The Ontario Securities Commission

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

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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

SEPTEMBER 11, 2009

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
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20 Queen Street West
Toronto, Ontario
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Patrick J. LeSage	—	PJL
Carol S. Perry	—	CSP
James D. Carnwath	—	JDC

SCHEDULED OSC HEARINGS

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: MGC
September 21, 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
September 21, 2009 10:00 a.m.	**Prosporex Investments Inc., Prosporex Forex SPV Trust, Anthony Diamond, Diamond+Diamond, and Diamond+Diamond Merchant Banking Bank** s. 127 H. Daley in attendance for Staff Panel: MGC/CSP
September 21, 2009 11:30 a.m. September 22-28, 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: MGC/DLK

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: PJL
September 24, 2009 9:30 a.m.	**Lyndz Pharmaceuticals Inc., Lyndz Pharma Ltd., James Marketing Ltd., Michael Eatch and Rickey McKenzie** s. 127(1) and (5) J. Feasby in attendance for Staff Panel: MGC
September 25, 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 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 7, 2009 10:00 a.m.	**Paul Iannicca** s. 127 H. Craig in attendance for Staff Panel: TBA
October 7, 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
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 9, 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
October 9, 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
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 12-16, 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: MGC/CSP
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
December 11, 2009 9:00 a.m.	**Tulsiani Investments Inc. and Sunil Tulsiani** s. 127 A. Sonnen 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
January 25-26, 2010 10:00 a.m.	**Lehman Cohort Global Group Inc., Anton Schnedl, Richard Unzer, Alexander Grundmann and Henry Hehlsinger** s. 127 H. Craig in attendance for Staff Panel: 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

March 1-8, 2010	**Teodosio Vincent Pangia**
10:00 a.m.	s. 127
	J. Feasby in attendance for Staff
	Panel: TBA
March 3, 2010	**Brilliante Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York**
10:00 a.m.	
	s. 127
	S. Horgan in attendance for Staff
	Panel: TBA
TBA	**Yama Abdullah Yaqeen**
	s. 8(2)
	J. Superina in attendance for Staff
	Panel: TBA
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell**
	s. 127
	J. Waechter in attendance for Staff
	Panel: TBA
TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly**
	s. 127
	K. Daniels in attendance for Staff
	Panel: TBA
TBA	**Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)**
	s. 127 and 127.1
	D. Ferris in attendance for Staff
	Panel: TBA
TBA	**Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin**
	s. 127
	H. Craig in attendance for Staff
	Panel: TBA
TBA	**Gregory Galanis**
	s. 127
	P. Foy in attendance for Staff
	Panel: TBA
TBA	**Franklin Danny White, Naveed Ahmad Qureshi, WNBC The World Network Business Club Ltd., MMCL Mind Management Consulting, Capital Reserve Financial Group, and Capital Investments of America**
	s. 127
	C. Price in attendance for Staff
	Panel: TBA
TBA	**Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling**
	s. 127(1) and 127.1
	J. Superina, A. Clark in attendance for Staff
	Panel: TBA

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

s. 127

M. Boswell in attendance for Staff

Panel: TBA

TBA **FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun**

s. 127

A. Sonnen in attendance for Staff

Panel: TBA

TBA **Shane Suman and Monie Rahman**

s. 127 and 127(1)

C. Price in attendance for Staff

Panel: TBA

TBA **Global Petroleum Strategies, LLC, Petroleum Unlimited, LLC, Roger A. Kimmel, Jr.**

s. 127

E. Cole in attendance for Staff

Panel: PJL

TBA **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

TBA **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

TBA **Abel Da Silva**

s. 127

M. Boswell in attendance for Staff

Panel: DLK

TBA **M P Global Financial Ltd., and Joe Feng Deng**

s. 127 (1)

M. Britton in attendance for Staff

Panel: MGC

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

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

ADJOURNED SINE DIE

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

1.1.2 CSA Staff Notice 52-325 – Certification Compliance Review

CSA STAFF NOTICE 52-325
CERTIFICATION COMPLIANCE REVIEW

Purpose

This notice outlines the results of a recent review conducted by staff of the Canadian Securities Administrators (staff or we) of compliance with the provisions of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (Certification Instrument or NI 52-109).

NI 52-109 came into force on December 15, 2008, at which time Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109) was repealed. The purpose of the Certification Instrument is to improve the quality and reliability of reporting issuers' annual and interim disclosure. We believe that this, in turn, will help to maintain and enhance investors' confidence in the integrity of our capital markets. See Appendix A of this notice for a summary of the most significant changes from MI 52-109 to NI 52-109.

Executive Summary

Of the total reporting issuers reviewed, 38% appeared to substantively comply with the requirements of NI 52-109 such that no action was required. However, of the remaining 62% of issuers reviewed, we identified some level of non-compliance with the provisions of the Certification Instrument. For 30% of reporting issuers reviewed, the filings were so deficient that the issuers were required to refile their annual MD&A and/or certificates. For 32% of the issuers reviewed, we required the issuers to make prospective changes in future filings. Staff expects that issuers' compliance with NI 52-109 will improve as issuers become more familiar with the requirements. Meanwhile, we will continue to monitor compliance with these requirements closely.

Review program

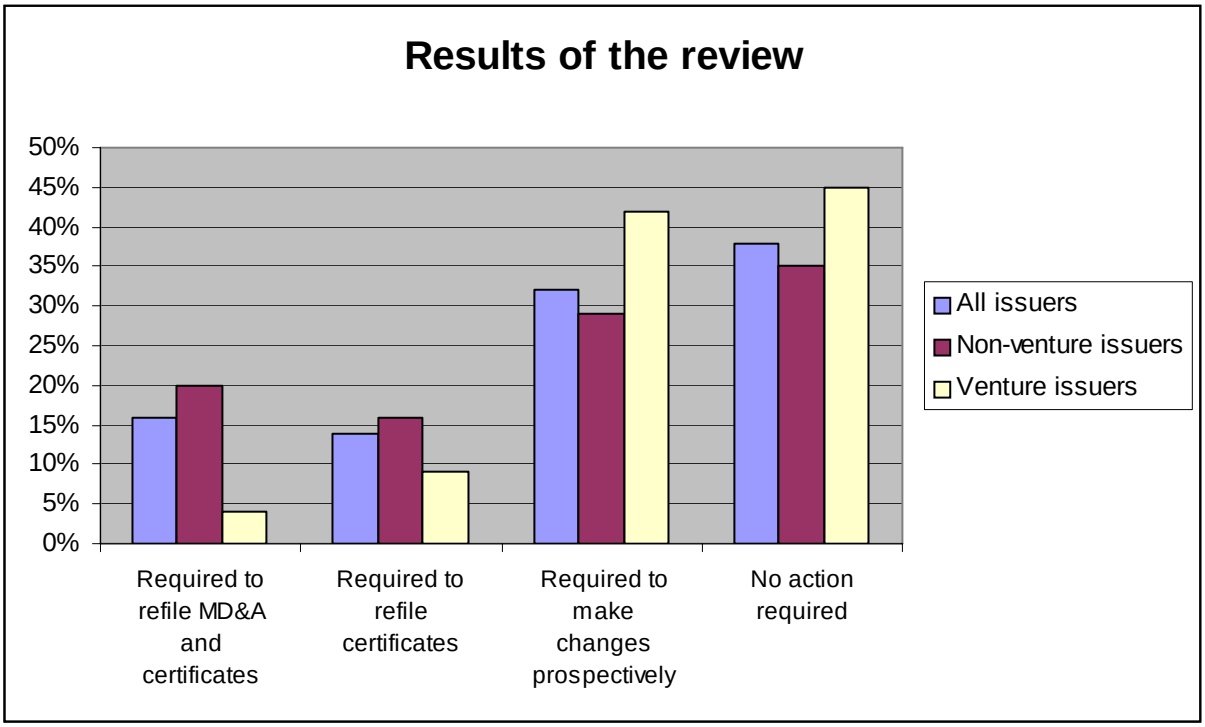
We selected a sample of 198 non-venture issuers and 53 venture issuers with a December 31, 2008 year-end.

Our review focused on the following questions:

- Did the certifying officers and issuer use the correct form of certificate for their circumstance?
- Did the issuer's annual management discussion and analysis (MD&A) include disclosure that corresponds to the representations contained in the certificates?
- Was the MD&A disclosure consistent with the guidance in the Companion Policy to NI 52-109 (52-109CP)?
- Were the annual certificates dated and filed on the correct date?
- If the issuer refiled its annual financial statements, annual MD&A or Annual Information Form (AIF), did the issuer also file Form 52-109F1R – *Certification of refiled annual filings* (Form 52-109F1R)?
- Were the annual certificates filed in the exact wording prescribed by the required form without any amendments?

Results of the review

The table below summarizes the results of the review. In some cases, issuers did not comply with more than one provision of the Certification Instrument.



We characterized the level of non-compliance into three categories (refiling of MD&A and certificates, refiling of certificates and prospective changes) based upon the nature and severity of the deficiencies identified.

For 30% of reporting issuers reviewed, the filings were so deficient that the issuers were required to refile their annual MD&A and/or certificates. This was the situation for 36% of non-venture issuers and 13% of venture issuers reviewed. The majority of the refilings related to:

- conclusions about the effectiveness of disclosure controls and procedures (DC&P) and internal control over financial reporting (ICFR) in the annual MD&A, and
- significant amendments to the wording prescribed by the certificates.

Prospective changes were required for 32% of reporting issuers reviewed to correct some aspect of their compliance with the Certification Instrument provisions going forward. A significant number of these commitments related to:

- amendments to the wording prescribed by the certificate, and
- the use of incorrect dates.

The results of the review are described in greater detail below. We encourage certifying officers and issuers to use this notice and to thoroughly review the Certification Instrument and 52-109CP in order to fully comply with the certification requirements.

A – Refiling of MD&A and certificates

As a result of our review, we recommended that 20% of non-venture issuers and 4% of venture issuers reviewed refile their MD&A and certificates due to the following deficiencies.

Issuers did not fully disclose their conclusions about the effectiveness of DC&P and ICFR in their MD&A

In accordance with the representations in subparagraphs 6(a) and (b)(i) of Form 52-109F1 – *Certification of annual filings full certificate* (Form 52-109F1), the annual MD&A must disclose the certifying officers' conclusions about the effectiveness of the issuer's DC&P and ICFR.

Eleven percent of non-venture issuers did not disclose in their annual MD&A the certifying officers' conclusions about the effectiveness of DC&P or the ICFR. Four percent of venture issuers reviewed, that elected to file Form 52-109F1, also did not

disclose these conclusions. This includes issuers that did not disclose conclusions about the effectiveness of both the design and operation of DC&P or ICFR. Guidance on evaluating operating effectiveness of DC&P and ICFR can be found in Part 7 of 52-109CP.

Issuers qualified their conclusions about the effectiveness of DC&P and/or ICFR

As discussed in Parts 9.5 and 10.1 of 52-109CP, certifying officers may not qualify their assessment by stating that the issuer's DC&P and ICFR are effective, subject to certain qualifications or exceptions, unless the qualification pertains to one of the scope limitations explicitly permitted by section 3.3 of the Certification Instrument.

Eleven percent of non-venture issuers reviewed qualified their conclusions about the effectiveness of DC&P and ICFR. While some of these issuers concluded that DC&P and ICFR were effective, they also disclosed a "weakness", "design challenge" or "deficiency," (collectively, a limitation), such as lack of segregation of duties or a lack of knowledgeable accounting staff in technically complex areas. This type of disclosure is potentially confusing to readers of the annual MD&A because it is difficult to discern if such a description constitutes a material weakness relating to ICFR or a weakness in DC&P that is significant.

If issuers elect to discuss a limitation in their annual MD&A that is not a material weakness relating to their ICFR or a weakness in DC&P that is significant, the discussion should avoid any ambiguity about the nature of the limitation. The MD&A should clearly disclose if the limitation constitutes a material weakness relating to ICFR or a weakness in DC&P that is significant. Guidance on assessing the significance of deficiencies in ICFR can be found in Part 9 of 52-109CP.

Some issuers concluded that DC&P and ICFR were effective because they had procedures for addressing the limitation. In some cases, an issuer's discussion did not clarify if a material weakness relating to ICFR or a weakness in DC&P that is significant existed after implementing the procedures. A reader could infer that although there was a material weakness relating to ICFR or a weakness in DC&P that was significant, it was fully addressed at the reporting date due to the implementation of the procedures. If the control deficiencies were fully addressed, the limitation would not exist at the financial reporting date.

Several issuers confused the concepts of "mitigating procedures" and "compensating controls". As discussed in subsection 9.1(3) of 52-109CP, a mitigating procedure may help to reduce, but does not eliminate, the financial reporting risk that the deficient ICFR component failed to address. Certifying officers and issuers should not imply that a mitigating procedure eliminates a material weakness and should not conclude that ICFR and DC&P are effective. In contrast to a mitigating procedure, a compensating control fully addresses a material weakness and allows certifying officers to conclude that ICFR and DC&P are effective. In the case of a compensating control, the material weakness relating to ICFR or the weakness in DC&P that is significant is fully addressed and there is no associated reporting obligation.

As discussed in section 6.11 of 52-109CP, the lack of segregation of duties is a significant ICFR challenge. An issuer may address this challenge through additional involvement by its audit committee or board of directors. This involvement could represent either a mitigating procedure or a compensating control, depending on the nature of procedures performed by the directors, the volume of transactions and the complexity of the business. Staff believes that the threshold is high for the additional involvement of the audit committee or board of directors to constitute a compensating control, rather than a mitigating procedure. If the issuer has implemented only a mitigating procedure, it should identify the lack of segregation of duties as a material weakness and conclude that ICFR is not effective. Further, section 10.3 of 52-109CP states that if the certifying officers identify a material weakness in the issuer's ICFR, this will almost always represent a weakness that is significant in the issuer's DC&P.

Issuers limited the scope of design of DC&P and ICFR

In accordance with section 3.3(2) of NI 52-109, an issuer that limits its scope of DC&P or ICFR design to exclude controls, policies and procedures of a proportionately consolidated entity, a variable interest entity or a business acquired not more than 365 days before the end of the financial period to which the certificates relate must disclose in its MD&A the limitation and provide summary financial information about these entities. Guidance on meaningful summary financial information is included in section 13.3 and section 14.2 of 52-109CP.

Two percent of the non-venture issuers reviewed, that relied on a scope limitation, failed to disclose in their MD&A summary financial information. In addition, one non-venture issuer did not disclose in its MD&A the fact that it had limited the scope of its design of DC&P and ICFR.

B – Refiling of certificates

Staff recommended that 16% of non-venture issuers and 9% of venture issuers reviewed refile their certificates due to the following deficiencies.

Significant amendments to the wording of the form

In accordance with sections 4.1 and 5.1 of NI 52-109, issuers are required to file the annual and interim certificates in the exact wording prescribed by the required form. This includes the form number and the form title.

Six percent of non-venture issuers reviewed made significant amendments to the wording prescribed by the required form.

The most common amendments were:

- omitting paragraphs;
- removing paragraph 5.2 on ICFR material weakness relating to design, paragraph 5.3 on limitation of scope of design and subparagraph 6(b)(ii) on ICFR material weakness relating to operation when they did not apply;
- reporting changes in ICFR for a shorter period than the issuer's interim period by inserting the incorrect date in paragraph 7, and
- adding text.

No material weakness or scope limitation

In accordance with the instruction included in the required form, the certifying officers and the issuer must insert paragraph 5.2, subparagraph 6(b)(ii) and paragraph 5.3 in the certificates only if they are applicable. If they are not applicable, they must insert "N/A".

Eleven percent of non-venture issuers reviewed:

- incorrectly referred, by the inclusion of paragraph 5.2 and/or subparagraph 6(b)(ii) in their certificates, to the existence of a material weakness relating to ICFR when one did not exist, or
- incorrectly referred, by the inclusion of paragraph 5.3 in their certificates, to a limitation in the scope of the design of DC&P and ICFR when no scope limitation was required.

Refiled financial statements, MD&A or AIF

In accordance with Part 6 of NI 51-109, if an issuer refiles its financial statements, MD&A or AIF, it must file separate certificates for the period in Form 52-109F1R for refiled annual filings or Form 52-109F2R - *Certification of refiled interim filings* for refiled interim filings.

Two percent of non-venture issuers reviewed did not refile certificates when they filed amended financial statements or MD&A.

AIF filed subsequently

In accordance with subsection 4.1(2) of NI 52-109, a reporting issuer must file its certificates on the later of the dates on which it files its AIF (if it is required to file an AIF), or files its annual financial statements and annual MD&A. A non-venture issuer that chooses to file annual certificates at the date of the filing of its annual financial statements and annual MD&A must refile the annual certificates if the AIF is subsequently filed.

In addition, if a venture issuer voluntarily files an AIF for a financial year after it has filed its annual financial statements, annual MD&A and annual certificates for the financial year, the venture issuer must file separate annual certificates on the same date that it files its AIF (Form 52-109F1-AIF – *Certification of Annual Filings in Connection with Voluntarily Filed AIF)*. This is in accordance with subsection 4.1(3) of NI 52-109.

Two percent of non-venture issuers reviewed and 4% of venture issuers reviewed did not refile certificates when they filed an AIF subsequent to filing their financial statements and MD&A.

