The Ontario Securities Commission

OSC Bulletin

August 14, 2009

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

The Ontario Securities Commission
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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

AUGUST 14, 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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David L. Knight, FCA	—	DLK
Patrick J. LeSage	—	PJL
Carol S. Perry	—	CSP

SCHEDULED OSC HEARINGS

August 17, 2009	**Shane Suman and Monie Rahman**
1:00 p.m.	s. 127 and 127(1)
August 21, 2009	C. Price in attendance for Staff
9:00 a.m.	Panel: JEAT/PLK
August 18, 2009	**Paul Iannicca**
2:30 p.m.	s. 127
	H. Craig in attendance for Staff
	Panel: LER
August 18, 2009	**Tulsiani Investments Inc. and Sunil Tulsiani**
2:30 p.m.	s. 127
	A. Sonnen in attendance for Staff
	Panel: JEAT
August 18, 2009	**Prosporex Investments Inc., Prosporex Forex SPV Trust,**
3:30 p.m.	**Anthony Diamond, Diamond+Diamond, and Diamond+Diamond Merchant Banking Bank**
	s. 127
	H. Daley in attendance for Staff
	Panel: MGC/CSP
August 19, 2009	**Lehman Cohort Global Group Inc., Anton Schnedl, Richard Unzer,**
10:00 a.m.	**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: CSP
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. September 8, 2009 10:00 a.m.	**MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric** s. 127 and 127(1) D. Ferris in attendance for Staff Panel: PJL/CSP
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 09:00 a.m.	**MI Developments Inc.** s. 104(1) and 127 M. Vaillancourt in attendance for Staff Panel: JEAT/PLK

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 22, 2009 10:00 a.m.	**Berkshire Capital Limited, GP Berkshire Capital Limited, Panama Opportunity Fund and Ernest Anderson** s. 127 E. Cole in attendance for Staff Panel: TBA
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 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 Fun 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
January 18, 2010 10:00 a.m. January 19, 2010 2:30 p.m. January 20-29, 2010 10:00 a.m.	**New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd., L. Jeffrey Pogachar, Paola Lombardi and Alan S. Price** s. 127 S. Kushneryk in attendance for Staff Panel: TBA
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
February 8-12, 2010 10:00 a.m.	**Goldbridge Financial Inc., Wesley Wayne Weber and Shawn C. Lesperance** s. 127 J. Feasby 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

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

S. B. McLaughlin

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

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

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

ADJOURNED SINE DIE

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 Notice of Commission Approval – Amendments to the Rules of the Toronto Stock Exchange to Update the Order Designation Provisions in TSX Rule 4-403

TSX INC.

AMENDMENTS TO THE RULES OF THE TORONTO STOCK EXCHANGE TO UPDATE THE ORDER DESIGNATION PROVISIONS IN TSX RULE 4-403

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission approved amendments to the Rules of the Toronto Stock Exchange to Update the Order Designation Provisions in TSX Rule 4-403. The amendments in addition to updating the existing order marker requirements in TSX Rule 4-403 also introduce a requirement for Participating Organizations to mark orders when they are entered for the account of an issuer that is purchasing pursuant to a normal course issuer bid.

The amendments were published for comment on March 27, 2009 at (2009) 32 OSCB 2878. No changes have been made to the amendments that were originally published. A summary of the comments received and TSX Inc.'s response are attached to this notice of approval.

SUMMARY OF COMMENTS

AMENDMENTS TO THE TORONTO STOCK EXCHANGE TRADING RULES TO UPDATE THE ORDER DESIGNATION PROVISIONS INCLUDING NORMAL COURSE ISSUER BID MARKERS

List of Commenters:

ITG Canada Corp. (ITG)
RBC Dominion Securities Inc. (RBC)
Raymond James Ltd. (RJ)
Professor Brian F. Smith, School of Business and Economics, Wilfred Laurier University (Smith)

Capitalized terms used and not otherwise defined shall have the meaning given in the Request for Comments for public interest amendments to the Toronto Stock Exchange Trading Rules to Update the Order Designation provisions including Normal Course Issuer Bid Markers, published in the OSC Bulletin on March 27, 2009.

Summarized Comments Received	*TSX Response*
1. Introduction of the NCIB marker and amendments to TSX Rule 4-403.	
All four of the commenters supported the introduction of the NCIB marker and the amendments to TSX Rule 4-403.	Thank you for your comments. TSX will implement the amendments to TSX Rule 4-403 as proposed in the Request for Comments.
2. Enforcement of the prohibitions against upticks, trading in the opening session and trading in the last 30 minutes of the regular trading session.	
ITG and RJ suggested that TSX should automate enforcement of NCIB orders which would violate a TSX Rule, including the uptick restriction and restrictions against trades in the opening session and last 30 minutes of the regular trading session. They suggested that NCIB orders could either be automatically price-adjusted for those orders which would create an uptick or automatically cancelled when the execution of that order would violate a TSX Rule, such as trading in the opening session or in the last 30 minutes of the regular trading session.	Currently, the Quantum™ trading engine is not programmed to automatically enforce the NCIB trading restrictions as suggested. TSX will review the possibility of effecting cost/benefit analysis regarding automated enforcement of the NCIB trading restrictions. In the meantime, the implementation of the new marker will assist TSX in monitoring and enforcing trading restrictions through a violation notification reporting system, post-trade.
3. Race Conditions Considerations.	
RBC suggested that TSX (and the OSC) should review and consider time stamps at the order origination (i.e. Participating Organizations OMS systems) rather than time stamps at TSX for compliance with the uptick restriction. Trades executed under an NCIB program on behalf of a liquid issuer may inadvertently cause the Participating Organization executing the purchases to receive a potential uptick violation notification. In most cases, trades considered subject to these race conditions have caused no market interruption nor materially influenced the stock price.	TSX does not consider it sufficient to rely upon the time stamp at the order origination for the uptick restriction because a significant amount of time may pass between the order entry and the trade execution. The Participating Organization is responsible for monitoring the order book and ensuring that the order is cancelled or amended if it would otherwise create an uptick. Participating Organizations must be able to demonstrate compliance with the NCIB trading restrictions or take securities into their error accounts for any violations identified post-trade.

Summarized Comments Received	*TSX Response*
4. Multiple Marketplace Environment.	
All four of the commenters suggested that the CSA and TSX consider updating their Rules and Policies governing the execution of NCIBs on an ATS in light of the multiple marketplace environment and ensure there are no inconsistencies with National Instruments 21-101 and 23-101.	TSX agrees that the framework of rules governing NCIBs should be reviewed. In light of the multiple marketplace environment TSX had referred the matter to the OSC for consideration during the fall of 2008. Since that time, TSX has been involved in discussions with IIROC and understands that consideration is underway.
RBC also noted that it is not clear how TSX can effectively conduct surveillance of NCIB trading activity by Participating Organizations if the execution of such order takes place on multiple markets.	TSX cannot monitor NCIB trading activities on marketplaces other than TSX. Such trading activities are subject to the review of IIROC and the Canadian Securities Administrators (CSA).
5. General	
For clarification purposes, RJ asked whether share purchase plan arrangements should be marked with the proposed NCIB marker given that these accounts must also follow the uptick restrictions (unless operated by an independent trustees).	Purchases made by a non-independent trustee for a share purchase plan (or a similar plan) should be marked with the NCIB marker. The trading restrictions apply to all purchases by a non-independent trustee under a share purchase plan (or a similar plan). Participating Organizations are directed to TSX Staff Notice 2008-0003 dated September 29, 2008 for additional guidance on this point.
Smith advises that NCIB purchases should be reported to the public through SEDI, in the same manner as insider trading reports are publicly disclosed.	TSX understands that buying brokers currently mark NCIB trades as insider trades and that issuers file insider trading reports on SEDI as a conservative practice, however it is not entirely clear that brokers and issuers are required to do so under provincial securities legislation. Due to this uncertainty, it is not clear whether the CSA enforces insider trading requirements on NCIB purchase. TSX believes that the CSA could consider Smith's proposal as part of the review referenced above in item 4.

1.2 Notices of Hearing

1.2.1 MI Developments Inc. – ss. 104(1), 127

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

AND

IN THE MATTER OF
MI DEVELOPMENTS INC. ("MID")

NOTICE OF HEARING
(Subsection 104(1) and section 127)

WHEREAS Greenlight Capital, Inc. has requested that the Commission convene a hearing to consider matters in connection with MID's compliance with Multilateral Instrument 61-101 – Protection of Minority Security Holders in Special Transactions ("MI 61-101") (the "Greenlight Application");

AND WHEREAS Farallon Capital Management, L.L.C., Hotchkis and Wiley Capital Management, LLC, Donald Smith & Co. Inc., Owl Creek Asset Management, L.P., North Run Capital, LP and Pzena Investment Management, LLC on behalf of themselves and funds and entities under their management have requested that the Commission convene a hearing in connection with MID's compliance with MI 61-101 (the "Farallon Application");

TAKE NOTICE that the Commission will hold a hearing pursuant to subsection 104(1) and section 127 of the Act at the Commission's offices at 20 Queen Street West, 17th Floor Hearing Room, Toronto, Ontario commencing on Wednesday, September 9, 2009 at 9:00 a.m. and or as soon as possible thereafter to consider whether the Commission should make an order under subsection 104(1) and/or section 127 of the Act, as the Commission deems appropriate.

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

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

BY REASON OF the Greenlight Application dated July 13, 2009 and the Farallon Application dated July 10, 2009 filed with the Office of the Secretary of the Ontario Securities Commission.

DATED at Toronto, this 11th day of August, 2009.

"John Stevenson"
Secretary to the Commission

1.3 News Releases

1.3.1 Canadian Securities Regulators Outline Requirements for Exempt Market Dealers

FOR IMMEDIATE RELEASE
August 7, 2009

CANADIAN SECURITIES REGULATORS
OUTLINE REQUIREMENTS FOR
EXEMPT MARKET DEALERS

Toronto – The Canadian Securities Administrators (CSA) today outlined the requirements for exempt market dealers (EMDs) under the new National Registration regime.

CSA Staff Notice 31-312 summarizes the key proficiency, financial and operational requirements and transition process for the new EMD registration category under National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103) which was published on July 17, 2009. It also summarizes the conditions for exemptive relief available in Alberta, British Columbia, Manitoba and the Territories.

National Instrument 31-103 and related rules apply to firms and individuals who deal in securities, provide investment advice, or manage investment funds. NI 31-103 and related rules and amendments will come into force on September 28, 2009.

The Notice and NI 31-103 are available on various CSA members' websites.

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

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867-975-6587

Donn MacDougall
Northwest Territories
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867-920-8984

1.4 Notices from the Office of the Secretary

1.4.1 Hillcorp International Services et al.

FOR IMMEDIATE RELEASE
August 6, 2009

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

AND

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

TORONTO – Following a hearing held yesterday, the Commission issued an Order extending the temporary order to February 8, 2010, with certain provisions, and adjourning the hearing to February 5, 2010 at 10:00 a.m.

A copy of the Order dated August 5, 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)

1.4.2 Berkshire Capital Limited et al.

FOR IMMEDIATE RELEASE
August 10, 2009

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

AND

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

TORONTO – Following a hearing held today, the Commission issued an Order which provides that the hearing is adjourned to September 22, 2009 and the Temporary Order is continued until September 23, 2009, or such other date as is agreed by Staff and the Respondents and is determined by the Office of the Secretary. The hearing on September 22, 2009 will commence at 10:00 a.m.

A copy of the Order dated August 10, 2009 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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SECRETARY

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Laurie Gillett
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416-595-8913

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416-593-8314
1-877-785-1555 (Toll Free)

1.4.3 New Life Capital Corp. et al.

FOR IMMEDIATE RELEASE
August 10, 2009

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

AND

IN THE MATTER OF
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

TORONTO – The Commission issued an Order today in the above named matter which provides that the Temporary Order is continued until the conclusion of the hearing on the merits on this matter or until further order of the Commission and the hearing is adjourned to the weeks of January 18 and 25, 2010, when the Commission will sit from 10:00 a.m. to 4:30 p.m. except for January 19, 2010, when the Commission will sit from 2:30 to 5:00 p.m.

A copy of the Order dated August 10, 2009 is available at **www.osc.gov.on.ca**.

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1.4.4 Patheon Inc. and JLL Patheon Holdings LLC

FOR IMMEDIATE RELEASE
August 11, 2009

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

AND

IN THE MATTER OF
PATHEON INC.

AND

IN THE MATTER OF
AN OFFER TO PURCHASE FOR CASH
ANY AND ALL OF THE
RESTRICTED VOTING SHARES OF PATHEON INC.
BY JLL PATHEON HOLDINGS LLC

AND

IN THE MATTER OF
AN APPLICATION BY THE SPECIAL COMMITTEE OF
THE BOARD OF DIRECTORS OF PATHEON INC.
FOR CERTAIN RELIEF UNDER
SECTIONS 104(1) AND 127

TORONTO – The Commission issued its Reasons for Decision on the Application of JLL Patheon Holdings, LLC pursuant to s. 104(2) of the *Securities Act* and the Application of the Special Committee of Patheon Inc.

A copy of the Reasons for Decision dated August 6, 2009 is available at **www.osc.gov.on.ca**.

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1.4.5 MI Developments Inc.

FOR IMMEDIATE RELEASE
August 11, 2009

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

AND

IN THE MATTER OF
MI DEVELOPMENTS INC. ("MID")

TORONTO – On August 11, 2009, the Commission issued a Notice of Hearing pursuant to subsection 104(1) and section 127 of the *Securities Act* to consider the Application of Greenlight Capital, Inc. (the "Greenlight Application") and the Application of Farallon Capital Management, L.L.C., Hotchkis and Wiley Capital Management, LLC, Donald Smith & Co. Inc., Owl Creek Asset Management, L.P., North Run Capital, LP and Pzena Investment Management, LLC on behalf of themselves and funds and entities under their management (the "Farallon Application").

The hearing will be held at the Commission's offices at 20 Queen Street West, 17th Floor Hearing Room A, Toronto, Ontario commencing on Wednesday, September 9, 2009 at 9:00 a.m.

A copy of the Notice of Hearing, the Greenlight Application and the Farallon Application are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.6 Rex Diamond Mining Corporation et al.

FOR IMMEDIATE RELEASE
August 12, 2009

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

AND

IN THE MATTER OF
REX DIAMOND MINING CORPORATION,
SERGE MULLER AND BENOIT HOLEMANS

TORONTO – The Commission issued its Reasons and Decision on Sanctions and Costs and an Order in the above named matter.

A copy of the Reasons and Decision on Sanctions and Costs and the Order dated August 11, 2009 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Sprott Asset Management L.P. and Sprott Molybdenum Participation Corporation

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from the self-dealing provisions in s. 118(2)(b) of the Act and s. 115(6) of the Regulation to permit a fund to sell illiquid assets representing 0.34% of the fund's portfolio to its fund manager, as part of the liquidation and distribution of substantially all of the fund's assets to its investors – the trades will comply with conditions in s.6.1(2) of National Instrument 81-107 – Independent Review Committee for Investment Fund (NI 81-107), including Independent Review Committee approval and the requirement that either the last arm's length trade price from the executing dealer or a quote from an independent, arm's length dealer be obtained, when the bid and ask price of the illiquid assets are not readily available.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 118(2)(b), 121(2)(a)(ii), 147.
Ontario Regulation 1015 General Regulation, s. 115(6).
National Instrument 81-107 Independent Review Committee for Investment Funds.

July 14, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(The Principal Jurisdiction)

AND

ALBERTA, SASKATCHEWAN, ONTARIO, NOVA SCOTIA, NEW BRUNSWICK, AND NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF
SPROTT ASSET MANAGEMENT L.P.
(the Manager or Filer)

AND

IN THE MATTER OF
SPROTT MOLYBDENUM PARTICIPATION CORPORATION
(the Corporation)

DECISION

Background

The securities regulatory authority or regulator in Ontario has received an application from the Filer for a decision under the securities legislation of the jurisdiction of the principal regulator (the **Legislation**) for an exemption pursuant to section 121 of the Legislation from the restriction prohibiting a portfolio manager from knowingly causing any investment portfolio managed by it from purchasing or selling the securities of any issuer from or to the account of a responsible person, any associate of a responsible person or the portfolio manager, as set out in clause 118(2)(b) of the Legislation, in order to permit the purchase of the Illiquid Assets (as hereinafter defined) held by the Corporation (the **Purchase**) by the Filer (the **Passport Exemption**).

The securities regulatory authority or regulator in each of Alberta, Saskatchewan, Ontario, Nova Scotia, New Brunswick, and Newfoundland and Labrador (the **Jurisdictions**) (the **Coordinated Exemptive Relief Decision Makers**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption from

(a) in respect of the Legislation in Newfoundland and Labrador only, the restriction prohibiting a portfolio manager from knowingly causing any investment portfolio managed by it from purchasing or selling the securities of any issuer from or to the account of a responsible person, any associate of a responsible person or the portfolio manager, as set out in the Legislation; and

(b) in respect of the Legislation in Ontario, Alberta, Saskatchewan, Nova Scotia, Newfoundland & Labrador and New Brunswick only, the restriction prohibiting the purchase or sale of any security, in which an investment counsel or any partner, officer or associate of an investment counsel has a direct or indirect beneficial interest, from or to any portfolio managed or supervised by the investment counsel, as set out in the Legislation,

in order to permit the Purchase by the Filer (collectively, the **Coordinated Exemptive Relief**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Québec, Nova Scotia and New Brunswick,

(c) the decision is the decision of the principal regulator, and

(d) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker.

Interpretation

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

IRC means the independent review committee of the Corporation established pursuant to NI 81-107;

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

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

SAM GP means Sprott Asset Management GP Inc., the general partner of the Filer; and

SAM Inc. means Sprott Asset Management Inc.

Representations

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

1. The Filer is a limited partnership formed and organized under the laws of the Province of Ontario and maintains its head office in the City of Toronto. The general partner of the Filer is SAM GP, which is a corporation incorporated under the laws of the Province of Ontario. SAM GP is a directly wholly-owned subsidiary of Sprott Inc. Sprott Inc. is a corporation incorporated under the laws of the Province of Ontario and is a public company listed on the Toronto Stock Exchange. Sprott Inc. is the sole limited partner of the Filer and the sole shareholder of SAM GP. Certain of the directors and officers of the Filer and SAM GP are also directors and officers of Sprott Inc.

2. The Filer is registered under the securities legislation in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador as an adviser in the categories of investment counsel and portfolio manager, or the equivalent.

3. The Corporation is a corporation incorporated under the laws of the Province of Ontario and maintains its head office in the City of Toronto. The Corporation is a public company listed on the Toronto Stock Exchange under the symbol “MLY” and is a reporting issuer in each province of Canada. The initial public officering of the common shares (the **Common Shares**) and the warrants of the Corporation were qualified for distribution pursuant to a final prospectus dated April 4, 2007 (the **Prospectus**).

4. The Corporation is a “non-redeemable investment fund” as such term is defined in the Legislation and is not subject to the investment restrictions applicable to mutual funds which are prescribed by NI 81-102. The Filer has established an IRC for the Corporation in accordance with the requirements under NI 81-107.

5. The Filer and the Corporation are not in default of securities legislation in any jurisdiction of Canada.

6. The primary investment objective of the Corporation is to achieve capital appreciation by investing in securities of private and public companies that explore for, mine and/or process molybdenum (**Portfolio Investments**) and by investing in, holding, selling and otherwise transacting in all commercial forms of molybdenum (**Physical Molybdenum**, and together with the Portfolio Investments, the **Molybdenum Assets**).

7. Pursuant to a management services agreement dated as of April 3, 2007, the Filer (and its predecessor SAM Inc.) provides management, administrative and investment management services in respect of the Molybdenum Assets held by the Corporation.

8. On April 4, 2007, SAM Inc. had subscribed on a private placement basis for 3,976,000 Common Shares. Part of the proceeds from SAM Inc.’s subscription for Common Shares was used to repay an outstanding interest-free debt which was owed by the Corporation to SAM Inc. and was used to acquire additional Portfolio Investments. As at June 26, 2009, Sprott Inc. owns 3,976,000 Common Shares or 10.08% of the issued and outstanding Common Shares.

9. On January 9, 2009, the Corporation announced in a press release that, in view of the unfavourable outlook for the price of molybdenum and for issuers involved in the production and sale of molybdenum, its board of directors had determined that a distribution to shareholders of all or substantially all of the assets of the

Corporation would be in the best interests of the Corporation and its shareholders.

10. On June 3, 2009, the Corporation announced in a press release that the Corporation proposes to distribute all or substantially all of its assets to its shareholders on or about July 9, 2009 (the **Distribution**) and that the Corporation had entered into a proposed private placement investment with an arm's length investor and that the Corporation intends to enter into a reorganization transaction. The Corporation proposes to distribute to its shareholders the cash proceeds from the sale of its assets and the private placement investment through a tax-effective share exchange, as a result of which holders of Common Shares will ultimately receive cash and a new class of common shares of the Corporation, thereby remaining shareholders of the Corporation with the potential to benefit from any future success of the reorganized Corporation. Shareholders of the Corporation were asked to vote on the proposed Distribution, the proposed private placement investment and the proposed reorganization transaction at an annual and special meeting of shareholders held on June 30, 2009. Details regarding the proposed Distribution, the proposed private placement investment and the proposed reorganization transaction were contained in a management information circular (the Circular) for such meeting which was mailed to shareholders on June 9, 2009.

11. Since January 9, 2009, the Corporation has not acquired, and does not expect to acquire, any additional Molybdenum Assets and the Filer has been liquidating the Corporation's existing Portfolio Investments in an orderly manner, subject to market conditions. Proceeds from the sale of the Corporation's Molybdenum Assets are being held in cash and short-term securities, pending distribution of such assets by way of a return of capital to shareholders.

12. The Corporation has a number of Portfolio Investments which are "illiquid assets" as such term is defined in NI 81-102. As at June 26, 2009, the Corporation continues to hold Portfolio Investments which include: 7,218,900 common shares of Golden Phoenix Minerals Inc. (Over-the-Counter Bulletin Board Market: GPXM.OB) and 1,350,000 warrants of Creston Moly Corp. (TSX-V: CMS) which are publicly traded (collectively referred to herein as the **Illiquid Assets**). As at June 26, 2009, the Illiquid Assets represent 0.34% of the net asset value of the Corporation.

13. In order to maximize the amount of capital that will ultimately be distributed to each shareholder of the Corporation, the Filer proposes to make a one time purchase of all of the Illiquid Assets held by the Corporation. The Filer is of the view that it will be neither practical nor economical to make a distribution "in kind" of portions of these Illiquid Assets to shareholders of the Corporation since shareholders will have difficulty finding a market, if any, for these types of assets.

14. The Purchase by the Filer will be subject to the requirements contained in paragraphs (b), (c), (d), (e), (f) and (g) of subsection 6.1(2) of NI 81-107.

15. In connection with paragraph (c) of subsection 6.1(2) of NI 81-107, the Filer will satisfy the condition that the bid and ask price of each security comprising the Illiquid Assets be "readily available" by obtaining either the last arm's length trade price from the executing dealer or a quote from an independent, arm's length dealer.

16. In connection with paragraph (e) of subsection 6.1(2) of NI 81-107, the current market price of each security comprising the Illiquid Assets at which the trade will be executed in connection with the Purchase by the Filer will be determined in accordance with clause 6.1(1)(a) of NI 81-107.

17. The Purchase by the Filer will be completed through an independent third-party dealer using best execution practices.

18. The IRC has approved, in respect of the Corporation, the Purchase by the Filer on the same terms as are required under subsection 5.2(2) of NI 81-107.

19. At the annual and special meeting of shareholders of the Corporation held on June 30, 2009 shareholders approved the Distribution, including the Purchase by the Filer, and the private placement investment by the arm's length investor and the Corporation's reorganization transaction as described in the Circular.

20. If the Passport Exemption and the Coordinated Exemptive Relief are not granted, the Filer will be prohibited by the Legislation from knowingly causing any investment portfolio managed by it from purchasing or selling the Illiquid Assets from or to the account of a responsible person, any associate of a responsible person or the Filer.

21. If the Coordinated Exemptive Relief is not granted, the Filer will be prohibited by the Legislation from purchasing or selling the Illiquid Assets, in which the Filer or any partner, officer or associate of the Filer has a direct or indirect beneficial interest, from or to any portfolio managed or supervised by the Filer.

22. The Purchase by the Filer represents the business judgment of "responsible persons" (as such term is defined in the Legislation) uninfluenced by considerations other than the best interests of the Corporation and its shareholders.

Decision

Each of the principal regulator and the Coordinated Exemptive Relief Decision Makers is satisfied that the decision meets the test set out in the Legislation for the relevant regulator or securities regulatory authority to make the decision.

The decision of the principal regulator under the Legislation is that the Passport Exemption is granted provided that the following conditions are satisfied with respect to the Purchase by the Filer:

(a) the IRC has approved, in respect of the Corporation, the Purchase on the same terms as are required under subsection 5.2(2) of NI 81-107;

(b) the Purchase complies with paragraphs (b), (c), (d), (e), (f) and (g) of subsection 6.1(2) of NI 81-107;

(c) in connection with paragraph (c) of subsection 6.1(2) of NI 81-107, the bid and ask price of each security comprising the Illiquid Assets will satisfy the condition to be "readily available" by obtaining either the last arm's length trade price from the executing dealer or a quote from an independent, arm's length dealer;

(d) in connection with paragraph (e) of subsection 6.1(2) of NI 81-107, the current market price of each security comprising the Illiquid Assets at which the trade will be executed in connection with the Purchase will be determined in accordance with clause 6.1(1)(a) of NI 81-107; and

(e) the Purchase will be completed through an independent third-party dealer using best execution practices.

The decision of the Coordinated Exemptive Relief Decision Makers under the Legislation is that the Coordinated Exemptive Relief is granted provided that the following conditions are satisfied with respect to the Purchase by the Filer:

(a) the IRC has approved, in respect of the Corporation, the Purchase on the same terms as are required under subsection 5.2(2) of NI 81-107;

(b) the Purchase complies with paragraphs (b), (c), (d), (e), (f) and (g) of subsection 6.1(2) of NI 81-107;

(c) in connection with paragraph (c) of subsection 6.1(2) of NI 81-107, the bid and ask price of each security comprising the Illiquid Assets will satisfy the condition to be "readily available" by obtaining either the last arm's length trade price from the executing dealer or a quote from an independent, arm's length dealer;

(d) in connection with paragraph (e) of subsection 6.1(2) of NI 81-107, the current market price of each security comprising the Illiquid Assets at which the trade will be executed in connection with the Purchase will be determined in accordance with clause 6.1(1)(a) of NI 81-107; and

(e) the Purchase will be completed through an independent third-party dealer using best execution practices.

