Meeting is scheduled to be held on August 25, 2009.

8. The Meeting will be held under the laws of British Columbia.

9. In connection with the Meeting, the Applicant has caused an information circular to be mailed to shareholders which discloses full particulars of the Announced Transaction, including details of the proposed Continuance, the anticipated timing thereof and any substantive differences between the OBCA and the BCBCA.

10. The consent of the holders of Exchangeable Shares is not required for the Applicant to continue under the BCBCA.

11. The Applicant intends to apply (the "Application for Continuance") to the Director under the OBCA for authorization to continue under the BCBCA pursuant to section 181 of the OBCA (the "Continuance"). Pursuant to subsection 4(b) of the Regulation, where a corporation is an offering corporation, the Application for Continuance must be accompanied by a consent from the Commission.

12. The Applicant will remain a reporting issuer under the Act and the Legislation after the Continuance but intends to apply to cease its reporting obligations under the Act and the Legislation following completion of the Announced Transaction.

13. The Applicant is not in default of any of the provisions of the Act or the regulations or rules made thereunder and is not in default under the Legislation.

14. The Applicant is not in default of any of the rules, regulations or policies of the TSX.

15. The Applicant is not a party to any proceeding or, to the best of its knowledge, information and belief, pending proceeding under the OBCA, the Act or the Legislation.

16. Pet Valu, Inc., the only holder of common shares of the Applicant authorized the Continuance of the Applicant by shareholder resolution dated July 14, 2009.

17. The material rights, duties and obligations of a corporation governed by the BCBCA are substantially similar to those of a corporation governed by the OBCA.

18. The Continuance is proposed to be made because the Applicant believes it to be in the best interest of the Applicant to continue as a corporation and conduct its affairs in accordance with the laws of the Province of British Columbia. It is a condition precedent to the completion of the Announced Transaction that the Applicant be continued as a limited company under the laws of British Columbia. In the event that the Announced Transaction is not completed, the Applicant intends to continue to Ontario under the OBCA.

THE COMMISSION HEREBY CONSENTS to the continuance of the Applicant as a corporation under the BCBCA.

DATED at Toronto, Ontario this 4th day of August, 2009.

"Margot C. Howard"
Commissioner
Ontario Securities Commission

"Kevin J. Kelly"
Commissioner
Ontario Securities Commission

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