Note to reader

The note to reader is an integral part of the Form 52-109FV1 – *Certification of annual filings - venture issuer basic certificate* (Form 52-109FV1). It clarifies the responsibility of certifying officers and discloses that inherent limitations on the ability of certifying officers of a venture issuer to design and implement on a cost-effective basis DC&P and ICFR may result in additional risks to the quality, reliability, transparency and timeliness of interim and annual filings and other reports provided under securities legislation.

Five percent of venture issuers reviewed did not include the "Note to reader" in their Form 52-109FV1.

C – Prospective changes to the certificates and/or the MD&A

Twenty-nine percent of non-venture issuers and 42% of venture issuers were required to make prospective changes in the following areas.

- ***Amendments to wording on forms.*** Certifying officers and issuers were advised not to make any amendment to the wording prescribed by the required form even if they considered those amendments to be minor. In most of these instances, certifying officers and issuers did not include the paragraph titles, the title of the form or the form number. Some certifying officers of non-venture issuers removed "if any" after "AIF" from paragraph 1 of the annual certificates and some venture issuers removed the reference to "the AIF" in the same paragraph. None of these alterations are permitted.

- ***Date in paragraph 7 of the certificates.*** When certifying officers certify that the issuer disclosed in its annual MD&A any change in the issuer's ICFR that occurred during the period, they must insert the date immediately following the end of the period in respect of which the issuer made its most recent interim or annual filing, as applicable. This date would generally be October 1, 2008 for issuers with December 31, 2008 year-end. We note that many certifying officers inserted January 1, 2008.

- ***Certificate date.*** Some certifying officers did not date the certificates the same date that the certificates were filed. In accordance with section 7.1 of NI 52-109, a certifying officer must date a certificate filed under NI 52-109 the same date the certificate is filed.

- ***Filing date of certificates.*** Some issuers did not file the certificates concurrently with the filing of their AIF or financial statements and MD&A, whichever is later. Certifying officers and issuers were advised that in accordance with subsections 4.1(2) and 5.1(2) of NI 52-109, they are required to file their certificates on the later of the dates on which they file their AIF (if they are required to file an AIF) or their annual financial statements and annual MD&A. Interim certificates must be filed on the same date the interim financial statements and interim MD&A are filed.

- ***Venture issuer disclosure.*** Some venture issuers discussed DC&P or ICFR in the MD&A but did not include cautionary language. In accordance with section 15.3 of 52-109CP, if a venture issuer and its certifying officers file Form 52-109FV1 or Form 52-109FV2 – *Certification off interim filings - venture issuer basic certificate* and chooses to discuss the design or operation of one or more components of their ICFR and DC&P in the MD&A or other regulatory filings, they should consider disclosing in the same document that:

  (a) the venture issuer is not required to certify the design and evaluation of its DC&P and ICFR and has not completed such an evaluation, and

  (b) inherent limitations on the ability of the certifying officers to design and implement on a cost-effective basis DC&P and ICFR for the issuer may result in additional risks to the quality, reliability, transparency and timeliness of interim and annual filings and other reports provided under securities legislation.

D – No action required

No action was taken with 35% of non-venture issuers and 45% of venture issuers reviewed. In these cases, the issuer either fully complied with the Certification Instrument, or the level of non-compliance was insignificant.

Next steps

We will continue to review compliance with the Certification Instrument as part of our ongoing compliance reviews and our continuous disclosure review program. We will take action when deficiencies are identified.

September 11, 2009

For more information

For more information, contact any of the following people:

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Appendix A
Certification Instrument

On December 15, 2008, the Certification Instrument came into force and MI 52-109 was repealed. The most significant changes introduced by NI 52-109 are set out below.

Non-venture issuers

Full Annual Certificate

A representation has been added to this certificate to the effect that the certifying officers have evaluated, or have caused to be evaluated under their supervision, the effectiveness of the issuer's ICFR at the financial year-end and that the issuer has disclosed in its annual MD&A the certifying officers' conclusions about the effectiveness of ICFR at the financial year-end based on their evaluation.

Design of DC&P and ICFR

Non-venture issuers:

- are required to use a control framework in the design of ICFR
- may limit the scope of their design of DC&P and ICFR to exclude controls, policies and procedures of a proportionately consolidated entity or variable interest entity in which the issuer has an interest or a business that the issuer acquired not more than 365 days before the end of the financial period to which the certificate relates
- must disclose in their MD&A any scope limitation in the design of DC&P and ICFR and provide summary financial information about the proportionately consolidated entity, variable interest entity or acquired business that has been proportionately consolidated or consolidated in the issuer's financial statements

Material weakness in design or operation of ICFR

If the certifying officers of a non-venture issuer determine that a material weakness relating to either the design or operation of ICFR exists at the end of the period covered by the annual or interim filings, the issuer must disclose the following in its annual or interim MD&A:

- a description of each material weakness
- the impact of the material weakness on the issuer's financial reporting and its ICFR, and
- any plans or any actions undertaken for remediating the material weakness

Venture issuers

Venture Issuer Basic Certificate

There is a new form of certificate for venture issuers. It does not include representations relating to the establishment and maintenance of DC&P and ICFR.

1.1.3 Notice of Commission Approval – Material Amendments to CDS Procedures Relating to Electronic Alert Service (EAS)

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO CDS PROCEDURES

NEW ELECTRONIC ALERT SERVICE (EAS)

NOTICE OF COMMISSION APPROVAL

On September 8, 2009, the Commission approved amendments to the procedures of CDS Clearing and Depository Services Inc. (CDS) relating to the new Electronic Alert Service (EAS). The amendments describe the new EAS, an automated notification function that will deliver electronic alerts to participants advising them of an activity that has taken place. A notice and description of the amendments was published, together with a request for comment, in the Commission's Bulletin on July 3, 2009, at (2009) 32 OSCB 5492. No comment letters were received regarding the amendments.

1.3 News Releases

1.3.1 OSC Announces Commissioner Appointments

FOR IMMEDIATE RELEASE
September 9, 2009

OSC ANNOUNCES
COMMISSIONER APPOINTMENTS

TORONTO – David Wilson, Chair of the Ontario Securities Commission (OSC) announced today the appointments of Commissioners James Carnwath effective August 12, 2009, as well as Sinan Akdeniz and Charles Wesley Moore (Wes) Scott effective September 8, 2009, each for a term of two years.

"I welcome the addition of Messrs. Carnwath, Akdeniz and Scott as Commissioners and Board members," said Mr. Wilson. "These individuals bring the breadth of knowledge and experience necessary to discharge the adjudicative, as well as regulatory and operational oversight activities of the OSC."

James Carnwath is a former Justice of the Divisional Court, Ontario Superior Court of Justice and was the Senior Judge for the Central-West Region. He retired after 29 years on the bench. He has served as Chair of the Education Committee of the Canadian Institute for the Administration of Justice, and was responsible for the organization, staffing and course content of the Seminar for Newly-Appointed Federal Judges and for the Judicial Writing Seminar for federally appointed judges. He was called to the Bar in 1962 and holds an Honours Bachelor of Arts degree in English and a Bachelor of Laws degree from the University of Toronto.

Sinan Akdeniz qualified in the United Kingdom as a professional Accountant. He held progressively senior positions with TD Bank Financial Group. Initially joining in an internal audit role, Mr. Akdeniz became a Derivatives Structurer and then progressed to trading management roles of increasing responsibility. Prior to joining TD Bank Financial Group, Mr. Akdeniz worked with Touche Ross & Co. UK and was a Royal Air Force Regiment Officer. He holds an Honours Bachelor of Science degree in physics from the University of Manchester.

Wes Scott is a retired corporate executive who spent over 30 years in the Bell Canada group, retiring in 2001 as Chief Corporate Officer of BCE Inc. and Vice Chairman of Bell Canada. Throughout his career he held many senior positions in Finance, Operations and Regulatory matters. Mr. Scott has been a member of many public and private company boards in Canada and the United States. He has been an active volunteer, notably with the Hospital for Sick Children, Duke University's Centre for Canadian Studies and the Toronto Learning Partnership, of which he was a founding director. Mr. Scott holds a Masters in Business Administration degree from Harvard University and a Bachelor of Commerce from University of Toronto.

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

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1.4 Notices from the Office of the Secretary

1.4.1 Goldbridge Financial Inc. et al.

FOR IMMEDIATE RELEASE
September 2, 2009

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

AND

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

TORONTO – Following a hearing held today, the Commission issued an Order approving the Settlement Agreement reached between Staff of the Commission and Shawn Lesperance.

A copy of the Order dated September 2, 2009 and Settlement Agreement September 1, 2009 are available at **www.osc.gov.on.ca**.

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1.4.2 MAG Silver Corp. and Fresnillo plc

FOR IMMEDIATE RELEASE
September 2, 2009

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

AND

IN THE MATTER OF
MULTILATERAL INSTRUMENT 61-101 –
PROTECTION OF MINORITY SECURITY
HOLDERS IN SPECIAL TRANSACTIONS

AND

IN THE MATTER OF
A PROPOSED INSIDER BID FOR
MAG SILVER CORP. BY FRESNILLO PLC

TORONTO – The Commission issued its Written Decision in support of Oral Ruling delivered on June 18, 2009 in the above named matter.

A copy of the Written Decision dated August 31, 2009 is available at **www.osc.gov.on.ca**.

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1.4.3 Global Petroleum Strategies, LLC et al.

FOR IMMEDIATE RELEASE
September 2, 2009

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

AND

IN THE MATTER OF
GLOBAL PETROLEUM STRATEGIES, LLC,
PETROLEUM UNLIMITED, LLC AND
ROGER A. KIMMEL JR.

TORONTO – Following a hearing held today, the Commission issued an Order in the above matter which provides that

1. Pursuant to paragraph 2 of subsection 127(1) of the Act, Petroleum Unlimited LLC and Roger A. Kimmel Jr. cease trading in or purchasing securities for a period of seven years, and;

2. Pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Petroleum Unlimited LLC and Roger A. Kimmel Jr. for a period of seven years;

3. Pursuant to paragraph 2 of subsection 127(1) of the Act, Global Petroleum Strategies LLC cease trading in or purchasing securities permanently, and;

4. Pursuant to paragraph 3 of subsection 127(1) of the Act, any of the exemptions contained in Ontario securities law do not apply to Global Petroleum Strategies LLC permanently.

A copy of the Order dated September 2, 2009, is available at **www.osc.gov.on.ca**.

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1.4.4. Brilliante Brasilcan Resources Corp. et al.

FOR IMMEDIATE RELEASE
September 3, 2009

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

AND

IN THE MATTER
BRILLIANTE BRASILCAN RESOURCES CORP.,
YORK RIO RESOURCES INC.,
BRIAN W. AIDELMAN, JASON GEORGIADIS,
RICHARD TAYLOR AND VICTOR YORK

TORONTO – Today, the Commission issued an Order pursuant to subsections 127(1), (2) and (8) of the Act in the above named matter extending the Temporary Order to March 4, 2010 with certain provisions. The hearing is adjourned to March 3, 2010 at 10:00 a.m.

A copy of the Order dated September 3, 2009 is available at **www.osc.gov.on.ca**.

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1.4.5 Y

FOR IMMEDIATE RELEASE
September 4, 2009

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

AND

IN THE MATTER OF
Y

AND

IN THE MATTER OF
AN APPLICATION BY THE CROWN

TORONTO – Following a hearing on November 20, 2008, the Commission issued two orders under section 17 of the Act on January 9, 2009 and March 12, 2009, and issued Reasons for the Orders on August 31, 2009.

A copy of the Redacted Orders dated January 9, 2009 and March 12, 2009 and the Reasons are available at **www.osc.gov.on.ca**.

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1.4.6 Y

FOR IMMEDIATE RELEASE
September 4, 2009

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

AND

IN THE MATTER OF
Y

AND

IN THE MATTER OF
AN APPLICATION BY Y

TORONTO – Following a hearing on November 20, 2008, the Commission issued five orders under section 17 of the Act on December 18, 2008 and January 9, 2009, and issued Reasons for the Orders on August 31, 2009.

A copy of the Redacted orders dated December 18, 2008 and January 9, 2009 and the s. 17 redacted orders dated December 18, 2008, January 9, 2009(1) and January 9, 2009(2) and the Reasons dated August 31, 2009 are available a**t www.osc.gov.on.ca**.

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1.4.7 Howard Graham

FOR IMMEDIATE RELEASE
September 8, 2009

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

AND

IN THE MATTER OF
HOWARD GRAHAM

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

A copy of the Reasons and Decision and the Order dated September 4, 2009 are available at **www.osc.gov.on.ca**.

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1.4.8 Oversea Chinese Fund Limited Partnership et al.

FOR IMMEDIATE RELEASE
September 8, 2009

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

AND

IN THE MATTER OF
OVERSEA CHINESE FUND LIMITED PARTNERSHIP,
WEIZHEN TANG AND ASSOCIATES INC.,
WEIZHEN TANG CORP. AND WEIZHEN TANG

TORONTO – The Commission issued an Order today which provides that (1) the Temporary Order is extended to September 26, 2009; and (2) the hearing in this matter is adjourned to September 25, 2009 at 10:00 a.m. or as soon thereafter as the hearing can be held.

A copy of the Order dated September 8, 2009 is available at **www.osc.gov.on.ca**.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Mega Group Inc./Mega Groupe Inc

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from the registration requirement and the prospectus requirement – Existing MRRS Decision document exempts the Filer's issuance of Class A Shares and Shareholders' Loan Deposits to Applicants and Member Loans to Eligible Subscribers from the registration requirement and the prospectus requirement – Filer proposes to issue Class B Shares to Applicants and Mega Members – Purchasers of the Class B Shares are the same persons that can purchase other securities of the Filer under the Existing MRRS Decision – Class B Shares will be issued on the same terms and conditions as set out in the Existing MRRS Decision - Mega Members approved of the plan to issue the Class B shares – Potential purchasers of Class B Shares will have knowledge of the business of the Filer and will receive information about the Filer and the Class B Shares – Relief granted subject to specific conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1).

August 14, 2009

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

AND

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

AND

IN THE MATTER OF
MEGA GROUP INC./MEGA GROUPE INC
(THE "FILER")

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the "**Decision Maker**") has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that the registration requirement and the prospectus requirement contained in the Legislation shall not apply to the proposed issuance by the Filer of:

1. Class A Shares and Shareholders' Loan Deposits (each as defined below) to Applicants (as defined below);

2. Class B Shares (as defined below) to Applicants and Mega Members (as defined below); and

3. Member Loans (as defined below) to Eligible Subscribers (as defined below);

(the "**Requested Relief**").

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

(a) the Saskatchewan Financial Services 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 British Columbia, Alberta, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Yukon Territory, 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. As well, in addition to words and phrases defined elsewhere in this decision, for the purpose of this decision, the following terms shall have the following meanings:

"Applicant" means any person or company who operates as a retailer of furniture, household appliance and/or electronic products, and who applies for membership (subscribes for a Class A Share) in the Filer. **"Applicants"** means more than one Applicant;

"Articles" means the Articles of Incorporation of the Filer, as the same may be amended from time to time;

"Board" means the Board of Directors of the Filer from time to time;

"Bylaws" means the Bylaws of the Filer, as the same may be amended from time to time;

"CBCA" means the *Canada Business Corporations Act*, as amended or supplemented from time to time;

"Certificate" means the certificate issued under the Trust Deed to evidence a Member Loan made by an Eligible Subscriber to the Filer pursuant to the Member Loan Offering and Financing Program, and "Certificates" means more than one Certificate;

"Class A Shares" means the Class A voting preferred shares of the Filer having those rights, privileges, entitlements and restrictions set out in the Articles, which include the right to receive a Patronage Dividend, but no further right to receive income or to participate in the distribution of assets of the Filer on its liquidation, winding up or dissolution, save and except for the return of the $1.00 subscription price for such share;

"Class B Shares" means the Class B non-voting common equity shares of the Filer having those rights, privileges, entitlements and restrictions set out in the Articles, and which include the right to receive a dividend in the discretion of the Board and, subject to the prior rights of the holders of Class A Shares, to participate, ratably, in the distribution of the assets of the Filer on its liquidation, winding up or dissolution;

"Due to Members' Account" means, for accounting purposes, the undistributed surplus of income held by the Filer that has not been paid out to Mega Members as a Patronage Dividend for the Filer's financial year ending December 31, 2008, as determined and set by the Board. Anticipating the Patronage Dividend to be paid to Mega Members for the financial year ending December 31, 2008, it is expected that the remaining balance in the Due to Members' Account will be approximately $4.3 million dollars;

"Eligible Subscribers" for the purpose of subscribing for Member Loans, are persons who are:

(a) Mega Members;

(b) individual directors or senior officers of a Mega Member;

(c) individuals who directly or indirectly "control" (as that term is defined in the Legislation) a Mega Member;

(d) a spouse, spousal equivalent or child of a person mentioned in (a), (b) or (c) above; or

(e) a registered retirement savings plan of which an individual mentioned in (a), (b), (c) or (d) above is the annuitant;

"Existing MRRS Decision" means the MRRS Decision Document dated June 16, 2000, in favour of the Filer, granting an exemption from the registration requirement and the prospectus requirement of applicable securities legislation respecting the issuance by the Filer of Class A Shares and Shareholders' Loan Deposits to Applicants resident in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and Member Loans to Eligible Subscribers resident in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Newfoundland and Labrador;

"Financing Program" means the Member Loan Offering instituted by the Filer to raise funds from Eligible Subscribers, the proceeds of which provide general working capital for the Filer and to reduce the Filer's reliance on external financing to fund its business activities;

"**Member Agreement"** means the written agreement that prospective Applicants must enter into with the Filer, pursuant to which the Applicant agrees to observe and be governed by the Bylaws of the Filer;

"Member Loans" means the non-convertible unsecured debt instruments issued by the Filer to Eligible Subscribers pursuant to the provisions of the Trust Deed, the Member Loan Offering and the Financing Program;

"Member Loan Offering" means the offering by the Filer to Eligible Subscribers of Member Loans established and created pursuant to the Trust Deed as part of the Financing Program;

"Mega Members" are Applicants whose application has been approved by the Board and who have been issued a Class A Share. A "Mega Member" is any one of the Mega Members;

"Membership" means the state of holding a Class A Share;

"NBA" means the wholly owned subsidiary of the Filer, VIP Distributors Inc. operating under the business name National Buying Associates, a federal company existing under the CBCA, originally incorporated pursuant to the laws of Saskatchewan on or about March 15, 1976 and continued as a federal corporation under the CBCA pursuant to its Certificate and Articles of Continuance dated July 25, 1989;

"NBA Member" means a member of NBA. Unlike Mega Members, NBA Members have no equity interest in NBA or the Filer and do not participate in the revenues or profits of NBA;

"Patronage Dividend" means the dividend payable by the Filer to holders of Class A Shares as set out in the Articles of Amendment, which is based annually on a minimum of ninety (90%) percent of the Filer's net income after expenses and taxes, allocated and paid out annually to the holders of Class A shares in proportion to the dollar volume of purchases made through the Filer by the holder of such Class A shares.