"Carol S. Perry"
Commissioner
Ontario Securities Commission

"Kevin J. Kelly"
Commissioner
Ontario Securities Commission

2.1.2 Fortsum Business Solutions Inc.

Headnote

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

Applicable Legislative Provisions

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

Translation

Montreal, August 5, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
QUEBEC, ALBERTA AND ONTARIO
(THE "JURISDICTIONS")

AND

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

AND

IN THE MATTER OF
FORTSUM BUSINESS SOLUTIONS INC.
(THE "FILER")

DECISION

Background

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

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

(a) the Autorité des marchés financiers 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 *Regulation 14-101 respecting Definitions* (elsewhere, 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. On May 21, 2009, 4503961 Canada Inc. ("**4503961**"), a wholly-owned subsidiary of GFI Solutions Group Inc. ("**GFI**"), acquired all of the outstanding securities of Fortsum Business Solutions Inc. by way of a statutory plan of arrangement under Section 192 of the *Canada Business Corporations Act* pursuant to which 4503961 and Fortsum Business Solutions Inc. were then amalgamated into a single company being the Filer (collectively, the "**Transaction**").

2. The head office of the Filer is located at 75 Queen Street, Suite 6100, Montréal, Québec.

3. Upon the completion of the Transaction, GFI is now the sole shareholder of the Filer.

4. At the close of the market on May 22, 2009, the common shares of the Filer were delisted from the TSX Venture Exchange.

5. As a result of the completion of the Transaction, the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada.

6. No securities of the Filer are traded on a marketplace as defined in *Regulation 21-101 respecting Marketplace Operation* (elsewhere, National Instrument 21-101 *Marketplace Operation*).

7. The Filer has no intention to seek financing by way of a distribution of securities to the public.

8. The Filer applied to voluntarily surrender its status as a reporting issuer in British Columbia under Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* on June 1, 2009. As a result of such application, the Filer is not a reporting issuer in British Columbia effective June 11, 2009.

9. Upon the grant of the Requested Exemptive Relief, the Filer will not be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer.

10. The Filer is not in default of any of its obligations as a reporting issuer under the Legislation except for its obligation to file the following documents:

    (a) the interim financial statements and the management's discussion and analysis for the interim period ended March 31, 2009, required pursuant to sections 4.3, 4.4 and

5.1 of *Regulation 51-102 respecting Continuous Disclosure Obligations* (elsewhere, National Instrument 51-102 *Continuous Disclosure Obligations*);

(b) the interim certificates for the interim period ended March 31, 2009, required pursuant to Part 5 of *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings* (elsewhere, National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*).

Decision

Each of the Decision Makers is satisfied that the exemptive relief application 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 Requested Exemptive Relief is granted.

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

2.1.3 I.G. Investment Management, Ltd. et al.

Headnote

Passport System for Exemptive Relief Applications – s. 3.3 of National Policy 11-203 exemption from Section 2.2(1.1) and Section 2.5(2)(a) of NI 81-102 to permit mutual funds to invest directly in securities of IRPF beyond the prescribed limits; exemption from Section 14.2 of NI 81-106 to permit mutual funds to invest directly in securities of IRPF that do not have identical dates for the calculation of net asset value.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.2(1) and 2.5(2)(a).
National Instrument 81-106 Investment Fund Continuous Disclosure, s. 14.2.

June 26, 2009

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

AND

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

AND

IN THE MATTER OF
I.G. INVESTMENT MANAGEMENT, LTD.
("IGIM")

AND

THE ALLEGRO BALANCED PORTFOLIO CLASS,
THE ALLEGRO BALANCED GROWTH PORTFOLIO CLASS AND THE ALLEGRO BALANCED GROWTH CANADA FOCUS PORTFOLIO CLASS
(collectively, the "Proposed Portfolios" and with IGIM, the "Filers")

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the "Decision Maker") has received an application from IGIM, on behalf of the Proposed Portfolios and all future mutual funds structured as 'fund-of-funds' managed by IGIM or an affiliate of IGIM (collectively referred to as the "Portfolios"), for a decision under the securities legislation of the Jurisdictions (the "Legislation") for relief from:

(i) Section 2.2(1) of National Instrument 81-102 ("NI 81-102") to allow the Portfolios to invest a fixed

portion of their net assets in Investors Real Property Fund ("IRPF") beyond the prescribed limits;

(ii) Section 2.5(2)(a) of NI 81-102 that IRPF be an investment fund subject to National Instrument 81-101 ("NI 81-101") to allow the Portfolios to invest in IRPF; and

(iii) Section 14.2 of National Instrument 81-106 ("NI 81-106") to invest directly in securities of IRPF that do not have identical dates for the calculation of net asset value

(the "Exemptions Sought").

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

(a) The Manitoba Securities Commission is the principal regulator for this application,

(b) IGIM has provided notice that Subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("MI 11-102") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Prince Edward island, Newfoundland & Labrador, Yukon, Northwest Territories and Nunavut; and

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

Interpretation

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

In this decision:

(a) "Portfolios" refers to the Proposed Portfolios and other mutual funds for which IGIM, or an affiliate of IGIM, is the Manager and which will:

(i) set a target investment mix based on a strategic asset allocation strategy for its investments in Bottom Funds and the actual investment mix may be adjusted by up to a set percentage above or below such target in IGIM's sole discretion, and

(ii) invest up to 10% of their net assets in IRPF;

(b) "Underlying Funds" refers to any one or more of the mutual funds into which any one or more of the Portfolios may invest their assets (other than cash and cash equivalents), including IRPF.

Representations

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

Background

1. IGIM is a corporation continued under the laws of Ontario and it, or an affiliate of IGIM, will manage the Portfolios and the Underlying Funds. The head office of IGIM is in Winnipeg, Manitoba. Each of the Portfolios and Underlying Funds is, or will be, distributed in Manitoba and the other Jurisdictions.

2. The Portfolios will achieve their investment objectives by investing:

(a) in Underlying Funds in accordance with a target investment mix based on a strategic asset allocation strategy for its investments in the Underlying Funds where the actual investment mix may be adjusted by up to a set percentage above or below such target in IGIM's sole discretion, and

(b) up to 10% of their net assets in IRPF.

3. Each of the Portfolios will be a separate class of shares issued by Investors Group Corporate Class Inc. (the "Corporation"), a corporation governed by the Canada Business Corporations Act.

4. Each of the Underlying Funds will be an open end investment trust established under the laws of the Province of Manitoba.

5. Each of the Portfolios and the Underlying Funds is, or will be, a reporting issuer in each of the provinces and territories of Canada and is not in default of any of the requirements under the securities legislation of the Jurisdictions (the "Legislation").

6. Securities of the Portfolios and the Underlying Funds are, or will be, qualified for distribution in all of the provinces and territories of Canada pursuant to a simplified prospectus and annual information form or, in the case of IRPF, the Alternative Prospectus, as defined below.

Subsections 2.5(2)(a) – Investment in IRPF

7. In order to achieve the investment objectives of the Portfolios, IGIM, using strategic asset allocation, will invest fixed percentages of the assets of the Portfolios (other than cash and cash equivalents) in securities of IRPF, provided that the investment by a Portfolio in IRPF shall not exceed 10% of the assets of the Portfolio, subject to a variation of 2.5% (the "Permitted Ranges") to account for market fluctuations. Investments of

each Portfolio will be made in accordance with its fundamental investment objectives.

8. The simplified prospectus of each Portfolio will disclose the specific risk factors and restrictions associated with investments in IRPF.

9. The Portfolios will not invest in an Underlying Fund with an investment objective which includes investing directly or indirectly in other mutual funds, except as permitted by NI 81-102.

10. The investments by the Portfolios in the securities of the Underlying Funds will represent the business judgment of responsible persons, uninfluenced by considerations other than the best interest of the Portfolios.

11. Except to the extent evidenced by specific approvals granted by the Decision Makers pursuant to NI 81-102, the investments by the Portfolios in the Underlying Funds will be structured to comply with the investment restrictions of the Legislation and NI 81-102.

12. Section 2.5 of NI 81-102 permits mutual funds to invest in the securities of other mutual funds subject to certain restrictions (the "Fund-of-Funds Rules"). The Portfolios are in compliance with the provisions of the Fund-of-Funds Rules, except with respect to the requirement that all Underlying Funds be subject to NI 81-101 because IRPF is not directly subject to the requirements of NI 81-101. Although IRPF is not directly subject to NI 81-101, by decision of The Manitoba Securities Commission dated May 26, 2009 (SEDAR Project #1388340), IRPF is required to file a prospectus in accordance with NI 81-101 and containing additional disclosure or alternate disclosure relevant to IRPF ("Alternative Prospectus").

13. In the absence of the relief requested of the Decision Makers under this Application, the Portfolios would not be able to invest directly in the securities of IRPF.

General

14. IGIM believes that the relief sought under this Application will be in the best interests of the securityholders of the Portfolios as it will provide them with a balanced investment with limited exposure to the real property sector at a modest cost.

15. IGIM believes that the relief sought under this Application will be in the best interests of the unitholders of IRPF because investment by the Portfolios in IRPF provides IRPF with greater assets than might otherwise be the case which results in various beneficial opportunities for IRPF.

16. IGIM is not in default of securities legislation in any jurisdiction.

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 Exemptions Sought are granted provided that:

1. in all other respects, at the time a Portfolio makes or holds an investment in IRPF, the investment shall comply with the requirements of NI 81-102;

2. the simplified prospectus of the Portfolios disclose the specific risk factors and restrictions associated with investing in IRPF; and

3. the investment by a Portfolio in IRPF shall not exceed 10% of the assets of the Portfolio, subject to variance within the Permitted Ranges.

"Bob Bouchard"
Director – Corporate Finance
The Manitoba Securities Commission

2.1.4 Exchange Industrial Income Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption granted from the requirement to include financial statements in an information circular for a predecessor corporation participating in an arrangement with a trust – information circular will be sent to the trust's unitholders – fundamental change in the business and operations of predecessor corporation and change in all of its executive officers and directors.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, ss. 9.1, 13.1.
Form 51-102F5 Information Circular, s. 14.2.

June 5, 2009

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

AND

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

AND

IN THE MATTER OF
EXCHANGE INDUSTRIAL INCOME FUND
(the "Filer")

DECISION

Background

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

(a) exempting the Filer from the requirement under Item 14.2 of Form 51-102F5 to National Instrument 51-102 – *Continuous Disclosure Obligations* ("**NI 51-102**") to include in an information circular (the "**Information Circular**") to be sent to the holders (the "**Unitholders**") of Class A trust units ("**Units**") of the Fund in connection with a proposed plan of arrangement (the "**Arrangement**") involving, among others, the Fund and HMY Airways Inc. ("**HMY**") certain financial statements prescribed by National Instrument 41-101 – *General Prospectus Requirements* ("**NI 41-101**"), provided that certain alternative financial statements are included in the Information Circular (the "**Exemption Sought**"); and

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

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

1. The Manitoba Securities Commission is the principal regulator for this application,

2. 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, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, the Northwest Territories and Nunavut, and

3. the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

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

Representations

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

The Fund

1. The Fund is a trust formed under the laws of the Province of Manitoba on March 22, 2004 pursuant to a declaration of trust dated March 22, 2004, as amended and/or restated by the amended and restated declaration of trust dated May 3, 2004 and the amending agreements dated December 31, 2004, June 24, 2005 and May 22, 2007.

2. The head office of the Fund is located in Winnipeg, Manitoba.

3. The Fund is a diversified, acquisition-oriented income trust focused on acquisition opportunities in the manufacturing and transportation sectors, in particular companies that are suited for public markets, except for their size. The Fund currently owns subsidiary entities operating in the aviation and manufacturing sectors, as well as a subsidiary entity responsible for the management of the Fund.

4. The Units are listed and posted for trading on the Toronto Stock Exchange (the "**TSX**") under the trading symbol "EIF.UN" and the Fund is a

reporting issuer (or equivalent) in each jurisdiction of Canada (other than the Yukon Territory).

5. The authorized capital of the Fund is comprised of an unlimited number of Units, of which there are approximately 8,896,000 Units currently issued and outstanding on the date hereof.

6. To its knowledge, the Fund is not in default of any of its obligations as a reporting issuer pursuant to applicable securities legislation in any of the jurisdictions in which it is a reporting issuer or its equivalent.

7. HMY was originally named "Hoho International Airways Inc." and, after a number of name changes, was renamed "HMY Airways Inc". HMY is a corporation incorporated under the laws of Canada on January 24, 2002 and continued under the laws of British Columbia on March 31, 2009, with its head office located in Vancouver, British Columbia. HMY is expected to be continued under the *Canada Business Corporations Act*.

8. HMY is a wholly-owned subsidiary of Ho International Airways Inc. ("**HIA**").

9. Pursuant to an internal reorganization of HMY and HIA, effective April 30, 2009: (i) HMY acquired from HIA all of the issued and outstanding shares of Harmony Vacations Inc. ("**HVI**"), a private corporation that was an affiliate of HMY by virtue of HMY and HVI being under common control of HIA, in exchange for common shares of HMY ("**HMY Common Shares**"); and (ii) HVI was subsequently dissolved.

10. No securities of HMY are listed on any stock exchange and HMY is not a reporting issuer in any jurisdiction.

11. The authorized capital of HMY is comprised of 1,000 HMY Common Shares, 999,000 Class A preferred shares and 1,000,000 Class B preferred shares of which there are currently 171 HMY Common Shares and 136,260 Class A preferred shares (collectively, the "**HMY Shares**") issued and outstanding on the date hereof.

12. On April 1, 2009, the Fund and HIA entered into a letter of intent pursuant to which the parties agreed to implement the Arrangement involving, among other things, the acquisition by HMY of all of the issued and outstanding Units from Unitholders in exchange for HMY Shares, the dissolution of the Fund, an internal reorganization of the subsidiary entities of the Fund (which will become subsidiary entities of HMY), a change in the name of HMY (HMY following the completion of the Arrangement is for the purposes of this decision hereinafter referred to as "**EIG Corp**") and the listing of the common shares of EIG Corp. on the TSX. The Arrangement will be a "reverse take-over" and a "restructuring transaction" as those terms are defined in NI 51-102.

13. The Information Circular detailing the Arrangement is anticipated to be mailed to Unitholders in June, 2009 following receipt of an interim order of the Court of Queen's Bench (Manitoba) for a meeting of Unitholders which meeting is expected to take place during the third quarter of 2009.

14. Item 14.2 of Form 51-102F5 requires the Information Circular to contain, among other things, information sufficient to enable a reasonable Unitholder to form a reasoned judgment concerning the nature and effect of the Arrangement and the expected resulting entity or entities and the disclosure (including financial statement disclosure) for HMY prescribed by the appropriate prospectus form for HMY.

15. The appropriate prospectus form for HMY is Form 41-101F1 – *Information Required in a Prospectus* (the "**General Prospectus Form**"), which would require the inclusion of the following audited annual consolidated financial statements of HMY:

    (a) an income statement, a statement of retained earnings and a cash flow statement for the three most recently completed years ended more than 120 days before the date of the Information Circular;

    (b) a balance sheet as at the end of the two most recently completed financial years described in paragraph (a); and

    (c) notes to the financial statements,

    provided that, if the Information Circular includes financial statements for a financial year of HMY ended less than 90 days prior to the date of the Information Circular, the Information Circular does not have to include the income statement, the statement of retained earnings and the cash flow statement for the third most recently completed financial year ended more than 120 days prior to the date of the Information Circular and the balance sheet for the second most recently completed financial year of HMY ended more than 120 days prior to the date of the Information Circular.

16. The year end of HMY is April 30. The Fund intends to finalize and send the Information Circular to Unitholders within 90 days of April 30, 2009 and intends to include audited annual consolidated financial statements of HMY for the year ended April 30, 2009. Accordingly, NI 51-102 (and the General Prospectus Form) would permit the Fund to include the following audited annual consolidated financial statements of HMY:

(a) an income statement, a statement of retained earnings and a cash flow statement for the three most recently completed years ended April 30, 2009, April 30, 2008 and April 30, 2007;

(b) a balance sheet as at April 30, 2009 and April 30, 2008; and

(c) notes to the financial statements.

17. Subject to the receipt of the Exemption Sought, the Information Circular will include the following audited annual consolidated financial statements of HMY:

(a) an income statement, a statement of retained earnings and a cash flow statement for the two most recently completed years ended April 30, 2009 and April 30, 2008;

(b) a balance sheet as at April 30, 2009 and April 30, 2008; and

(c) notes to the financial statements.

18 HMY and HVI each ceased active business operations in 2007 and divested most of their respective assets in the fall of 2008. As a result, the financial results for the year ended April 30, 2007 would not provide any meaningful additional information to Unitholders with respect to HMY and HVI.

19 Because HMY and HVI ceased active business operations in 2007, the current business carried on by HMY is fundamentally different from the business conducted during the year ended April 30, 2007, and the financial statements of HMY and HVI for the year ended April 30, 2007 would not assist Unitholders or other potential securityholders of the Fund with their assessment of the current business of HMY.

20. The inclusion of annual consolidated financial statements of HMY or HVI for the year ended April 30, 2007 would arguably be misleading and/or confusing to Unitholders who are attempting to assess the financial condition and business of EIG Corp. on a go forward basis to the extent that such financial statements leave Unitholders with the impression that HMY or HVI is still carrying on active business operations.

21. The only business to be carried on by EIG Corp. and its subsidiary entities following the completion of the Arrangement is the business carried on by the Fund and its subsidiary entities immediately prior to the Arrangement.

22. None of the directors or officers of HMY are expected to continue as a director or officer of EIG Corp.

23. The Information Circular will:

(a) contain disclosure in accordance with Form 51-102F5 and, in respect of HMY, in accordance with the General Prospectus Form;

(b) include or incorporate by reference, among other things, financial statement disclosure in respect of the Fund in compliance with Form National Instrument 44-101F1 – *Short Form Prospectus* and the pro forma financial statements of EIG Corp. in compliance with the General Prospectus Form;

(c) contain qualitative disclosure of the differences between the taxation of a trust and the taxation of a corporation; and

(d) contain a comparison of the distribution policy of the Fund prior to the Arrangement to the dividend policy as it relates to distributable cash of the EIG Corp following the completion of the Arrangement.

Decision

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

The decision of the Decision Makers under the Legislation is that:

(a) the Exemption Sought is granted provided that the Filer include in the Information Circular:

(i) the financial statements described in paragraphs 17 above;

(ii) a pro forma income statement for EIG Corp. for the year ended December 31, 2008 after giving effect to the Arrangement; and

(iii) a pro forma balance sheet and income statement for EIG Corp. as at and for the three-month period ended March 31, 2009 after giving effect to the Arrangement; and

(b) the Confidentiality Request is granted until the earliest to occur of: (i) the date on which the Filer publicly announces that it has entered into a definitive

agreement in respect of the Arrangement; (ii) the date that the Filer advises the Decision Maker that there is no longer any need for the Application and this decision to remain confidential; and (iii) 90 days from the date of this decision document.

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

2.1.5 Nventa Biopharmaceuticals Corporation

Headnote

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

Applicable Legislative Provisions

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

Translation

August 6, 2009

Nventa Biopharmaceuticals Corporation
Suite 4010 – 11400 Burnet Road
Austin, Texas USA
78788

Dear Sirs/Mesdames:

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

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

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

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

2.1.6 Fort Chicago Energy Partners L.P. and Canaccord Capital Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for exemptive relief to permit issuer and underwriter, acting as agent, to make "at-the-market" prospectus distributions (ATM distributions) to purchasers through facilities of Toronto Stock Exchange (TSX) – issuer proposing to enter into equity distribution agreement with agent relating to ATM distributions through TSX – ATM distributions to be made pursuant to shelf prospectus procedures in Part 9 of NI 44-102 Shelf Distributions – issuer will issue a press release and file agreement on SEDAR – issuer has filed and received a receipt for a short form base shelf prospectus and will file in connection with ATM distribution a prospectus supplement describing terms of equity distribution agreement – prospectus qualifies distribution of securities by issuer to purchasers who purchase securities from the issuer pursuant to an ATM distribution – application for relief from prospectus delivery requirement in subsection 71(1) of the Securities Act (Ontario) (the Act) and relief from certain prospectus form requirements (including requirements which prescribe language describing purchasers' statutory rights) – delivery of prospectus not practicable in circumstances of an ATM distribution as agent will generally be unaware of identity of purchasers – ATM distribution model premised on concept of "constructive delivery" (access equals delivery) of prospectus to purchasers as a result of filing of prospectus on SEDAR – relief from prospectus delivery requirement has effect of removing two-day right of withdrawal in subsection 71(2) of the Act and remedies of rescission or damages for non-delivery of the prospectus in 133 of the Act – remedies a purchaser of securities may have against issuer or agent for rescission or damages if prospectus contains a misrepresentation remain unaffected by non-delivery of prospectus and the MRRS decision – relief granted on certain terms and conditions including:

- issuer may issue and sell securities in an amount not to exceed 10% of aggregate market value of outstanding securities in accordance with restrictions contained in Part 9 of NI 44-102;

- number of securities sold on TSX pursuant to ATM distribution on any trading day may not exceed 25 per cent of the trading volume of the securities on the TSX on that day;

- prospectus certificate language modified to ensure that, at the time of each sale of securities pursuant to an ATM distribution, prospectus will contain full, true and plain disclosure of all material facts relating to the issuer and securities being distributed;

- agent is registered as an investment dealer in all jurisdictions and will sign prospectus certificate;
- issuer will file on SEDAR a report disclosing number and average price of securities distributed over TSX by issuer pursuant to the prospectus filed in connection with ATM distribution as well as gross proceeds, commission and net proceeds within seven calendar days after end of month with respect to sales during prior month;
- issuer will also disclose number and average price of securities sold under the ATM distribution as well as gross proceeds, commission and net proceeds in the ordinary course in its annual and interim financial statements and MD&A filed on SEDAR;
- prospectus will contain language clearly describing impact of decision on purchasers' statutory rights; and
- decision will terminate on the lapse date of the shelf prospectus.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 71(1), 71(2), 133, 147.

Applicable Ontario Rules

National Instrument 44-101 Short Form Prospectus Distributions, Part 8; and Item 20 of Form 44-101F1.
National Instrument 44-102 Shelf Distributions, Part 9; and s. 1.1 of Appendix A.

Citation: Fort Chicago Energy Partners L.P and Canaccord Capital Corporation, Re, 2009 ABASC 179

May 8, 2009

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

AND

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

AND

IN THE MATTER OF
FORT CHICAGO ENERGY PARTNERS L.P
(the Issuer)

AND

CANACCORD CAPITAL CORPORATION
(the Agent and, together with the Issuer, the Filers)

DECISION

Background

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

(a) the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement applies send or deliver to the purchaser or its agent the latest prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) and any amendment to the prospectus (the **Delivery Requirement**) does not apply to the Agent or any other Toronto Stock Exchange (**TSX**) participating organization acting as selling agent for the Agent (each such other organization, a **Selling Agent**) in connection with any at-the-market distributions (**ATM Distributions**) within the meaning of National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) made by the Issuer pursuant to the terms and conditions of an equity distribution agreement (the **Equity Distribution Agreement**) among the Issuer, certain of its subsidiaries and the Agent;

(b) the requirements (collectively, the **Form Requirements**) that (i) a forward-looking issuer certificate included in a prospectus supplement be in a form specified in Appendix A to NI 44-102 and (ii) a statement concerning purchasers' statutory rights of withdrawal and remedies for rescission or damages be included in a short form prospectus in substantially the form prescribed in Item 20 of Form 44-101F1 *Short Form Prospectus* (such prescribed statement, the **Statement of Purchasers' Rights**) do not apply to the prospectus supplement of the Issuer to be filed in respect of the sale of Class A limited partnership units (**Units**) pursuant to ATM Distributions under the Equity Distribution Agreement (the **Prospectus Supplement**), provided that the alternative form of certificate and disclosure regarding a purchaser's statutory rights described below are included in the Prospectus Supplement; and

(c) that the application and this decision (together, the **Confidential Material**) be kept confidential and not be made public until the earliest of (i) the date on which the Issuer and the Agent enter into the Equity Distribution Agreement, (ii) the date on which the Filers advise the Decision Makers that

there is no longer any need for the Confidential Material to remain confidential, or (iii) the date that is 90 days after the date of this decision.

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

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

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

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

Interpretation

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

Representations

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

Fort Chicago Energy Partners L.P.

1. The Issuer is a limited partnership established under the laws of Alberta that owns and operates energy infrastructure assets across North America. The head office of the Issuer (and that of its general partner, Fort Chicago Energy Management Ltd.) is located in Calgary, Alberta.

2. The Issuer is currently a reporting issuer or the equivalent under the securities legislation of each of the provinces of Canada and is not in default of its obligations as a reporting issuer under such legislation.

3. The Units are listed on the TSX.

4. The Issuer has previously filed and received a receipt under the Legislation for a short form base shelf prospectus dated May 2, 2008 providing for the distribution from time to time of Units, Class B limited partnership units, unsecured debt securities and subscription receipts in an aggregate initial offering price of up to $1,500,000,000 (the **Shelf Prospectus**). The Shelf Prospectus remains in effect and constitutes an "unallocated shelf" within the meaning of Part 3 of NI 44-102.

5. The Shelf Prospectus includes a forward-looking issuer certificate of the Issuer in the form prescribed by method 1 as set forth in section 1.1 of Appendix A to NI 44-102. The Shelf Prospectus also includes a Statement of Purchasers' Rights in the prescribed form.

Canaccord Capital Corporation

6. The Agent is a corporation incorporated under the laws of the Province of British Columbia with its head office in Vancouver, British Columbia.

7. The Agent is registered as an investment dealer under the securities legislation of each of the provinces and territories of Canada, is a member of the Investment Industry Regulatory Organization of Canada, and is a participating organization of the TSX.

Proposed ATM Distribution Arrangement

8. Subject to mutual agreement on terms and conditions, the Issuer proposes to enter into the Equity Distribution Agreement with the Agent providing for periodic sale of Units by the Issuer through the Agent, as agent, pursuant to ATM Distributions under the shelf procedures prescribed by Part 9 of NI 44-102.

9. Prior to making any ATM Distributions, the Issuer will have filed the Prospectus Supplement to qualify the sale of Units under the Equity Distribution Agreement in each of the provinces of Canada, which will describe the Equity Distribution Agreement and otherwise supplement the disclosure in the Shelf Prospectus.

10. If the Equity Distribution Agreement is entered into, the Issuer will issue a news release to announce the same and will file a copy of the agreement on SEDAR. The news release will indicate that the Shelf Prospectus and the Prospectus Supplement have been filed on SEDAR, and will specify where and how purchasers may obtain copies. A copy of the news release will also be posted on the Issuer's website. The news release will serve as the news release contemplated by section 3.2 of NI 44-102 for an expected distribution of equity securities under an unallocated shelf.

11. The Equity Distribution Agreement will limit the number of Units that the Issuer may issue and sell pursuant to any ATM Distribution thereunder to an amount not to exceed 10% of the aggregate market value of the outstanding Units calculated in accordance with section 9.2 of NI 44-102.

12. The Agent will, in turn, sell Units through methods constituting an ATM Distribution, including sales made on the TSX through the Agent, as agent, directly or through a Selling Agent.

13. The Agent will act as the sole agent on behalf of the Issuer in connection with the sale of Units on the TSX pursuant to the Equity Distribution Agreement, and will be the only person or company paid an agency fee or commission by the Issuer in connection with such sales. The Agent will sign an underwriter's certificate in the Prospectus Supplement.