"Retained Earnings Account" means, for accounting purposes, the account established by the Filer for the benefit of the holders of Class B Shares, and which contains the amount of after tax earnings retained by the Filer from its net income (being gross income less expenses) that remains undistributed to Class B Shareholders in any fiscal year, and to which each holder of Class B Shares has an interest in proportion to the number of Class B shares held by such Mega Member;

"Shareholders' Loan Deposit" means the cash amount determined and set by the Board, from time to time, which an Applicant must pay to the Filer, as a condition of Membership, as a security deposit to be held by the Filer as security for payment of any goods purchased from or through the centralized buying and invoicing facilities of the Filer by such Mega Member;

"Shares" means collectively the Class A Shares and Class B Shares;

"Territories" means, collectively, the Yukon Territories, Northwest Territories and Nunavut.

"Trust Deed" means the Trust Indenture for the securing of an issue of Member Loans dated for reference the 1st day of July, 2000, between the Filer and Concentra Trust (formerly Co-operative Trust Company of Canada), as the same may be supplemented or amended from time to time;

Representations

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

1. The Filer (formerly known as Volume Independent Purchasers' Stores Ltd.), a federal company existing under the CBCA, was incorporated pursuant to the laws of Saskatchewan on or about December 6, 1965 and continued pursuant to the CBCA by Certificate and Articles of Continuance dated June 17, 1987;

2. The head office of the Filer is in Saskatoon, Saskatchewan;

3. The Filer is not a reporting issuer in any jurisdiction, and it is not anticipated that it will become a reporting issuer in any jurisdiction in the foreseeable future;

4. The authorized capital of the Filer consists of the following:

   (a) An unlimited number of Class A Shares, of which 206 are currently issued; and

   (b) An unlimited number of Class B Shares, of which none are currently issued;

5. The Shares of the Filer are not listed or posted for trading on any stock exchange or over-the-counter market and there is no market for such Shares. The Articles provide that Shares may be transferred only with the consent of the Board.

6. The Filer is not in default of any of the requirements of applicable securities legislation of any jurisdiction to which it is subject.

7. The Filer operates a centralized buying and invoicing service for the benefit of the Mega Members and NBA Members who consist of independently owned retailers of furniture, household appliances and/or electronic products;

8. Both Mega Members and NBA Members place orders for furniture, household appliances and electronic products with suppliers approved by the Filer, and a copy of such order is provided to the Filer or NBA, as the case may be. Provided such Member is not in default of its obligations to the Filer or NBA, as applicable, and has not exceeded its credit limit, the Filer will provide confirmation of approval of such order to the Member and the supplier. Upon the Filer approving an order the supplier ships the product covered by the order and invoices, on a bulk basis, the Filer. The Filer in turn then invoices the Member, at cost. The combination of such orders provides the Filer with greater buying power from manufacturers, suppliers and wholesalers. Both Mega Members and NBA Members participate in volume rebates, discounts and other buying incentives received by the Filer as a result of its greater buying power. As well, both Mega Members and NBA Members have access to the Filer's ancillary services of advertising, promotional, training and administrative expertise as well as access to several networks focusing on matters specific to particular retail areas of interest to certain Mega Members and/or NBA Members. The Filer has contracts with each of its approved suppliers, which provide, among other things, for the volume rebates including thresholds and the payment to the Filer of central billing allowances. The accrual of the central billing allowance funds the Filer's business activities and is the main source of the Filer's revenue. Surplus revenue or net income, after expenses and establishment of suitable reserves, has historically been paid out to Mega Members as an annual Patronage Dividend. NBA Members do not have an equity interest in Mega Group or NBA, and do not participate in any Patronage Dividends or receive any other payments from Mega Group or NBA;

9. The Filer solicits new members by direct contact of independent retailers. In the event the retailer is interested, the retailer contacts the Filer and applies for membership as either a Mega Member or NBA Member, depending on the interests of the retailer and the level of participation desired;

10. Although the Filer is a federal CBCA company, it operates based on co-operative principals;

11. Membership in the Filer is, subject to approval of the Board, open to any Applicant and, upon acceptance of an application and compliance with the Filer's Bylaws, an Applicant is issued one (1) Class A Share at a subscription price of $1, whereupon the Applicant becomes a shareholder and Mega Member;

12. Pursuant to the Articles, each Class A Share entitles the holder thereof to one (1) vote at any meetings of the Mega Members and to receive an annual Patronage Dividend based upon the dollar volume of such Mega Member's purchases through the centralized buying and invoicing facilities of the Filer;

13. No Mega Member is entitled to hold more than one Class A Share. On liquidation, winding up or dissolution of the Filer, each holder of a Class A Share is entitled to receive the return of their $1 cost of purchase and any declared but unpaid Patronage Dividends in respect of such share, but not otherwise entitled to receive any further distribution from the Filer;

14. As a condition of Membership, each Applicant is required to deposit or place with the Filer a Shareholders' Loan Deposit. Each Shareholders' Loan Deposit is treated by the Filer as a loan from, and due by the Filer to, such Mega Member;

15. Pursuant to the Bylaws, the cash received by the Filer from Shareholders' Loan Deposits may be used by the Filer for its general working capital, but the primary purpose of the Shareholders' Loan Deposits is to secure and guarantee the purchases of merchandise by the Mega Members through the centralized buying and invoicing facilities of the Filer. Interest on each Mega Member's Shareholders' Loan Deposit is calculated and paid annually to such Mega Member at an interest rate determined and set by the Board from time to time. The principal portion of a Mega Member's Shareholders' Loan Deposit is generally only repaid to a Mega Member upon resignation, withdrawal or other termination of such Mega Member's membership in the Filer. The Shareholders' Loan Deposit is akin to the relationship that might exist between a furniture retailer and a manufacturer/wholesaler supplier of merchandise who, in the ordinary course of business, requires the retailer to deposit cash or other security to secure ongoing deliveries of inventory.

16. Pursuant to the Existing MRRS Decision, prior to the Filer issuing a Class A Share to, or taking a Shareholders' Loan Deposit from, an Applicant, the Filer delivers to an Applicant a copy of:

    (a) the Articles and Bylaws;

    (b) the Filer's most recent annual audited financial statements;

    (c) the Existing MRRS Decision; and

    (d) a statement to the effect that, as a consequence of the Existing MRRS Decision, certain protections, rights and remedies provided by securities legislation, including statutory rights of rescission or damages, will not be available with respect to the acquisition of the Class A Shares and Shareholders' Loan Deposit and that certain restrictions are imposed on the disposition of the Class A Shares and Shareholders' Loan Deposit;

17. The Filer also operates a Financing Program pursuant to which it offers Member Loans to Eligible Subscribers on the following terms and conditions:

    (a) Participation in the Member Loan Offering is completely voluntary, but is only open to Eligible Subscribers. Periodically, the Filer circulates notice to the Mega Members of the existence of this program. The circular indicates the terms and rates of interest on which Member Loans are being offered by the Filer to Eligible Subscribers;

    (b) Member Loans are created and authorized for issuance pursuant to the Trust Deed;

    (c) The Trust Deed authorizes the Filer to create and issue Member Loans to an aggregate principal amount of $20 million. Eligible Subscribers, including Mega Members, are entitled, but not obligated, to subscribe for Member Loans in denominations of $5,000 and multiples thereof. Member Loans are evidenced by Certificates. The terms and conditions of the Member Loans, including maturity dates (which range from one to ten years), installment payments prior to maturity (if any) and rates of interest payable on such Member Loans, vary from Certificate to Certificate as determined and set by the Board at the time such Member Loans are offered to Mega Members.

    (d) Member Loans are not secured and are not rated by any rating agency;

    (e) Member Loans are offered only to, and may be subscribed for by, Eligible Investors;

    (f) the Member Loans are not tradable except:

        (i) to another Eligible Subscriber; or

        (ii) in circumstances where the further trade would be exempt from the prospectus and registration requirements of applicable securities laws;

    (g) prior to accepting a subscription for a Member Loan from an Eligible Subscriber, and pursuant to the Existing MRRS Decision, the Filer delivers to the Eligible Subscriber a copy of:

        (i) the Articles and Bylaws;

(ii) the Filer's most recent annual audited financial statements;

(iii) the Existing MRRS Decision;

(iv) a written summary of the material terms of the Trust Deed and the Financing Program; and

(v) a statement to the effect that as a consequence of the Existing MRRS Decision, certain protections, rights and remedies provided by securities legislation, including statutory rights of rescission or damages, will not be available with respect to the acquisition of the Member Loans and that certain restrictions are imposed on the disposition of the Member Loans;

(h) the proceeds of the Member Loan Offering are used by the Filer to provide general working capital for the Issuer and to reduce the Issuer's reliance on external financing to fund its business activities;

18. Under the Existing MRRS Decision, the trade of Class A Shares and Shareholder Loan Deposits to Applicants and Member Loans to Eligible Subscribers is currently exempt from the registration requirements and the prospectus requirements of applicable securities legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island and Newfoundland and Labrador. In Nova Scotia, the Existing MRRS Decision exempts the trade of Class A Shares and Shareholders' Loan Deposits to Applicants resident in Nova Scotia from these requirements, but such exemptive relief does not extend to the trade of Member Loans to Eligible Subscribers resident in Nova Scotia. As of the date of this Application, no Member Loans are held by or have been issued to a resident of Nova Scotia. The Filer wishes to extend the exemption in respect of such trades to include Applicants and Eligible Subscribers resident in the jurisdictions of the Yukon Territories, Northwest Territories and Nunavut, and to extend the exemption respecting the trade of Member Loans to include residents of Nova Scotia;

19. At its Annual General and Special Meeting of Mega Members held on May 9, 2008, the Mega Members resolved, among other things, to:

(a) Approve and adopt an amendment to the Articles which:

(i) Creates the Class B Shares, being a new class of common non-voting equity share in the capital stock of the Filer;

(ii) Alters the rights and privileges of the Class A Shares, such that, from and after the filing of the amendment to the Articles, the Board is permitted to withhold up to 10% of the after tax earnings retained by the Filer from its net income (being gross income of the Filer less expenses) in any fiscal year, and allocate such amount to a Retained Earnings Account;

(iii) Makes it a condition of Membership that an Applicant must subscribe for Class B Shares, in such amount and for such subscription price as the Board may determine from time to time;

(b) Approve and adopt certain amendments to the Bylaws which:

(i) Modify the subscription process to provide for the requirement that all new Applicants must subscribe for a Class A Share as well as that number of Class B Shares, in such amount and on such terms as the Board may determine from time to time, in addition to depositing with the Filer the Shareholders' Loan Deposit in order for the application of such Applicant to be considered by the Board;

(ii) Modify certain defined terms under the Bylaws to contemplate the withholding of up to 10% of the after tax earnings retained by the Filer from its net income in any fiscal year, and allocate such amount to a Retained Earnings Account;

(c) Approve the proposed plan of the Board to issue Class B Shares to each Mega Member at an initial subscription price of $1.00 per Class B Share. The number of Class B Shares to be issued to a particular Mega Member will be determined and set by the Board and based upon each Mega Member's proportionate share of the average dollar volume of purchases made by all Mega Members through the Filer during the three most recent financial years of the Filer beginning with 2006. The aggregate subscription price for the initial issuance of Class B Shares shall be paid for, at least in part, by the Filer allocating each Mega Member's proportionate interest in the Due to Members' Account towards payment for the Class B Shares issued to such Mega Member. For a Mega Member which joined prior to 2006, the amount held to its credit in the Due to Members' Account will be approximately the amount required to fund the purchase of its Class B Shares. Any deficiency between the amount applied from the Due to Members' Account and the aggregate subscription price for the Class B Shares initially issued to a Mega Member will be a debt due from such

Mega Member to the Filer, payable without interest in three annual consecutive installments. The initial issuance price of the Class B Shares was arbitrarily determined and set by the Board in order to give a baseline for the face value of such Class B shares; and

(d) Approve, on an ongoing basis, the proposed plan of the Board to allocate up to 10% of the surplus equity of the Filer in each financial year beginning in 2009 to the Retained Earnings Account for the benefit of the holders of Class B Shares;

20. Periodically it is anticipated that the Filer would offer Mega Members the ability to subscribe for additional Class B Shares in such amounts and at such subscription price as the Board may determine and set from time to time, as a means by which the Filer might be able to raise additional equity should circumstances or potential opportunities require the infusion of additional capital. Participation by Mega Members in such subsequent offerings of Class B Shares would be completely voluntary;

21. Pursuant to the Bylaws, a Mega Member can voluntarily call on the Filer to redeem their Class A Shares and Class B Shares, and the Filer may, without the consent of the holder thereof, redeem a Mega Member's Class A Share and Class B Shares in the event that, as more particularly described in the Bylaws, such Mega Member purchases merchandise from or has any direct or indirect ownership interest in, without the prior consent of the Filer, another buying group or merchandising service that is a competitor of the Filer;

22. Pursuant to the Articles, on redemption of a Mega Member's Shares such Mega Member is paid their $1.00 subscription price for the Class A Share held by the Mega Member and any declared but unpaid Patronage Dividend on such Class A Share, together with an amount for each Class B Share held by such Mega Member consisting of the return of the subscription price for the Class B Shares held by such Mega Member, any declared but unpaid dividends on such Class B Shares and a proportionate share of the Retained Earnings Account attributable to the Class B Shares held by such Mega Member, within the timelines and subject to the conditions all as more particularly described in the Articles;

23. Any Mega Member who does not wish, or objects to, the issuance of Class B Shares to them or the effective conversion of such Mega Member's proportionate interest in the Due to Members' Account to pay for such Class B Shares may call on the Filer to terminate its Membership, whereupon such Mega Member shall be paid its Class A Redemption Amount and Class B Redemption Amount (as such terms are defined in the Articles). Following receipt of a notice of withdrawal, such Mega Member will have no further right to participate in the Filer's buying program, but may if the former member so wished reapply as an NBA Member; and

24. Applicants, Mega Members and Eligible Subscribers are engaged, directly or indirectly, in the furniture, household appliance and/or electronic products retailing business and, therefore, possess substantial knowledge of that business and of the Filer's operations and affairs, which operations are not carried on primarily with a view of making a profit but rather as a means of combining the purchasing power of all Mega Members to enable them to obtain, collectively, better prices and terms for the purchase of inventory used in their respective businesses; and

25. In accordance with the requirements of the CBCA, Mega Members receive annual notices of shareholder meetings and management proxy circulars of the Filer, in the prescribed form, on an ongoing basis together with annual audited comparative financial statements prepared in accordance with the requirements of the CBCA. The audited annual comparative financial statements are prepared and sent to Mega Members within 140 days of the end of each financial year of the Filer.

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 Requested Relief is granted provided that:

1. in connection with the proposed trade of Class A Shares, Class B Shares and Shareholders' Loan Deposits:

(a) the Class A Shares are issued at a nominal subscription price of $1 and only one (1) Class A Share is issued to each Applicant;

(b) prior to issuing a Class A Share or Class B Shares, or taking a Shareholders' Loan Deposit from, any specific Applicant or Mega Member the Filer shall first deliver to the Applicant or Mega Member a copy of:

(i) the current Articles and Bylaws;

(ii) the Filer's most recent annual audited financial statements;

(iii) this decision; and

(iv) a statement to the effect that, as a consequence of this decision, certain protections, rights and remedies provided by securities legislation, including statutory rights of rescission or damages, will not be available with respect to the acquisition of the Shares and Shareholders' Loan Deposit and that certain restrictions are imposed on the disposition of the Shares and Shareholders' Loan Deposit;

(c) the trade of Class A Shares, Class B Shares (including the initial issuance thereof to existing Mega Members) and Shareholders' Loan Deposits is carried out substantially in the manner described in this decision; and

(d) a subsequent trade in Shares and/or Shareholders' Loan Deposits by a person or company who acquires the Shares and/or Shareholders' Loan Deposits under this decision in a jurisdiction in Canada shall be deemed to be a distribution or primary distribution to the public under the securities legislation of the jurisdiction, unless such trade is made to the Filer or, subject to the restrictions on ownership of Class A Shares under the Articles, another Member; and

2. in connection with the proposed trade of Member Loans:

(a) the Member Loans are offered for sale on substantially the terms and conditions described in this decision;

(b) prior to accepting any specific subscription from an Eligible Subscriber for a Member Loan the Filer shall first deliver to such Eligible Subscriber a copy of:

(i) the current Articles and Bylaws;

(ii) the Filer's most recent annual audited financial statements;

(iii) this decision;

(iv) a written summary of the current material terms of the Trust Deed and Financing Program; and

(v) a statement to the effect that as a consequence of this decision, certain protections, rights and remedies provided by the securities legislation, including statutory rights of rescission or damages, will not be available with respect to the acquisition of the Member Loans and that certain restrictions are imposed on the disposition of the Member Loans;

(c) a subsequent trade in a Member Loan by a person or company who acquires the Member Loan under this decision in a jurisdiction in Canada shall be deemed to be a distribution or primary distribution to the public under the securities legislation of the jurisdiction unless the transferee of such Member Loan is another Eligible Subscriber who is provided with substantially the same information that the Filer would be required to provide pursuant to this decision if the transferee was acquiring the Member Loan directly from the Filer.

This decision will come into effect on the date hereof and will supersede and replace the Existing MRRS Decision in its entirety, effective that date.

"Barbara Shourounis"
Director, Securities Division
Saskatchewan Financial Services Commission

2.1.2 West Street Capital Corporation

Headnote

MI 11-102, NP 11-203 and MI 61-101 – business combination – relief from requirement to obtain minority approval – offer to acquire all issued and outstanding preferred shares of Filer – if offeror does not acquire sufficient number of preferred shares to effect a compulsory acquisition, Filer may effect an amalgamation transaction pursuant to OBCA which would require minority approval under MI 61-101 by holders of the Filer's common shares – Under proposed amalgamation, holders of common shares would receive functionally equivalent interest in new entity as they held in the Filer – Proposed amalgamation will provide equal treatment to all holders of common shares and will not have any adverse effect on the holders of common shares.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System.
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions, s. 3.6(5).
Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, ss. 4.5, 9.1

July 27, 2009

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

AND

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

AND

IN THE MATTER OF
WEST STREET CAPITAL CORPORATION
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction (the **Principal Regulator**) has received an application from the Filer, in connection with the proposed Amalgamation (as defined below) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the requirement to obtain minority approval for a business combination from the holders of issued and outstanding common shares of the Filer (the **Common Shares**), as set out in section 4.5 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**), be waived (the **Exemption Sought**).

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

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

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

Interpretation

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

Representations

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

1. Pursuant to the requirements of National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* and MI 11-102, the Ontario Securities Commission is the principal regulator to review and grant the Exemption Sought as the head office of the Filer is located in Ontario.

2. The Filer was incorporated under the *Business Corporations Act* (Ontario) (the **OBCA**) on April 4, 1984 under the name Enfield Corporation Limited and on May 13, 2004, changed its name to West Street Capital Corporation. The address of the Filer's corporate and registered head office is Brookfield Place, Suite 300, 181 Bay Street, Toronto, Ontario, M5J 2T3. The Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec and Newfoundland and Labrador and is not in default of its reporting issuer obligations under the securities legislation of such provinces.

3. The issued and outstanding capital of the Filer consists of 7% Cumulative Redeemable Convertible Class E Preferred Shares, Series 1 (**Preferred Shares**) and Common Shares. Both classes of shares are listed on the TSX Venture Exchange.

4. Brookfield Asset Management Inc. (**BAM**) owns 1,539,505 Preferred Shares, representing approximately 92.9% of the currently issued and outstanding Preferred Shares, and 5,429,840 Common Shares, representing approximately 49.7% of the currently issued and outstanding Common Shares. The remaining Preferred Shares and Common Shares are owned by the public.

5. The Filer has not paid dividends on the Preferred Shares since November 1991. The Preferred Shares are redeemable at any time for a

redemption price of $25.00 per Preferred Share, plus accrued but unpaid dividends. The Preferred Shares cannot be redeemed in part, without the approval of the holders, if dividends are accrued and unpaid.

6. The Preferred Shares do not carry a residual right to participate in the earnings of the Filer and, on liquidation or winding up of the Filer, in its assets. The Preferred Shares are convertible into Common Shares only if the Filer calls the Preferred Shares for redemption. The Filer has no intention of redeeming the Preferred Shares.

7. Because dividends on the Preferred Shares are in arrears, the holders of the Preferred Shares are entitled to elect two directors to the board of the Filer, which currently consists of a total of four directors. The Preferred Shares are otherwise non-voting.

8. BAM has made an offer (the **Offer**) to purchase all of the issued and outstanding Preferred Shares not already owned by BAM on the basis of $35.00 per Preferred Share. The Offer and accompanying take-over bid circular were sent by BAM to holders of Preferred Shares on June 19, 2009. The Offer is currently scheduled to expire on July 27, 2009, unless extended or withdrawn by BAM.

9. The Offer is an "insider bid" under MI 61-101. In accordance with the applicable requirements in Part 2 of MI 61-101, a special committee of independent directors of the Filer (the **Special Committee**) engaged KPMG Corporate Finance Inc. (**KPMG**) to prepare a formal valuation of the Preferred Shares in accordance with the requirements of MI 61-101 and to provide the Special Committee its opinion as to the fairness of the consideration under the Offer, from a financial point of view, to the holders of Preferred Shares. KPMG determined as of May 31, 2009 that the fair market value of the Preferred Shares is in the range of $27.19 to $29.97 per Preferred Share and that the consideration under the Offer is fair, from a financial point of view, to holders of Preferred Shares.

10. The Special Committee concluded that the Offer is fair, from a financial point of view, to the holders of Preferred Shares and recommended that the Board of Directors of the Filer recommend that holders tender their Preferred Shares to the Offer.

11. If BAM acquires less than 90% of the outstanding Preferred Shares not already held by BAM under the Offer, or is otherwise unable to acquire the Preferred Shares not deposited under the Offer pursuant to section 188 of the OBCA, BAM currently intends, depending on the number of Preferred Shares taken up and paid for under the Offer, to acquire the remaining Preferred Shares by means of either: (a) an amalgamation of the Filer with a newly incorporated BAM subsidiary that will have no assets (other than the cash necessary to redeem the minority Preferred Shares), no liabilities and no business, on such terms and conditions as BAM, at the time, believes to be appropriate (the **Amalgamation**) or (b) an arrangement pursuant to section 182 of the OBCA (the **Arrangement** and together with the Amalgamation, the **Subsequent Acquisition Transaction**).

12. Prior to the currently scheduled expiry of the Offer, BAM intends to vary the Offer to increase the price per Preferred Share and to disclose its intention to carry out the Subsequent Acquisition Transaction, the tax consequences of the Subsequent Acquisition Transaction to holders of Preferred Shares and BAM's intention to vote the Preferred Shares it acquires pursuant to the Offer in favour of the Subsequent Acquisition Transaction.

13. The consideration to be paid to holders whose Preferred Shares are acquired pursuant to the Amalgamation will be equal in amount to and in the same form (indirectly through the redemption of redeemable preferred shares) as that payable under the Offer. Holders of Common Shares would receive a common share of the corporation resulting from the Amalgamation (**I'"**) for each Common Share but would otherwise be unaffected by the Amalgamation. BAM would not increase its ownership of Common Shares by way of the Amalgamation.

14. If the Filer decides to effect the Amalgamation, the Filer will hold a special meeting of holders of Preferred Shares and holders of Common Shares to consider the Amalgamation. Under the OBCA, the Amalgamation must be approved at the special meeting by at least two-thirds of the votes cast by holders of Preferred Shares present in person or by proxy and at least two-thirds of the votes cast by holders of Common Shares present in person or by proxy. Holders of Preferred Shares and holders of Common Shares will be entitled to exercise rights of dissent in respect of the Amalgamation.

15. The Amalgamation would be a "business combination", as defined in MI 61-101, requiring the Filer to obtain minority approval; however, the only class of "affected securities" under MI 61-101 is the Common Shares, so the Amalgamation would be subject to obtaining approval by the minority holders of the Common Shares. The Filer would not be required to obtain a formal valuation for the Amalgamation because no securities of the Filer are listed or quoted on the stock exchanges listed in section 4.4(1)(a) of MI 61-101.

16. The Arrangement would not be a "business combination", as defined in MI 61-101, because it

would not result in termination of the interest of a holder of an equity security of West Street.

17. If the Amalgamation is carried out, holders of Common Shares will receive fair value for their shares since each common share of Amalco will be functionally equivalent to each Common Share. Therefore, the Amalgamation would not result in any economic change to the position of or alteration of the rights of the holders of Common Shares.

18. The Filer will not carry out the Amalgamation unless it is approved by a majority of the votes cast in respect of Preferred Shares not beneficially owned by BAM, other than Preferred Shares acquired by BAM pursuant to the Offer.

19. Since the Amalgamation will provide equal treatment to all holders of Common Shares and will not have any adverse effect on the holders of Common Shares, the holders of Common Shares will not be prejudiced as a result of the Amalgamation nor if the Exemption Sought is granted.

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:

(i) the Filer obtains minority approval for the Amalgamation from the holders of Preferred Shares in accordance with Part 8 of MI 61-101; and

(ii) the Amalgamation is effected as described in paragraphs 11 to 14 above.

"Michael Brown"
Assistant Manager
Ontario Securities Commission

2.1.3 Toronto-Dominion Bank and TD Capital Trust IV

Headnote

MI 11-102 and NP 11-203 – capital trust established by bank to issue trust subordinated notes as cost-effective means of raising capital for Canadian bank regulatory purposes exempted from eligibility requirements to file a short-form base shelf prospectus – trust previously granted relief from the eligibility requirements and certain disclosure requirements under NI 44-101 – relief granted subject to certain conditions – relief also granted for temporary confidentiality of decision.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions, s. 2.1.

June 12, 2009

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

AND

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

AND

IN THE MATTER OF
THE TORONTO-DOMINION BANK (the "Bank") AND
TD CAPITAL TRUST IV (the "Trust" and, together with the Bank, the "Filers")

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the "**Application**") from the Filers for a decision (the "**Requested Relief**") under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") that:

(a) the Trust be exempted from the qualification requirements (the "**Qualification Requirements**") of Part 2 of National Instrument 44-102 *Shelf Distributions* ("**NI 44-102**"), such that the Trust is qualified to file a prospectus in the form of a short form base shelf prospectus in connection with offerings by the Trust from time to time of Notes (as defined herein) and other securities issued in connection with Notes; and

(b) the Application and this decision document be held in confidence by the principal regulator, subject to certain conditions.

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

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

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

Interpretation

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

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

"Prospectus" means the short form prospectus of the Bank and the Trust dated January 15, 2009 in respect of the Offering (as defined below).

Representations

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

The Bank

1. The Bank is a Schedule 1 chartered bank subject to the provisions of the Bank Act. The head office of the Bank is located at P.O. Box 1, Toronto-Dominion Centre, Toronto, Ontario M5K 1A2.

2. The authorized share capital of the Bank consists of an unlimited number of: (i) common shares ("**Bank Common Shares**"); and (ii) Class A First Preferred Shares ("**Bank Preferred Shares**") issuable in series.

3. The Bank Common Shares are listed and posted for trading on the Toronto Stock Exchange and the New York Stock Exchange.

4. The Bank is a reporting issuer in each province and territory of Canada and is not, to the best of its knowledge, in default of any requirement of the securities legislation in such jurisdictions.

The Trust

5. The Trust is a trust established under the laws of the Province of Ontario pursuant to an amended and restated declaration of trust dated as of January 26, 2009, as may be amended, restated or supplemented from time to time. The Trust's head and registered office is located at c/o The Toronto-Dominion Bank, Toronto Dominion Bank Tower, Toronto-Dominion Centre, Toronto, Ontario, M5K 1A2.

6. The Trust was established by the Bank in order to comply with the regulatory requirements of the Superintendent of Financial Institutions (Canada) (the "**Superintendent**") relating to the issuance of innovative capital instruments (as contained in the Superintendent's Principles Governing Inclusion of Innovative Instruments in Tier 1 Capital).

7. The Trust completed an initial public offering (the "**Offering**") of two series of subordinated notes of the Trust (the "**Notes**") in each of the provinces and territories of Canada on January 26, 2009 and may, from time to time, issue further series of Notes. The first series of Notes were designated as 9.523% TD Capital Trust IV Notes – Series 1 Due June 30, 2108 (the "**TD CaTS IV – Series 1**") and the second series of Notes were designated as 10.00% TD Capital Trust IV Notes – Series 2 Due June 30, 2108 (the "**TD CaTS IV – Series 2**" and collectively with the TD CaTS IV – Series 1, the "**TD CaTS IV Notes**"). The capital of the Trust consists of the TD CaTS IV Notes issued pursuant to the Offering and voting trust units, issuable in series (the "**Voting Trust Units**" and, collectively with the Notes, the "**Trust Securities**"). All of the Voting Trust Units are held by the Bank.

8. As a result of the Offering, the Trust became a reporting issuer in each of the provinces and territories of Canada. The Trust is not, to the best of its knowledge, in default of any requirement of the securities legislation in such jurisdictions.

9. The Trust is a single purpose vehicle established for the purpose of effecting offerings of Trust Securities in order to provide the Bank with a cost effective means of raising capital for Canadian bank regulatory purposes by means of: (i) offering Notes to the public from time to time; and (ii) acquiring and holding assets, which will consist primarily of one or more senior unsecured deposit notes of the Bank and certain other eligible assets (collectively, the "**Trust Assets**"). The Trust Assets will generate income for distribution to holders of Trust Securities. The Trust does not and will not carry on any operating activity other than in connection with offerings of Trust Securities and in connection with the Trust Assets.

10. The Trust may, from time to time issue further series of Notes which qualify as Tier 1 capital of the Bank for regulatory purposes, the proceeds of which would be used to acquire additional Trust Assets.

11. The specific terms of any future series of Notes will be set forth in a prospectus supplement to a short form base shelf prospectus which may include, where applicable, the aggregate principal amount, the currency or the currency unit for which the Notes may be purchased, maturity, interest provisions, authorized denominations, offering price, any terms for redemption at the

option of the Trust or the holder, any exchange or conversion terms and any other specific terms.

12. The Notes will be direct unsecured obligations of the Trust ranking at least equally with other subordinated indebtedness of the Trust from time to time issued and outstanding. Holders of Notes may be required, in certain circumstances, to invest interest paid on the Notes in a new series of Bank Preferred Shares (a "**Deferral Event Subscription**"). In addition, the Notes may be automatically exchanged, without the consent of the holder, for newly-issued Bank Preferred Shares upon the occurrence of certain stated events relating to the solvency of the Bank or actions taken by the Superintendent in respect of the Bank (an "**Automatic Exchange**").

13. Because of the terms of the Notes, and the various covenants of the Bank made in relation to the Trust and the Notes, information about the affairs and financial performance of the Bank, as opposed to that of the Trust, is meaningful to holders of Notes.

14. It is expected that future series of Notes will receive an approved rating from an approved rating organization, as defined in NI 44-101.

15. Pursuant to a decision dated December 29, 2008, the Commission, as principal regulator, granted relief to the Bank and the Trust from the qualification requirements of Part 2 of National Instrument 44-101 – *Short Form Prospectus Distributions* ("**NI 44-101**") and the disclosure requirements (the "**Disclosure Requirements**") in Item 6 (Earnings Coverage Ratios) and Item 11 (Documents Incorporated by Reference), with the exception of Item 11.1(1)(5), of Form 44-101F1 of NI 44-101 ("**Form 44-101F1**") in respect of the Trust, as applicable, in connection with offerings by the Trust from time to time of Notes, subject to the satisfaction of certain conditions.

16. At the time of the filing of any short form base shelf prospectus, or any supplement thereto, in connection with proposed offerings of Notes from time to time:

    (a) the short form base shelf prospectus or supplement, as applicable, will be prepared in accordance with the requirements of NI 44-101 and NI 44-102, as applicable, other than the Disclosure Requirements, except as permitted by the Legislation;

    (b) the Trust will comply with all of the filing requirements and procedures set out in NI 44-101 and NI 44-102 other than the Disclosure Requirements and the Qualification Requirements, except as permitted by the Legislation;

    (c) the prospectus will incorporate by reference the documents that would be required to be incorporated by reference under Item 11 of Form 44-101F1 if the Bank were the issuer of such securities;

    (d) the prospectus disclosure required by Item 11 (other than Item 11.1(1)(5)) of Form 44-101F1 in respect of the Trust) will be addressed by incorporating by reference the Bank's public disclosure documents referred to in paragraph 16(c) above; and

    (e) the Bank will satisfy the criteria in section 2.2 of NI 44-101 if the word "issuer" is replaced with "Bank".