14. The Agent will effect ATM Distributions on the TSX, either itself or through a Selling Agent. If sales are effected through a Selling Agent, the Selling Agent will be paid a customary seller's commission for effecting the trades. A purchaser's rights and remedies under the Legislation against the Agent, as underwriter of an ATM Distribution through the TSX, will not be affected by a decision to effect the sale directly or through a Selling Agent.

15. The number of Units sold on the TSX pursuant to an ATM Distribution on any trading day will not exceed 25% of the trading volume of the Units on the TSX on that day.

16. The Equity Distribution Agreement will provide that, at the time of each sale of Units pursuant to an ATM Distribution, the Issuer will represent to the Agent that the Shelf Prospectus, as supplemented by the Prospectus Supplement and any subsequent amendment or supplement to the Shelf Prospectus or the Prospectus Supplement (together, the **Prospectus**), contains full, true and plain disclosure of all material facts relating to the Issuer and the Units being distributed. The Issuer will therefore be unable to proceed with sales pursuant to an ATM Distribution when it is in possession of undisclosed information that would constitute a material fact or a material change in respect of the Units.

17. If after the Issuer delivers a notice to the Agent directing the Agent to sell Units on the Issuer's behalf pursuant to the Equity Distribution Agreement (a **Sell Notice**), the sale of the Units specified in the Sell Notice, taking into consideration prior sales, would constitute a material fact or material change, the Issuer would be required to suspend sales under the Equity Distribution Agreement until either (i) it had filed a material change report or amended the Prospectus, or (ii) circumstances had changed so that the sales would no longer constitute a material fact or material change.

18. In determining whether the sale of the number of Units specified in a Sell Notice would constitute a material fact or material change, the Issuer will take into account a number of factors, including, without limitation (i) the parameters of the Sell Notice, including the number of Units proposed to be sold and any price or timing restrictions that the Issuer may impose with respect to the particular ATM Distribution, (ii) the percentage of outstanding Units that the number of Units proposed to be sold pursuant to the Sell Notice represents, (iii) trading volume and volatility of the Units, (iv) recent developments in the business, affairs and capital structure of the Issuer, and (v) prevailing market conditions generally.

19. The Agent will monitor closely the market's reaction to trades made on the TSX pursuant to an ATM Distribution in order to evaluate the likely market impact of future trades. The Agent has experience and expertise in managing sell orders to limit downward pressure on trading prices. If the Agent has concerns as to whether a particular sell order placed by the Issuer may have a significant effect on the market price of the Units, the Agent will recommend against effecting the trade at that time. It is in the interest of both the Issuer and the Agent to minimize the market impact of sales under an ATM Distribution.

20. The Agent's certificate to be signed by the Agent and included in the Prospectus Supplement will be in the form specified in section 2.2 of Appendix B to NI 44-102.

Disclosure of Units Sold

21. For each month during which Units are distributed on the TSX by the Issuer pursuant to ATM Distributions under the Prospectus, the Issuer will file on SEDAR a report disclosing the number and average price of Units so distributed during that month, as well as total gross proceeds, commission and net proceeds, within seven calendar days after the end of such month.

22. The Issuer will also disclose the number and average price of Units sold pursuant to ATM Distributions under the Prospectus, as well as total gross proceeds, commission and net proceeds, in the ordinary course in its annual and interim financial statements and MD&A filed on SEDAR.

Prospectus Delivery Requirement

23. Pursuant to the Delivery Requirement, a dealer effecting a trade of Units on the TSX on behalf of the Issuer as part of an ATM Distribution is required to deliver a copy of the prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) to the purchaser within prescribed time limits.

24. The delivery of a prospectus is not practicable in the circumstances of an ATM Distribution on the TSX as the dealer effecting the trade will not know the purchaser's identity.

25. A purchaser of securities offered by a prospectus during the period of distribution is deemed to have

relied on a misrepresentation in the prospectus if it was a misrepresentation at the time of purchase.

Withdrawal Right

26. Pursuant to the Legislation, an agreement to purchase securities offered in a subscription to which the prospectus requirement applies is not binding on the purchaser if the dealer receives, not later than the prescribed time following receipt by the purchaser of the latest prospectus or any amendment to the prospectus, notice in writing that the purchaser does not intend to be bound by the agreement of purchase (the **Withdrawal Right**).

27. The Withdrawal Right is not workable in the context of an ATM Distribution because a prospectus will not be delivered to a purchaser of Units thereunder.

Right of Action for Non-Delivery

28. Pursuant to the Legislation, a purchaser of a security to whom a prospectus was required to be sent or delivered in compliance with the Delivery Requirement, but was not so sent or delivered, has a right of action for rescission or damages against the dealer who did not comply with the Delivery Requirement (the **Right of Action for Non-Delivery**).

29. The Right of Action for Non-Delivery is not workable in the context of an ATM Distribution because a prospectus will not be delivered to a purchaser of Units thereunder.

Prospectus Form Requirements

30. Exemptive Relief from the Form Requirements for the Issuer's forward-looking certificate in the Prospectus Supplement is required to reflect that no pricing supplement will be filed subsequent to the Prospectus Supplement. Accordingly, the form of certificate prescribed by the Form Requirements will be deleted and the following substituted therefor:

> This short form prospectus, as supplemented by the foregoing, together with the documents incorporated in this prospectus by reference as of the date of a particular distribution of securities offered by this prospectus, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus, as required by the securities legislation of each of the provinces of Canada.

31. The modified forward-looking issuer certificate will, for purposes of any distribution of Units pursuant to an ATM Distribution under the Prospectus Supplement, supersede and replace the forward-looking issuer certificate contained in the Shelf Prospectus.

32. Exemptive Relief from the Form Requirements for the Statement of Purchasers' Rights in the Prospectus Supplement is required to reflect the relief from the Delivery Requirement. Accordingly, the language of the Statement of Purchasers' Rights prescribed by the Form Requirements will be deleted and the following substituted therefor:

> Securities legislation in certain of the provinces of Canada provides purchasers with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. However, purchasers of securities under an at-the-market distribution by the Issuer will not have any right to withdraw from an agreement to purchase the securities, and will not have remedies for rescission or, in some jurisdictions, revision of the price, or damages for non-delivery, because the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment will not be delivered as permitted under a decision dated ●, 2009.
>
> Securities legislation also provides purchasers with remedies for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contain a misrepresentation, provided that the remedies are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's jurisdiction. Any remedies under securities legislation that a purchaser of securities under an at-the-market distribution by the Issuer may have against the Issuer or the Agent for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contain a misrepresentation remain unaffected by the non-delivery and the decision referred to above.

Purchasers should refer to the applicable provisions of the securities legislation of their respective jurisdictions and the decision referred to above for the particulars of their rights or consult with a legal adviser.

33. The modified disclosure of purchasers' rights will, for purposes of any distribution of Units pursuant to an ATM Distribution under the Prospectus Supplement, supersede and replace the Statement of Purchasers' Rights contained in the Shelf Prospectus.

Decision

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

The decision of the Decision Makers under the Legislation is that:

(a) provided that the representations in sections 10, 12, 13, 14 and 15 are complied with, the Delivery Requirement under the Legislation of each Jurisdiction does not apply to the Agent or any Selling Agent and, as a result, the Withdrawal Right and the Right of Action for Non-Delivery will not apply to any ATM Distributions;

(b) provided that the disclosure described in sections 21, 30 and 32 is made, the Form Requirements do not apply under the Legislation of each Jurisdiction to the prospectus of the Issuer filed in connection with any ATM Distributions;

(c) the Confidential Material will be kept confidential and not be made public until the earliest of (i) the date on which the Issuer and the Agent enter into the Equity Distribution Agreement, (ii) the date on which the Filers advise the Decision Makers that there is no longer any need for the Confidential Material to remain confidential, or (iii) the date that is 90 days after the date of this decision; and

(d) this decision will terminate on the lapse date of the Shelf Prospectus under the Legislation of each Jurisdiction.

"Glenda A. Campbell, QC"
Alberta Securities Commission

"Stephen R. Murison"
Alberta Securities Commission

2.1.7 Lingohr & Partner North America, Inc. – s. 6.1(1) of NI 31-102 National Registration Database and s. 6.1 of OSC Rule 13-502 Fees

Headnote

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

Rules Cited

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

August 10, 2009

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

AND

IN THE MATTER OF
LINGOHR & PARTNER NORTH AMERICA, INC.

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

UPON the Director having received the application of Lingohr & Partner North America, Inc. (the **Applicant**) for a decision pursuant to subsection 6.1(1) of National Instrument 31-102 *National Registration Database* (**NI 31-102**) granting the Applicant an exemption from the Electronic Funds Transfer Requirement (as defined below) contemplated under NI 31-102 and for a decision pursuant to section 6.1 of Ontario Securities Commission Rule 13-502 *Fees* (**Rule 13-502**) granting the Applicant an exemption from the Activity Fee Requirement (as defined below) contemplated under section 4.1 of Rule 13-502 in respect of its application;

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

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

1. The Applicant is a corporation formed under the laws of the State of Oregon in the United States of America. The head office of the Applicant is

located in Eugene, Oregon, United States of America.

2. The Applicant is registered as an investment adviser in the State of Oregon with the United States Securities and Exchange Commission.

3. The Applicant is not registered in any capacity under the Act and is not a reporting issuer in any province or territory of Canada. However, the Applicant has applied for registration under the Act as an adviser in the category of non-resident investment counsel and portfolio manager.

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

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

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

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

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

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

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

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

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

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

D. is not registered under the securities legislation in any jurisdiction of Canada other than Ontario in another category to which the EFT Requirement applies, or has received an exemption from the EFT Requirement in each jurisdiction to which the EFT Requirement applies;

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

AND IT IS THE FURTHER DECISION of the Director, pursuant to section 6.1 of Rule 13-502, that the Applicant is exempt from the Application Fee Requirement contemplated under section 4.1 of Rule 13-502 in respect of this application.

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

2.1.8 Intrepid NuStar Exchange Corporation – s. 1(10)

Headnote

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

Applicable Legislative Provisions

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

August 10, 2009

Intrepid NuStar Exchange Corporation
c/o Gardiner Roberts LLP
Suite 3100 Scotia Plaza
40 King Street West
Toronto, Ontario
M5H 3Y2

Dear Sirs/Mesdames:

Re: Intrepid NuStar Exchange Corporation – application for a decision under securities legislation of Alberta and Ontario (the Jurisdictions) that the Applicant is not a reporting issuer

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

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

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

2.1.9 Vertex One Asset Management Ltd. and Vertex Growth Fund

Headnote

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

Applicable Legislative Provisions

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

August 10, 2009

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

AND

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

AND

IN THE MATTER OF
VERTEX ONE ASSET MANAGEMENT LTD.
(the Filer)

AND

IN THE MATTER OF
VERTEX GROWTH FUND (the Fund)

DECISION

Background

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

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

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

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

(together, the Exemption Sought).

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

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

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

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

Interpretation

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

Representations

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

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

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

3. neither the Filer nor the Fund is in default of the Legislation;

4. the Fund has filed a preliminary simplified prospectus dated June 23, 2009 with the Decision Makers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

or

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

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

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

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

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

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

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

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

Decision

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Martin Eady”
Director, Corporate Finance
British Columbia Securities Commission

2.1.10 Return on Innovation Management Ltd. and ROI Canadian Top 20 Picks Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to allow mutual fund to short sell up to 20% of net assets, subject to certain conditions – National Instrument 81-102 Mutual Funds.

Applicable Legislative Provisions

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

August 10, 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
RETURN ON INNOVATION MANAGEMENT LTD.
(the "Filer")

AND

IN THE MATTER OF
ROI CANADIAN TOP 20 PICKS FUND
(the "Fund")

DECISION

Background

The principal regulator (the "Decision Maker") 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 of the principal regulator (the "Legislation") to exempt the Fund from the following requirements of the Legislation:

(i) the requirement of section 2.6(a) of National Instrument 81-102 – Mutual Funds ("NI 81-102") prohibiting a mutual fund from providing a security interest over its assets;

(ii) the requirement of section 2.6(c) of NI 81-102 prohibiting a mutual fund from selling securities short; and

(iii) the requirement of section 6.1(1) of NI 81-102 prohibiting a mutual fund from depositing a portion of its assets with an entity other than the fund's custodian

(collectively, the "Exemption Sought").

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

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

(ii) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 Passport System ("MI 11-102") is intended to be relied upon in each of the other provinces and territories of Canada.

Interpretation

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

Representations

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

1. The Fund is an open-end mutual fund trust established under the laws of Ontario.

2. The Filer is the manager of the Fund. The Fund filed a preliminary simplified prospectus and annual information form dated July 10, 2009 under SEDAR Project No. 1446968 in all of the provinces and territories of Canada. The Fund will be a reporting issuer in all of the provinces and territories of Canada upon the issuance of a receipt for its final simplified prospectus and annual information form.

3. The Fund is not in default of the securities legislation in any of the provinces or territories of Canada.

4. The head office of the Filer and the Fund is located in Ontario.

5. The investment practices of the Fund will comply in all respects with the requirements of Part 2 of NI 81-102, except to the extent that the Fund has received permission from the Principal Regulator to deviate therefrom.

6. The Filer proposes that the Fund be authorized to engage in a limited, prudent and disciplined amount of short selling. The Filer is of the view that the Fund could benefit from the implementation and execution of a controlled and limited short selling strategy. This strategy would complement the Fund's primary discipline of buying securities with the expectation that they will appreciate in market value.

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

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

9. The Fund will implement the following controls when conducting a short sale:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Decision

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

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

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

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

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

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

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

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

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

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

(ii) have a net worth in excess of the equivalent of CDN $50 million determined from its most recent audited financial statements that have been made public;

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

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

(j) prior to conducting any short sales, the Fund discloses in its simplified prospectus a description of: (i) short selling, (ii) how the Fund intends to engage in short selling, (iii) the risks associated with short selling, and (iv)

in the Investment Strategy section of the simplified prospectus, the Fund's strategy and this exemptive relief; and

(k) prior to conducting any short sales, the Fund discloses in its annual information form the following information:

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

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

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

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

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

The Exemption Sought shall terminate upon the coming into force of any legislation or rule of the principal regulator dealing with the matters referred to in subsections 2.6(a), 2.6(c) and 6.1(1) of NI 81-102.

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

2.2 Orders

2.2.1 Hillcorp International Services et al. – ss. 127(1), 127(7), 127(8)

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

AND

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

ORDER
Sections 127(1), 127(7) and 127(8)

WHEREAS on July 21, 2009 the Ontario Securities Commission (the "Commission") issued a temporary cease trade order (the "Temporary Order") and on July 24, 2009 issued an amended temporary cease trade order (the "Amended Order") pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering the following:

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

2. that all trading in any 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 162 Limited, Hillcorp International, Hillcorp Wealth, Suncorp Holdings 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;

AND WHEREAS on July 21, 2009 the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by the Commission and on July 24, 2009 the Commission ordered that the Amended Order shall expire on August 5, 2009;

AND WHEREAS on July 21, 2009 the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on August 5, 2009 at 11:00 a.m. (the "Notice of Hearing");

AND WHEREAS on July 24, 2009 the Commission issued an amended Notice of Hearing to consider, among other things, the extension of the Amended Order, to be held on August 5, 2009 at 11:00 a.m. (the "Amended Notice of Hearing");

AND WHEREAS Staff of the Commission ("Staff") have served 162 Ontario, Hillcorp International, Hillcorp Wealth, Suncorp Holdings, Hill, McArthur, Renneberg and De Melo with copies of the Temporary Order, the Amended Order, the Notice of Hearing and the Amended Notice of Hearing as evidenced by the Affidavits of Service of Kathleen McMillan sworn on July 30, 2009 and July 31, 2009;

AND WHEREAS the Commission held a Hearing on August 5, 2009 and counsel for 162 Ontario, Hillcorp International and Hill attended the hearing and counsel for Renneberg attended the hearing;

AND WHEREAS Hillcorp Wealth, Suncorp Holdings, McArthur and De Melo did not attend the Hearing;

AND WHEREAS the Commission reviewed the Affidavits of Amy Tse sworn July 22, 2009 and July 24, 2009;

AND WHEREAS the Commission heard submissions from counsel for Staff and from counsel for 162 Ontario, Hillcorp International and Hill and counsel for Renneberg;

AND WHEREAS counsel for 162 Ontario, Hillcorp International and Hill and counsel for Renneberg did not oppose the extension of the Amended Order to February 8, 2010, and counsel for Renneberg requested a carve-out to permit Renneberg to trade under certain conditions;

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

IT IS HEREBY ORDERED pursuant to subsections 127(7) and 127(8) of the Act that the Amended Order is extended to February 8, 2010; and specifically:

1. that all trading in any securities by and of 162 Ontario, Hillcorp International, Hillcorp Wealth, Suncorp Holdings shall cease;

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

3. that all trading in any securities by Hill, McArthur, Renneberg and De Melo shall cease;

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

5. with the exception that Renneberg may trade in certain securities for his own account or for the account of his registered retirement savings plan or registered retirement income fund (as defined in the Income Tax Act (Canada)) in which he has sole legal or beneficial ownership, provided that:

    a. the securities consist only of securities that are listed and posted for trading on the Toronto Stock Exchange or the New York Stock Exchange (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;

    b. Renneberg submits to Staff, at least five business days prior to the first trade made under this Order, a detailed written statement showing his direct or indirect legal or beneficial ownership of or control or direction over all securities referred to in paragraph (a), as of the date of this Order;

    c. Renneberg does not have direct or indirect legal or beneficial ownership of or control or direction over more than one per cent of the outstanding securities of the class or series of the class in question;

    d. Renneberg must trade only through a registered dealer and through accounts opened in his name only and must immediately close any trading accounts that were not opened in his name only; and

    e. Renneberg must submit standing instructions to each registrant with whom he has an account, or through or with whom he trades any securities, directing that copies of all trade confirmations and monthly account statements be forwarded directly to Staff at the same time such documents are sent to Renneberg, and Renneberg must ensure that such instructions are complied with.

IT IS FURTHER ORDERED that the Hearing is adjourned to Friday, February 5, 2010 at 10:00 a.m.

Dated at Toronto this 5th day of August, 2009.

“Carol S. Perry”

“Kevin J. Kelly”

2.2.2 Mediobanca Securities USA LLC – s. 6.1(1) of NI 31-102 National Registration Database and s. 6.1 of OSC Rule 13-502 Fees

Headnote

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

Rules Cited

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

August 6, 2009

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

AND

IN THE MATTER OF
MEDIOBANCA SECURITIES USA LLC

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

UPON the Director having received the application of Mediobanca Securities USA LLC (the **Applicant**) for a decision pursuant to subsection 6.1(1) of National Instrument 31-102 *National Registration Database* (**NI 31-102**) granting the Applicant an exemption from the Electronic Funds Transfer Requirement (as defined below) contemplated under NI 31-102 and for a decision pursuant to section 6.1 of Ontario Securities Commission Rule 13-502 *Fees* (**Rule 13-502**) granting the Applicant an exemption from the Activity Fee Requirement (as defined below) contemplated under section 4.1 of Rule 13-502 in respect of its application;

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

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

1. The Applicant is a limited liability company formed under the laws of the State of Delaware in the United States of America. The head office of the Applicant is located in New York, New York, United States of America.

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

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

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

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

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

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

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

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

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

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

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

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

D. is not registered under the securities legislation in any jurisdiction of Canada other than Ontario in another category to which the EFT Requirement applies, or has received an exemption from the EFT Requirement in each jurisdiction to which the EFT Requirement applies;

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

AND IT IS THE FURTHER DECISION of the Director, pursuant to section 6.1 of Rule 13-502, that the Applicant is exempt from the Application Fee Requirement contemplated under section 4.1 of Rule 13-502 in respect of this application.

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

2.2.3 Berkshire Capital Limited 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
BERKSHIRE CAPITAL LIMITED,
GP BERKSHIRE CAPITAL LIMITED,
PANAMA OPPORTUNITY FUND AND
ERNEST ANDERSON

ORDER
(Subsection 127(7) and (8))

WHEREAS the Ontario Securities Commission ("the Commission") issued a temporary order on January 27, 2009 ("the Temporary Order") with respect to Berkshire Capital Limited, GP Berkshire Capital Limited, Panama Opportunity Fund ("the Berkshire Entities") and with respect to Ernest Anderson ("Anderson") (collectively "the Respondents");

AND WHEREAS the Temporary Order ordered that: (i) trading in securities of and by the Respondents cease pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended ("the Act"); and (ii) any exemptions contained in Ontario securities law do not apply to the Respondents pursuant to paragraph 3 of subsection 127(1) and subsection 127(5) of the Act;

AND WHEREAS the Commission further ordered that the Temporary Order is continued until the 15th day after its making unless extended by the Commission;

AND WHEREAS Staff of the Commission ("Staff") served Anderson with the Temporary Order on January 27, 2009 and the Notice of Hearing and the Statement of Allegations on February 6, 2009;

AND WHEREAS Staff served the Berkshire Entities by sending the Temporary Order to Anderson who, although he accepted service on his own behalf, refused service on behalf of the Berkshire Entities;

AND WHEREAS Staff also served the Berkshire Entities by emailing the Temporary Order, the Notice of Hearing and the Statement of Allegations to the Berkshire Entities' Panamanian contacts, Georgia Lainiotis ("Lainiotis") and Mohamed Al-Harazi ("Al-Harazi"), who have been identified to Staff as being involved with the Berkshire Entities;

AND WHEREAS on February 10, 2009, Staff appeared before the Commission, Anderson having provided his consent to extend the Temporary Order and adjourn the hearing to March 19, 2009 in writing;

AND WHEREAS Staff filed the Affidavit of Stephanie Collins in support of Staff's request to extend the Temporary Order against the Berkshire Entities;

AND WHEREAS Staff and Anderson consented to an extension of the Temporary Order until March 19, 2009 and the Berkshire Entities did not appear;

AND WHEREAS on February 10, 2009, the Commission granted the request for an adjournment and rescheduled the hearing to March 19, 2009 and extended the Temporary Order until March 20, 2009;

AND WHEREAS Staff served the extension of the Temporary Order on Anderson and the Berkshire Entities by emailing it to Anderson, Lainiotis and Al-Harazi;

AND WHEREAS Staff served the Record of Staff (February 10, 2009) on Anderson on March 12, 2009;

AND WHEREAS Anderson on March 18, 2009 requested an adjournment to retain counsel;

AND WHEREAS on March 19, 2009, Staff appeared before the Commission and no one appearing on behalf of the respondents;

AND WHEREAS Staff and Anderson consented to adjourn the hearing to May 5, 2009 and to extend the Temporary Order until May 6, 2009 and the Berkshire Entities did not appear;

AND WHEREAS on March 19, 2009, the Commission granted the request for an adjournment and rescheduled the hearing to May 5, 2009 and extended the Temporary Order until May 6, 2009;

AND WHEREAS Staff served the extension of the Temporary Order on Anderson and the Berkshire Entities by emailing it to Anderson and Lainiotis. Staff attempted to serve it on Al-Harazi by emailing it to him at the address which had previously been successfully used, but the email was returned;

AND WHEREAS on May 5, 2009, Staff appeared before the Commission, Anderson appeared and opposed the continuation of the Temporary Order, and no one appearing on behalf of the Berkshire Entities;

AND WHEREAS on May 5, 2009, the Commission adjourned the hearing to July 9, 2009 at 10.00 a.m. and extended the Temporary Order until July 10, 2009;

AND WHEREAS on July 9, 2009, Staff and Anderson consented in writing to adjourn the hearing and to extend the Temporary Order for one month;

AND WHEREAS on reading the written consent of Staff and Anderson, the Commission granted the request for an adjournment and rescheduled the hearing to August 10, 2009 and extended the Temporary Order until August 11, 2009;

AND WHEREAS on August 10, 2009, Staff appeared before the Commission, Anderson having provided his consent in writing to adjourn the hearing to September 22, 2009 and to extend the Temporary Order until September 23, 2009;

AND WHEREAS on hearing the submissions of Staff and reading the written consent of Anderson, the Commission granted the request for an adjournment to reschedule the hearing to September 22, 2009 and continue the Temporary Order until September 23, 2009;

IT IS ORDERED THAT the hearing is adjourned to September 22, 2009 and the Temporary Order is continued until September 23, 2009, or such other date as is agreed by Staff and the Respondents and is determined by the Office of the Secretary.

DATED at Toronto, this 10th day of August, 2009.