Decision

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

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

1. the Trust and the Bank, as applicable, comply with paragraph 16 above;

2. a receipt issued for a short form base shelf prospectus of the Trust will be effective for the period set out in section 2.2(3) of NI 44-102 provided that, for the purposes of subsections 2.2(3)(b)(i), (ii), (iii) and (iv) thereof, the word "issuer" is replaced with "Bank";

3. the Bank remains the direct or indirect beneficial owner of all of the outstanding Voting Trust Units;

4. the Notes will not be exchangeable for securities other than Bank Preferred Shares;

5. the Bank, as holder of the Voting Trust Units, will not propose changes to the terms and conditions of any outstanding Notes offered and sold pursuant to a short form base shelf prospectus of the Trust filed under this decision that would result in such Notes being exchangeable for securities other than Bank Preferred Shares;

6. the Trust has minimal assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the Trust Securities or the administration of the Trust Assets;

7. the Trust issues a news release and files a material change report in accordance with Part 7 of NI 51-102, as amended, supplemented or replaced from time to time, in respect of any material change in the affairs of the Trust that is

not also a material change in the affairs of the Bank;

8. the Trust is an electronic filer under NI 13-101;

9. the Trust is a reporting issuer in at least one jurisdiction of Canada;

10. the Trust files with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction: (a) under all applicable securities legislation; (b) pursuant to an order issued by the securities regulatory authority; or (c) pursuant to an undertaking to the securities regulatory authority;

11. the Notes to be distributed (a) have received an approved rating on a provisional basis; (b) are not the subject of an announcement by an approved rating organization, of which the issuer is or ought reasonably to be aware, that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and (c) have not received a provisional or final rating lower than an approved rating from any approved rating organization; and

12. the only securities of the Trust distributed pursuant to a short form base shelf prospectus are Notes or other securities issued in connection therewith to enable the Notes to qualify as Tier 1 capital of the Bank under the Canadian bank regulatory guidelines issued by the Superintendent or other governmental authority in Canada concerning the maintenance of adequate capital reserves by Canadian chartered banks from time to time, including the Deferral Event Subscription or the Automatic Exchange.

The further decision of the principal regulator is that the application of the Filers and this decision shall be held in confidence by the principal regulator until the earlier of (i) the date that a preliminary short form base shelf prospectus is filed by the Bank and the Trust, and (ii) August 31, 2009.

"Jo-Anne Matear"
Assistant Manager, Corporate Finance

2.1.4 Manulife Financial Capital Trust II et al.

Headnote

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

Applicable Legislative Provisions

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

August 21, 2009

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

AND

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

AND

IN THE MATTER OF
MANULIFE FINANCIAL CAPITAL TRUST II
(the "Trust"), THE MANUFACTURERS LIFE
INSURANCE COMPANY ("MLI") AND
MANULIFE FINANCIAL CORPORATION
("MFC" and, together with the Trust and MLI,
the "Filers")

DECISION

Background

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

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

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

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

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

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

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

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

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

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

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

"Prospectus" means the final short form prospectus of the Trust and MLI dated July 6, 2009 in respect of the Offering (as defined below).

Representations

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

MFC

1. MFC was incorporated under the *Insurance Companies Act* (Canada) (the "**ICA**") on April 26, 1999. On September 23, 1999, in connection with the demutualization of MLI, MFC became the sole shareholder of MLI. MFC's head office is located at 200 Bloor Street East, Toronto, Ontario, M4W 1E5.

2. The authorized share capital of MFC consists of: (i) an unlimited number of common shares; (ii) an unlimited number of Class A Shares, issuable in series; (iii) an unlimited number of Class 1 Shares, issuable in series; and (iv) an unlimited number of Class B Shares, issuable in series.

3. MFC is a publicly traded company on the Toronto Stock Exchange, the New York Stock Exchange, the Stock Exchange of Hong Kong Limited and the Philippine Stock Exchange.

4. MFC is a reporting issuer in each province and territory of Canada (each, a "**Reporting Jurisdiction**" and collectively, the "**Reporting Jurisdictions**") and is not, to its knowledge, in default of its reporting issuer obligations under the securities legislation of any of the Reporting Jurisdictions.

MLI

5. MLI is an insurance company under the ICA and is regulated by the Superintendent of Financial Institutions (Canada) (the "**Superintendent**"). The head office of MLI is located at 200 Bloor Street East, Toronto, Ontario, M4W 1E5.

6. The authorized share capital of MLI consists of: (i) an unlimited number of common shares; (ii) an unlimited number of Class A Shares, issuable in series; (iii) an unlimited number of Class 1 Shares, issuable in series; and (iv) an unlimited number of Class B Shares, issuable in series. MFC holds all of the issued and outstanding shares of MLI.

7. MLI is a reporting issuer in the Reporting Jurisdictions and is not, to its knowledge, in default of its reporting issuer obligations under the securities legislation of any of the Reporting Jurisdictions.

8. MFC has guaranteed certain obligations of MLI in order to rationalize the securities reporting obligations of MFC and MLI (the "**MFC Guarantees**"). The MFC Guarantees included: (i) a subordinated guarantee of MLI's Class A Shares, Class 1 Shares and Class B Shares (the "**MFC Preferred Share Guarantee**"); (ii) a full and unconditional subordinated guarantee of MLI's $550 million of outstanding 6.24% subordinated debentures due February 16, 2016; and (iii) a full and unconditional guarantee of MLI's obligations under the annuities which provided the cash flows to service the $200 million of 5.390% annuity-backed notes due March 12, 2007 and the $200 million of 4.551% annuity-backed notes due November 12, 2008 issued by Maritime Life Canadian Funding. The annuity-backed notes were repaid on maturity.

9. As a result of the MFC Guarantees, MLI received an exemption dated January 22, 2007 (the "**2007 MLI Order**") from the securities regulatory authority in each province and territory other than Yukon, Northwest Territories, Nunavut and Prince Edward Island from the requirements to file certain continuous disclosure materials. For so long as the terms and conditions of the 2007 MLI Order are satisfied, MLI is not required to file the following documents required by NI 51-102: (i) audited annual or unaudited interim financial statements; (ii) annual or interim MD&A; (iii) an annual information form; (iv) press releases and material change reports in the case of material changes that are also material changes in the affairs of MFC; and (v) other material contracts. MLI prepares and files annual financial statements prepared in accordance with Canadian generally accepted accounting principles and certain comparative financial information of MLI is filed by MFC on a quarterly basis. MLI has filed a notice on SEDAR indicating that it is relying on the continuous disclosure filings of MFC and setting out where those documents can be found for viewing in electronic format. MFC makes available to holders of MLI securities on an ongoing basis MFC's audited annual financial statements and unaudited interim financial statements (including MD&A thereon) and other MFC continuous disclosure materials.

The Trust

10. The Trust is a trust established under the laws of Ontario by Computershare Trust Company of Canada, as trustee (the "**Trustee**") pursuant to a declaration of trust dated as of June 12, 2009, as amended and restated on July 10, 2009 and as it may be further amended, restated and supplemented from time to time (the "**Declaration of Trust**").

11. The Trust's head office is located at 200 Bloor Street East, Toronto, Ontario, M4W 1E5. The Trust has a financial year end of December 31.

12. The Trust completed an initial public offering (the "**Offering**") of 7.405% Manulife Financial Trust II Notes - Series 1 due December 31, 2108 (the "**MaCS II - Series 1**") in the Reporting Jurisdictions on July 10, 2009 and may, from time to time, issue further series of notes substantially similar to the MaCS II - Series 1 (collectively with the MaCS II - Series 1, the "**MaCS II Notes**"). As a result of the Offering, the capital of the Trust consists of: (i) MaCS II - Series 1; and (ii) voting trust units ("**Voting Trust Units**"). All of the outstanding Voting Trust Units are held by MLI.

13. As a result of having obtained a receipt for the Prospectus in respect of the Offering, the Trust is a reporting issuer in the Reporting Jurisdictions. The Trust is not, to its knowledge, in default of its reporting issuer obligations under the securities legislation of any of the Reporting Jurisdictions.

14. The Trust is a single purpose vehicle established for the purpose of effecting offerings of securities, including MaCS II - Series 1 and Voting Trust Units (collectively, the "**Trust Securities**"), in order to provide MLI with a cost effective means of raising capital for Canadian insurance regulatory purposes by means of: (i) creating and selling the Trust Securities; and (ii) acquiring and holding assets, which will consist primarily of a senior unsecured debenture of MLI (the "**MLI Debenture**") and other eligible assets specified in the Prospectus (collectively, the "T**rust Assets**"). The Trust Assets will generate income for the payment of principal, interest, the redemption price, if any, and any other amounts, in respect of the Trust's debt securities, including the MaCS II - Series 1. The Trust will not carry on any operating activity other than in connection with offerings of Trust Securities and in connection with the Trust Assets.

MaCS II - Series 1

15. From the date of issue until December 31, 2108, the Trust will pay interest on the MaCS II - Series 1 in equal (subject to the reset of the interest rate and except for the first interest payment) semi-annual instalments on June 30 and December 31 of each year (each an "**Interest Payment Date**"). Starting on December 31, 2019, and on every fifth anniversary of such date thereafter until December 31, 2104 (each such date, an "**Interest Reset Date**"), the interest rate on the MaCS II - Series 1 will be reset at an interest rate per annum equal to the Government of Canada Yield (as defined in the Prospectus) plus 5.00%.

16. Pursuant to an assignment, set-off and trust agreement entered into among the Trust, MLI, MFC and CIBC Mellon Trust Company as indenture trustee, dated July 10, 2009 (the "**Assignment and Set-Off Agreement**"), MLI and MFC have agreed, for the benefit of the holders of the MaCS II - Series 1, that if (i) MLI elects, at its sole option, prior to the commencement of the interest period ending on the day preceding the relevant Interest Payment Date, that holders of MaCS II - Series 1 invest interest payable on the MaCS II - Series 1 on the relevant Interest Payment Date in a new series of Class 1 Shares of MLI (the "**MLI Deferral Preferred Shares**"), or (ii) for whatever reason, interest is not paid in full in cash on the MaCS II - Series 1 on any Interest Payment Date (in the case of either (i) or (ii), an "**Other Deferral Event**"), (a) MLI will not declare or pay cash dividends on any MLI Public Preferred Shares (as defined below), or (b) if no MLI Public Preferred Shares are outstanding, MFC will not declare or pay cash dividends on any of its preferred shares or common shares (collectively, the "**MFC Dividend Restricted Shares**"), and (c) in cases where clause (a) applies, neither MFC nor any subsidiary of MFC may make any payment to holders of MLI Public Preferred Shares in respect of dividends not declared or paid by MLI, and neither MFC nor any subsidiary of MFC may purchase

any MLI Public Preferred Shares, or, in cases where clause (b) applies, neither MFC nor any subsidiary of MFC may make any payment to holders of MFC Dividend Restricted Shares in respect of dividends not declared or paid by MFC, and neither MFC nor any subsidiary of MFC may purchase any MFC Dividend Restricted Shares, provided that any subsidiary of MFC whose primary business is dealing in securities may purchase MLI Public Preferred Shares or MFC Dividend Restricted Shares in certain limited circumstances as permitted in the ICA or the regulations thereunder, in any case until the sixth month following the relevant Interest Payment Date (the "**Dividend Stopper Undertaking**"). Accordingly, it is in the interest of MLI and MFC to ensure, to the extent within their control, that the Trust pays the interest in cash on the MaCS II - Series 1 on each Interest Payment Date so as to avoid triggering the Dividend Stopper Undertaking. "**MLI Public Preferred Shares**" means, at any time, preferred shares of MLI which, at that time: (i) have been issued to the public (excluding any preferred shares of MLI held beneficially by affiliates of MLI); (ii) are listed on a recognized stock exchange; and (iii) have an aggregate liquidation entitlement of at least $200 million, provided, however, if, at any time, there is more than one class of MLI Public Preferred Shares outstanding, then the most senior class or classes of outstanding MLI Public Preferred Shares shall, for all purposes, be the MLI Public Preferred Shares.

17. On each Interest Payment Date on which a Deferral Event (as defined below) has occurred, holders of MaCS II - Series 1 will be required to invest interest payable on the MaCS II - Series 1 in MLI Deferral Preferred Shares. A "**Deferral Event**" means: (i) an Other Deferral Event, or (ii) MLI has failed to declare cash dividends on its Class A Shares Series 1 or, if any MLI Public Preferred Shares are outstanding, MLI has failed to declare cash dividends on any of its MLI Public Preferred Shares in accordance with their respective terms, in either case, in the last 90 days preceding the commencement of the interest period ending on the day preceding the relevant Interest Payment Date.

18. The MLI Deferral Preferred Shares will pay quarterly non-cumulative preferential cash dividends, as and when declared by the board of directors of MLI (the "**Board of Directors**"), subject to the provisions of the ICA, at the Perpetual Preferred Share Rate (as defined in the Prospectus), subject to any withholding tax.

19. Prior to the issuance of any MLI Deferral Preferred Shares in respect of a Deferral Event, MLI will not, without the prior approval of the Superintendent and the prior approval of the holders of the MaCS II - Series 1, amend any terms attaching to such MLI Deferral Preferred Shares, provided that the prior approval of the holders of MaCS II - Series 1 will not be required in the case of amendments relating to the Class 1 Shares of MLI as a class.

20. The MaCS II - Series 1, including accrued and unpaid interest thereon, will be exchanged automatically, without the consent of the holder thereof, for newly issued Class 1 Shares Series 1 of MLI ("**MLI Exchange Preferred Shares**") if: (i) an application for a winding-up order in respect of MLI pursuant to the *Winding-Up and Restructuring Act* (Canada) is filed by the Attorney General of Canada or a winding-up order in respect of MLI pursuant to that Act is granted by a court; (ii) the Superintendent advises MLI in writing that the Superintendent has taken control of MLI or its assets pursuant to the ICA; (iii) the Superintendent advises MLI in writing that the Superintendent is of the opinion that MLI has a net Tier 1 capital ratio of less than 75% or an MCCSR ratio of less than 120%; (iv) the Board of Directors advises the Superintendent in writing that MLI has a net Tier 1 capital ratio of less than 75% or an MCCSR ratio of less than 120%; or (v) the Superintendent directs MLI pursuant to the ICA to increase its capital or provide additional liquidity and MLI elects to cause the Automatic Exchange as a consequence of the issuance of such direction or MLI does not comply with such direction to the satisfaction of the Superintendent within the time specified therein (the "**Automatic Exchange**").

21. Pursuant to a share exchange agreement among MLI, MFC, the Trust and CIBC Mellon Trust Company as exchange trustee (the "**Exchange Trustee**") dated July 10, 2009 (the "**Share Exchange Agreement**"), MLI has granted to the Exchange Trustee, for the benefit of the holders of MaCS II - Series 1, the right to exchange MaCS II – Series 1 for MLI Exchange Preferred Shares upon an Automatic Exchange and the Exchange Trustee on behalf of the holders of MaCS II – Series 1 has granted to MLI the right to exchange MaCS II – Series 1 for MLI Exchange Preferred Shares upon an Automatic Exchange. Pursuant to the Share Exchange Agreement, MLI has covenanted to take or refrain from taking certain actions so as to ensure that holders of MaCS II – Series 1 will receive the benefit of the Automatic Exchange, including obtaining the requisite approval of holders of the MaCS II – Series 1 for any amendment to the provisions of the MLI Exchange Preferred Shares (other than any amendments relating to the Class 1 Shares of MLI as a class).

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

23. If the MaCS II – Series 1 have not been exchanged for MLI Exchange Preferred Shares pursuant to the Automatic Exchange, MLI will not, without the prior approval of the Superintendent and the prior approval of the holders of the MaCS II – Series 1, amend any terms attaching to the MLI Exchange Preferred Shares, provided that the prior approval of the holders of MaCS II – Series 1 will not be required in the case of amendments relating to the Class 1 Shares of MLI as a class.

24. The MFC Preferred Share Guarantee will apply to preferred shares of MLI outstanding from time to time, including the Class 1 Shares of MLI issuable upon a Deferral Event or an Automatic Exchange. In circumstances where MFC is not the subject of a winding-up order, the MFC Preferred Share Guarantee will entitle the holder to receive payment from MFC within 15 days of any failure by MLI to pay a declared dividend or to pay the redemption price for such shares and, in the case of any amount remaining unpaid with respect to the preference of the preferred shares of MLI upon a winding-up of MLI, within 15 days of the later of the date of the final distribution of property of MLI to its creditors and the date of the final distribution of surplus of MLI, if any, to its shareholders. In circumstances where MFC is the subject of a winding-up order, the MFC Preferred Share Guarantee will entitle the holder to receive payment from MFC within 15 days of the determination of the final distribution of surplus of MFC, if any, to MFC's shareholders. Claims under the MFC Preferred Share Guarantee will be subordinate to all outstanding indebtedness and liabilities of MFC unless otherwise provided by the terms of the instrument creating or evidencing any such liability. In the event that a failure to pay declared dividends, the redemption price or the liquidation preference of MLI preferred shares occurs at a time when MFC is subject to a winding-up order, the MFC Preferred Share Guarantee has been structured so that the amount payable by MFC under the MFC Preferred Share Guarantee will be subject to reduction such that the claims of holders of the respective class of preferred shares of MLI under the MFC Preferred Share Guarantee will, in effect, rank equally with the claims of holders of the respective class of preferred shares of MFC to any surplus assets of MFC remaining for distribution. Otherwise the MFC Preferred Share Guarantee would negatively impact the capital treatment of preferred shares of MLI for insurance regulatory purposes.