"James E. A. Turner"

2.2.4 New Life Capital Corp. et al. – s. 127

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

AND

IN THE MATTER OF
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

ORDER
(Section 127)

WHEREAS the Ontario Securities Commission (the "Commission") issued a temporary cease trade order on August 6, 2008 (the "Temporary Order") in respect of New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd. (all of the corporations together, "New Life"), L. Jeffrey Pogachar ("Pogachar"), Paola Lombardi ("Lombardi") and Alan S. Price ("Price") (collectively, the "Respondents");

AND WHEREAS the Temporary Order ordered that (1) pursuant to clause 2 of subsection 127(1) and subsection 127(5) of the Act, trading in securities of and by the Respondents shall cease; (2) pursuant to clause 3 of subsection 127(1) and subsection 127(5) of the Act, any exemptions contained in Ontario securities law not do not apply to any of the Respondents; and (3) the Order shall not prevent or prohibit any future payments in the way of premiums owing from time to time in respect of insurance policies which were purchased by the Respondents on or before the date of the Order;

AND WHEREAS the Commission issued a Direction on August 6, 2008 to TD Canada Trust, Branch 2492 in Grimsby, Ontario directing TD Canada Trust to retain all funds, securities or property on deposit in the names or under the control of New Life (the "Direction");

AND WHEREAS a Notice of Hearing was issued by the Commission and a Statement of Allegations was filed and delivered to the Respondents by Staff of the Commission ("Staff") on August 7, 2008;

AND WHEREAS the Commission varied the Direction on August 11, 2008 to permit the release of $87,743.54 from the funds that are the subject of the Direction for the purpose of certain immediate and urgent expenses (the "Varied Direction");

AND WHEREAS on August 12, 2008 the Ontario Superior Court of Justice ordered that the Varied Direction, as varied or revoked by the Commission, is continued until final resolution of this matter by the Commission or further order of the Court;

AND WHEREAS on August 15, 2008, the Commission ordered the following exemptions to the Temporary Order: (1) Pogachar, Lombardi and Price may each hold one account to trade securities; (2) each account must be held with a registered dealer to whom this Order and any preceding Orders in this matter must be given at the time of opening the account or before any trading occurs in the account; and (3) the only securities that may be traded in each account are: (a) those listed and posted for trading on the TSX, TSX Venture Exchange, Bourse de Montreal or New York Stock Exchange; (b) those issued by a mutual fund which is a reporting issuer; or (c) a fixed income security;

AND WHEREAS the Respondents are represented by counsel and were served with the Temporary Order, the Notice of Hearing dated August 7, 2008, the Statement of Allegations dated August 7, 2008 and the Affidavit of Stephanie Collins sworn August 7, 2008 (the "Collins Affidavit");

AND WHEREAS on August 21, 2008, Staff and counsel for the Respondents appeared before the Commission, and the Commission ordered that the Temporary Order is continued until September 22, 2008 and that the hearing is adjourned to September 19, 2008, at 2:30 p.m.;

AND WHEREAS the Respondents requested a variance to the Direction to permit outstanding expenses to be paid and additional expenses to be paid going forward and Staff consented to the Respondents' request but only with respect to certain outstanding expenses and certain minimal expenses to be paid going forward (the "Consent Expenses");

AND WHEREAS the Respondents requested a variance to the Direction on September 19, 2008 with respect to the Consent Expenses only;

AND WHEREAS Staff delivered to counsel for the Respondents and filed a Supplementary Affidavit of Stephanie Collins sworn September 19, 2008 detailing the expenses included in the variance requested by the Respondents and consented to by Staff;

AND WHEREAS on September 19, 2008, Staff and counsel for the Respondents appeared before the Commission and the Commission ordered: (i) that the Varied Direction is further varied in order to permit the release of $46,891.35, and (ii) that the Temporary Order is continued until October 15, 2008 and the hearing is adjourned to October 14, 2008 or such other date as is agreed by Staff and the Respondents and determined by the Office of the Secretary;

AND WHEREAS on October 10, 2008, the Commission ordered that the Temporary Order is continued until October 24, 2008, and the hearing is adjourned to October 23, 2008 at 10:00 a.m., or such other date as is agreed by Staff and the Respondents and determined by the Office of the Secretary;

AND WHEREAS on October 23, 2008, Staff, counsel for New Life and counsel for Pogachar and Lombardi attended before the Commission, New Life brought a motion to seek a variation to the Direction for

certain purposes and the Commission ordered that (1) the Temporary Order is continued until November 7, 2008 and the hearing is adjourned to November 6, 2008 at 9:00 a.m.; and (2) the Direction is varied to permit the release of $60,000.00 to pay Gowling Lafleur Henderson LLP to cover unpaid accounts;

AND WHEREAS a hearing was held on November 6, 2008 at which Staff, counsel for New Life and counsel for Pogachar and Lombardi appeared and the Commission ordered that the Temporary Order is continued until December 8, 2008 and the hearing is adjourned to December 5, 2008;

AND WHEREAS a hearing was held on December 8, 2008 at which Staff and counsel for Pogachar and Lombardi attended, Staff having been advised as to the consent to proposed hearing dates by counsel for New Life and counsel for Alan S. Price, and the Commission ordered that the Temporary Order is continued until the conclusion of the hearing on the merits in this matter or until further order of the Commission and the hearing is adjourned to the weeks of August 10 and 17, 2009 but for August 18, 2009;

AND WHEREAS, on application of the Commission pursuant to section 129 of the Act, on December 17, 2008, the Ontario Superior Court of Justice appointed KPMG Inc. as receiver over the property, assets and undertakings of New Life;

AND WHEREAS, the Commission is not available for the hearing on the merits during the weeks of August 10 and 18, 2009 and the parties, including New Life as represented by counsel for KPMG Inc. as court-appointed receiver, consent to an adjournment of the hearing on the merits to the weeks of January 18 and 25, 2010, and to the scheduling of a pre-hearing conference for Tuesday, October 13, 2009 at 2:30 p.m.

IT IS ORDERED that:

(a) the Temporary Order is continued until the conclusion of the hearing on the merits or until further order of the Commission;

(b) the hearing on the merits is adjourned to the weeks of January 18 and 25, 2010, when the Commission will sit from 10:00 a.m. to 4:30 p.m. except for January 19, 2010, when the Commission will sit from 2:30 to 5:00 p.m.; and

(c) a half-day pre-hearing conference will be held on Tuesday, October 13, 2009 at 2:30 p.m.

DATED at Toronto this 10th day of August, 2009.

"James E. A. Turner"

2.2.5 Rex Diamond Mining Corporation et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
REX DIAMOND MINING CORPORATION,
SERGE MULLER, AND BENOIT HOLEMANS

ORDER
(Sections 127 and 127.1 of the Securities Act)

WHEREAS the Commission issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act* (the "Act") in respect of Rex Diamond Mining Corporation ("Rex"), Serge Muller ("Muller") and Benoit Holemans ("Holemans") (collectively, the "Respondents");

AND WHEREAS the Commission conducted a hearing into this matter on December 10-14, 2007 and March 31, 2008;

AND WHEREAS the Commission issued its Reasons and Decision on the merits in this matter on August 21, 2008;

AND WHEREAS the Commission is satisfied that the Respondents have not complied with Ontario securities law and have not acted in the public interest, as outlined in the Commission's Reasons and Decision dated August 21, 2008;

AND WHEREAS the Commission conducted a hearing with respect to sanctions and costs on May 11, 2009;

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

IT IS HEREBY ORDERED that:

1. pursuant to paragraph 6 of subsection 127(1) of the Act, Muller and Holemans be reprimanded;

2. pursuant to paragraph 7 of subsection 127(1) of the Act, Muller immediately resign as a director and officer of Rex for a period of 10 years commencing from the date of this Order;

3. pursuant to paragraph 7 of subsection 127(1) of the Act, Holemans immediately resign as an officer of Rex for a period of 12 months commencing from the date of this Order;

4. pursuant to paragraph 8 of subsection 127(1) of the Act, Muller be prohibited from becoming or acting as a director or officer of Rex or any other issuer for a period of 10 years commencing from the date of this Order;

5. pursuant to paragraph 8 of subsection 127(1) of the Act, Holemans be prohibited from becoming or acting as a director or officer of Rex or any other issuer for a period of 12 months commencing from the date of this Order;

6. pursuant to subsections 127.1(1) and (2) of the Act, Rex pay the amount of $60,000 toward the costs of or related to the investigation and hearing incurred by the Commission; and

7. pursuant to subsections 127.1(1) and (2) of the Act, Muller pay the amount of $40,000 toward the costs of or related to the investigation and hearing incurred by the Commission.

Dated at Toronto, Ontario this 11th day of August 2009.

“Wendell S. Wigle”

“David L. Knight”

“Kevin J. Kelly”

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Patheon Inc. and JLL Patheon Holdings LLC – ss. 104(1), 127

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

AND

IN THE MATTER OF
PATHEON INC.

AND

IN THE MATTER OF
AN OFFER TO PURCHASE FOR CASH
ANY AND ALL OF THE RESTRICTED VOTING SHARES OF PATHEON INC.
BY JLL PATHEON HOLDINGS, LLC

AND

IN THE MATTER OF
AN APPLICATION BY THE SPECIAL COMMITTEE
OF THE BOARD OF DIRECTORS OF PATHEON INC.
FOR CERTAIN RELIEF UNDER SECTIONS 104(1) AND 127

REASONS FOR DECISION
(Sections 104(1) and 127 of the Act)

Hearing:	April 15, 16, 2009		
Decision:	April 16, 2009		
Reasons:	August 6, 2009		
Panel:	James E. A. Turner	–	Vice-Chair and Chair of the Panel
	Mary G. Condon	–	Commissioner
Counsel:	J. Sasha Angus Naizam Kanji Michael Tang	–	For the Ontario Securities Commission
	Katherine Kay Eliot Kolers Alex Rose Ron Ferguson David Weinberg	–	For JLL Patheon Holdings, LLC
	Luis Sarabia William Gula Patrick Moyer Philippe Rousseau	–	For The Special Committee of Patheon Inc.

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REASONS FOR DECISION

I. Background

A. Introduction

[1] This matter arises from two applications made to the Ontario Securities Commission (the "**Commission**") relating to an unsolicited offer by JLL Patheon Holdings, LLC ("**JLL**") to purchase for cash any and all of the outstanding restricted voting shares (the "**Restricted Voting Shares**") of Patheon Inc. ("**Patheon**") pursuant to a take-over bid dated March 11, 2009 (the "**Offer**"). The Offer expires at 6:00 p.m. (Toronto time) on April 16, 2009 unless it is extended or withdrawn by JLL.

[2] On April 3, 2009, JLL made an application for a decision pursuant to subsection 104(2) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") for exemptions from the requirements relating to identical consideration under subsection 97(1) of the Act and the prohibition against collateral agreements under subsection 97.1(1) of the Act (the "**JLL Application**"). The JLL Application was made because it was the view of Staff of the Commission ("**Staff**") that the following agreements violated those provisions of the Act: (i) a voting agreement dated March 10, 2009 (the "**Voting Agreement**") between JLL, JLL Patheon Holdings II, LLC, Joaquin Viso ("**Viso**"), Viso's spouse and certain other shareholders of Patheon who acquired Restricted Voting Shares in connection with the acquisition by Patheon of MOVA Pharmaceuticals Corporation in 2004 (the "**MOVA Group**"), and (ii) a stockholders' agreement (the "**Stockholders' Agreement**") to be entered into between JLL and the MOVA Group in the circumstances provided for in the Voting Agreement.

[3] On April 6, 2009, the Special Committee of the Board of Directors of Patheon (the "**Special Committee**") made an application for certain relief under sections 104(1) and 127 of the Act (the "**Special Committee Application**"). The Special Committee sought the following orders in the Special Committee Application:

1. Orders under subsection 104(1) of the Act:
    i. restraining JLL from contravening sections 97(1) and 97.1 of the Act;
    ii. directing JLL to comply with sections 97(1) and 97.1 of the Act; and
    iii. directing Ramsey A. Frank ("**Frank**"), the sole manager of JLL and JLL Patheon Holdings II, LLC, to cause those companies to comply with and cease contravening sections 97(1) and 97.1 of the Act;
2. An order under section 127 of the Act prohibiting the acquisition by JLL of any securities under the Offer until such time as identical consideration is offered to all holders of Restricted Voting Shares and all deficiencies in JLL's take-over bid circular dated March 11, 2009 (the "**Take-over Bid Circular**") are corrected; and
3. Such other orders as counsel may request and the Commission thinks fit.

B. Our Order and Decision

[4] As discussed more fully below, JLL decided not to proceed with the JLL Application.

[5] On April 15 and 16, 2009, we held a hearing to consider the Special Committee Application at which we received submissions from counsel for JLL, the Special Committee and Staff. The oral hearing was necessarily abbreviated and we were required to make our decision before the Offer expired at 6:00 p.m. on April 16, 2009. We are satisfied that we had adequate materials and submissions to permit us to do so.

[6] On April 16, 2009, after the close of trading on the Toronto Stock Exchange (the "**TSX**"), we issued our decision and gave oral reasons in this matter. We dismissed the Special Committee Application provided JLL complies with the following conditions:

1. JLL shall terminate the Voting Agreement;
2. JLL shall certify that no oral or written agreement, arrangement or understanding, formal or informal, direct or indirect, currently exists or will be entered into or agreed to during the period of the Offer and for a period of 120 days following the expiry of the Offer with any shareholder of Patheon in respect of (i) the Offer or any second-step or compulsory acquisition transaction following the Offer, or (ii) Patheon or any of its securities, including the acquisition or voting thereof, other than in connection with a second-step or compulsory acquisition transaction in which all shareholders of Patheon are to receive the same consideration as the consideration under the Offer or all shareholders tendering to the Offer receive the same consideration as that paid to shareholders in such second-step or compulsory acquisition transaction;

3. The MOVA Group shall certify that no oral or written agreement, arrangement or understanding, formal or informal, direct or indirect, currently exists or will be entered into or agreed to with JLL during the period of the Offer and for a period of 120 days following the expiry of the Offer in respect of (i) the Offer or any second-step or compulsory acquisition transaction following the Offer, or (ii) Patheon or any of its securities, including the acquisition or voting thereof, other than in connection with a second-step or compulsory acquisition transaction in which all shareholders of Patheon are to receive the same consideration as the consideration under the Offer or all shareholders tendering to the Offer receive the same consideration as that paid to shareholders in such second-step or compulsory acquisition transaction;

4. JLL shall amend the Take-over Bid Circular to make full disclosure of the terms of this decision and of any consequential changes resulting from it;

5. JLL shall issue a news release no later than the date of mailing of the amendment to the Take-over Bid Circular summarizing the matters referred to in paragraph 4; and

6. JLL shall extend its Offer such that the Offer remains open for acceptance by shareholders for a period ending not less than 15 days following the mailing of the amendment to the Take-over Bid Circular referred to in paragraph 4.

[7] We received a request for written reasons in this matter. These are the full reasons for our decision.

II. The Parties

A. Patheon

[8] Patheon is a provider of contract development and manufacturing services to the global pharmaceutical industry, with operations in Canada, the United States, Puerto Rico and Europe. Its registered office is located in Mississauga, Ontario. It is a reporting issuer in all provinces and territories of Canada.

[9] Patheon's share capital consists of two classes of shares: the Restricted Voting Shares and preferred shares issuable in series. The Restricted Voting Shares are listed for trading on the TSX under the symbol "PTI". As at March 20, 2009, there were 91,149,388 Restricted Voting Shares outstanding. The outstanding preferred shares consist of 150,000 convertible preferred shares and 150,000 special voting preferred shares.

[10] Approximately 13.7% of the outstanding Restricted Voting Shares are owned by the MOVA Group, which acquired them when it sold MOVA Pharmaceutical Corporation to Patheon in 2004.

B. JLL

[11] JLL is a limited liability company organized under the laws of the State of Delaware. JLL is an affiliate of JLL Partners Fund V, L.P. and its fund manager, JLL Partners, Inc., a private equity investment firm organized under the laws of the State of Delaware and based in New York. None of these entities are reporting issuers in any jurisdiction in Canada.

[12] As of April 2009, JLL and its affiliates owned 1,650,000 Restricted Voting Shares, representing 1.8% of the issued and outstanding Restricted Voting Shares. JLL and its affiliates also owned 150,000 convertible preferred shares and 150,000 special voting preferred shares of Patheon, representing 100% of each such class. The preferred shares were acquired pursuant to a private placement completed in April, 2007. On an as-converted basis, JLL's holdings of Restricted Voting Shares, the convertible preferred shares and the special voting shares represent approximately 30% of the currently issued and outstanding Restricted Voting Shares. Accordingly, JLL is an insider of Patheon. JLL has three representatives on the board of directors of Patheon.

III. Background Facts

A. Chronology of Events

1. Events Prior to the Announcement of the Offer

[13] On November 19, 2008, representatives of JLL disclosed to Eric W. Evans, the Chief Financial Officer of Patheon, who subsequently advised Wesley P. Wheeler, the Chief Executive Officer of Patheon, that JLL was considering possible transactions through which it would increase its ownership interest in Patheon.

[14] On December 1, 2008, JLL contacted Viso to discuss a potential offer for the outstanding Restricted Voting Shares.

[15] On December 5, 2008, Frank telephoned certain directors of Patheon and notified them that JLL intended to make an offer for the outstanding Restricted Voting Shares not already owned by JLL or its affiliates. After the close of business on December 5, 2008, JLL sent a letter to Patheon, signed by Frank, stating JLL's intention to make the Offer (the "**JLL Letter**").

2. Events from the Announcement of the Offer to the Commencement of the Offer

[16] Shortly after the opening of trading on the TSX on December 8, 2008, JLL issued a news release announcing its intention to make the Offer at a price of US $2.00 per Restricted Voting Share. Shortly thereafter, Patheon issued a news release acknowledging receipt of the JLL Letter and stating that the Board of Directors would form a special committee of independent directors to review and evaluate the proposed Offer. The Special Committee was formed at a meeting of the Board of Directors held on December 11, 2008.

[17] On January 9, 2009, the Special Committee announced that it had engaged (i) BMO Nesbitt Burns Inc. ("**BMO**") to review and evaluate the Offer and, among other things, to prepare an independent valuation of the Restricted Voting Shares, as required under Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**"), and (ii) Goldman, Sachs & Co. as financial advisor to the Special Committee. On February 19, 2009, BMO delivered to the Special Committee an independent valuation which concluded that, as of February 16, 2009, the fair market value of the Restricted Voting Shares was in the range of US $4.20 to US $5.00 per share.

[18] On or about March 5, 2009, Viso advised certain members of the Special Committee that he had been having discussions with JLL to "protect his interests" in connection with the Offer. In a subsequent conversation on March 9, 2009 between Frank and Paul W. Currie ("**Currie**"), the Chair of the Special Committee, Currie asked JLL to increase its proposed offer price, to add a minimum tender condition and to clarify how public shareholders would be protected if JLL increased its ownership of Patheon. Frank responded that JLL was not prepared to do any of those things.

[19] As of March 10, 2009, JLL entered into the Voting Agreement with Viso, as representative of the MOVA Group. The Voting Agreement was entered into subsequent to the public announcement of JLL's intention to make the Offer and one day prior to the formal commencement of the Offer.

3. Events After the Commencement of the Offer

[20] JLL formally commenced the Offer on March 11, 2009. The Offer was made at a price of US $2.00 per Restricted Voting Share and was made on an "any and all" basis with no minimum tender condition. The Offer was made at a premium of approximately 138% to the U.S. dollar equivalent of the closing market price of the Restricted Voting Shares on December 5, 2008. The Offer was not made for Restricted Voting Shares held by JLL, "its affiliates, associates or any person acting jointly or in concert [with JLL] within the meaning of the [*Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended]" (the "**CBCA**"). The Offer indicated that it was JLL's current intention, if it acquired Restricted Voting Shares under the Offer, to carry out one or more transactions to acquire all of the Restricted Voting Shares not deposited under the Offer (referred to as the "**JLL Subsequent Acquisition Transaction**").

[21] The Voting Agreement between JLL and the MOVA Group was first publicly disclosed on March 11, 2009.

[22] On March 19, 2009, the Special Committee met with Staff to discuss its concerns regarding the legality of the Offer. The Special Committee submitted a written complaint on March 26, 2009 asking the Commission to review the legality of the Offer.

[23] On March 25, 2009, the Special Committee received an e-mail from JLL stating that the Offer would be extended to all holders of Restricted Voting Shares and to the MOVA Group. JLL stated that it intended to issue a news release to that effect.

[24] The Special Committee and the Board of Directors of Patheon approved a Directors' Circular at a meeting held on March 25, 2009. The Directors' Circular recommended that shareholders of Patheon not tender to the Offer. The Directors' Circular was filed on SEDAR on March 26, 2009.

[25] On April 1, 2009, JLL responded to the Special Committee's March 26, 2009 submissions to Staff. Additional submissions were subsequently made by both the Special Committee and JLL.

[26] On April 9, 2009, the Commission decided, as a procedural matter, not to consider the JLL Application except pursuant to a public hearing. In making this determination, the Commission expressed no view on the merits of the JLL Application.

[27] On April 13, 2009, JLL submitted a letter to the Commission stating that JLL would prefer to have the Offer put before Patheon's shareholders on a timely basis and did not want to proceed to a hearing on the JLL Application. As a result, without admitting any contravention of the Act, JLL proposed to take the following steps (the "**JLL Proposal**"):

1. immediately terminate the Voting Agreement in its entirety (including the agreement to enter into the Stockholders' Agreement), it being understood that JLL and the MOVA Group would treat the Voting Agreement as void ab initio, so that the MOVA Group is no longer considered an "offeror" under the CBCA;

2. extend the Offer to April 27, 2009;

3. prepare and file a notice of change to the Offer and the Take-over Bid Circular to reflect: (i) that the Offer has been extended; (ii) that the Voting Agreement has been terminated; (iii) that the MOVA Group is no longer considered an "offeror" under the CBCA or to be acting jointly or in concert with JLL under subsection 91(1)(b) of the Act; (iv) that in order to effect a subsequent "compulsory acquisition", JLL will have to acquire under the Offer 90% of the outstanding Restricted Voting Shares, other than any Restricted Voting Shares held by JLL (which term will not be deemed to include the MOVA Group) and its associates and affiliates; and (v) such other disclosure matters as Staff and JLL shall agree upon; and

4. withdraw the JLL Application.

[28] JLL stated in its letter that the Commission ought to decline to hold a hearing on the Special Committee Application. If the Commission determines that the Special Committee Application should proceed, JLL stated that it would have no reason to take the steps contemplated by the JLL Proposal. Accordingly, in that case, JLL would not terminate the Voting Agreement and would proceed with the JLL Application.

[29] On April 13, 2009, the Special Committee submitted a letter to the Commission stating that the JLL Proposal was not sufficient to remedy JLL's breaches of the Act and other conduct in connection with the Offer. The Special Committee indicated, however, that it was prepared to withdraw the Special Committee Application (the "**Special Committee Proposal**") if certain requirements were met. The Special Committee Proposal required JLL and the MOVA Group to certify that:

1. the only consideration that the MOVA Group is entitled to receive in respect of the Offer is US $2.00 in cash per Restricted Voting Share or such additional consideration as is offered by JLL to all holders of Restricted Voting Shares pursuant to the Offer in accordance with the Act;

2. no oral, written or other agreement, commitment or understanding, formal or informal, currently exists or will be entered into during the term of the Offer and for a period of 120 days following the expiry of the Offer between JLL and any member of the MOVA Group in respect of (i) the Offer or any second-step or compulsory acquisition following the Offer, or (ii) Patheon or any of [its] securities, including the acquisition or voting thereof; and

3. the MOVA Group will not be entitled to receive any collateral benefit or other consideration that is not also available to, and shall not be treated differently than, the other shareholders of Patheon in any subsequent acquisition transaction or compulsory acquisition following the Offer.

[30] The Special Committee expressed the view that, if JLL was unable or unwilling to agree to its conditions, the Special Committee Application should proceed to a hearing.

[31] The Special Committee set out two fundamental concerns with JLL's proposal to terminate the Voting Agreement:

1. it would be difficult in the circumstances for Patheon's shareholders to be confident that, if the Voting Agreement was simply terminated, it would not be replaced with a tacit agreement that, to the extent possible, similar arrangements would be put in place after the Offer is completed; and

2. if JLL were permitted to proceed with the Offer notwithstanding its breach of the Act, it would encourage other capital market participants to structure an offer in the same way.

[32] On April 15, 2009, JLL wrote to the Commission stating that, while in its view the Voting Agreement did not violate subsections 97(1) and 97.1(1) of the Act, it was prepared to immediately terminate it, extend its Offer, prepare and file a notice of change, and withdraw the JLL Application. JLL stated its belief that the two remaining matters in dispute between the parties (the specifics of any certification and the period of extension of the Offer) could be resolved without proceeding to a hearing.

B. The Voting Agreement

[33] Viso is one of the nine directors of Patheon. The members of the MOVA Group are parties to an agreement dated March 10, 2009 pursuant to which Viso has control or direction over the Restricted Voting Shares held by the MOVA Group.

[34] Relevant excerpts from the Voting Agreement are set out in Schedule A and relevant excerpts from the Stockholders' Agreement are set out in Schedule B.

[35] The Voting Agreement protects the position of the MOVA Group as a minority shareholder if it decides not to tender to the Offer. Two types of benefits arise. First, if the MOVA Group does not tender to the Offer it will not have its share interest eliminated as part of any JLL Subsequent Acquisition Transaction. Second, if the MOVA Group remains a shareholder of Patheon following the Offer, the Stockholders' Agreement provides certain shareholder protections to the MOVA Group as a minority shareholder as described in paragraph 76 of these reasons and in Schedule B.

[36] The Special Committee submits that the Voting Agreement is a sham and was entered into in order to permit JLL to be able to acquire, under the CBCA, all of the Restricted Voting Shares not tendered to the Offer by public shareholders even if the MOVA Group does not tender its shares to the Offer. It accomplishes that by constituting the MOVA Group technically as an "offeror" in respect of the Offer within the meaning of section 206 of the CBCA. That means that to complete a compulsory acquisition under section 206 of the CBCA, JLL needs to acquire only 90% of the shares not owned by it, excluding the shares owned by the MOVA Group. As a result, JLL can make use of section 206 even if the MOVA Group does not tender to the Offer.

[37] The Stockholders' Agreement is put in place only if the MOVA Group does not tender to the Offer and JLL successfully acquires 50.1% of the aggregate voting power of Patheon's Restricted Voting Shares and other voting securities (pursuant to the Offer or any compulsory acquisition or JLL Subsequent Acquisition Transaction).

IV. Issues

[38] The Special Committee is prepared to accept the JLL Proposal subject to the resolution of the following questions:

1. Should JLL be restricted in its ability to enter into agreements, arrangements or understandings with the MOVA Group for some period following the completion of the Offer? If so, what form of certifications should be required of JLL and the MOVA Group to evidence that restriction?

2. For how long should the Offer be extended as a result of the variation required to reflect the JLL Proposal?

[39] In addition, we are asked to consider whether the JLL Proposal sufficiently addresses the violations of the identical consideration requirement in subsection 97(1) of the Act and the prohibition against collateral agreements under subsection 97.1(1) as alleged by the Special Committee.

V. Positions of the Parties

A. The Special Committee

1. Identical Consideration and Collateral Benefits

[40] The Special Committee submits that the Voting Agreement violates subsections 97(1) and 97.1(1) of the Act in that (i) the MOVA Group has been offered consideration that is not being made available to all shareholders of the same class of shares, and (ii) JLL and the MOVA Group are party to a collateral agreement (the Voting Agreement) that provides consideration of greater value to the MOVA Group than to other shareholders.

[41] The Special Committee also submits that the Offer is coercive to public shareholders because it:

1. is an "any and all" offer with no minimum tender condition;

2. is made at a price substantially below the fair market value of the Restricted Voting Shares as determined pursuant to the formal valuation referred to in paragraph 17 of these reasons;

3. JLL has said that it would like to take Patheon private if it acquires enough shares, but that it may, instead, buy a block of shares which will allow it to control Patheon without paying a control premium;

4. JLL announced its intention to make a US $2.00 offer only four days prior to the public disclosure of fourth quarter results that would have caused the Restricted Voting Shares to be trading at a markedly higher price;

5. JLL has made the Offer while acting jointly or in concert with the MOVA Group in violation of the standstill restrictions contained in the investor agreement between Patheon and JLL dated April 27, 2007; and

6. JLL has admitted that the Voting Agreement was part of a scheme to allow it to avoid complying with the strict compulsory acquisition requirements of the CBCA by making the MOVA Group an "offeror" within the meaning of subsection 206 of the CBCA.

We did not receive oral submissions from the Special Committee with respect to items 4, 5 and 6 above.

[42] Section 97 of the Act provides as follows:

> 97(1) If a formal bid is made, all holders of the same class of securities shall be offered identical consideration.
>
> (2) Subsection (1) does not prohibit an offeror from offering an identical choice of consideration to all holders of the same class of securities.
>
> (3) If a variation in the terms of a formal bid before the expiry of the bid increases the value of the consideration offered for the securities subject to the bid, the offeror shall pay that increased consideration to each person or company whose securities are taken up under the bid, whether or not the securities were taken up by the offeror before the variation of the bid.

We refer to section 97 of the Act as the "identical consideration" provision.

[43] Section 97.1 of the Act provides as follows:

> 97.1(1) If a person or company makes or intends to make a formal bid, the person or company or any person or company acting jointly or in concert with that person or company shall not enter into any collateral agreement, commitment or understanding that has the effect, directly or indirectly, of providing a security holder of the offeree issuer with consideration of greater value than that offered to the other security holders of the same class of securities.
>
> (2) Subsection (1) does not apply to such employment compensation arrangements, severance arrangements or other employment benefit arrangements as may be specified by regulation.

We refer to section 97.1 of the Act as the "collateral benefit" provision or prohibition.

[44] The Special Committee submits that the fundamental purpose of the take-over bid provisions of the Act is to protect the integrity of the capital markets and the interests of shareholders of an offeree issuer.