25. The MaCS II - Series 1 have been structured to achieve Tier 1 regulatory capital for purposes of the guidelines of the Superintendent.

26. On or after December 31, 2014, the Trust may, at its option, with the prior approval of the Superintendent, on giving not more than 60 nor less than 30 days' notice to the holders of the MaCS II – Series 1, redeem the MaCS II – Series 1, in whole or in part. The redemption price per $1,000 principal amount of MaCS II – Series 1 redeemed on any day that is not an Interest Reset Date in respect of the MaCS II – Series 1 will be equal to the greater of par and the Canada Yield Price (as defined in the Prospectus), and the redemption price per $1,000 principal amount of MaCS II – Series 1 redeemed on any Interest Reset Date in respect of the MaCS II – Series 1 will be par, together in either case with accrued and unpaid interest to but excluding the date fixed for redemption, subject to any applicable withholding tax.

27. The Trust may, at its option, with the prior approval of the Superintendent, on giving not more than 60 nor less than 30 days' notice to the holders of MaCS II – Series 1, redeem all (but not less than all) of the MaCS II – Series 1 upon the occurrence of certain regulatory or tax events affecting MLI or the Trust. The redemption price per $1,000 principal amount of the MaCS II – Series 1 will be equal to par, together with accrued and unpaid interest to but excluding the date fixed for redemption, subject to any applicable withholding tax.

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

29. Neither MLI nor MFC will assign or otherwise transfer any of its obligations under the Share Exchange Agreement or the Assignment and Set-Off Agreement, except in the case of a merger, consolidation, amalgamation or reorganization or a sale of substantially all of the assets of MLI or MFC.

30. MLI has covenanted that all of the outstanding Voting Trust Units will be held at all times by MLI.

31. As long as any MaCS II – Series 1 are outstanding and held by any person other than MLI or any of its affiliates, the Trust may only be terminated with the approval of the holder of the Voting Trust Units and with the prior approval of the Superintendent and MLI and MFC will not take any action to cause the termination of the Trust except (i) prior to December 31, 2014 upon the occurrence of certain regulatory or tax events affecting MLI or the Trust or (ii) on or after December 31, 2014 for any reason. The holders of MaCS II – Series 1 will not be entitled to initiate proceedings for the termination of the Trust. So long as any MaCS II – Series 1 are outstanding and held by any person other than MLI or any of its affiliates, neither MLI nor MFC will approve the termination of the Trust unless the Trust has sufficient funds to pay the redemption price of the MaCS II – Series 1.

32. The MaCS II - Series 1 are non-voting except in certain limited circumstances set out in the Declaration of Trust. The Voting Trust Units entitle the holder thereof (i.e. MLI) to vote in respect of certain matters regarding the Trust.

33. Pursuant to an administration agreement dated June 12, 2009, as amended and restated on July 10, 2009 and as it may be further amended and restated from time to time, entered into between the Trustee and MLI, the Trustee has delegated to MLI certain of its obligations in relation to the administration of the Trust. MLI, as administrative agent, will,

at the request of the Trustee, administer the day-to-day operations of the Trust and perform such other matters as may be requested by the Trustee from time to time.

34. The Trust may, from time to time, issue further series of MaCS II Notes, the proceeds of which would be used to acquire additional Trust Assets.

35. Because of the terms of the Trust Securities, the Share Exchange Agreement, the Assignment and Set-Off Agreement and the various covenants of MLI and MFC, and given that the MFC Preferred Share Guarantee will apply to the Class 1 Shares of MLI issuable upon the occurrence of an Automatic Exchange or Deferral Event, information about the affairs and financial performance of MLI and MFC, as opposed to that of the Trust, is meaningful to holders of MaCS II - Series 1. MFC and MLI's filings will provide holders of MaCS II - Series 1 and the general investing public with all information required in order to make an informed decision relating to an investment in MaCS II - Series 1 and any other MaCS II Notes that the Trust may issue from time to time. Information regarding MFC and MLI is relevant both to an investor's expectation of being paid the principal, interest and redemption price, if any, and any other amount on the MaCS II - Series 1 when due and payable.

36. MFC has delivered to the Ontario Securities Commission an undertaking (the "**Responsible Issuer Undertaking**") confirming that: (i) for so long as MLI and the Trust both qualify for the Exemption Sought, MFC will be considered a "responsible issuer" for purposes of determining MFC's liability under Part XXIII.1 of the *Securities Act* (Ontario) as if the MaCS II Notes were an "issuer's security" of MFC for purposes of such Part; and (ii) for greater certainty, pursuant to the definition of "issuer's security" in section 138.1 of the Securities Act (Ontario), MLI Deferral Preferred Shares and MLI Exchange Preferred Shares guaranteed by MFC constitute issuer's securities of MFC for purposes of determining MFC's liability under Part XXIII.1 of the *Securities Act* (Ontario). MFC has filed the Responsible Issuer Undertaking on its SEDAR profile.

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) in respect of the Continuous Disclosure Obligations:

(i) each of MFC and MLI remain a reporting issuer under the Legislation and has filed all continuous disclosure documents that it is required to file by the Legislation;

(ii) the Trust files a notice indicating that it is relying on the continuous disclosure filings of MFC and MLI listed in paragraph (a)(i) of this Decision and setting out where those documents can be found for viewing in electronic format;

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

(iv) at any time MLI is exempt from filing such documents, the Trust sends, or causes MFC or MLI to send, MFC's interim and annual financial statements and interim and annual MD&A required by NI 51-102 to holders of the Trust's debt securities, at the same time and in the same manner as if the holders of the Trust's debt securities were holders of similar debt securities of MFC;

(v) at any time MLI is not exempt from filing such documents, the Trust sends, or causes MLI to send, MLI's interim and annual financial statements and interim and annual MD&A required by NI 51-102 to holders of the Trust's debt securities, at the same time and in the same manner as if the holders of the Trust's debt securities were holders of similar debt securities of MLI;

(vi) all outstanding securities of the Trust are either MaCS II Notes or Voting Trust Units;

(vii) the rights and obligations of the holders of additional series of MaCS II Notes of the Trust are the same in all material respects as the rights and obligations of the holders of the MaCS II - Series 1, with the exception of economic terms such as the interest payable by the Trust, maturity date and redemption dates and prices;

(viii) MLI remains the direct owner of all of the issued and outstanding voting securities of the Trust, including the Voting Trust Units;

(ix) MFC remains the beneficial owner of all of the issued and outstanding voting securities of MLI;

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

(xi) MLI, as holder of the Voting Trust Units, will not propose changes to the terms and conditions of any outstanding MaCS II Notes that would result in MaCS II Notes being exchangeable for securities other than MLI Exchange Preferred Shares;

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

(xiii) in any circumstances where the MaCS II - Series 1 (or any additional series of MaCS II Notes) are voting, the Trust will comply with Part 9 of NI 51-102; and

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

(b) in respect of the Certification Obligations:

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

(ii) the Trust is and continues to be exempted from the Continuous Disclosure Obligations and MFC, MLI and the Trust are in compliance with the conditions set out in paragraph (a) of this Decision.

(c) this decision shall expire 30 days after the date that a material adverse change occurs in the representations of MFC, MLI or the Trust in this decision.

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

2.1.5 CommunityLend Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption from the requirements under National Instrument 45-106 Prospectus and Registration Exemptions relating to the filing of reports of trade with respect to distributions of loan agreements by borrowers/issuers to lenders/investors and with respect to distributions of investment contracts by the promoter to lenders/investors – Exemption from the requirements under OSC Rule 45-501 Ontario Prospectus and Registration Exemptions respecting the delivery of an offering memorandum to the Ontario Securities Commission with respect to documents made available to lenders/investors on the promoter's website – Promoter plans to operate a peer-to-peer lending (P2P lending) system – Only accredited investors will be able to invest in loan agreements and investment contracts on promoter's website – Loan agreement is (or is likely) a security issued by a borrower/issuer – The structure of the system is (or is likely) a an investment contract and a security issued by promoter – A loan request of a borrower/issuer may constitute an offering memorandum – Certain documents and information on promoter's website may constitute an offering memorandum – Nature of P2P lending website makes it impractical for parties to file reports of trade and deliver offering memoranda within 10 days of trade – Promoter will instead file reports of trade and deliver offering memoranda within 10 days of the end of each month on behalf of itself and borrowers/issuers – Exemption granted subject to numerous conditions to address regulatory and investor protection concerns in respect of P2P lending websites, including condition that promoter be registered as an investment counsel and portfolio manager and as a limited market dealer.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, s. 147.
National Instrument 45-106 Prospectus and Registration Exemptions, ss. 6.1(a), 6.3, 7.1.
OSC Rule 45-501 Ontario Prospectus and Registration Exemptions, s. 6.4.

September 8, 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
COMMUNITYLEND INC.
(THE "FILER" OR "COMMUNITYLEND")

DECISION

BACKGROUND

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of the Borrowers/issuers (as defined below) and itself, for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") that the Filer and the Borrowers/issuers be exempted from:

(a) the requirements under section 6.1(a) of National Instrument 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**") relating to filing reports of trade (the "**Report of Trade Requirements**") with respect to the distributions of loan agreements (**"Loan Agreements"**) by Borrowers/issuers to Lenders/investors (as defined below) and with respect to distributions of Investment Contracts (as defined below) by the Filer to Lenders/investors;

(b) the requirements under section 6.3 of NI 45-106 respecting the content of Form 45-106F1 *Report of Exempt Distribution* (the **"Report of Trade Form Requirements"**); and

(c) the requirements respecting the delivery of an offering memorandum to securities regulatory authorities (the "**Offering Memorandum Delivery Requirements**") with respect to documents made available to Lenders/investors on the Filer's

website (collectively, with the Report of Trade Requirements and the Report of Trade Form Requirements, the "**Exemption Sought**").

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**"MI 11-102"**) is intended to be relied upon in British Columbia and Québec (collectively, with Ontario, the "**Applicable Jurisdictions**").

INTERPRETATION

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

REPRESENTATIONS

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

1. CommunityLend will operate an online peer-to-peer lending system (the **"System"**) in the Applicable Jurisdictions. The System will operate as an alternative to traditional lending sources by facilitating loans (**"Loans"**) between borrowers ("**Borrowers/issuers**") and lenders (**"Lenders/investors"**) who are seeking better rates on, respectively, their borrowing needs or a portion of their investable assets.

2. The System will operate entirely on the internet and is designed to allow Lenders/investors individually to make bids on portions of consumer Loans. The investments which will be available to Lenders/investors upon the launch of the System are relatively short term (maximum term is three years) and the maximum aggregate permitted size of the Loan amount for each Borrower/issuer is $25,000.

3. All prospective Borrowers/issuers will be required to satisfy the minimum credit criteria established by CommunityLend at the time they apply to register in the System. These minimum credit criteria will include minimum thresholds of credit ratings and affordability ratings, among other factors. The ratings will be presented by CommunityLend based on Borrowers/issuers' input and certain external input. At the launch of the System, the minimum credit criteria will be set at a level consistent with typical bank requirements which are considered to represent "prime risk borrowers" (which is not generally the same as borrowers to whom a bank will lend at its "prime rate"). CommunityLend may adjust the minimum credit criteria as it deems appropriate over time, as long as the criteria only includes "prime risk borrowers" and excludes "subprime risk borrowers". Only prospective Borrowers/issuers who meet the minimum credit criteria will be allowed to register in the System as Borrowers/issuers.

Securities

4. Since the Loan Agreement is evidence of indebtedness of the Borrower/issuer, it is (or is likely) a "security" as that term is defined under applicable securities legislation. The Borrower/issuer would therefore be the issuer of that security under applicable securities legislation. Each Loan Agreement entered into on the System will only have a single Borrower/issuer.

5. Since the structure of the System (the "**CommunityLend Structure**") creates rights and obligations among Borrowers/issuers, Lenders/investors and CommunityLend, the CommunityLend Structure is (or is likely) an investment contract ("**Investment Contract**") and therefore a "security" as that term is defined under applicable securities legislation. CommunityLend would therefore be the sole issuer of that security under applicable securities legislation.

General Business Description

6. CommunityLend will facilitate the entering into of Loan Agreements between Borrowers/issuers and Lenders/investors through a bidding process which will occur on the restricted pages of the System (the **"Restricted Pages"**), an interactive online web-based environment which is only accessible to registered users.

7. Borrowers/issuers will create and post loan requests (**"Loan Requests"**) for their desired loans which will include Borrowers/issuers' initial offered interest rates for their Loan Requests. The determination of the initial offered interest rate will be at the Borrower/issuer's sole discretion, subject to the minimum interest rate requirements set by CommunityLend.

8. Lenders/investors will fill portions of a Loan Request until the Loan Request is fully funded. Lenders/investors will be able to bid directly for portions of a Borrower/issuer's Loan through a competitive auction process if the Borrower/issuer has elected for his or her fully funded Loan Request to proceed to the competitive auction process at the time the Loan Request was created. The result of this bidding activity will be that each Borrower/issuer, for the most part, will have his or her Loan filled by multiple Lenders/investors.

9. Once the Loan Request has closed for bidding and provided the Borrower/issuer has indicated his or her acceptance of an initial disclosure statement-loan closing stage with respect to such Loan Request, a Loan Agreement will be executed by CommunityLend as agent of both Borrower/issuer and Lender/investor as per the borrower registration agreement (the **"Borrower Registration Agreement"**) and the lender registration and account agreement (**"Lender Registration and Account Agreement"**).

10. The Loan Agreement will stipulate the terms and conditions of the Loan and is conditional on a satisfactory final financial review with respect to the Borrower/issuer. If the final financial review is unsatisfactory, CommunityLend will cancel the Loan Request and it will be removed from the System.

11. CommunityLend will not be a party to the Loan Agreement. CommunityLend will facilitate the administrative aspects of the Loans between Lenders/investors and Borrowers/issuers, including Loan disbursements, Loan payments, and, in the event of Loan default, all collection activity.

12. The identity of Lenders/investors and Borrowers/issuers on the System will be known only by CommunityLend and, where required, by its agents under confidentiality agreements. However, CommunityLend may disclose Borrowers/issuers' identifying information to Lenders/investors in limited circumstances pursuant to its litigation policy.

CommunityLend Licenses and Registrations

13. CommunityLend will carry on business in the Applicable Jurisdictions. The public pages of its website (**"Public Pages"**) will make clear that participation on the System is limited to residents in Ontario, Québec and British Columbia. Any prospective Lenders/investors and Borrowers/issuers who are not resident in the three Applicable Jurisdictions will not be permitted to register on the System. CommunityLend will screen prospective participants' province of residence through an identity verification process.

14. CommunityLend has been registered as a dealer in the category of limited market dealer ("**LMD**") in Ontario, and as an adviser in the category of investment counsel/portfolio manager ("**ICPM**") or the equivalent in all the Applicable Jurisdictions. Should proposed National Instrument 31-103 *Registration Requirements and Exemptions* come into force, CommunityLend will be registered as a dealer in the category of exempt market dealer (**"EMD"**) at that time, and will apply for registration in the category of EMD in the remaining Applicable Jurisdictions.

15. CommunityLend has obtained, or will obtain all registrations and licenses that it has determined are required (federally and in each Applicable Jurisdiction) and will comply with applicable non-securities legislation, namely, federal and provincial financial institutions legislation, provincial consumer protection legislation, provincial consumer reporting legislation, provincial and federal privacy and freedom of information legislation, *Criminal Code* provisions, federal anti-money laundering and terrorist financing legislation and federal *Interest Act* provisions (the "**Applicable Non-Securities Laws**"). Where practical, appropriate mechanisms have been built into the System and otherwise manual procedures have been established, to ensure compliance with Applicable Non-Securities Laws.

CommunityLend Website

16. CommunityLend will operate a website that includes Public Pages and Restricted Pages.

17. The Public Pages will be completely accessible to all members of the public. The Restricted Pages will only be accessible by registered users and will include active Loan Requests.

18. CommunityLend will make available an Application Program Interface or "API" service to API eligible participants, subject to the appropriate agreements. The API service will allow API eligible participants to download all data on all Loan Requests (with the exception of any identifying data, such as name, address, telephone, employer, references, or publicly known personally identifiable information).

System Participants

Lenders/Investors

19. A prospective lender who wishes to participate in the System as a Lender/investor must register as a Lender/investor by completing all of the requirements of the lender registration process to the satisfaction of CommunityLend.

20. Accredited Investors (as defined below) will be divided into three categories for the purposes of the System:

    (a) Lenders/investors who are Accredited Investors enumerated in:

        (i) paragraphs (a) to (d), (f) to (i), (n), (o) and (p) of the definition of "accredited investor" in section 1.1 of NI 45-106;

        (ii) paragraph (s) of that definition as it pertains to paragraphs (a) to (d) of the definition; and

        (iii) paragraph (t) of that definition as it pertains to the above categories,

        (the "**Institutional Accredited Investors**").

    (b) Lenders/investors who are Accredited Investors enumerated in:

        (i) paragraphs (e), (m), (q), (r), (u) and (v) of the definition of "accredited investor" in section 1.1 of NI 45-106; and

        (ii) paragraph (t) of that definition as it pertains to the above categories,

        (the "**Non-Institutional Accredited Investors**").