[45] The Special Committee submits that the term "consideration" in subsection 97(1) of the Act should not be interpreted narrowly. The language is broad in order to ensure that all shareholders have the opportunity to make the same investment decision with respect to their securities. A narrow reading of the term undermines the fundamental purpose for which the section was adopted. Accordingly, sections 97 and 97.1 do not merely require an identical dollar amount per security to be offered or that the term consideration "be confined to the four corners of [a] formal bid." The Special Committee relies on *Re Sears Canada Inc.* (2006), 22 B.L.R. (4th) 267 (O.S.C.) ("*Sears*") at para. 242, where the Commission stated that "consideration" is "something which is of value in the eyes of the law and could include an act, or promise of an act, which is incapable of being given monetary value, though it has some value or benefit in the sense of advantage for the party who is the present or future recipient or beneficiary of the act."

[46] The Special Committee also refers us to three cases where the Commission has held that "identical consideration" within the meaning of subsection 97(1) of the Act and the fundamental principles underlying it extend beyond the specific consideration offered to purchase shares in a bid: *Re CDC Life Sciences Inc.* (1988), 11 O.S.C.B. 2541 ("*CDC Life Sciences*"); *Re Noverco Inc.* (1990), 13 O.S.C.B. 3243; and *Re NCG Acquisition Corp. et al.* (1992), 15 O.S.C.B. 5355. It also encompasses other consideration including, in particular, rights and benefits that may arise from not tendering to an offer.

[47] The Special Committee also submits that the differential treatment afforded to the MOVA Group has the effect of conferring consideration of greater value on the members of the MOVA Group in contravention of subsection 97.1(1) of the Act. The consideration in question conferring the greater value need not arise from or in connection with the acquisition of a security holder's shares by a bidder, nor does a bidder need to perceive there to be greater value in the consideration. Value is measured in the eyes of the security holder to whom the consideration is given and "can be inferred from the very fact that a shareholder entered into [a collateral] agreement" (*Sears*, *supra* at para. 214).

[48] The Special Committee submits that, unlike other shareholders who do not wish to accept the Offer, the MOVA Group has been afforded the benefits contained in the Voting Agreement, including the right to continue to hold their shares and to

benefit from the potential upside of Patheon's business in the future and the opportunity to dispose of its Restricted Voting Shares in the future at potentially a higher price than under the Offer.

2. Extension of the Offer

[49] Initially, the Special Committee submitted that JLL should be required to extend the Offer, and not take up any Restricted Voting Shares tendered, until at least 21 days have elapsed after the mailing of the notice of change and variation in respect of the amendments to the Take-over Bid Circular. The Special Committee submitted that this period was necessary to ensure that there was sufficient time for shareholders to receive and digest the amended disclosure, and to have an adequate opportunity to exercise their withdrawal rights should they choose to do so. During the hearing, however, the Special Committee informed us that it agreed with Staff's position that a 15-day period would be sufficient, determined from the date of the notice of variation.

[50] The Special Committee opposes JLL's position that a 10 day extension (as provided for in the Act) is sufficient, given that, as a practical matter, that period would include two weekends, effectively "short-changing" shareholders by giving them only five or six business days to consider the changes to the Take-over Bid Circular.

[51] The Special Committee submits that the changes resulting from the termination of the Voting Agreement are so fundamental that making the necessary changes is tantamount to making a new bid.

3. Ability to Enter into Future Agreements, Arrangements and Understandings

No New Agreement for the Period of 120 Days

[52] The Special Committee submits that Patheon shareholders may be concerned that an explicit agreement (the Voting Agreement) that violates the identical consideration provision may be replaced by a similar tacit agreement, arrangement or understanding. To address this concern, the Special Committee submits that JLL and the MOVA Group ought to certify that there currently are no such agreements, arrangements or understandings and there will not be any for a period of 120 days following the expiry of the Offer. The Special Committee relies on *Re Royal Trustco Ltd. and Campeau Corporation (No. 2)* (1980), 11 B.L.R. 298 (O.S.C.) ("*Royal Trustco*") where the Commission imposed a similar condition upon finding similar breaches of the Act.

No Collateral Benefits

[53] In addition, the Special Committee submits that JLL and the MOVA Group ought to also certify that the MOVA Group will not receive any collateral benefit or other consideration that is not also available to, and shall not be treated differently than, the other shareholders of Patheon in any JLL Subsequent Acquisition Transaction or compulsory acquisition following the Offer.

Special Committee Concerns

[54] The Special Committee submits that if JLL is not required to make these certifications, JLL could, as early as the day following the completion of the Offer, enter into a new agreement with the MOVA Group that would provide substantially the same benefits to the MOVA Group and to JLL as the Voting Agreement.

[55] The Special Committee submits that such certifications are appropriate and necessary to (i) address the reasonable concern that shareholders may have that JLL will replace the Voting Agreement with a tacit agreement, arrangement or understanding with the MOVA Group, and (ii) ensure that JLL and the MOVA Group do not achieve through a subsequent agreement the very things that they have agreed not to do during the period of the Offer, that undermine the protection of minority shareholders. The Special Committee submits that not requiring these certifications would undermine public confidence in Ontario's capital markets.

Do Not Wait and See

[56] The Special Committee also submits that it is critical that appropriate conditions be placed on JLL's ability to enter into a new or revised agreement with the MOVA Group following the Offer. The Commission should not wait to address this issue until a specific JLL Subsequent Acquisition Transaction is proposed. Shareholders are entitled to make a decision on whether to tender their shares to the Offer with full information about whether any agreements, arrangements or understandings will be put in place between JLL and the MOVA Group. The Commission cannot "unscramble the egg" once shares have been taken up under the Offer. The ability of JLL to exercise control over Patheon if the Offer is successful makes it unlikely that there would be an effective challenge of these arrangements, even if such a transaction treats the other shareholders of Patheon unfairly.

[57] The Special Committee submits that it is ineffective and impractical, given the circumstances, to wait and see whether JLL enters into an inappropriate agreement because the parties would find themselves back before the Commission making the

same submissions. The Commission is in a position now to identify with precision the conditions to which JLL should be subject and to provide shareholders with certainty by dealing with this issue and avoiding the potential need for a future hearing.

4. Allegations that the Take-over Bid Circular is Materially Deficient and Misleading

[58] The Special Committee also submits that the disclosure in the Take-over Bid Circular is confusing, misleading and materially deficient and that the Take-over Bid Circular fails to fully and properly disclose material information in accordance with applicable securities legislation. We did not receive any oral submissions at the hearing with respect to these disclosure issues and we do not address them in these reasons.

5. Alternative to Certification

[59] The Special Committee submits that an alternative means to achieve the purpose of the certification requirement referred to above, while permitting JLL to enter into an agreement with the MOVA Group, is to require JLL to agree that, if it does enter into such an agreement following the completion of the Offer, the Restricted Voting Shares acquired from the MOVA Group under the Offer will not be counted as part of Minority Approval for purposes of MI 61-101.

[60] The effect of this alternative would be that JLL could effect a JLL Subsequent Acquisition Transaction in which the MOVA Group is treated differently than other shareholders only if the transaction is approved by the holders of a majority of the Restricted Voting Shares held by shareholders other than the MOVA Group who have full information regarding the arrangements made by JLL with the MOVA Group. Notwithstanding this submission, certification was the principal focus of the Special Committee's oral submissions.

6. Section 8.2 of MI 61-101

[61] The Special Committee submits that because JLL wants to count the shares acquired under the Offer (as a first step) as part of any majority of the minority shareholder approval of a JLL Subsequent Acquisition Transaction (as a second step), one cannot simply de-link the first step from the second step transaction. In this context, the Offer and any JLL Subsequent Acquisition Transaction represent a single, integrated transaction. Accordingly, the Special Committee submits that what JLL is prohibited from doing in the first step should not be allowed in the second step of that integrated transaction. Otherwise, public confidence in Ontario's capital markets would be undermined and a clear message would be sent to market participants that bidders can disregard Ontario's take-over bid laws and then simply remove the offending agreement or stop the conduct when challenged.

[62] The Special Committee submits that if an offeror wishes to rely on section 8.2 of MI 61-101 and count shares tendered in a first step offer as part of the minority shareholder approval in a second step subsequent acquisition transaction, side deals are not permitted unless they are fully disclosed in the circular prepared for the first step offer, and the offeror has to comply with the identical consideration and collateral benefit provisions of the Act with respect to that offer.

[63] In addition, if JLL is permitted to enter into a new arrangement with the MOVA Group, the Special Committee submits that public shareholders, in determining whether to accept the Offer, should be fully informed of that arrangement. They should know the terms of any new agreement, the identity of the parties, the number of shares involved, and the effect on the number of shares that JLL would need to acquire in order to take Patheon private (all consistent with the disclosure required by section 8.2 of MI 61-101).

[64] The Special Committee submits that shareholders are entitled to make a decision on whether to tender their shares to the Offer based on full information. This principle is all the more important because the Offer is a coercive bid in the view of the Special Committee. It is a fundamental element of the ability to count shares tendered to a prior bid as part of majority of the minority shareholder approval under MI 61-101 that shareholders be fully informed.

B. JLL

1. Extension of the Offer

[65] JLL submits that the Offer should be extended for 10 days following the date of the notice of extension and variation, which is the time period set out in subsection 98.1(1) of the Act. The effect of the termination of the Voting Agreement on the decision of Patheon's shareholders to accept or reject the Offer is not so complex or unique as to require a longer withdrawal period. Further, following the news release issued by the Special Committee on April 14, 2009, shareholders of Patheon are aware of the proposed extension as well as the proposal to terminate the Voting Agreement.

2. Certification Regarding Future Agreements, Arrangements and Understandings

[66] JLL submits that it has already, and will again, certify that upon termination of the Voting Agreement there will be no agreement, arrangement or understanding with the MOVA Group. JLL submits that there is no need to certify that no such agreement, arrangement or understanding will be entered into during the 120 days following the expiry of the Offer. Such a certification is based on the Special Committee's unjustified assertion that the certification proposed by JLL cannot be believed.

[67] JLL submits that, in any case, it is impossible to demonstrate that there are no tacit agreements with the MOVA Group, other than to provide a certification that there are none, which JLL has already done. In JLL's submission, the Commission has previously accepted that as enough. In *Royal Trustco*, the Commission made an order cease-trading a take-over bid that would terminate if, amongst other things, certification was provided that there were no collateral agreements or undertakings. No certification was required as to conduct following the expiry of that offer.

[68] JLL submits that if it does ultimately enter into an agreement with the MOVA Group following the expiry of the Offer, the Commission can examine all of the circumstances surrounding such an agreement at that time, when the facts will have crystallized and the Commission can consider the matter without having to assume that JLL is being untruthful in making its certification. JLL is prepared to notify the Commission if an agreement is proposed to be entered into with the MOVA Group within 120 days of the expiry of the Offer and to make full disclosure of that undertaking.

[69] In essence, JLL submits that there is no need for the Commission to do anything at the present time. There is no basis for the Commission to require an additional JLL certification. Doing so would ask JLL to "prove a negative" since JLL has already stated that no agreement exists with other shareholders of Patheon.

[70] JLL submits that there is no legal or policy justification for the imposition of such a term. There is nothing in the Act, regulations or policy statements precluding JLL from entering into an agreement with a third party to facilitate a second-step acquisition after the expiry of the Offer.

3. The Commission's Public Interest Jurisdiction

[71] JLL submits that the Commission's public interest jurisdiction is derived from the broad mandate conferred upon the Commission under the Act to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets. The Commission's public interest jurisdiction is not unlimited (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 ("*Asbestos*") at para. 41). Intervention on public interest grounds is warranted only where a transaction is abusive to investors or the capital markets generally.

[72] JLL submits that the threshold for the Commission to make an order under section 127 of the Act is a high one that cannot be satisfied in the present circumstances. JLL proposes to terminate the Voting Agreement and the termination agreement to be entered into will contemplate deeming the MOVA Group no longer to be an "offeror" under the CBCA for purposes of the Offer. That puts the MOVA Group in the identical position it was in prior to the Offer. In such circumstances, it cannot be said that any shareholder is receiving any different consideration than any other shareholder.

[73] Furthermore, JLL submits that there is no breach of the underlying "spirit" of the take-over bid provisions of the Act. Without a breach of the rules or the spirit underlying them, there is no basis for the Commission to exercise its public interest jurisdiction. Moreover, in the circumstances, there is no basis to conclude that the Offer is abusive to investors or the capital markets generally, therefore making it unwarranted for the Commission to take the extreme measure of invoking its public interest jurisdiction.

4. Termination of the Voting Agreement

[74] JLL submits that the Voting Agreement does not contravene sections 97 and 97.1 of the Act. JLL also submits that terminating the Voting Agreement, as JLL proposes to do in accordance with the JLL Proposal, resolves all of the alleged problems identified by the Special Committee and will allow investors to decide the merits of the Offer.

C. Staff

1. Identical Consideration and Collateral Benefits

[75] Staff submits that the Voting Agreement provides the MOVA Group with a meaningful advantage in deciding whether to tender shares to the Offer, by eliminating the structural disadvantages that other Patheon shareholders face in response to an "any and all" bid. Those disadvantages include protection for a shareholder who does not tender to the Offer from being "squeezed out" and ending up receiving identical consideration to that under the Offer but at a later time.

[76] Staff submits that the proposed provisions of the Stockholders' Agreement mitigate any coerciveness of the Offer to the MOVA Group because it provides the MOVA Group with certain tag-along, drag-along and board representation rights, which address concerns the MOVA Group may have about remaining a minority shareholding in an issuer with a small and illiquid public float. The MOVA Group is protected from the loss of liquidity and has the potential opportunity to obtain a control premium in the future that will not be available to public shareholders.

2. Extension of the Offer

[77] Staff submits that 15 days is a reasonable period of time for extending the Offer because the minimum 10-day period is not adequate in the circumstances. Ten days does not provide shareholders sufficient time to fully consider the variation of the Offer in light of the complexity of the disclosure contemplated.

3. Certification Regarding Future Agreements, Arrangements and Understandings

[78] Staff agrees with the Special Committee that JLL should, in addition to terminating the Voting Agreement, also be required to certify that no other oral, written or other agreement, arrangement or understanding, formal or informal, with any member of the MOVA Group, currently exists or will be entered into during the period of the Offer or with respect to any JLL Subsequent Acquisition Transaction or compulsory acquisition for a period of 120 days following the expiry of the Offer.

[79] Staff submits that the Commission must consider two issues in addressing the issue of certification:

1. the application of section 8.2 of MI 61-101 to the Offer; and

2. the application of the Commission's public interest jurisdiction in the context of the identical treatment and minority approval principles underlying MI 61-101.

4. Application of MI 61-101 to the Offer and a Subsequent Acquisition Transaction

[80] Staff submits that a JLL Subsequent Acquisition Transaction will be a business combination under MI 61-101 because it will terminate the interests of the holders of Restricted Voting Shares who do not tender to the Offer, without their consent, and JLL, a related party of Patheon, would be acquiring Patheon. As a result, the transaction must be approved by a majority of the Restricted Voting Shares held by shareholders, other than those held by JLL, any related parties of Patheon that receive a collateral benefit, and their respective joint actors ("**Minority Approval**").

[81] Section 8.2 of MI 61-101 allows JLL to vote or treat as voted, for purposes of Minority Approval, any Restricted Voting Shares that it acquires under the Offer if certain conditions are met. Staff submits that, assuming section 8.2 is complied with, the combination of the Offer and any JLL Subsequent Acquisition Transaction is considered to be the equivalent of a single transaction that is subject to Minority Approval. The shares acquired by JLL under the Offer can be treated as voted as part of the Minority Approval. Therefore, if sufficient Restricted Voting Shares are tendered to the Offer, JLL will be certain that it can obtain Minority Approval and will be guaranteed the ability to eliminate through a JLL Subsequent Acquisition Transaction the Restricted Voting Shares that are not tendered to the Offer by public shareholders.

[82] Staff agrees with the Special Committee regarding the concerns underlying the request that JLL certify that it will not enter into future agreements with the MOVA Group that would provide JLL and the MOVA Group with the same benefits that are reflected in the current Voting Agreement. Under subsections 8.2(f)(iv) and (v) of MI 61-101, a bidder who wants to count shares tendered to a bid as part of the minority approval required for a subsequent acquisition transaction must make reasonable inquiries about the identity and holdings of persons who may be excluded from the vote. Staff submits that it is unreasonable for JLL to state that it does not know whether it will decide to negotiate a new agreement with the MOVA Group once the Offer is completed and a JLL Subsequent Acquisition Transaction is proposed. Staff supports the Special Committee Proposal, or the alternative suggested by the Special Committee, which Staff sees as addressing the possible violation of subsections 8.2(f)(iv) and (v) of MI 61-101.

5. Application of Commission's Public Interest Jurisdiction

[83] Staff submits that the Commission should exercise its public interest jurisdiction to cease trade the Offer unless it is amended to address the concerns raised by the Special Committee and Staff in this proceeding. The Supreme Court of Canada has affirmed the Commission's broad jurisdiction to intervene on public interest grounds where it would further the purposes of the Act (*Asbestos*, *supra* at 148, 149).

[84] Staff also refers to *Re Cablecasting Ltd.*, [1978] O.S.C.B. 37 ("*Cablecasting*") where the Commission applied its public interest jurisdiction to a going private transaction carried out in compliance with the requirements of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 but not in compliance with the disclosure requirements applicable to issuer bids under Commission Policy 3-37 (a predecessor to MI 61-101).

[85] Staff submits that the Commission can intervene on public interest grounds even if there is no breach of the Act, the regulations or a policy statement. The Commission should intervene in the public interest where a market participant initiates a transaction that is designed to exploit a loophole in securities legislation.

[86] Staff submits that an order in the public interest under subsection 127(1) of the Act may be appropriate when there is abuse. In the take-over bid context, this can occur where a transaction is artificial and defeats the reasonable expectations of investors (*Re Financial Models Co.* (2005), 28 O.S.C.B. 2184 ("*Financial Models*")).

[87] Staff submits that a key factor in determining whether the Commission should exercise its public interest jurisdiction to impose the additional conditions set out in the Special Committee Proposal, or the alternative proposed by the Special Committee, is whether the MOVA Group received preferential treatment in the nature of collateral benefits, as that term is defined in MI 61-101. Staff is of the view that a voting agreement entered into by JLL and the MOVA Group in connection with a JLL Subsequent Acquisition Transaction would be a collateral benefit within the meaning of MI 61-101. As the MOVA Group would not have tendered to the Offer and would not be voting on a JLL Subsequent Acquisition Transaction, excluding its votes from Minority Approval would be an insufficient remedy. Staff submits that the purpose of the Voting Agreement and any similar future agreement is inconsistent with the rationale behind the identical consideration requirement and the prohibition against collateral benefits.

[88] The Commission has contemplated the possibility, in subsection 2.1(5) of the Companion Policy to MI 61-101, that it may need to intervene on public interest grounds where an arm's length security holder is receiving preferential treatment for its support of a business combination.

[89] Staff submits that JLL has used the Voting Agreement, and may use a future agreement with the MOVA Group, to neutralize the possibility that the MOVA Group would veto a potential privatization of Patheon (by not tendering to the Offer) to obtain a higher price for its shares under the Offer, to the detriment of minority shareholders. This is similar to novel and abusive schemes that the Commission has addressed in prior decisions, including Sears, in that it violates the principle of identical treatment underlying the bid regime.

[90] Therefore, Staff submits that the Commission should intervene on public interest grounds to either prohibit the entering into of future agreements as recommended by the Special Committee or, in the alterative, treat a second-step business combination of Patheon as a separate transaction in which JLL would not be able to count the Restricted Voting Shares acquired under the Offer as part of any Minority Approval.

[91] Staff submits that the Commission should not permit JLL to undermine the principle of identical treatment underlying both the take-over bid regime and the business combination requirements of MI 61-101. In particular, JLL should not be permitted to resolve the concerns raised by the Special Committee Application by treating the Voting Agreement as void *ab initio*, while keeping open the option of entering into a similar agreement in the future in connection with a JLL Subsequent Acquisition Transaction. The Commission should either prohibit such an agreement or treat such an agreement as part of a business combination that is not linked to the Offer. In the latter case, JLL would not be able to count Restricted Voting Shares acquired under the Offer as part of any Minority Approval.

[92] Staff submits that, unless the parties reach an agreement on the outstanding issues no later than 12:00 p.m. on April 16, 2009, the Commission should make an order under subsection 127(1)2 of the Act cease trading the Offer until such time as (i) JLL takes the steps set out in the JLL Proposal, except that JLL shall extend the Offer for at least 15 days from the date it files the notice of variation, and (ii) JLL amends the Take-over Bid Circular to include the certifications requested by Staff.

6. The JLL Proposal Creates Uncertainty

[93] Staff submits that the JLL Proposal creates uncertainty for public shareholders of Patheon. A shareholder deciding whether to tender to the Offer must consider the value that is being given up by doing so. A shareholder cannot make that assessment if there is uncertainty as to whether a future agreement may be entered into between JLL and the MOVA Group.

VI. Analysis and Conclusions

1. The Issues

[94] The issues we have to address in this matter are significantly narrowed as a result of the JLL Proposal, which JLL confirmed to us it was prepared to honour. That proposal includes the agreement of JLL to terminate the Voting Agreement on the basis that it is void *ab initio*. The two outstanding issues about which the Special Committee and JLL do not agree are (i) whether JLL should be free to enter into a new agreement, arrangement or understanding with the MOVA Group or other shareholders within the period of 120 days following the expiry of the Offer, and (ii) the period the Offer should be required to remain open following the necessary variation to the Offer as a result of our decision in this matter. Related to the first issue is the question of the proper interpretation of section 8.2 of MI 61-101.

[95] JLL did not proceed with the JLL Application and takes the position that, if the JLL Proposal is approved, there is nothing for this panel to decide with respect to the issues raised by the Special Committee Application. Accordingly, JLL did not make substantial oral submissions with respect to the implications of the Voting Agreement for purposes of the identical consideration provision or the collateral benefit prohibition. We did receive the written submissions of both parties with respect to these issues filed in connection with the JLL Application.

[96] JLL submits that, where there has been no breach of the Act, our public interest jurisdiction can be exercised only where there is a clear abuse of shareholders. JLL submits that there is no abuse of shareholders here. As a result, it is necessary for us to address the concerns we have with the Voting Agreement.

2. Identical Consideration and Collateral Benefits

[97] Clearly, the MOVA Group is receiving through the Voting Agreement an opportunity and benefits not available to other shareholders of Patheon. That opportunity is the ability to remain as a minority shareholder of Patheon subsequent to the Offer (reflected in an assurance that its shares will not be acquired by JLL pursuant to a JLL Subsequent Acquisition Transaction) on terms that provide basic shareholder protections to the MOVA Group, including those related to the possible lack of liquidity of the Restricted Voting Shares after the Offer (see the relevant excerpts from the Voting Agreement in Schedule A and the relevant excerpts from the Stockholders' Agreement in Schedule B). That opportunity and those benefits make it easier for the MOVA Group to decide not to tender to the Offer. The MOVA Group has protected its interests through the Voting Agreement and the Stockholders' Agreement and JLL has neutralized the MOVA Group in terms of whether or not JLL will be able to acquire under the CBCA the Restricted Voting Shares not tendered to the Offer if the MOVA Group does not accept the Offer.

[98] As a result, the MOVA Group is receiving preferential treatment that mitigates any coercion that may be inherent in the Offer.

[99] In contrast, public shareholders of Patheon are receiving only the Offer. They must decide whether to tender to the Offer knowing that if they do not, they may end up as minority shareholders holding an illiquid stock, with very limited shareholder rights or protections, or they may have their shares acquired at the same price as under the Offer pursuant to a JLL Subsequent Acquisition Transaction. To the extent that the Offer is coercive, public shareholders are suffering that coercion with no mitigation.

[100] The public shareholders of Patheon are being offered the same cash consideration as the MOVA Group under the terms of the Offer. However, they are not being offered the same opportunity as the MOVA Group to remain as a shareholder of Patheon with the benefit of the Stockholders' Agreement. We believe that opportunity and that benefit have significant value to the MOVA Group, although those benefits may be difficult to quantify.

[101] *Royal Trustco* established that agreements that confer collateral benefits on a shareholder, even though the benefit is structured to be conferred outside a bid, are nonetheless subject to the collateral benefit prohibition. The Commission went further in *Sears* and stated (at para. 241) that:

> As a matter of principle and policy, it should not be possible for an offeror to avoid the application of the Collateral Benefits Prohibition by agreeing to provide collateral benefits to a shareholder whose shares are to be acquired outside the bid in a SAT [subsequent acquisition transaction] or other transaction. There is nothing in the language of subsection 97(2) which expressly requires or even implies that the shares at issue must be acquired under the bid. To interpret the provision otherwise where avoidance of its intent could so easily be achieved would be to undermine the fundamental principle of equal treatment of shareholders.

[102] We believe that the *Sears* principle applies to the circumstances before us. In our view, it is not necessary for the shares of the MOVA Group to be acquired by JLL under the Offer or otherwise in order for the collateral benefit prohibition to apply. In our view, the opportunity and benefits given to the MOVA Group in this case can constitute collateral benefits within the meaning of subsection 97.1(1) of the Act regardless of whether the MOVA Group tenders to the Offer or remains a Patheon shareholder following the Offer. To conclude otherwise in these circumstances would undermine the fundamental principle of equal treatment of shareholders where a formal bid is made.

[103] In *CDC Life Sciences*, the Commission held that an agreement between a bidder and a major shareholder that provided mutual rights of first refusal, consultation arrangements and a put option was a prohibited collateral benefit.

[104] Where on its face the identical consideration requirement applies, the onus is on the bidder to establish that the consideration being given to a particular shareholder is not greater than that offered to other shareholders (see *Royal Trustco* at para. 309 and *Sears* at paras. 208 and 216). JLL has not satisfied that onus.

[105] In our view, the term "consideration" used in subsections 97(1) and 97.1(1) of the Act should be interpreted broadly in accordance with the regulatory objectives of the take-over bid regime contained in the Act. One of the principal animating objectives of that regime is the fair and equal treatment of public shareholders when a formal bid is made. That principle underlies and is the reason for many of the specific provisions of the Act applicable when a formal bid is made (see the commentary in paragraph 116 of these reasons).

[106] The important point is that the MOVA Group is receiving an opportunity and benefits outside the terms of the Offer that are not being offered to and are not available to public shareholders. Subsection 97(1) of the Act requires that all shareholders be offered identical consideration. JLL is offering different consideration to the MOVA Group through the opportunity to remain as a shareholder with the benefits of the Voting Agreement and the Stockholders' Agreement. Subsection 97.1(1) requires that no collateral agreement, commitment or understanding entered into by an offeror have the effect of providing a shareholder consideration of greater value than that offered to other shareholders. JLL has entered into the Voting Agreement with the MOVA Group which provides the MOVA Group consideration of greater value than that offered to public shareholders. In our view it is not an answer to say that, if the MOVA Group accepts the Offer, they will receive the identical cash consideration as the public shareholders. That response ignores the legal and economic reality of the circumstances and what we consider to be the proper interpretation of the term "consideration" used in subsections 97(1) and 97.1(1) of the Act. It also ignores the opportunity and benefits the MOVA Group is receiving through the Voting Agreement.