    (c) Lenders/investors who are Accredited Investors enumerated in paragraphs (j), (k) and (l) of the definition of "accredited investor" in section 1.1 of NI 45-106 (the "**Individual Accredited Investors**").

    (Institutional Accredited Investors, Non-Institutional Accredited Investors and Individual Accredited Investors are collectively referred to as the "**Accredited Investors**").

21. Registered Lenders/investors will have two ways of participating in the System, both of which are available to them at their option, subject to diversification requirements and cumulative loss limits:

    (a) participation by Accredited Investors as facilitated participants (**"Facilitated Participants"**) in an automatic bidding process facilitated by CommunityLend and referred to as "Standing Bids". Under the Facilitated Participation option, Facilitated Participants will not be directly involved in the matching process but rather will rely on the System to automatically match their bids with Loan Requests; and/or

    (b) participation by Accredited Investors as active participants (**"Active Participants"**) in an active bidding process where Lenders/investors make decisions about which Loan Requests to bid on, at what interest rates and in what amounts. Under the Active Participation option, Lenders/investors will personally view Loan Requests posted in the System and will have autonomy and discretion with respect to the Loan Requests in which they wish to participate.

Borrowers/Issuers

22. A prospective borrower who wishes to participate in the System as a Borrower/issuer must register as a Borrower/issuer by completing all of the requirements of the borrower registration process to the satisfaction of CommunityLend.

23. Only prospective Borrowers/issuers who meet minimum credit criteria will be allowed to register in the System as Borrowers/issuers.

Prohibition

24. Directors, officers and employees of CommunityLend or any affiliate of CommunityLend (as well as immediate family members of directors, officers and employees of CommunityLend or its affiliates) and connected or related issuers of

CommunityLend, as defined under applicable securities legislation, will not be permitted to participate as Borrowers/issuers or Lenders/investors.

Summary of Registration Processes

25. In order for prospective Borrowers/issuers and Lenders/investors to utilize the System, they will be required to go through various stages of screening, registrations, applications and reviews. CommunityLend will comply with all securities legislation applicable in the Jurisdictions, including know-your-client and suitability requirements.

26. Prospective Lenders/investors and Borrowers/issuers who wish to register on the System will be required as a first step to choose a user name and provide an email address.

Lender/investor Registration Process

27. After creating a user name, prospective Lenders/investors will then be required to complete all of the following procedures to complete the Lender/investor registration process:

    (a) the Accredited Investor certification process as described below under the heading "*Accredited Investor Certification Process*";

    (b) a Lender/investor know-your-client review and a two-stage Lender/investor suitability review

    (c) enter into a Lender Registration and Account Agreement;

    (d) identity verification;

    (e) banking validation; and

    (f) transfer of $100 to the Trust Account (defined below).

Borrower/issuer Registration Process

28. After creating a user name, potential Borrowers/issuers will then be required to complete all of the following procedures to complete the Borrower/issuer registration process:

    (a) a Borrower/issuer know-your-client review and a Borrower/issuer suitability review:

    (b) enter into a Borrower Registration Agreement;

    (c) identity verification;

    (d) the loan application process; and

    (e) banking validation.

Identity Verification

29. As part of their registration processes, prospective Lenders/investors and Borrowers/issuers will be required to complete identity verification where they are individuals. Alternative offline processes exist for prospective Lenders/investors who are not individuals.

30. Identity verification will include online identity verification through the use of the Equifax eID-Verifier System process for both Lenders/investors and Borrowers/issuers. Manual processes will be used for Institutional and Non-Institutional Accredited Investors and where required for other potential participants.

31. Potential Lenders/investors and Borrowers/issuers with addresses from outside of Ontario, Québec and British Columbia will automatically be rejected in the registration process through the use of the Equifax eID-Verifier System.

Borrower Registration Agreement

32. Anyone resident in Ontario, Québec or British Columbia with a Canadian bank account, who is a natural person and has the legal capacity to contract, may apply to register as a Borrower/issuer on the System. A prospective

Borrower/issuer must have reached the legal age of majority in his or her Applicable Jurisdiction of residence. A corporation, a partnership or other business organization may not be a Borrower/issuer.

33. As part of the borrower registration process, prospective Borrowers/issuers will be required to enter into a Borrower Registration Agreement. The Borrower Registration Agreement is a standard form contract available on the Public Pages. Pursuant to the Borrower Registration Agreement, the Borrower/issuer appoints CommunityLend as its agent with full power and authority to complete the Loan Agreement on behalf of the Borrower/issuer.

34. Under the Borrower Registration Agreement, all Borrowers/issuers will agree that CommunityLend may have a legal right to disclose Borrowers/issuers' personal information to regulatory authorities having jurisdiction over CommunityLend (e.g., in connection with reporting transaction information in the Monthly Report (defined below) on persons who participate in transactions on the System), including the names and addresses of the Borrowers/issuers. CommunityLend will disclose the information and obtain the authorization described under the heading "Authorization of Indirect Collection of Personal Information for Distributions in Ontario" in the attached Appendix A.

Lender Registration and Account Agreement

35. Any Accredited Investor who is resident in Ontario, Québec or British Columbia with a Canadian bank account and who has the legal capacity to contract may apply to register as a Lender/investor on the System. A prospective Lender/investor who is a natural person must have reached the legal age of majority in his or her Applicable Jurisdiction of residence.

36. Once the Accredited Investor certification process has been completed to the satisfaction of CommunityLend, prospective Lenders/investors will be required to enter into a Lender Registration and Account Agreement. The Lender Registration and Account Agreement is a standard-form contract available on the Public Pages. Pursuant to the Lender Registration and Account Agreement, the Lender/investor appoints CommunityLend as its agent with full power and authority to complete the Loan Agreement on behalf of the Lender/investor.

37. Upon completion of the Lender/ registration process, the prospective Lender/investor will be required to transfer $100 to the Trust Account. This amount will be applied towards future Bids of Lenders/investors.

38. Under the Lender Registration and Account Agreement, all Lenders/investors will agree that CommunityLend may have a legal right to disclose Lenders/investors' personal information to regulatory authorities having jurisdiction over CommunityLend (e.g., in connection with reporting transaction information in the Monthly Report on persons who participate in transactions on the System), including the names and addresses of the Lenders/investors. CommunityLend will disclose the information and obtain the authorization described under the heading "Authorization of Indirect Collection of Personal Information for Distributions in Ontario" in the attached Appendix A.

39. Lenders/investors may not assign, transfer, sublicense or otherwise delegate any of their rights under the Lender Registration and Account Agreement to another person. There will be no secondary market established by CommunityLend for the Investment Contracts or the Loans.

40. For the purposes of the Monthly Report, CommunityLend will consider the date of the transfer of $100 to the Trust Account by the Lender/investor pursuant to the Lender Registration and Account Agreement as the date of issuance of an Investment Contract by CommunityLend to the Lender/investor.

Accredited Investor Certification Process

41. Prospective Lenders/investors that select the Individual Accredited Investor categories will be required to complete the Accredited Investor certification process. Prospective Lenders/investors will be provided with a description of the various categories of the definition of an Accredited Investor. Each prospective Lender/investor will be required to indicate in a certificate (the **"Accredited Investor Certificate"**) within which category of the definition of Accredited Investor the Lender/investor qualifies. Lenders/investors that are Institutional Accredited Investors and Non-Institutional Accredited Investors will be given instructions to contact CommunityLend "offline", where they will be subject to a manual Accredited Investor certification process by CommunityLend which will also include obtaining a similar Accredited Investor Certificate from such Lenders/investors and any other supporting documentation that may be necessary in the particular circumstances. In the case of Institutional and Non-Institutional Accredited Investors, this will require obtaining copies of financial statements, incorporation documentation and by-laws, among other documents.

42. Lenders/investors that elect the Facilitated Participation option will be required to confirm and re-certify their eligibility as an Accredited Investor at the time of creating a Standing Bid and annually thereafter. Lenders/investors who elect

the Active Participation option will be required to confirm and re-certify their eligibility as an Accredited Investor before each and every bid.

43. Accredited Investor Certificates will be addressed to CommunityLend and to the Borrowers/issuers.

44. Under the Lender Registration and Account Agreement, all Lenders/investors will be required to represent to CommunityLend that they are an Accredited Investor as detailed in their current Accredited Investor Certificate on file with CommunityLend. Each Lender/investor will be required to notify CommunityLend promptly of any changes to his or her status as an Accredited Investor.

45. If, after registration as a Lender/investor, CommunityLend becomes aware that the Lender/investor is not, or there is a reasonable basis for believing that the Lender/investor is not, an Accredited Investor, CommunityLend will take appropriate actions.

Diversification Requirements and Cumulative Loss Limits

46. The System will also impose specific diversification requirements on Lenders/investors who are Individual Accredited Investors or Non-Institutional Accredited Investors. All Lenders/investor who are an Individual Accredited Investor or a Non-Institutional Accredited Investor:

    (a) will be limited to investing not more than $100,000 on the System;

    (b) will be prohibited from investing more than 10% of the funds in his or her account in any one Loan, provided, however, that the Lender/investor will be able to bid $100 against any Loan even if such bid exceeds 10% of the funds in his or her account (i.e., where the balance in the account is less than $1,000);

    (c) will not be permitted to hold more than 10% of any one Loan; and

    (d) may, where appropriate, be subject to further diversification requirements as determined by the second stage determination of the Lender/investor suitability review.

47. There will be no diversification requirements for Lenders/investors who are Institutional Accredited Investors. However, Lenders/investors who are Institutional Accredited Investors will be subject to the second stage determination of the Lender/investor suitability review.

48. Lenders/investors who are Individual Accredited Investors or Non-Institutional Accredited Investors will be subject to cumulative loss limits. In particular, if Loans in which a Lender/investor has invested become delinquent to the extent of 25% or more of the Lender/investor's portfolio of Loans, then Lenders/investors will be precluded from bidding on a new Loan until the ratio of delinquent loans falls back below 25%. The cumulative loss limits may be adjusted subject to the second stage determination of the Lender/investor suitability review. Lenders/investors will be automatically precluded from bidding on a Loan Request if, as a result of such bidding, they will be in breach of the diversification requirements or cumulative loss limits imposed by the System.

Borrower Suitability Review

49. CommunityLend will conduct the Borrower/issuer suitability review through the loan application process, an initial financial review, and a final financial review.

Loan Application Process for Registered Borrowers/issuers

50. Once registered on the System, Borrowers/issuers will be required to go through the loan application process each time they create a Loan Request. Each Loan Request will be subject to an initial financial review conducted by CommunityLend before it can be posted in the System.

51. CommunityLend will update a Borrower/issuer's credit information before each new Loan Request is posted, subject to CommunityLend's discretion not to do so where, for example, the credit report showing a history of how consistently a Borrower/issuer pays his or her financial obligations had been retrieved within 30 days from the date of the Loan Request and no issues have arisen with respect to the Borrower/issuer's creditworthiness, therefore satisfying CommunityLend that it still possesses reliable, current credit information pertaining to the Borrower/issuer. If after an update, a Borrower/issuer no longer meets the minimum credit criteria, the Loan Request will not be posted.

52. Lenders/investors will be advised in the Loan Request that the ratings presented by CommunityLend are based on information obtained within 30 days from the date of the Loan Request.

53. A Borrower/issuer may have up to two Loans outstanding at any one time, provided that the aggregate outstanding principal balance of the two Loans does not exceed the $25,000 maximum Loan amount specified by CommunityLend. The minimum Loan amount is currently set at $1,000.

54. To be eligible to post a Loan Request for a second Loan, a Borrower/issuer must not be in default on his or her existing Loan, and he or she must not have been delinquent in making his or her last two monthly Loan payments or have been delinquent by one payment on three or more occurrences in a 12-month period. The Borrower/issuer may not post a Loan Request for a second Loan within six months following the date the first Loan Agreement was entered into. The Borrower/issuer may not apply for a Loan on the System in order to repay another existing Loan previously obtained on the System. Subject to this requirement, a Borrower/issuer may post as many Loan Requests over time as he or she desires; however, CommunityLend reserves the right to limit the number of Loan Requests a Borrower/issuer posts, or attempts to post, on the System.

Minimum Interest Rates

55. Based on a risk-adjusted formula reviewed on a regular basis, CommunityLend will assign to all credit ratings, as adjusted, applicable minimum interest rates. Minimum interest rates will be set out in a minimum interest rates schedule. By imposing minimum interest rates for the Borrower/issuer's particular credit rating, as adjusted, CommunityLend will control the interest rates at which the Borrower/issuer may create a Loan Request. Borrowers/issuers will not be able to include an offered interest rate in their Loan Requests which is lower than the minimum interest rate for their particular credit rating, as adjusted. Borrowers/issuers will be able to post Loan Requests at offered interest rates which are higher than the minimum interest rate for their particular credit rating.

Loan Request Process

56. The Loan Request process is a three-stage process:

    (a) the creation of a Loan Request by a prospective Borrower/issuer;

    (b) the initial financial review of the prospective Borrower/issuer's Loan Request, Loan application and registration processes by CommunityLend; and

    (c) the posting of the Loan Request in the System upon successful completion of the initial financial review by CommunityLend.

57. The Loan Request will include the following information:

    (a) the Borrower/issuer's user name;

    (b) the Borrower/issuer's province of residence;

    (c) the Loan amount;

    (d) the offered interest rate for the Loan Request;

    (e) the annual percentage rate as required under consumer protection legislation;

    (f) the Borrower/issuer's credit rating;

    (g) the Borrower/issuer's affordability rating;

    (h) the Borrower/issuer's stability rating;

    (i) the purpose of the Loan; and

    (j) the status of the Loan (i.e. the degree funded) and the bid history.

58. A Borrower/issuer may also choose to include other relevant information he or she would like to share in his or her Loan Request, subject to the terms of the Borrower Registration Agreement.

59. Each time a Borrower/issuer submits a Loan Request for an initial financial review, he or she will be required to certify that the information provided in his or her registration with CommunityLend, the information provided by him or her to

CommunityLend during his or her Loan application process and the information provided in the Loan Request is true and complete as of the date submitted.

60. The content of Loan Requests will be reviewed by CommunityLend during the initial financial review and posted in the System.

Registered Users' Protection

61. CommunityLend has adopted a security policy which is aimed at preserving the integrity of the CommunityLend website and protection of personal data of registered users.

62. Registered users will not have each other's e-mail addresses.

Loan Agreement

63. Upon satisfactory completion of the final financial review, a Loan Agreement between the Borrower/issuer and each Lender/investor who had a winning bid that is in place on a fully funded Loan Request at the time of the loan request closure (each a "**Winning Bid**") will automatically be created for each Winning Bid. The System will insert the user names, date, Loan amount, interest rate and payment dates into the standard form Loan Agreement. At this time, an electronic confirmation of the Loan Agreement will be sent to the Borrower/issuer and each Lender/investor and the Borrower/issuer and Lenders/investors will have the ability to print the Loan Agreement.

64. The Loan Agreement is a standard form contract available on the Public Pages and will stipulate the terms and conditions of the Loan, including the amount of the Loan, the term of the Loan, the interest rate, the terms of repayment, events of default and collection procedure on default, and will set out other terms and conditions common to a Loan Agreement.

65. At launch, all Loan Agreements will be for a three year term and all of the rights and obligations will be the same in each Loan Agreement, with the exception of the Loan amount, interest rate, scheduled repayment amounts and payment dates. CommunityLend will make the System available for shorter terms, using the same Loan Agreement, over time.

66. The Loan Agreement will contain a promise by the Borrower/issuer to repay the Lender/investor. The Loan Agreements are unsecured debt obligations of the individual Borrowers/issuers without any obligation on CommunityLend's part or recourse against CommunityLend for payment of principal or interest or other charges on the Loan. CommunityLend will not be a party to any Loan Agreement.

67. For the purposes of the Monthly Report, CommunityLend will consider the date of the electronic confirmation of the Loan Agreement as the date of issuance of an evidence of indebtedness by the Borrower/issuer to the Lender/investor.

68. The Loan Agreements may not be assigned, transferred, sold or securitized, in whole or in part, by Borrowers/issuers or Lenders/investors. There will be no secondary market established by CommunityLend for the Loans or the Investment Contracts.

69. Details of all Loan Agreements will be available for viewing by all registered Lenders/investors and Borrowers/issuers.

Funding of Loans, Loan Disbursements and Record Keeping

70. Pursuant to an account agreement to be entered into between CommunityLend and a Canadian chartered bank, all Lenders/investors' funds will be deposited into an "in trust" account maintained at the bank for this purpose (the "**Trust Account**"). In addition, CommunityLend will execute a declaration of trust for the benefit of the Lenders/investors in proportion to their respective interests in the funds maintained in the Trust Account.

71. Payments by Borrowers/issuers to Lenders/investors will also flow through the Trust Account.

72. Lenders/investors' and Borrowers/issuers' funds placed in the Trust Account will not be co-mingled with CommunityLend's own funds.

73. CommunityLend will maintain appropriate accounting records for each Lender/investor and Borrower/issuer which will track amounts deposited by each Lender/investor into the Trust Account and other information including outstanding Bids, amounts extended as Loans to Borrowers/issuers, the status of repayment on those Loans, details regarding repayment of Loans in default, and collection charges.