[107] In our view, the entering into of the Voting Agreement in these circumstances may well have breached subsections 97(1) and 97.1(1) of the Act. We have not come to a final conclusion, however, because we have not received sufficient evidence and submissions with respect to that issue and because we do not need to decide that issue for purposes of our decision.

3. Fairness to Shareholders

[108] Generally, when a significant shareholder tenders to an offer, that gives at least some comfort that the offer is fair to shareholders. This is particularly so when the tendering shareholder is an insider with better access to corporate information than other public shareholders. Where a significant shareholder that is an insider is not prepared to accept an offer, and is given benefits not available to other public shareholders to remain as a shareholder after completion of an offer, that raises a question as to the fairness of the offer to public shareholders. Rather than convincing the MOVA Group to tender to the Offer by increasing the Offer price, JLL has provided the opportunity to the MOVA Group to remain as a shareholder after completion of the Offer with the benefit of the Stockholders' Agreement.

[109] In addition, where a shareholder remains a shareholder after completion of an offer and a subsequent acquisition transaction, the offeror is legally entitled to subsequently acquire that shareholder's shares at whatever price the offeror and the shareholder negotiate, assuming the acquisition occurs at least 20 business days following the expiry of the offer (see subsection 93.3(1) of the Act). There is no limit in those circumstances on the premium that JLL could pay in the future to the MOVA Group for the acquisition of their shares.

[110] These concerns about fairness to public shareholders are magnified where an insider makes an "any and all" bid (with no minimum condition) at a cash price that is substantially less than the fair market value of the relevant shares based on an independent valuation. These circumstances raise the question whether the Offer is coercive to public shareholders. While we are not prepared to conclude that the Offer is coercive, these circumstances squarely raise that issue.

4. Remedying Possible Default

[111] We do not accept that it is sufficient for JLL to remedy the regulatory issues raised by the Voting Agreement simply by "tearing it up" and treating it as "void *ab initio*". Having entered into that agreement, JLL may well have made an illegal offer in breach of the Act. Whether tearing up the Voting Agreement would be an adequate and appropriate remedy to a possible breach of the Act in these circumstances is a matter for the Commission to determine. Even if the Voting Agreement is terminated, the parties to it know the terms to which they were willing to agree. That makes it far simpler to resurrect those terms in a future agreement.

5. Disclosure

[112] We accept the proposition that full, accurate and timely disclosure of relevant information must be made to shareholders in connection with a take-over bid. That permits shareholders to make an informed decision whether to tender to the offer. One of our concerns in this case is the possibility that JLL and the MOVA Group could enter into a new agreement, arrangement or understanding of some kind after completion of the Offer and prior to a JLL Subsequent Acquisition Transaction, of which shareholders tendering to the Offer would have no notice or disclosure. Without knowing what the terms of any such agreement might be, it is impossible to assess the relevance of such an agreement and its implications in terms of disclosure in the Take-over Bid Circular. JLL is taking the position that it wants a completely free hand as to its ability to enter into any new

agreement, arrangement or understanding with the MOVA Group. In our view, JLL lost that free hand by entering into the Voting Agreement in the first place.

[113] We are also concerned that the disclosure arising from the issues before us and their resolution may be complex and that shareholders and market participants may need more than 10 days to consider the resulting disclosure and its implications in deciding whether to tender to the Offer. We note the submission made to us that as a practical matter shareholders of Patheon may have only five or six business days to consider the variation amending the Take-over Bid Circular.

6. The Law as to Our Public Interest Jurisdiction

[114] In considering the Commission's power to make orders in the public interest under section 127 of the Act, the Supreme Court of Canada has observed that "the OSC has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so" (*Asbestos*, *supra* at para. 45). The Court indicated that this discretion is subject to two constraints:

> In exercising its discretion, the OSC should consider the protection of investors and the efficiency of, and public confidence in, capital markets generally. In addition, s. 127(1) is a regulatory provision. The sanctions under the section are preventive in nature and prospective in orientation. Therefore, s. 127 cannot be used merely to remedy Securities Act misconduct alleged to have caused harm or damages to private parties or individuals.
>
> (*Asbestos*, *supra* at para. 45)

Our public interest jurisdiction allows us to intervene in a bid even if there is no breach of the Act, the regulations or any policy statement. We recognise, however, that our public interest jurisdiction must be exercised with caution and restraint.

[115] In *Cablecasting*, the Commission applied its public interest jurisdiction to a going private transaction that was not effected in compliance with the disclosure requirements applicable to issuer bids under a policy that was the predecessor to MI 61-101. In its decision, the Commission provided guidance as to when it is more likely to intervene on policy grounds under the rubric of its public interest jurisdiction despite the absence of any breach of Ontario securities law. The Commission stated that:

> Another relevant consideration in assessing whether to act against a particular transaction is whether the principle of the new policy ruling that would be required to deal with the transaction is foreshadowed by principles already enunciated in the Act, the regulations or prior policy statements. Where this is the case the Commission will be less reluctant to exercise its discretionary authority than it will be in cases that involve an entirely new principle.
>
> (*Cablecasting*, *supra*, at 43)

[116] There should be no doubt in the minds of market participants that the Commission will intervene in the public interest where the take-over bid rules have been complied with but the animating principles underlying those rules have not. In *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at 1617 and 1618, the Commission stated that:

> It should be clear to all that the underlying purpose of Part XIX of the Act is the protection of the integrity of the capital markets in which take-over bids are made, and in particular the protection of investors who are solicited in the course of a takeover bid. Those purposes are carried out through provisions which, among other things, attempt to ensure that equal treatment is accorded to all offerees in a bid, that offerees have a reasonable time within which to consider the terms of a bid, and that adequate information is available to offerees to allow them to make a reasoned decision as to whether to accept or reject a bid. These provisions exist to protect investors, of course, but their over-arching purpose is the protection of the integrity of the capital markets in which those investors have placed their money – and their trust.

That conclusion is consistent with the "foreshadowing" principle referred to in *Cablecasting*.

[117] In *Re H.E.R.O. Industries Ltd.* (1990), 13 O.S.C.B. 3775 ("*H.E.R.O.*"), the Commission intervened in a bid which offended the animating principle of equality of treatment of offerees. The Commission concluded in that case that the relevant transaction was "manifestly unfair to the public minority shareholders of H.E.R.O." (*H.E.R.O.* at 3794). The Commission stated that the conduct in that case was "clearly abusive of the integrity of the capital markets, which have every right to expect that market participants … will adhere to both the letter and the spirit of the rules that are intended to guarantee equal treatment of offerees … when a bid is made".

[118] The Commission has also previously indicated that when considering the use of its public interest jurisdiction, "the Commission needs to have regard to all of the facts, all of the policy consideration [sic] at play, all of the underlying circumstances of the case, and all of the interests affected by the matter and the remedy sought" (*Re Sterling Centrecorp. Inc.* (2007), 30 O.S.C.B. 6683 at para. 212).

[119] JLL referred us to *Financial Models* where the Commission declined to exercise its public interest jurisdiction to intervene in a bid. In our view, that case is distinguishable from the present circumstances on at least two grounds. In that case, the relevant shareholders agreement providing the right of first refusal was in place before the bid was contemplated and all shareholders were receiving the same offer and identical consideration. Further, no collateral benefits were being given to the significant shareholder. In *Financial Models*, the Commission stated that orders in the public interest may be appropriate where there is abuse, which "could occur where a transaction is artificial and defeats the reasonable expectation [sic] of investors" (*Financial Models*, *supra* at para. 50).

7. Conclusion as to our Public Interest Jurisdiction

[120] In our view, the issues raised by this matter directly engage the animating principles underlying our take-over bid regime. As discussed above, those principles focus on the fair and equal treatment of shareholders when a formal bid is made. We believe that the circumstances before us are quite different from those in *Re Canadian Tire Corp.* (1987), 10 O.S.C.B. 857 and other similar Commission decisions where it was clear that the relevant offer or transaction fully complied with the Act (or, in the case of *Sears*, was assumed to be in full compliance). Here, we have real concerns that subsections 97(1) and 97.1(1) of the Act may have been contravened, that public shareholders are not being treated fairly and equally in connection with the Offer and that there may not be sufficient time for public shareholders to consider the disclosure to be made to shareholders of the matters before us and of our decision. Those are all issues that, in our view, directly engage our public interest jurisdiction under section 127 of the Act.

[121] Accordingly, we are satisfied that we have authority in these circumstances to decide the two issues outstanding between the parties and to issue an order in the public interest giving effect to the JLL Proposal and our resolution of those issues. In doing so, we are acting in the public interest to protect the integrity of our capital markets and the confidence of investors in those markets.

[122] We should emphasize that we are not imputing any improper motive or intention to JLL in entering into the Voting Agreement. We assume that JLL entered into that agreement in good faith for appropriate business purposes and not with an intention to breach the Act or circumvent the animating principles of our take-over bid regime. Nor do we mean to suggest that the representations made, or to be made, by JLL in this matter, are or will be other than truthful and reliable. We are simply concerned that the entering into of the Voting Agreement has consequences under the Act and practical implications.

[123] We would add that we do not accept that JLL should be able to simply say that it is "tearing up" the Voting Agreement and, accordingly, this panel does not need to decide whether the entering into of that agreement contravened the Act; and at the same time argue that our public interest jurisdiction is not engaged in the circumstances. As of the hearing, the Offer is outstanding and the Voting Agreement remains in place.

8. For How Long Should the Offer be Extended?

[124] As noted above, we believe that our decision requires potentially complex disclosure that must be reflected in a variation to the Offer. The implications of that disclosure may not be readily apparent to public shareholders. Certainly the variation will not be as simple to understand as, for example, a variation increasing the Offer price. In our view, in these circumstances, it is appropriate that the Offer remain open for acceptance for a period longer than the 10 day period required by the Act. We believe that a reasonable period would be at least 15 days following the date of the variation to the Take-over Bid Circular.

9. Should JLL Be Restricted in Entering Into a New Agreement with the MOVA Group?

[125] We have identified above our concerns in the circumstances with the possibility that JLL might enter into a new agreement with the MOVA Group in the future. In our view, if JLL and MOVA Group are "tearing up" the Voting Agreement, it is only fair to shareholders of Patheon to know, when making their decision whether to tender to the Offer, that no new agreement, arrangement or understanding will be entered into for an appropriate period after the expiry of the Offer and prior to any JLL Subsequent Acquisition Transaction.

10. Interpretation of Section 8.2 of MI 61-101

[126] It is not disputed that a JLL Subsequent Acquisition Transaction would be a "business combination" subject to MI 61-101. We heard arguments as to the appropriate interpretation of section 8.2 of MI 61-101 (the terms of which are set out in Schedule C).

[127] The question raised is whether section 8.2 allows an offeror to complete a subsequent acquisition transaction at a price higher than that paid pursuant to the prior offer, without providing that price to the shareholders who accepted the prior offer. The language of paragraph (e) of section 8.2 of MI 61-101 appears to leave open that possibility by requiring that the consideration pursuant to the subsequent acquisition transaction must be "at least equal in value" to the consideration received under the prior offer.

[128] We note that section 8.2 sets forth rules to determine what shares can be counted in obtaining minority shareholder approval under MI 61-101. It is not a substantive provision imposing legal obligations or restrictions.

[129] In our view, paragraph (e) of section 8.2 is intended to address, among other things, the coercion inherent if an offer were to be made at a higher price than the price to be paid pursuant to a subsequent acquisition transaction. If that structure were permitted, it could coerce shareholders to accept the offer in order to avoid the possibility of being squeezed out pursuant to a subsequent acquisition transaction at a lower price. We also agree with the submission of the Special Committee and Staff that, where section 8.2 is relied upon, the effect of the section is to integrate as a single transaction the prior offer and the subsequent acquisition transaction. The Commission concluded in *Sears* (at para. 241) that the predecessor to MI 61-101 "treats the combination of the Offer and the SAT [subsequent acquisition transaction] as the equivalent of a single transaction for purposes of determining whether the Minority Approval requirement has been satisfied."

[130] In addition, in our view, disclosure in a take-over bid circular should generally relate to the integrated transaction and, to the extent reasonably possible, should not leave uncertainty with respect to issues that may be important to shareholders considering the offer that relate to a subsequent acquisition transaction. We note in this respect that paragraph (f) of section 8.2 requires specified disclosure in a take-over bid circular of information related to a subsequent acquisition transaction, including the number of shares that must be excluded in determining minority shareholder approval for the subsequent acquisition transaction.

[131] For purposes of this matter, we do not need to decide whether section 8.2 would ever permit a subsequent acquisition transaction to be carried out at a higher price than the prior offer. To answer that broader question, we would want to receive submissions on the interpretation and implications of other provisions of the Act.

[132] We have concluded in the circumstances before us that JLL should not be permitted to pay a higher price per share to the MOVA Group or other shareholders in a JLL Subsequent Acquisition Transaction (integrated with the Offer) than is to be paid to public shareholders under the Offer. In our view, it would undermine confidence in the integrity of our capital markets if JLL is permitted to do so during the period of 120 days following the expiry of the Offer. Accordingly, the certification we are requiring as a condition to our order prevents JLL from entering into any agreement, arrangement or understanding with any shareholder of Patheon for a period of 120 days after expiry of the Offer, unless the agreement provides the same consideration to shareholders under the Offer as is provided pursuant to the JLL Subsequent Acquisition Transaction. We have chosen the 120-day period as the appropriate timeframe because that is the period established in MI 61-101 in which an offer can be integrated with a subsequent acquisition transaction for purposes of obtaining minority shareholder approval (see paragraph (d) of section 8.2 of MI 61-101).

11. Our Order

[133] The Special Committee requested that we issue an order cease trading the Offer, subject to the conditions discussed above. We were reluctant to issue a cease trade order because such an order could be misunderstood by the market. Our preference was to issue a less intrusive order dismissing the Special Committee Application subject to conditions giving effect to the JLL Proposal and our decisions above. We ordered that if JLL failed to comply with the conditions to our order, we would entertain an application for an alternative remedy.

[134] Accordingly, we issued an order dismissing the Special Committee Application conditional upon the matters referred to in paragraph 6 of these reasons including termination of the Voting Agreement and the certifications by JLL and the MOVA Group discussed above. Any disclosure issued by JLL as a result of this decision should be vetted with Staff.

Dated at Toronto this 6th day of August, 2009.

"James E. A. Turner"

"Mary G. Condon"

Schedule A

Relevant Excerpts from the Voting Agreement

Under the Voting Agreement, among other things:

(a) JLL agreed that, to the extent permitted by law, it will not, in a compulsory acquisition or subsequent acquisition transaction undertaken as part of any take-over bid, acquire the MOVA Group's Restricted Voting Shares if they are not tendered to the Offer;

(b) JLL and the MOVA Group agreed that, subject to obtaining prior regulatory approval and to the extent otherwise permitted by law, upon JLL acquiring voting securities of Patheon representing at least 50.1% of the aggregate voting power of Patheon's outstanding voting securities pursuant to a take-over bid and any related compulsory acquisition or subsequent acquisition transaction, JLL and the MOVA Group will enter into the Stockholders' Agreement;

(c) JLL and the MOVA Group agreed to (i) vote all of their Patheon shares in favour of any resolution concerning any offering of Patheon's equity securities in the United States or listing of such securities on one or more securities exchanges in the United States, (ii) not exercise any rights of dissent in respect of such matters, (iii) consult with each other prior to exercising any voting rights attached to the Patheon shares in connection with such matters, and (iv) not acquire any securities of Patheon other than pursuant to an offer to acquire all of the Restricted Voting Shares; and

(d) the members of the MOVA Group agreed that they will either (i) deposit 100% of their Restricted Voting Shares under the Offer, or (ii) deposit none of their Restricted Voting Shares under the Offer.

Schedule B

Relevant Excerpts from the Stockholders' Agreement

The Stockholders' Agreement contemplates, among other things:

(a) (i) if JLL proposes to transfer 10% or more of its Patheon shares in any six-month period, the MOVA Group may require that JLL cause the purchaser to purchase a proportionate amount of the MOVA Group's Restricted Voting Shares on identical terms, and (ii) if JLL proposes to transfer Patheon shares in any six-month period and such transfer has the effect of causing a person to hold voting securities representing more than 50% of aggregate voting power of Patheon's outstanding voting securities, the MOVA Group may require that JLL cause the purchaser to purchase all of the MOVA Group's Restricted Voting Shares on identical terms (collectively, the "Tag-Along Rights");

(b) that (i) certain registration rights previously granted by Patheon to JLL and two members of the MOVA Group will remain in effect (subject to certain limitations), (ii) to the extent any member of the MOVA Group does not have the right to exercise incidental registration rights in connection with a public offering, JLL will use commercially reasonable efforts to cause Patheon to provide such member with such rights on terms no less favourable than those provided to the other members of the MOVA Group under the existing registration rights agreement between such members and Patheon, and (iii) upon a request for demand registration by JLL which results in a public offering by Patheon, JLL will use commercially reasonable efforts to cause any shares sought to be included by any member of the MOVA Group to be included therein on a pro rata basis with the shares held by JLL (such additional registration rights referred to in clauses (ii) and (iii) being referred to as the "Incidental Registration Rights");

(c) JLL will use commercially reasonable efforts (i) while Patheon is a public company, to cause Joaquin Viso to be represented on Patheon's Board, and (ii) while Patheon is a private company, to cause a person designated by Joaquin Viso to be represented on Patheon's Board;

(d) in the event that JLL effects a compulsory acquisition or subsequent acquisition transaction in connection with the Offer, JLL shall cause the Restricted Voting Shares held by the MOVA Group to be excluded and not cashed out in such transaction (together with the covenant against compulsory or subsequent acquisitions set out in the Voting Agreement, the "Second Step Forbearance");

(e) if JLL shall enter into any stockholders' agreement with any other existing or future holder of Restricted Voting Shares having a similar purpose to the Stockholders' Agreement and which contains material terms that are superior in any material respect to the material terms of the Stockholders' Agreement, JLL shall offer to the MOVA Group to amend the Stockholders' Agreement such that such material terms are no less favourable, in aggregate, than those in such other agreement;

(f) that after the Restricted Voting Shares cease to be listed on the TSX and Patheon is no longer a reporting issuer, the members of the MOVA Group may not sell their Patheon shares, except pursuant to the tag-along and drag-along rights described above; and

(g) if JLL proposes to transfer more than 50% of its Patheon shares in any six-month period, JLL may require the MOVA Group to sell a proportionate amount of the MOVA Group's Restricted Voting Shares on identical terms.

Schedule C

Section 8.2 of MI 61-101

8.2 Second Step Business Combination – Despite subsection 8.1(2), the votes attached to securities acquired under a bid may be included as votes in favour of a subsequent business combination in determining whether minority approval has been obtained if

(a) the security holder that tendered the securities to the bid was not a joint actor with the offeror in respect of the bid,

(b) the security holder that tendered the securities to the bid was not

(i) a direct or indirect party to any connected transaction to the bid, or

(ii) entitled to receive, directly or indirectly, in connection with the bid

(A) consideration per offeree security that was not identical in amount and form to the entitlement of the general body of holders in Canada of securities of the same class,

(B) a collateral benefit, or

(C) consideration for securities of a class of equity securities of the issuer if the issuer had more than one outstanding class of equity securities, unless that consideration was not greater than the entitlement of the general body of holders in Canada of every other class of equity securities of the issuer in relation to the voting and financial participating interests in the issuer represented by the respective securities,

(c) the business combination is being effected by the offeror that made the bid, or an affiliated entity of that offeror, and is in respect of the securities of the same class for which the bid was made and that were not acquired in the bid,

(d) the business combination is completed no later than 120 days after the date of expiry of the bid,

(e) the consideration per security that the holders of affected securities would be entitled to receive in the business combination is at least equal in value to and is in the same form as the consideration that the tendering security holders were entitled to receive in the bid, and

(f) the disclosure document for the bid

(i) disclosed that if the offeror acquired securities under the bid, the offeror intended to acquire the remainder of the securities under a statutory right of acquisition or under a business combination that would satisfy the conditions in paragraphs (d) and (e),

(ii) contained a summary of a formal valuation of the securities in accordance with the applicable provisions of Part 6, or contained the valuation in its entirety, if the offeror in the bid was subject to and not exempt from the requirement to obtain a formal valuation,

(iii) stated that the business combination would be subject to minority approval,

(iv) disclosed the number of votes attached to the securities that, to the knowledge of the issuer after reasonable inquiry, would be required to be excluded in determining whether minority approval for the business combination had been obtained,

(v) identified the holders of securities specified in subparagraph (iv) and set out their individual holdings,

(vi) identified each class of securities the holders of which would be entitled to vote separately as a class on the business combination,

(vii) described the expected tax consequences of both the bid and the business combination if, at the time the bid was made, the tax consequences arising from the business combination

(A) were reasonably foreseeable to the offeror, and

(B) were reasonably expected to be different from the tax consequences of tendering to the bid, and

(viii) disclosed that the tax consequences of the bid and the business combination may be different if, at the time the bid was made, the offeror could not reasonably foresee the tax consequences arising from the business combination.

3.1.2 Rex Diamond Mining Corporation et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
REX DIAMOND MINING CORPORATION,
SERGE MULLER AND BENOIT HOLEMANS

REASONS AND DECISION ON SANCTIONS AND COSTS
(Section 127 and 127.1 of the Securities Act)

Hearing:	May 11, 2009		
Decision:	August 11, 2009		
Panel:	Wendell S. Wigle, Q.C.	–	Commissioner and Chair of the Panel
	David L. Knight, F.C.A.	–	Commissioner
	Kevin J. Kelly	–	Commissioner
Counsel:	John Corelli Shauna Flynn	–	For Staff of the Ontario Securities Commission
	Matthew Scott	–	For Rex Diamond Mining Corporation, Serge Muller, and Benoit Holemans

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REASONS AND DECISION ON SANCTIONS AND COSTS

I. Background

[1] This was a bifurcated hearing before the Ontario Securities Commission (the "Commission") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make an order with respect to sanctions and costs against Rex Diamond Mining Corporation ("Rex"), Serge Muller ("Muller") and Benoit Holemans ("Holemans") (collectively, the "Respondents").

[2] The hearing on the merits commenced on December 10, 2007, and evidence was heard on December 10, 11, 12, 13 and 14, 2007. Following the close of evidence, submissions on the merits were heard on March 31, 2008, and the decision on the merits was rendered on August 21, 2008 (*Re Rex Diamond et al.* (2008), 31 O.S.C.B. 8337 (the "Merits Decision")).

[3] Following the release of the Merits Decision, we held a separate hearing on May 11, 2009, to consider submissions from Staff and the Respondents regarding sanctions and costs (the "Sanctions and Costs Hearing").

[4] These are our reasons and decision as to the appropriate sanctions and costs to order against the Respondents.

II. Reasons and Decision Dated August 21, 2008

[5] The Merits Decision addressed the following allegations: (1) whether material changes occurred in Rex's operations when it found out about the potential revocation of certain mining leases (the "Leases"); (2) whether Muller and Holemans (as CEO and CFO, respectively) authorized, acquiesced or permitted a breach of section 75 of the Act; (3) whether the Respondents provided misleading disclosure in Rex's public filings; and (4) whether the Respondents misled Market Regulation Services Inc. ("RS") by providing incomplete and inaccurate information.

[6] Upon reviewing all the evidence, the applicable law and the submissions made, the Panel concluded in the Merits Decision that:

(1) it is likely that there was a material change in the business, operations or capital of Rex when Rex received the following correspondence from the Government of Sierra Leone:

  (a) the first warning letter dated January 3, 2003, which advised Rex that the Minerals Advisory Board recommended to the Minister of Mineral Resources that Rex's Leases be cancelled because Rex did not comply with the conditions set out in the Leases; and

  (b) the second warning letter dated April 16, 2003, which advised Rex that its Leases were not in good standing and that Rex failed to honour its financial obligations;

(2) material changes did occur in the business, operations or capital of Rex when:

  (a) Rex received the final notice warning letter dated June 4, 2003, from the Sierra Leone Government, which advised Rex that it had 90 days to comply with the conditions of the Leases or otherwise the Leases would be revoked;

  (b) Rex became aware of the Notice of Tender on December 15, 2003; and

  (c) the Government of Sierra Leone issued the Tender Evaluation on March 30, 2004.

(3) Rex should have issued news releases and filed material change reports following the events referred to in paragraphs 2(a) and 2(b), and should have filed a material change report as well as issuing a news release following the event described in paragraph 2(c). By failing to do so, Rex breached section 75 of the Act and acted contrary to the public interest;

(4) Rex acted contrary to the public interest by providing inaccurate and incomplete disclosure regarding its operations in Sierra Leone in each of its public filings of February 28, 2003, August 15, 2003 and November 28, 2003;

(5) Rex acted contrary to the public interest when it provided RS with an inaccurate and incomplete chronology of events; and

(6) Muller, as a director and the CEO of Rex, authorized or permitted, and Holemans, as the CFO of Rex, acquiesced in the conduct described in paragraphs (3) to (5) above, and thereby acted contrary to the public interest.

(Merits Decision, *supra* at paras. 8 and 285)

[7] It is this conduct that we must consider when determining the appropriate sanctions to impose in this matter.

III. Sanctions and Costs Requested by Staff

[8] In their written submissions, Staff requested that the following order be made against the Respondents:

(1) that pursuant to paragraph 4 of subsection 127(1) of the Act, Rex implement a new disclosure policy developed by a third-party advisor acceptable to the Commission, before applying for re-listing on an exchange;

(2) that pursuant to paragraph 4 of subsection 127(1) of the Act, following the implementation of Rex's new disclosure policy a third-party advisor acceptable to the Commission will review Rex's disclosure practices and provide a written report to Rex's shareholders and the Commission, all of which will occur before Rex applies for re-listing on an exchange;

(3) that pursuant to paragraph 4 of subsection 127(1) of the Act, Rex appoint to its Board an outside Director who satisfies criteria determined by a third-party advisor acceptable to the Commission, before applying for re-listing on an exchange;

(4) that pursuant to paragraph 6 of subsection 127(1) of the Act, Muller and Holemans be reprimanded;

(5) that pursuant to paragraph 7 of subsection 127(1) of the Act, Muller resign any position he holds as a director or officer of any issuer, including Rex, for a period of 10 years;

(6) that pursuant to paragraph 7 of subsection 127(1) of the Act, Holemans resign any position he holds as an officer of any issuer, including Rex, for a period of 18 months;

(7) that pursuant to paragraph 9 of subsection 127(1) of the Act, Rex and Muller pay administrative penalties in the following amounts:

(i) Rex: $100,000

(ii) Muller: $100,000

(8) That pursuant to subsections 127.1(1) & (2) of the Act, the Respondents pay the sum of $100,000 toward the costs of or related to the investigation and hearing incurred by the Commission, which amount is to be apportioned as follows:

(i) Rex: $60,000

(ii) Muller: $40,000

[9] In Staff's submission, the sanctions and costs requested are appropriate in light of the Respondents' serious breaches of the Act and conduct contrary to the public interest.

IV. The Law on Sanctions

[10] Pursuant to section 1.1 of the Act, the Commission has the mandate to: (i) provide protection to investors from unfair, improper or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets. As stated by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, [2001] 2 S.C.R. 132, the Commission's public interest mandate is neither remedial nor punitive; instead, it is protective and preventative, and it is intended to prevent future harm to Ontario's capital markets (at para. 42). Specifically:

> … pursuant to s. 127(1), the OSC has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so. … In exercising its discretion, the OSC should consider the protection of investors and the efficiency of, and public confidence in, capital markets

> generally. In addition, s. 127(1) is a regulatory provision. The sanctions under the section are preventative in nature and prospective in orientation.
>
> (*Canada in Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, *supra* at para. 45)

[11] In determining the appropriate sanctions to order in this matter, we must keep in mind the Commission's preventative and protective mandate set out in section 1.1 of the Act and we must also consider the specific circumstances in this case and ensure that the sanctions are proportionate (*Re M.C.J.C. Holdings*, (2002), 25 O.S.C.B. 1133 at 1134).

[12] The case law sets out the following list of non-exhaustive factors that are important to consider when imposing sanctions:

(1) the seriousness of the allegations;

(2) the respondent's experience in the marketplace;

(3) the level of a respondent's activity in the marketplace;

(4) whether or not there has been a recognition of the seriousness of the improprieties;

(5) the need to deter a respondent, and other like-minded individuals from engaging in similar abuses of the capital markets in the future;

(6) whether the violations are isolated or recurrent;

(7) the size of any profit or loss avoided from the illegal conduct;

(8) any mitigating factors, including the remorse of the respondent;

(9) the effect any sanction might have on the livelihood of the respondent;

(10) the effect any sanction might have on the ability of a respondent to participate without check in the capital markets;

(11) the reputation and prestige of the respondent; and

(12) the size of any financial sanctions or voluntary payment when considering other factors; and

(13) the shame or financial pain that any sanction would reasonably cause to the respondent and the remorse of that respondent.

(*Re M.C.J.C. Holdings*, (2002), 25 O.S.C.B. 1133 at 1136 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746)

[13] The applicability and importance of each factor will vary according to the facts and circumstances of each case.

[14] General deterrence is another important factor that the Commission should consider when determining appropriate sanctions. In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672, the Supreme Court of Canada established that "[…] it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative" (at para. 60).

[15] As stated above, the sanctions imposed must be protective and preventative. The role of the Commission is to impose sanctions that will protect investors and the capital markets from exposure to similar conduct in the future. As articulated by the Commission in *Re Mithras Management Inc.* (1990), 13 O.S.C.B. 1600:

> […] 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 so doing we must, of necessity, look to past conduct as a

> guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.
>
> (*Mithras*, *supra* at 1610 and 1611)

V. Appropriate Sanctions in this Case

1. Administrative Penalty

a. Staff's Submissions

[16] Staff requested an administrative penalty in the amount of $100,000 against Rex and $100,000 against Muller.

[17] In Staff's view, the imposition of administrative penalties would serve to discourage others from engaging in similar conduct. As well, Staff submitted that imposing an administrative penalty would impress upon Rex and Muller the severity of repetitive misconduct and failures to disclose the occurrence of material changes.

[18] Staff also addressed the fact that the Notice of Hearing in this matter did not specify that an administrative penalty would be sought. Staff submitted that although the Notice of Hearing was silent with respect to the imposition of an administrative penalty, the Panel could still impose such a penalty because:

(1) the legislation to impose an administrative penalty was in place and in force at the time that the Respondents' conduct occurred, and since the legislation does not mention a notice requirement for this sanction there is nothing that prohibits the imposition of an administrative penalty; and

(2) the Notice of Hearing contains a "basket clause" which states that the Commission may "make such other order as the Commission may deem appropriate". According to Staff, the "basket clause" provides notice that it is possible that other orders may be made by the Commission and this permits Staff to request additional sactions.

[19] As a result, in Staff's view, an administrative penalty may be imposed as the Commission has jurisdiction and there is no breach of fairness as the "basket clause" in the Notice of Hearing alerts the Respondents and their counsel that the Commission may make additional orders above and beyond those listed in the original Notice of Hearing. However, Staff did state that a request for an administrative penalty should normally be set out in the Notice of Hearing.

b. Respondents' Submissions

[20] Counsel for the Respondents took the position that it is inappropriate to impose an administrative penalty as this sanction was not identified as a potential sanction in the Notice of Hearing. Accordingly, imposing an administrative penalty is a breach of the duty of fairness as the Respondents now face a potential jeopardy of which they had no notice before the hearing on the merits.

[21] It was submitted that a party must be aware of the type of proceeding and the potential jeopardy being faced. According to the Respondents, the starting point for understanding what is at issue in a proceeding is the Notice of Hearing along with the Statement of Allegations. The Notice of Hearing lists the sanctions that are sought by Staff and informs the Respondents of the jeopardy that they face. As an administrative penalty was not listed, it was submitted that had the Respondents been aware that this sanction was at issue in this proceeding, they might have approached the proceeding in a different manner.

[22] With respect to the "basket clause", the Respondents are of the view that the "basket clause" cannot permit the addition of new sanctions at the last minute. It was submitted that the "basket clause" is only available to modify the types of orders listed in the Notice of Hearing to ensure that they have some practical effect. The "basket clause" should not be used to add new additional sanctions at the last minute.

c. Conclusion

[23] We are of the view that it would be unfair to impose an administrative penalty because the Notice of Hearing did not include a request for this remedy. The Respondents did not receive notice that an administrative penalty would be sought until five days before the Sanctions and Costs Hearing. If a request for an administrative penalty had been included in the Notice of Hearing, the Respondents might have taken a different approach in their preparation for the hearing. It is unfair to inform the Respondents after the merits hearing has concluded and only a few days before the Sanctions and Costs Hearing commences that an administrative penalty is sought. As stated in *Judicial Review of Administrative Action in Canada*:

> It has been held in many different contexts that it is a breach of the duty of fairness to fail to inform the individual of the gist, or key issues, of the case to be met.
>
> …
>
> As well, since fairness requires that a person who has been found liable must normally be given an opportunity to address the decision-maker on the question of the appropriate penalty, *the parties should be given notice of the range of penalties to which they may be exposed.*
>
> [Emphasis added]
>
> (Brown and Evans, *Judicial Review of Administrative Action in Canada*, Looseleaf ed. (Toronto: Canvasback Publishing, 2008) at pp. 9-40 and 9-47)

[24] As a result, we have decided not to impose any administrative penalties in this case, as the Notice of Hearing did not contemplate that such a sanction might be imposed. In our view, Staff should have amended the Notice of Hearing to include a request for an administrative penalty in advance of the hearing on the merits.

2. Rex

a. Staff's Submissions

[25] Staff sought the following sanctions against Rex: (1) the implementation of a new disclosure policy developed by a third-party advisor acceptable to the Commission, before applying for re-listing on an exchange; (2) following the implementation of Rex's new disclosure policy, a third-party advisor acceptable to the Commission will review Rex's disclosure practices and provide a written report to Rex's shareholders and the Commission, all of which will occur before Rex applies for re-listing on an exchange; and (3) Rex appoint to its Board an outside Director who satisfies criteria determined by a third-party advisor acceptable to the Commission, before applying for re-listing on an exchange. Staff relied on paragraph 4 of subsection 127(1) of the Act to impose these sanctions.

[26] Staff explained in their submissions that the sanctions sought against Rex were designed to ensure that the company will not repeat the same misconduct in the future. According to Staff, Rex did not have adequate policies in place to either identify material changes when they occurred or to make disclosure of material changes once they were identified. For this reason, Staff requested that sound policies (as described above) be put in place because the policy Rex had in place failed to ensure timely disclosure of the difficulties surrounding the mining leases.

[27] In Staff's view, new policies along with the appointment of an outside Director would lay the foundation for cultural change at Rex. In addition, Staff took the position that the sanctions requested would enable Rex to work with the Commission towards ensuring that similar breaches do not occur in the future.

b. Respondents' Submissions

[28] Counsel for the Respondents pointed out that the Notice of Hearing states "pursuant to paragraph 4 of subsection 127(1) that Rex submit to a review of its practices and procedures and institute such changes as may be ordered by the Commission", however, the Notice of Hearing did not flesh out all the details of the practices and procedures.

[29] It was submitted that since all the details of the practice and procedures were not set out in the Notice of Hearing, Staff's request under paragraph 4 of subsection 127(1) of the Act falls outside of what would be considered fair in the circumstances as there was no notice that there would be a new director or third party advisor appointed.

c. Conclusion

[30] Staff seeks an order under paragraph 4 of subsection 127(1) of the Act that: (1) Rex implement a new disclosure policy developed by a third-party advisor acceptable to the Commission, before applying for re-listing on an exchange; (2) following the implementation of Rex's new disclosure policy, a third-party advisor acceptable to the Commission will review Rex's disclosure practices and provide a written report to Rex's shareholders and the Commission, all of which will occur before Rex applies for re-listing on an exchange; and (3) Rex appoint to its Board an outside Director who satisfies criteria determined by a third-party advisor acceptable to the Commission, before applying for re-listing on an exchange.

[31] While the Notice of Hearing refers to paragraph 4 of subsection 127(1) of the Act, the specific sanctions that Staff has requested under this section are not mentioned in the Notice of Hearing. These proposed sanctions were articulated for the first time on the record in Staff's written submissions. This document is dated May 6, 2009, five days before the date of the Sanctions and Costs Hearing.

[32] We are of the view that it would be unfair to impose sanctions on Rex under paragraph 4 of subsection 127(1) of the Act because the Notice of Hearing did not provide Rex with sufficient detail about the scope and type of the sanctions sought by Staff.

[33] In our view, the wording in the Notice of Hearing "that Rex submit to a review of its practices and procedures and institute such changes" is vague and does not provide the Respondents with an understanding of the type of review Staff is now seeking. There is no mention of the requirements of the review, nor of the duration of the review. Further, the Notice of Hearing did not mention the possibility that Rex would be required to appoint a new director or third party advisor. It is unfair to inform any respondent after the merits hearing has concluded and days before the Sanctions and Costs Hearing commences that new sanctions (such as the appointment of a new director or third party advisor) are sought.

[34] As stated above at paragraph 23 of our Reasons and Decision, procedural fairness requires that a respondent be given notice of the range of sanctions to which they may be exposed (Judicial *Review of Administrative Action in Canada*, *supra* at p. 9-47). As a result, we have decided not to impose any sanction under paragraph 4 of subsection 127(1) in this case.

3. Muller

a. Staff's Submissions

[35] Staff sought the following sanctions against Muller: a reprimand and that Muller resign from any position he holds as a director or officer of any issuer, including Rex, for a period of 10 years.

[36] Staff submitted that since Muller's conduct was at the core of the non-disclosure and misleading disclosure that occurred in this case, his sanctions should reflect this and be more severe than the sanctions for Rex or Holemans.

[37] Staff also submitted that a 10 year director and officer ban is consistent with the case law. Staff pointed out that in Mithras, the Commission explained that the removal of individuals from the capital markets by the use of director and officer bans is an effective mechanism for protecting the public. In Staff's view, such a sanction is necessary to prevent future reoccurrences of similar conduct.

[38] Further, Staff focused on the fact that Muller was personally aware of information regarding Rex's mining leases and that he failed to communicate this information with others at Rex and in Rex's public filings. Staff emphasized that others at Rex deferred to Muller with respect to disclosure issues and that Muller's actions prevented disclosure of relevant information. According to Staff, Muller's conduct demonstrated a lack of appreciation of what a material change is, especially since Muller ignored advice that a material change had occurred.

b. Respondents' Submissions

[39] Counsel for the Respondents brought to our attention mitigating factors relating to Muller. It was submitted that although Muller did breach the continuous disclosure provisions of the Act, there was no malice involved on the part of Muller. Counsel for the Respondents argued that Muller merely exercised poor judgment with respect to Rex's disclosure. There was no evidence of personal gain by Muller or any of the other Respondents and there was no evidence of investor harm. As well, Muller cooperated with Staff during the course of the investigation and the hearing.

[40] With respect to the length of the officer and director ban, counsel for the Respondents submitted that a ban in the range of five or six years would be appropriate, or in the alternative a ban in the range between three to seven years would be acceptable in the circumstances. According to counsel for the respondents, imposing an officer and director ban in these ranges would be consistent with the ban imposed in *Re Anderson* (2009), LNABASC 87. In that case an officer and director ban was imposed for a period of 7 years in conjunction with an administrative penalty and costs for conduct relating to inaccurate disclosure in news releases.

[41] Counsel for the Respondents agreed that a reprimand is an acceptable sanction to impose under the circumstances of this case.

c. Conclusion

[42] Muller's actions were the core of the misconduct at issue in this case. Muller had the information about the mining leases and he decided not to make disclosure. Muller was the driving force behind the decisions that were made at Rex with respect to disclosing the material changes and as such, he must take responsibility for his actions. In the circumstances, we find that it is appropriate to impose a reprimand and to prohibit Muller from acting as an officer or director or any issuer for a period of 10 years.

[43] A ten year officer and director ban is appropriate in light of the numerous aggravating factors present. In particular, Muller's misconduct was not an isolated occurrence. Muller repeatedly failed to disclose material changes at Rex over a period of 10 months, and ignored the advice of others (such as the chief geologist, Rombouts) that material changes had in fact occurred.

[44] Another aggravating factor present is the fact that Muller only told certain individuals about what was happening to Rex's mines, therefore the general public did not have access to the same information. We note that this kind of selective disclosure exacerbates problems with equal access to information in the capital markets.

[45] In our view, these breaches of the Act's continuous disclosure regime are very serious in nature. Disclosure is a cornerstone of securities laws and regulations because the capital markets are dependent on current, truthful and accurate information that levels the playing field for all market participants. Muller failed to ensure that Rex complied with its continuous disclosure obligations. Specifically, Rex's public filings withheld crucial information about the mining leases and the prospects for Rex in Sierra Leone. In addition, Muller did not exhibit any recognition of the seriousness of his misconduct. In fact, he criticized the Commission for the pursuit of the allegations.

[46] Taking all of this into consideration, we find that it is appropriate for Muller to resign as an officer and director of Rex and to be prohibited from acting as an officer or director of any issuer for a period of 10 years. In our view, a 10 year ban is appropriate taking into consideration the specific facts present in this case and our findings in Merits Decision (see Merits Decision, *supra* at paras. 237 to 239).

[47] As well we find that it is appropriate for Muller to be reprimanded. The reprimand will provide strong censure of Muller's past conduct and impresses on the public the importance of timely, accurate and complete disclosure. Together, the combined sanctions will provide general and specific deterrence to help ensure that similar conduct does not take place in the future.

4. Holemans

a. Staff's Submissions

[48] Staff sought the following sanctions against Holemans: a reprimand and an order that Holemans resign any position that he holds as an officer of any issuer, including Rex, and be prohibited from acting as an officer of an issuer for a period of 18 months.

[49] In Staff's view, these sanctions reflect the level of Holemans' responsibility and take into account that in the Merits Decision, the Commission found Holemans' conduct less serious than Muller's conduct as Holemans lacked awareness of many of the events that transpired. For this reason, Staff has requested a shorter time period for Holemans' ban from acting as an officer.

b. Respondents' Submissions

[50] Counsel for the Respondents submitted that a reprimand is a sufficient sanction in the circumstances given Holemans' lack of awareness of the events that transpired, the fact that Holemans did not demonstrate any lack of respect to the Commission, and because Holemans cooperated with the Commission voluntarily.

[51] However, it was submitted that in the alternative if the Commission finds that it is necessary to remove Holemans from his position as CFO with Rex, then a ban of six months to one year would be appropriate in the circumstances.

[52] Counsel for the Respondents also emphasized that the Merits Decision found that Holemans' conduct was less blameworthy than Muller's conduct, and as a result, Holemans should be subject to lesser sanctions proportionate to his misconduct.

c. Conclusion

[53] Holemans was the CFO of Rex. As CFO, he occupied a position of authority, responsibility and trust within the company. He was ultimately responsible for Rex's financial reporting obligations and was named in Rex's disclosure policy as someone responsible for determining materiality.

[54] Regardless of his limited knowledge of events that transpired, as CFO, Holemans ought to have known about and was required to make further inquiries with respect to the status of the Leases, rather than simply deferring to Muller's instructions. Holemans' errors flowed from his failure as CFO to have sufficient processes in place to ensure that he was kept informed of material information and to diligently inquire into potentially material information that did come to his attention.

[55] In our view, imposing a reprimand and forced resignation as an officer of the company for a period of 12 months will deter Holemans from engaging in similar misconduct in the future. We find that a 12 month prohibition from becoming or acting as a director or officer of Rex or any other issuer is appropriate because Holemans'conduct was less serious than Muller's conduct as Holemans lacked awareness of many of the events that transpired (see Merits Decision, supra at para. 240).

[56] Together, all the sanctions imposed on Holemans will impress upon him and the public in general that there are consequences when an officer such as a CFO does not fulfill their duties.

VI. Costs

1. Staff's Submissions

[57] Staff requested, pursuant to section 127.1 of the Act, that Rex and Muller be ordered to pay a total of $100,000 to cover the costs of the investigation and hearing. Staff submitted that the total of $100,000 should be apportioned accordingly: Rex paying $60,000 in costs and Muller paying $40,000 in costs.

[58] In support of this request, Staff provided evidence relating to costs of the investigation and the hearing. We were provided with a schedule listing the date, number of hours worked, and information as to the type of work that was done by two Staff members involved in this matter: (1) investigative counsel, who was the lead investigator in this case, and (2) an investigator in the surveillance group, who performed the initial assessment of the case before it was transferred to a full investigation.

[59] Staff did not claim costs for any other Staff members that worked on the file, such as litigation counsel, other investigators, law clerks, students and assistants. According to Staff, the work of these other Staff members constituted approximately 20% of the total time dedicated to this case.

[60] Staff explained that its costs were calculated in accordance with Staff"s schedule of hourly rates for various members of Staff of the Enforcement Branch. This schedule was recommended by a consultant that was retained for the purpose of calculating an average hourly rate that would be used be all Staff to calculate costs. Specifically, investigation staff are billed at $185 per hour and litigation staff are billed at $205 per hour. Staff also explained that these billing rates do not reflect miscellaneous expenses that may arise in the conduct of an investigation or hearing. According to Staff's calculations, the total investigation costs for this case since January 2007 amount to $133,385 (721 hours billed by investigation staff). However, Staff only requested costs in the amount of $100,000.

2. The Respondents' Submissions

[61] Counsel for the Respondents submitted that the amount of costs payable by Rex and Muller should be discounted by 30% as the Respondents cooperated with Staff during the course of the proceeding. For example, the Respondents participated in voluntary interviews and provided documentation to Staff during the investigation. In addition, the cooperation of the Respondents enabled the Commission to conclude the merits hearing in six days (five days of evidence and one day for closing submissions).

[62] Counsel for the Respondents also questioned the amount of Staff's time and the costs claimed for correspondence (57.2 hours) and planning and reports (168 hours). It was submitted that these numbers appear to be excessive, but without the benefit of cross-examining the investigator it is difficult to ascertain the appropriateness of those hours and the costs associated with them. As a result, it was submitted that costs be discounted by 30% and that the allocation of 60% to Rex and 40% to Muller is appropriate in the circumstances.

3. Conclusion

[63] Pursuant to section 127.1 of the Act, the Commission has the discretion to order a person or company to pay the costs of the investigation (127.1(1)) and hearing (127.1(2)) if the Commission is satisfied that the person or company has not complied with the Act or not acted in the public interest.

[64] We have reviewed the documentation provided by Staff relating to the costs of the investigation and hearing and in the circumstances we find that it is appropriate for Muller to pay $40,000 in costs and Rex to pay $60,000 in costs. We note that Staff's total costs for the hearing amounted to $133,385 and Staff only requested recovering $100,000 of that total, a discount of approximately 25% of the total costs incurred. In our view, this discount reflects the fact that the Respondents cooperated with Staff during the course of the proceeding.

VII. Decision on Sanctions and Costs

[65] We consider that it is important in this case to: (1) impose sanctions that reflect the seriousness of the securities law violations that occurred in this matter; and (2) impose sanctions that not only deter the Respondents but also like-minded people from engaging in future conduct that violates securities law.

[66] We will issue an order giving effect to our decision on sanctions and costs and we order that:

(1) pursuant to paragraph 6 of subsection 127(1) of the Act, Muller and Holemans be reprimanded;

(2) pursuant to paragraph 7 of subsection 127(1) of the Act, Muller immediately resign as a director and officer of Rex for a period of 10 years commencing from the date of this Order;

(3) pursuant to paragraph 7 of subsection 127(1) of the Act, Holemans immediately resign as an officer of Rex for a period of 12 months commencing from the date of this Order;

(4) pursuant to paragraph 8 of subsection 127(1) of the Act, Muller be prohibited from becoming or acting as a director or officer of Rex or any other issuer for a period of 10 years commencing from the date of this Order;

(5) pursuant to paragraph 8 of subsection 127(1) of the Act, Holemans be prohibited from becoming or acting as a director or officer of Rex or any other issuer for a period of 12 months commencing from the date of this Order;

(6) pursuant to subsections 127.1(1) and (2) of the Act, Rex pay the amount of $60,000 toward the costs of or related to the investigation and hearing incurred by the Commission; and

(7) pursuant to subsections 127.1(1) and (2) of the Act, Muller pay the amount of $40,000 toward the costs of or related to the investigation and hearing incurred by the Commission.

Dated at Toronto, this 11th day of August, 2009.

“Wendell S. Wigle”

“David L. Knight”

“Kevin J. Kelly”

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

THERE ARE NO ITEMS FOR THIS WEEK.

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
Medifocus Inc.	07 Aug 09	19 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		
Medifocus Inc.	07 Aug 09	19 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 Purc. Price ($)	# of Securities Distributed
07/17/2009	42	1400 Victoria Park Limited Partnership - Limited Partnership Units	2,100,000.00	42.00
07/10/2009	41	20/20 Diversified Income Trust - Units	292,500.00	280.00
07/17/2009	14	Advandtel Minerals (Canada) Ltd. - Units	62,500.00	N/A
07/08/2009	13	Adventure Gold Inc. - Common Shares	19,500.00	150,000.00
07/14/2009	1	AgriMarine Holdings Inc. - Units	250,000.00	1,000,000.00
07/09/2009	8	All Canadian Investment Corporation - Units	270,000.00	270.00
06/30/2009	69	Alston Ventures Inc. - Common Shares	614,000.00	N/A
07/08/2009	1	Ambit Biosciences (Canada) Corporation - Notes	1,246,352.76	1.00
06/30/2009	1	Ares Corporate Opportunities Fund III L.P. - Limited Partnership Interest	29,062,500.00	N/A
06/17/2009	1	ATP Oil & Gas Corporation - Common Shares	2,345,000.00	8,750,000.00
06/30/2009	1	Aureos Latin America Fund I L.P. - Capital Commitment	1,723,692.53	N/A
06/30/2009	1	Aureos Latin America Fund II L.P. - Capital Commitment	410,987.84	N/A
07/02/2009	37	Baccalieu Energy Inc. - Common Shares	3,125,394.00	1,041,798.00
06/30/2009	33	Bowmore Exploration Ltd. - Units	4,320,000.00	21,000,000.00
06/30/2009	15	Boyuan Construction Group Inc. - Units	6,474,000.00	6,474.00
07/29/2009	1	Bridgeport Ventures Inc. - Common Shares	0.00	150,000.00
07/15/2009	1	Brightpoint Inc. - Common Shares	1,679,100.00	300,000.00
07/24/2009	1	Clairvest Equity Partners IV Limited Partnership - Limited Partnership Units	100,000,000.00	100,000.00
07/10/2009 to 07/19/2009	16	CMC Markets UK plc - Contracts for Differences	80,801.00	16.00
06/15/2009	52	Corex Gold Corporation - Units	600,000.00	3,000,000.00
07/16/2009	11	Corporation Power Tech Inc. - Units	380,250.00	3,802,500.00
01/14/2009 to 03/31/2009	1	Counsel Canadian Dividend - Trust Units	2,749,798.07	274,966.77
01/14/2009 to 03/31/2009	5	Counsel Canadian Growth - Trust Units	70,374,033.00	7,208,093.19

Transaction Date	# of Purchasers	Issuer/Security	Total Purc. Price ($)	# of Securities Distributed
10/01/2008 to 03/31/2009	3	Counsel Fixed Income - Trust Units	17,665,798.00	1,515,284.24
01/14/2009 to 03/31/2009	5	Counsel Global Real Estate - Trust Units	81,841,734.00	8,264,664.52
10/01/2008 to 03/31/2009	4	Counsel Global Small Cap - Trust Units	2,420,374.00	372,175.42
01/14/2009 to 03/31/2009	7	Counsel International Growth - Trust Units	116,390,000.00	11,706,804.07
10/01/2008 to 03/31/2009	2	Counsel Managed Portfolio - Trust Units	12,531,227.00	1,160,206.81
10/01/2008 to 03/31/2009	5	Counsel Select America - Trust Units	13,073,758.00	2,443,594.00
01/14/2009 to 03/31/2009	1	Counsel U.S. Value - Trust Units	4,500,000.00	454,384.48
06/26/2009	1	Crocodile Gold Inc. - Units	21,000.00	30,000.00
07/10/2009	1	Deutsche EuroShop AG - Common Shares	957,900.00	30,000.00
06/30/2009 to 07/09/2009	135	DIRTT Environmental Solutions Ltd. - Units	9,670,000.00	N/A
07/13/2009	2	Discover Financial Services - Common Shares	15,044,700.00	N/A
07/09/2009	1	Dominion Partners VIII, L.P. - Limited Partnership Interest	5,811,000.00	N/A
07/07/2009 to 07/16/2009	43	Eagle Peak Resources Inc. - Common Shares	603,089.00	460,788.00
05/29/2009 to 06/21/2009	77	Eagleridge Minerals Ltd. - Units	322,892.07	N/A
07/16/2009	1	Edgeworth Mortgage Investment Corporation - Preferred Shares	367,200.00	N/A
07/13/2009	85	EnerGulf Resources Inc. - Units	1,968,925.00	5,766,200.00
07/23/2009	17	Environmental Waste International Inc. - Units	900,000.00	N/A
07/03/2009	26	Erin Ventures Inc. - Units	227,500.00	6,500,000.00
07/16/2009	1	Explor Resources Inc. - Common Shares	1,200,000.00	5,000,000.00
06/19/2009	1	FBR Capital Markets Corporation - Common Shares	656,250.00	N/A
07/02/2009 to 07/06/2009	2	First Leaside Expansion Limited Partnership - Units	200,000.00	200,000.00
07/02/2009 to 07/07/2009	3	First Leaside Fund - Trust Units	215,000.00	215,000.00
07/07/2009	1	First Leaside Fund - Trust Units	110,000.00	215,000.00
07/17/2009	1	First Leaside Fund - Trust Units	21,219.20	19,000.00
07/20/2009 to 07/21/2009	3	First Leaside Fund - Trust Units	15,000.00	15,000.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purc. Price ($)	# of Securities Distributed
07/17/2009	1	First Leaside Fund - Trust Units	19,790.00	19,790.00
07/06/2009	1	First Leaside Premier Limited Partnership - Units	113,268.09	97,544.00
07/02/2009 to 07/06/2009	2	First Leaside Progressive Limited Partnership - Units	133,000.00	133,000.00
07/21/2009	1	First Leaside Progressive Limited Partnership - Units	75,000.00	75,000.00
07/21/2009	1	First Leaside Visions II Limited Partnership - Units	75,000.00	75,000.00
06/30/2009	44	Fission Energy Corp. - Flow-Through Shares	2,008,881.00	N/A
07/21/2009 to 07/24/2009	31	Fission Energy Corp. - Flow-Through Shares	1,922,850.00	N/A
06/24/2009	90	FT Capital Investment Fund - Units	1,120,500.00	2,241.00
07/06/2009 to 07/10/2009	2	General Motors Acceptance Corporation of Canada, Limited - Notes	485,989.34	485,989.34
06/29/2009 to 07/03/2009	7	General Motors Acceptance Corporation of Canada, Limited - Notes	2,836,232.43	2,836,232.43
07/20/2009	6	Golden Odyssey Mining Inc. - Common Shares	200,000.00	1,000,000.00
07/10/2009	52	Grand Power Logistics Group Inc. - Debentures	1,401,000.00	N/A
07/23/2009	1	Greif Inc. - Notes	262,538.57	N/A
07/15/2009	4	Harcourt Cochrane Limited Partnership - Units	140,000.00	28.00
07/24/2009	3	Hhgregg Inc. - Common Shares	680,724.00	38,200.00
07/14/2009 to 07/21/2009	15	Holcim Ltd. - Special Shares	7,313,058.20	162,260.00
06/23/2009	2	Iberdrola S.A. - Common Shares	60,778,808.64	250,000,000.00
07/16/2009	21	iCo Therapeutics Inc. - Common Shares	475,000.00	1,187,500.00
07/03/2009 to 07/13/2009	59	iLOOKabout Corp. - Units	2,198,700.00	N/A
07/02/2009	1	Imperial Capital Acquisition Fund IV (Institutional) 3 Limited Partnership - Limited Partnership Units	25,300.10	25,300.10
07/02/2009	1	Imperial Capital Acquisition Fund IV (Institutional) 4 Limited Partnership - Limited Partnership Units	12,650.08	12,650.08
07/02/2009	1	Imperial Capital Acquisition Fund IV (Institutional) 5 Limited Partnership - Limited Partnership Units	12,650.06	12,650.06
07/02/2009	1	Imperial Capital Acquisition Fund IV (Institutional) Limited Partnership - Limited Partnership Units	25,300.11	25,300.11
06/29/2009 to 06/30/2009	4	Imperial Capital Equity Partners Ltd. - Capital Commitment	4,500,000.00	4,500,000.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purc. Price ($)	# of Securities Distributed
07/15/2009	38	InfraReDx Inc. - Preferred Shares	7,350,379.80	N/A
07/28/2009	28	Investicare Seniors Housing Corp. - Units	1,018,750.00	N/A
07/21/2009	1	Janus Capital Group Inc. - Common Shares	2,438,000.00	20,909,090.00
07/21/2009	2	Janus Capital Group Inc. - Notes	775,460.00	N/A
06/29/2009	1	Knightsbridge Human Capital Management Inc. - Common Shares	360,000.00	150,000.00
07/31/2009	5	Largo Resources Ltd. - Flow-Through Units	510,000.00	5,100,000.00
06/30/2009	44	Longbow Capital Limited Partnership #18 - Limited Partnership Units	5,157,000.00	5,157.00
07/16/2009	5	Mantra Venture Group Ltd. - Units	505,258.38	466,334.00
07/22/2009	64	Medoro Resources Ltd. - Common Shares	8,625,000.00	N/A
07/01/2009	14	Midas Gold Inc. - Common Shares	290,300.00	5,000,000.00
07/24/2009	41	mobidia Technology Inc. - Preferred Shares	1,236,563.90	1,124,149.00
07/15/2009	6	Montero Mining and Exploration Ltd. - Common Shares	127,000.00	635,000.00
07/08/2009	1	National Australia Bank Limited - Notes	29,150,000.00	25,000,000.00
07/10/2009	2	New Solutions Financial (II) Corporation - Debentures	200,000.00	2.00
06/26/2009	24	New World Resource Corp. - Units	500,000.00	5,000,000.00
07/20/2009	15	Newcastle Minerals Ltd. - Units	180,000.00	6,000,000.00
06/16/2009	11	Northern Freegold Resources Ltd. - Units	5,000,000.00	N/A
06/16/2009	53	Northern Freegold Resources Ltd. - Units	3,000,000.00	N/A
06/29/2009	2	Palisade Capital Limited Partnership - Units	749,356.80	372.00
06/29/2009	8	Palisade Vantage Fund - Units	1,182,944.72	161,384.00
07/13/2009	2	Peerset Inc. - Debentures	375,000.00	N/A
07/16/2009	14	PMI Gold Corporation - Units	1,500,000.00	30,000,000.00
06/30/2009	15	Polar Mobile Group Inc. - Preferred Shares	1,104,787.84	N/A
07/22/2009	28	Prima Developments Ltd. - Units	210,250.00	2,102,500.00
07/17/2009	3	Q-Gold Resources Ltd. - Units	126,000.00	3,150,000.00
06/25/2009	1	Rainy River Resources Ltd. - Common Shares	23,000.00	10,000.00
07/07/2009	1	Real Mex Restaurants Inc. - Notes	4,819,500.00	N/A
07/14/2009	1	Regis Corporation - Notes	140,600.00	N/A
07/10/2009	1	Rheinmetall AG - Common Shares	3,349,500.00	70,000.00
07/14/2009	1	Riley Resources Inc. - Common Shares	10,000.00	40,000.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purc. Price ($)	# of Securities Distributed
06/30/2009	103	Shaelynn Capital Inc. - Preferred Shares	386,455.00	386,455.00
07/17/2009	1	Sketch2 Corp. - Common Shares	650,000.00	2,600,000.00
06/15/2009 to 06/19/2009	48	Skyline Apartment Real Estate Investment Trust - Units	2,399,723.09	N/A
07/09/2009	16	Sniper Resources Ltd. - Units	322,500.00	1,290,200.00
07/15/2009	9	Spectrum San Diego Inc. - Common Shares	431,200.00	55,000.00
07/06/2009	3	Starfire Minerals Inc. - Common Shares	105,000.00	N/A
07/21/2009	3	Sterlite Industries (India) Limited - American Depository Shares	29,310,671.00	2,177,613.00
07/08/2009	1	Sturgeon 2 Limited Partnership - Loans	50,000.00	N/A
07/09/2009	67	Suroco Energy Inc. - Units	7,223,750.00	28,895,000.00
07/10/2009	1	Tangcoh Gold Inc. - Flow-Through Shares	10,000.00	N/A
07/03/2009	18	Tarsis Resources Ltd. - Units	250,000.00	2,500,000.00
07/02/2009	10	TerraX Minerals Inc. - Units	105,000.00	17,500,000.00
07/20/2009	2	The Chippery Chip Factory Inc. - Debentures	5,693,186.00	N/A
07/21/2009	12	Timbercreek Real Estate Investment Trust - Units	2,099,818.40	169,578.15
07/06/2009	1	Tribute Minerals Inc. - Common Shares	583,575.00	11,671,500.00
06/26/2009	2	UBS AG - Certificate	134,797.77	136.00
06/26/2009 to 07/06/2009	1	UBS AG - Notes	137,400.00	137,400.00
06/22/2009 to 06/29/2009	4	UBS AG - Notes	1,400,000.00	1,400,000.00
06/16/2009 to 06/23/2009	4	UBS AG - Notes	1,350,000.00	N/A
06/09/2009	9	United Rentals (North America) Inc. - Notes	535,709,320.00	N/A
07/26/2009	132	Uranium Energy Corp. - Common Shares	25,736,732.59	200,000.00
07/17/2009	1	Vena Resources Inc. - Common Shares	159,156.54	418,833.00
07/07/2009	22	Walton AZ Sawtooth Investment Corporation - Common Shares	346,140.00	34,614.00
07/07/2009	6	Walton AZ Sawtooth Limited Partnership - Limited Partnership Units	420,620.76	36,198.00
07/07/2009	25	Walton AZ Silver Reef Investment Corporation - Common Shares	472,390.00	47,239.00
07/07/2009	2	Walton AZ Silver Reef Limited Partnership - Limited Partnership Units	495,627.86	42,653.00
07/07/2009	22	Walton GA Arcade Meadows 2 Investment Corporation - Common Shares	658,750.00	65,875.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purc. Price ($)	# of Securities Distributed
07/07/2009	4	Walton GA Arcade Meadows Limited Partnership 2 - Limited Partnership Units	800,513.42	68,891.00
07/07/2009	27	Walton TX Garland Heights 1 Investment Corporation - Common Shares	515,990.00	51,599.00
07/13/2009	153	Wind Acquisition Finance S.A. - Notes	4,189,901,364.75	N/A
06/19/2009	43	Yalian Steel Corporation - Common Shares	8,500,000.00	5,000,000.00
07/10/2009	3	Zorzal Incorporated - Debentures	76,000.00	N/A

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Astral Mining Corporation
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated August 4, 2009
NP 11-202 Receipt dated August 5, 2009
Offering Price and Description:
$644,238.00 - Rights to purchase up to 2,576,951 Units with each Unit consisting of one Common Share and one Warrant Price: $0.25 per Unit
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1454388

Issuer Name:
Bell Canada
Principal Regulator - Quebec
Type and Date:
Preliminary Shelf Prospectus dated August 7, 2009
NP 11-202 Receipt dated August 7, 2009
Offering Price and Description:
$3,000,000,000.00 - Debt Securities (Unsecured)
Unconditionally guaranteed as to payment of principal, interest and other payment obligations by BCE Inc.
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1455905

Issuer Name:
Brookfield Properties Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated August 10, 2009
NP 11-202 Receipt dated August 11, 2009
Offering Price and Description:
US$ * - * Common Shares
Price: US$ * per Common Share
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Citigroup Global Markets Canada Inc.
Deutsche Bank Securities Limited
TD Securities Inc.
Promoter(s):
-
Project #1457482

Issuer Name:
CMP 2009 II Resource Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated August 5, 2009
NP 11-202 Receipt dated August 6, 2009
Offering Price and Description:
$50,000,000.00 (maximum) - 50,000 Limited Partnership Units
Price per Unit: $1,000
Minimum Subscription: $5,000.00 (Five Units)
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Capital Corporation
Blackmont Capital Inc.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Promoter(s):
CMP 2009 II Corporation
Project #1454831

Issuer Name:
Discovery 2009 Flow-Through Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated August 5, 2009
NP 11-202 Receipt dated August 6, 2009
Offering Price and Description:
$ * (maximum) - (maximum – * Units)
$ * (minimum) - (minimum - * Units)
Price: $25.00 per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Canaccord Capital Corporation
National Bank Financial Inc.
TD Securities Inc.
Dundee Securities Corporation
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Manulife Securities Incorporated
Blackmont Capital Inc.
Middlefield Capital Corporation
Haywood Securities Inc.
Raymond James Ltd.
Research Capital Corporation
Wellington West Capital Markets Inc.
Promoter(s):
Middlefield Fund Management Limited
Project #1454864

Issuer Name:
Frontenac Mortgage Investment Corporation
Type and Date:
Preliminary Prospectus dated August 5, 2009
Receipted on August 6, 2009
Offering Price and Description:
Qualifying for Distribution
an Unlimited Number of Common Shares
Price: Book Value per Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1446041

Issuer Name:
North American Energy Partners Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Shelf Prospectus dated August 7, 2009
NP 11-202 Receipt dated August 7, 2009
Offering Price and Description:
$150,000,000.00 of Common Shares by the Company
9,750,951 Common Shares by the Selling Shareholders
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1455925

Issuer Name:
Pathway Quebec Mining 2009-II Flow-Through Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated August 6, 2009
NP 11-202 Receipt dated August 10, 2009
Offering Price and Description:
$10,000,000.00 (Maximum Offering)
$2,500,000.00 (Minimum Offering)
A Maximum of 1,000,000 and a Minimum of 250,000 Limited Partnership Units
Minimum Subscription:
250 Limited Partnership Units
Subscription Price: $10.00 per Limited Partnership Unit
Underwriter(s) or Distributor(s):
Wellington West Capital Inc.
HSBC Securities (Canada) Inc.
Desjardins Securities Inc.
Industrial Alliance Securities Inc.
Canaccord Capital Corporation
Laurentian Bank Securities Inc.
Dundee Securities Corporation
Promoter(s):
Pathway Quebec Mining 2009-II Inc.
Project #1456840

Issuer Name:
SXC Health Solutions Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated August 10, 2009
NP 11-202 Receipt dated August 11, 2009
Offering Price and Description:
US$ * -
Debt Securities
Common Shares
Warrants
Convertible Securities
Share Purchase Contracts
Share Purchase Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1457191

Issuer Name:
YIELDPLUS Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated August 5, 2009
NP 11-202 Receipt dated August 10, 2009
Offering Price and Description:
OFFERING OF * COMBINED UNITS, EACH COMBINED UNIT CONSISTING OF
ONE RIGHT AND ONE WARRANT, TO PURCHASE A MAXIMUM OF * TRUST UNITS
Subscription Price: Three Rights and $ * per Trust Unit
The Subscription Price equals * % of the Net Asset Value per Trust Unit on *, 2009
Warrant Exercise Price: $6.50 per Trust Unit
The Warrant Exercise Price Exceeds the Net Asset Value per Trust Unit as at August 4, 2009
Underwriter(s) or Distributor(s):
Middlefield Capital Corporation
Promoter(s):
-
Project #1456246

Issuer Name:
Ark StoneCastle Stable Growth Class
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated August 7, 2009
NP 11-202 Receipt dated August 11, 2009
Offering Price and Description:
Series A, F and I Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
Ark Fund Management Ltd.
Project #1421495

Issuer Name:
Augusta Resource Corporation
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated August 6, 2009
NP 11-202 Receipt dated August 6, 2009
Offering Price and Description:
$25,007,600.00 - 12,380,000 Common Shares $ 2.02 per Common Share
Underwriter(s) or Distributor(s):
Wellington West Capital Markets Inc.
Cormark Securities Inc.
CIBC World Markets Inc.
TD Securities Inc.
Promoter(s):
-
Project #1450899

Issuer Name:
Mirabela Nickel Limited
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated August 6, 2009
NP 11-202 Receipt dated August 6, 2009
Offering Price and Description:
C$45,150,000.00 - 21,500,000 Ordinary Shares - Price: C$2.10 Per Ordinary Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
BMO Nesbitt Burns Inc.
Cormark Securities Inc.
Dundee Securities Corporation
Haywood Securities Inc.
Promoter(s):
-
Project #1450723

Issuer Name:
Romarco Minerals Inc
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated August 6, 2009
NP 11-202 Receipt dated August 6, 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:
U.S. High Yield Bond Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated August 10, 2009
NP 11-202 Receipt dated August 11, 2009
Offering Price and Description:
Class O Units
Class F Units
Class I Units
Class P Units
Class R Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
SEI Investments Canada Company
Project #1434221

Issuer Name:
Wellington West Franklin Templeton Balanced Retirement Income Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated August 7, 2009
NP 11-202 Receipt dated August 7, 2009
Offering Price and Description:
Series A units @ Net Asset Value
Underwriter(s) or Distributor(s):
WELLINGTON WEST FINANCIAL SERVICES INC.
Wellington West Financial Services Inc.
Promoter(s):
-
Project #1445282

Issuer Name:
Horizons BetaPro Double Gold Bullion Fund
Principal Jurisdiction - Ontario
Type and Date:
Amendment to Preliminary Long Form Prospectus dated May 26, 2009
Withdrawn on August 11, 2009
Offering Price and Description:
US$ * - * Class U and
Cdn$ - * C Units
Price: U.S.$10.00 per Class U Unit
Cdn$10.00 per Class C Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Macquarie Capital Markets Canada Ltd.
Scotia Capital Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
UBS Securities Canada Inc.
Blackmont Capital Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
Raymond James Ltd.
Desjardins Securities Inc.
Haywood Securities Inc.
MGI Securities Inc.
Research Capital Corporation
Wellington West Capital Markets Inc.
Promoter(s):
BetaPro Management Inc.
Project #1423515

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: Nordic Partners Inc. To: Pareto Securities Inc.	International Dealer	July 9, 2009
Name Change	From: Guggenheim Capital Markets, LLC To: Guggenheim Securities, LLC	International Dealer	July 31, 2009
New Registration	Blue Marble Capital Management Limited	Extra-Provincial Investment Counsel & Portfolio Manager	August 5, 2009
Name Change	From: Burgeonvest Securities Limited To: Burgeonvest Bick Securities Limited	Investment Dealer	August 5, 2009
New Registration	Maple Leaf Angels Corporation	Limited Market Dealer	August 7, 2009
New Registration	Starboard Capital Inc.	Limited Market Dealer	August 7, 2009
Consent to Suspension (Rule 33-501 Surrender of Registration)	Lee Munder Investments Ltd.	International Adviser (Investment Counsel & Portfolio Manager)	August 10, 2009
Consent to Suspension (Rule 33-501 Surrender of Registration)	Independence Investments LLC	International Adviser (Investment Counsel & Portfolio Manager)	August 10, 2009
Consent to Suspension (Rule 33-501 Surrender of Registration)	Interpose Sault Incorporated	Limited Market Dealer	August 11, 2009
New Registration	Intrynsyc Capital Corporation	Limited Market Dealer	August 12, 2009

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 MFDA Schedules Next Appearance in the Matter of Carmen G. Moerike

NEWS RELEASE
For immediate release

MFDA SCHEDULES NEXT APPEARANCE
IN THE MATTER OF
CARMEN G. MOERIKE

August 5, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding against Carmen G. Moerike by Notice of Hearing dated June 22, 2009.

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

The next appearance in this matter has been scheduled to take place on November 13, 2009 commencing at 10:00 a.m. (Central), or as soon thereafter as the appearance can be held, at a location to be announced in Regina, Saskatchewan. The appearance 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

13.1.2 Material Amendments to CDS Procedures – DTC Direct Link and New York Link Services: Changes to Participant Collateral and Funding Requirements

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO CDS PROCEDURES

DTC DIRECT LINK AND NEW YORK LINK SERVICES:
CHANGES TO PARTICIPANT COLLATERAL AND FUNDING REQUIREMENTS

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED CDS PROCEDURE AMENDMENTS

Effective November 1, 2009, CDS sponsored participants of the New York Link ("NYL") service will be required to meet expanded collateral requirements resulting from changes introduced by the National Securities Clearing Corporation ("NSCC"). Such changes will require NYL participants to pledge all risk based margin ("RBM") related collateral directly with NSCC. In the current process, all RBM related collateral posted by NYL participants is held by CDS.

Since NSCC will be holding all the RBM related collateral from NYL participants starting November 1, 2009, CDS will no longer have access to the collateral needed to protect the remaining NYL participants from the default of a single NYL participant. Therefore, CDS will require NYL participants to pledge additional collateral to CDS, with a value similar to the RBM collateral pledged directly with NSCC, effectively doubling the RBM collateral requirement for each NYL participant.

CDS will also establish a NYL participant fund ("NYL Fund") and a DTC Direct Link ("DDL") participant fund ("DDL Fund"), requiring both DDL participants and NYL participants to post collateral to support those fund requirements. The NYL Fund and the DDL Fund will be established with a total value equal to the largest debit cap allocated to any participant using the related service, currently 60 million USD for NYL participants and 40 million USD for DDL participants. Both funds will be calculated in the same manner as the "Receiver's Collateral Pool" (RCP) in CDSX and will cover the default of the single largest participant. The intent of the NYL Fund and the DDL Fund is to provide collateral to meet day to day liquidity requirements resulting from the default of a participant.

As mentioned, the changes described above will take effect November 1, 2009. It is important to note that this is a deadline imposed on CDS by DTC and cannot be changed.

B. NATURE AND PURPOSE OF THE PROPOSED CDS PROCEDURE AMENDMENTS

The proposed amendments to the New York Link Participant Procedures and to the DTC Direct Link Participant Procedures are intended to clarify the process by which NYL and DDL participants can comply with the new collateral and funding requirements.

C. IMPACT OF THE PROPOSED CDS PROCEDURE AMENDMENTS

CDS Participant Fund for DTC Direct Link (administered by CDS)

A DTC Direct Link Participant Fund ("DDL Fund") will be established with a total value equal to the largest net debit cap allocated to any participant using the service, currently USD 40 million. The fund will be calculated in the same manner as the existing Receivers' Collateral Pools in CDSX and would cover the default of the single largest participant. The intent of this fund is to provide the collateral necessary to meet the day-of-default liquidity requirement resulting from the default of a DDL participant. The amount of collateral required for the DDL Fund will be adjusted on a quarterly basis.

New York Link Participant Funds

A New York Link Participant Fund ("NYL Fund") will be established and will be made up of two components. The first component will have a total value equal to the largest net debit cap allocated to any participant using the service, currently USD 60 million. This component will be calculated in the same manner as the DDL Fund and will provide the collateral necessary to cover the DTC payment obligation of a defaulting NYL participant. The second component will be calculated to cover the vast majority of NSCC payment obligations. The amount of collateral required for this second component will be adjusted on a quarterly basis.

Impact of Changes

CDS and participants of both the NYL and DDL services will need to implement processes and procedures to meet the new collateral requirements. The impact to both CDS and its participants will be additional cost of implementing and maintaining

processes and procedures. In addition participants may incur added cost for acquiring new collateral in order to meet their new collateral obligations required by NSCC and CDS.

C.1 Competition

CDS is the only provider of sponsored membership in DTC and NSCC for CDS participants.

C.2 Risks and Compliance Costs

There is a cost to participants for having to provide additional collateral to CDS. Moreover, if CDS participants are not willing to provide additional collateral to CDS, they will not be able to continue as a CDS sponsored participant in NSCC and DTC.

C.3 Comparison to International Standards – (a) Committee on Payment and Settlement Systems of the Bank for International Settlements, (b) Technical Committee of the International Organization of Securities Commissions, and (c) the Group of Thirty

CDS's proposed amendments are consistent with IOSCO's recommendation 11 for central counterparties; that being "CCPs that establish links either cross border or domestically to clear trades should evaluate the potential sources of risks that can arise, and ensure that the risks are managed prudently on an ongoing basis. There should be a framework for cooperation and coordination between the relevant regulators and overseers".

D. DESCRIPTION OF THE PROCEDURE DRAFTING PROCESS

D.1 Development Context

The proposed amendments were prepared by CDS's staff to define and document the manner by which participants would be required to meet the new collateral requirements.

D.2 Procedure Drafting Process

CDS Procedure Amendments are reviewed and approved by CDS's Strategic Development Review Committee ("SDRC"). The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by participants and CDS. The SRDC's membership includes representatives from the CDS Participant community and it meets on a monthly basis.

These amendments were reviewed and approved by the SDRC on July 30, 2009

D.3 Issues Considered

Liquidity risk in the case of a participant default was the primary consideration in CDS's evaluation of the new requirements.

D.4 Consultation

CDS consulted with the Risk Advisory Committee, the Audit/Risk Committee of the Board, as well as the CDS Board of Directors and obtained their feedback. CDS also kept its regulators informed on an ongoing basis of the events surrounding these changes. In addition, CDS held meetings with all impacted participants via conference calls and via the FAS working committee sponsored by IIROC and provided them with information relative to the proposed changes.

D.5 Alternatives Considered

CDS considered a number of options including asking participants to provide twice as much the collateral RBM collateral calculated by NSCC. These were not viable as they would not have addressed the liquidity risk inherent in these services.

D.6 Implementation Plan

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the Ontario *Securities Act*. The Autorité des marchés financiers has authorized CDS to carry on clearing activities in Québec pursuant to sections 169 and 170 of the Québec *Securities Act*. In addition CDS is deemed to be the clearing house for CDSX®, a clearing and settlement system designated by the Bank of Canada pursuant to section 4 of the *Payment Clearing and Settlement Act.* The Ontario Securities Commission, the Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the "Recognizing Regulators".

The amendments to Participant Procedures may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment. Implementation of these changes is planned for November 1, 2009.

E. TECHNOLOGICAL SYSTEMS CHANGES

E.1 CDS

CDS will modify its "risk model" to incorporate the new collateral requirement calculations and will develop supporting reports in order to communicate collateral and funding obligations to participants.

E.2 CDS Participants

Participants will be required to amend their processes and procedures to comply with the new collateral and funding requirements.

E.3 Other Market Participants

There is no anticipated impact to other market participants.

F. COMPARISON TO OTHER CLEARING AGENCIES

No comparable or similar procedures were available for other depository or clearing agencies.

G. PUBLIC INTEREST ASSESSMENT

CDS has determined that the proposed amendments are not contrary to the public interest.

H. COMMENTS

Comments on the proposed amendments should be in writing and submitted within 30 calendar days following the date of publication of this notice in the Ontario Securities Commission Bulletin to:

Kris Sanker
Director, Product Development
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

Phone: 416-365-8395
Fax: 416-365-0842
Email: ksanker@cds.ca

Copies should also be provided to the Autorité des marchés financiers and the Ontario Securities Commission by forwarding a copy to each of the following individuals:

M^{e} Anne-Marie Beaudoin
Secrétaire del'Autorité
Autorité des marchés financiers
800, square Victoria, 22^{e} étage
C.P. 246, tour de la Bourse
Montréal, Québec, H4Z 1G3

Télécopieur: (514) 864-6381
Courrier électronique: consultation-en-cours@lautorite.qc.ca

Manager, Market Regulation
Capital Markets Branch
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario, M5H 3S8

Fax: 416-595-8940
e-mail: marketregulation@osc.gov.on.ca

CDS will make available to the public, upon request, all comments received during the comment period.

I. PROPOSED CDS PROCEDURE AMENDMENTS

Due to table restrictions and formatting issues the text of current CDS Participant Procedures marked to reflect proposed amendments as well as text of these procedures reflecting the adoption of the proposed amendments can be accessed by clicking on the following link.

Please refer to http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-blacklined?Open to review the affected procedure amendments and the acceptable collateral table marked to reflect the proposed amendments. Once the link is accessed, please click on “Changes to the New York Link and DTC Direct Link services”.

13.1.3 MFDA Announces Date and Location for Continuation of Marlene Legare Hearing

NEWS RELEASE
For immediate release

MFDA ANNOUNCES DATE AND LOCATION FOR CONTINUATION OF MARLENE LEGARE HEARING

August 11, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of Marlene Legare by Notice of Hearing dated June 12, 2008.

The hearing of this matter on its merits resumed on May 25 and 28, 2009 and was adjourned to a date, time and location to be announced.

The hearing has been scheduled to resume on November 4-6, 2009 at 10:00 a.m. (Pacific), or as soon thereafter as the hearing can be held, at the Empire Landmark Hotel, 1400 Robson Street, Vancouver, British Columbia. The hearing will be open to the public except as may be required for the protection of confidential matters.

A copy of the Notice of Hearing is available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 145 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
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Hearings Coordinator
416-945-5146 or mwynnyckyj@mfda.ca

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