74. Loans will be repaid by automatic, pre-authorized monthly or biweekly electronic transfers from the Borrower/issuer's bank account to the Trust Account, and, at the option of the Lender/investor, the funds will be either electronically remitted to the Lender/investor's bank account or held to the credit of the Lender/investor in the Trust Account for future Loan purposes.

75. All Loans will be prepayable by the Borrowers/issuers without penalty.

76. Lenders/investors will be able to access their lender account information online at any time and view detailed information on all their account activity. Similarly, Borrowers/issuers will be able to access their Loan account information online.

Loan Default

77. Upon the occurrence of any event of default under a Loan Agreement, CommunityLend will, as agent for the Lenders/investors, determine whether to accelerate the principal amount and all accrued and unpaid interest and other charges due under the Loan Agreement and whether to accept lower payments and/or interest adjustments.

78. If a Loan is in default, the Lender/investor and the Borrower/issuer will be notified at regular intervals beginning immediately after the default. Failure to rectify the default position within the time period set out in the collection policy will result in the delinquent Loan being referred (but not sold) by CommunityLend for collection to a duly licensed arm's-length collection agency. CommunityLend will use all reasonable efforts to ensure that any collection agencies it engages to collect Loans will do so in good faith.

79. All collection activity with respect to delinquent loans will be initiated by CommunityLend as agent for the Lenders/investors and conducted in accordance with the collection policy posted on the Public Pages. All collection costs incurred by the Lenders/investors in connection with the collection of the delinquent loans will be disclosed in the collection policy and the fee schedule. CommunityLend will charge Lenders/investors, without mark-up or margin of any kind, the fees charged by the collection agency.

80. If the Loan has not been collected in 150 days, the balance of the Loan will be referred by CommunityLend to a second collection agency.

81. Delinquent Loans will be noted on the Borrower/issuer's Loan status which will be viewable by all registered users.

82. If the Borrower/issuer defaults on the Loan and the Loan proves uncollectible as a result of the default, the Borrower/issuer's rights to access the System will be suspended, and, as a result, the Borrower/issuer will not be able to create or post any Loan Requests unless the Borrower/issuer repays his or her delinquent loan with accrued interest in full.

83. Lenders/investors will be unable to collect delinquent loans themselves.

Litigation Policy and Arbitration of Disputes

84. If a Lender/investor has a legal dispute with a Borrower/issuer in respect of a misrepresentation (as defined in applicable securities legislation) made by the Borrower/issuer in his or her Loan Request, the Loan Agreement provides that all legal disputes will be referred to a single arbitrator for binding arbitration at Lender/investor's option in accordance with a litigation policy.

85. Should a Lender/investor opt to refer his or her dispute with the Borrower/issuer to arbitration, the Lender/investor will be required to have his or her dispute resolved in the manner set out in the Loan Agreement. CommunityLend will provide the Lender/investor with identifying information of the Borrower/issuers only for the purposes of enforcing the arbitrator's decision in court.

86. Should a Lender/investor opt not to refer his or her dispute with the Borrower/issuer to arbitration, the Lender/investor will be required to pursue his or her claim by way of court action in which case the Lender/investor will be required to seek a court order compelling CommunityLend to provide the Lender/investor with the name and other relevant information that CommunityLend has on file for the Borrower/issuer.

87. If a Lender/investor has a legal dispute with CommunityLend in respect of the Lender Registration and Account Agreement or a Borrower/issuer has a legal dispute with CommunityLend in respect of the Borrower Registration Agreement, each of those agreements provide that all legal disputes will be referred to a single arbitrator for binding arbitration in accordance with the provisions set out in those agreements. Lender/investors who are Individual

Accredited Investors and all Borrower/issuers will be entitled, by virtue of consumer protection legislation, to opt out of arbitration as the means of settling a dispute with CommunityLend.

88. Thus, the only parties for whom arbitration will be mandatory will be Lenders/investors who are either Institutional Accredited Investors or Non-Institutional Accredited Investors.

89. If the relevant agreements specify a limitation period for any voluntary or mandatory arbitration in respect of an alleged misrepresentation (as defined in applicable securities legislation) in a Borrower Offering Memorandum (defined below) or a CommunityLend Offering Memorandum (defined below), that limitation period shall not be less than the limitation period in section 138 of the *Securities Act* (Ontario).

Risk of CommunityLend Discontinuing Operations

90. CommunityLend's bankruptcy or other possible discontinuance of its operations will not result in the acceleration of any outstanding Loans and all Borrowers/issuers will continue to be obligated to the respective Lenders/investors under the terms of their Loan Agreements.

91. In the event CommunityLend discontinues its operations:

(a) all unfilled Loan Requests will be cancelled;

(b) no new Loan Requests will be permitted to be posted; and

(c) all Lenders/investors' funds in the Trust Account will be returned to the Lenders/investors.

92. Since servicing the Loans continuously depends on an intermediary such as CommunityLend, CommunityLend will take a number of steps to deal with the possibility of it discontinuing operations including:

(a) establishing a mechanism for a third party such as a trustee, receiver, administrative agent or debt collection agency to step in to ensure that the Loan administration process will continue for the benefit of Lenders/investors;

(b) ensuring that all Borrower/issuer Loan payments will continue to flow through the Trust Account; and

(c) backing-up data related to the System to ensure that all such data is safely stored and readily accessible by a third-party in the event of CommunityLend's discontinuance of operations.

Fees

93. CommunityLend will at all times maintain a current fee schedule setting out all fees and charges payable by Lenders/investors and Borrowers/issuers in the System on its Public Pages. The fee schedule will disclose the method of calculation for each such fee.

94. Registered individuals of CommunityLend will be compensated with salary, a bonus program (which will be based on personal and corporate achievement of goals, rather than individual transactional goal attainment) and an employee stock option plan. CommunityLend will not pay commissions, bonuses or other forms of compensation to its Registered Individuals based on transactional volumes on the System (other than compensation based on the overall performance of CommunityLend).

Offering Memoranda

95. A Loan Request of a Borrower/issuer may constitute an "offering memorandum" (as that term is defined under applicable securities legislation) of a Borrower/issuer (the "**Borrower Offering Memorandum**").

96. The following documents or information (the "**CommunityLend Offering Memorandum**") may constitute an "offering memorandum" (as that term is defined under applicable securities legislation) of CommunityLend:

(a) the Lender Registration and Account Agreement and all documents incorporated by reference into the Lender Registration and Account Agreement;

(b) the following information on the Public Pages:

(i) basic promotional material about the System, including a demonstration of, and information about, how the System operates;

(ii) general Loan performance data;

(iii) other information on the lending market generally to assist Lenders/investors in the bidding process;

(iv) explanations and examples of how CommunityLend collects and presents the information relating to credit ratings, minimum interest rates, affordability ratings, stability ratings and Loan performance;

(v) a fee schedule outlining all fees and charges payable by Lenders/investors and Borrowers/issuers in the System and minimum interest rates schedules;

(vi) FAQs that answer common questions; and

(vii) corporate information and contact information for CommunityLend,

but not the content of blogs, forums, and community pages or CommunityLend's interactive electronic communications;

(c) a risk disclosure statement (**"Risk Disclosure Statement"**); and

(d) all information in a Loan Request provided exclusively by CommunityLend, rather than the Borrower/issuer.

In addition, the Lender Registration and Account Agreement will set out the procedures to be followed if a Loan goes into default or if CommunityLend discontinues operations.

97. All visitors to the website will see a statement in plain language that only Accredited Investors resident in one of the Applicable Jurisdictions may be Lenders/investors and the Loan Agreements and Investment Contracts are not suitable investments for retail investors. The statement will contain a hyperlink to a page on the website that states that although securities regulatory authorities have granted exemptive relief to CommunityLend from certain requirements under securities legislation, no securities regulatory authority has approved or expressed an opinion about the securities offered on CommunityLend's website. CommunityLend will not make any statement that contradicts this statement.

98. CommunityLend will ensure that its website does not contain promotional statements or material that cannot be reasonably supported or misrepresentations.

99. CommunityLend will monitor any blogs, forums, or similar interactive communication channels on its website and within 48 hours remove any material from its website that it deems inappropriate, including material that raises investor protection concerns.

Technology

100. CommunityLend will have in place appropriate systems to protect Borrowers/issuers' and Lenders/investors' confidential information and customer privacy.

101. All data relating to bids will be stored permanently in the System. If a registered user wishes to download the Loan Agreement, Lender Registration and Account Agreement or Borrower Registration Agreement he or she can do so. All CommunityLend's policies, agreements, disclosure statements, and cautionary statements will be printable.

Advertising

102. All advertising, marketing or related materials (**"Advertising"**) of CommunityLend will comply with applicable securities legislation. CommunityLend will ensure that:

(a) any Advertising does not contain promotional statements or material that cannot be reasonably supported or misrepresentations;

(b) any Advertising only contains information that is also included in the CommunityLend Offering Memorandum and is presented in a fair and balanced manner; and

(c) any Advertising used to find or solicit potential Lenders/investors clearly and prominently states that only Accredited Investors resident in one of the Applicable Jurisdictions may be Lenders/investors.

Furthermore, CommunityLend will not use the word "prime" as a descriptor of any of the requested Loans or Borrowers/issuers on its website or in any Advertising.

Supporting Documents

103. The written information, documents and materials (**"Supporting Documents"**) the Filer has provided for the purposes of review by staff of the Ontario Securities Commission are accurate as at the date of this decision, including Supporting Documents relating to:

(a) the structure, operation and administration of the System, including matters relating to information technology and electronic funds transfer;

(b) the officers, directors, shareholders and employees of the Filer and its parent company, including:

(i) the qualifications, knowledge and experience of the officers, directors and employees of the Filer relating to consumer lending, the financial services industry, electronic commerce and nascent businesses, and

(ii) the persons who will be responsible for legal and regulatory affairs and compliance;

(c) the organization, business and affairs of the Filer and its parent company, including the business model of the Filer and its existing and proposed plans for financing; and

(d) the Filer's existing or proposed arrangements with third party service providers,

except to the extent the Supporting Documents have been otherwise modified or superseded by a statement contained in a subsequently delivered Supporting Document or a representation in this decision. Furthermore, the Filer will be revising the text of the proposed website pages and online contracts and policies which it previously delivered to comply with the representations and conditions in this decision.

DECISION

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

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

1. in respect of the Report of Trade Requirements and the Report of Trade Form Requirements,

(a) within 10 days after the end of the month in which a distribution of Investment Contracts or Loan Agreements occurs, the Filer files a completed report (prepared using the Alternative Form 45-106F1 attached as Appendix A to this decision) on behalf of itself and the Borrowers/issuers with the securities regulatory authorities in the Applicable Jurisdictions in which the distribution takes place (the "**Monthly Report**");

(b) at the same time that it files a Monthly Report in an Applicable Jurisdiction, the Filer delivers a private and confidential list of Lenders/investors (prepared using Schedule 1 of Alternative Form 45-106F1 attached as Appendix A to this decision) on behalf of itself and the Borrowers/issuers to the securities regulatory authority in the Applicable Jurisdiction in which the distribution takes place; and

(c) at the same time that it files a Monthly Report in an Applicable Jurisdiction, the Filer pays the following fees on behalf of itself and the Borrowers/issuers to the securities regulatory authority in the Applicable Jurisdiction:

(i) in British Columbia, a single fee for the filing of a Form 45-501F1 under the British Columbia Securities Regulation, namely a fee equal to the greater of (i) $100, or (ii) 0.03% of the proceeds realized by the Borrowers/issuers from the distribution to purchasers in British Columbia (i.e., 0.03% of the gross aggregated value of Loans distributed to Lenders/investors in British Columbia);

(ii) in Québec, a single fee for the filing of a Form 45-501F1 under the Quebec Securities Regulation, namely a fee equal to 0.025% of the gross aggregated value of the securities distributed in Québec, subject to a minimum of $250 of Loans distributed to Lenders/investors in Québec; and

(iii) in Ontario, a single fee for the filing of a Form 45-501F1 under OSC Rule 13-502 *Fees*, namely a fee of $500;

2. in respect of the Offering Memorandum Delivery Requirements,

   (a) within 10 days after the end of the month in which the System is made available to Accredited Investors, the Filer delivers a copy of the CommunityLend Offering Memorandum to the securities regulatory authorities in Ontario and Quebec;

   (b) within 10 days after the end of the month in which an amendment is made to the CommunityLend Offering Memorandum, the Filer delivers a copy of the portion of the CommunityLend Offering Memorandum that is amended, together with a certification by a senior executive officer of the Filer confirming that the remaining portions of the CommunityLend Offering Memorandum remain unamended, to the securities regulatory authorities in Ontario and Quebec;

   (c) within 10 days after the end of the month in which the Filer provides any other document to Lenders/investors on the Filer's website that is an offering memorandum under the Legislation, the Filer delivers a copy of the document to securities regulatory authorities in Ontario and Quebec; and

   (d) within 10 days after the end of the month in which a Loan Request is made available for Bidding by a Borrower/issuer, the Filer delivers a copy of the Loan Request on behalf of the Borrower/issuer to the securities regulatory authorities in Ontario and Quebec;

3. the Filer complies with the representations in this decision and the conditions in Appendix B of this decision;

4. the Filer is currently registered as an ICPM (or the equivalent) in the Applicable Jurisdictions and as an LMD (or the equivalent) in Ontario; and

5. the Exemption Sought will cease to be effective in the Applicable Jurisdictions on July 31, 2011 (the "**Expiry Date**"). As of the Expiry Date no new Loan Requests may be offered on the System and no new Investment Contracts will be issued; however, CommunityLend may continue to provide servicing, collection, record-keeping and other services in respect of outstanding Loans that have not been repaid in full. CommunityLend will ensure that during the period prior to the Expiry Date, no Loan Request with an offer period extending beyond the Expiry Date will be posted in the System. Any Loan Requests which have not been fully funded and closed for bidding as of the Expiry Date will be cancelled, unless CommunityLend has been granted an extension to the Exemption Sought on or prior to the Expiry Date.

As to the Exemption Sought from the Report of Trade Requirements and the Report of Trade Form Requirements:

"Michael Brown"
Assistant Manager, Corporate Finance

As to the Exemption Sought from the Offering Memorandum Delivery Requirements:

"James E. A. Turner"
Vice-Chair
Ontario Securities Commission

"Margot C. Howard"
Commissioner
Ontario Securities Commission

APPENDIX A

ALTERNATIVE FORM 45-106F1

MONTHLY REPORT OF EXEMPT DISTRIBUTIONS

This is the form required under a decision document dated **[*insert date*]** issued under National Policy 11-203 for a monthly report of exempt distributions.

Issuer Information

Item 1: State the full name of the issuer of the security distributed and the address and telephone number of its head office. If the issuer of the security distributed is an investment fund, state the name of the fund as the issuer, and provide the full name of the manager of the investment fund and the address and telephone number of the head office of the manager. Include the former name of the issuer if its name has changed since last report.

CommunityLend Inc. ("CommunityLend") – Investment Contracts
Borrowers/issuers on CommunityLend's Website – Loan Agreements

This report is submitted by:

CommunityLend
900-317 Adelaide St. W.
Toronto, Ontario, M5V 1P9
Telephone: 416-646-2177
Facsimile: 416-646-1418

for itself and as agent on behalf of the Borrowers/issuers who issued Loan Agreements on its website.

Item 2: State whether the issuer is or is not a reporting issuer and, if reporting, each of the jurisdictions in which it is reporting.

The issuers are not reporting issuers.

Item 3: Indicate the industry of the issuer by checking the appropriate box next to one of the industries listed below.

- ☐ Bio-tech
- Financial services
  - ☐ investment companies and funds
  - ☐ mortgage investment companies
- ☐ Forestry
- ☐ Hi-tech
- ☐ Industrial
- Mining
  - ☐ exploration/development
  - ☐ production
- ☐ Oil and gas
- ☐ Real estate
- ☐ Utilities
- ☒ Other (describe)

CommunityLend operates a peer-to-peer lending website and the Borrowers/issuers are individuals who issue Loan Agreements on its website

Details of Distribution

Item 4: Complete Schedule I to this report. Schedule I is designed to assist in completing the remainder of this report.

Item 5: State the distribution date. If the report is being filed for securities distributed on more that one distribution date, state all distribution dates.

Investment Contracts were issued by CommunityLend on [*list dates on which Lenders/investors transferred $100 to the Trust Account pursuant to their Lender Registration and Account Agreements during the reporting month*].

Loan Agreements were issued by Borrowers/issuers using CommunityLend's website on [*list dates on which electronic confirmations of Loan Agreements were sent to the Borrower/issuer and each Lender/investor during the reporting month]*.

Item 6: For each security distributed:

a. describe the type of security;

Investment Contracts issued by CommunityLend
Loan Agreements issued by Borrowers/issuers using CommunityLend's website

b. state the total number of securities distributed. If the security is convertible or exchangeable, describe the type of underlying security, the terms of exercise or conversion and any expiry date; and

[*Insert total number of new Lenders/investors who transferred $100 to the Trust Account pursuant to their Lender Registration and Account Agreements during the reporting month*] new Investment Contracts were issued to Lenders/investors by CommunityLend.

[*Insert aggregate dollar amount of new Loan Agreements for which electronic confirmations were sent to the Borrower/issuer and each Lender/investor during the reporting month*] aggregate amount of new Loan Agreements were issued by Borrowers/issuers using CommunityLend's website.

c. state the exemption(s) relied on.

Section 2.3 of National Instrument 45-106.

Item 7: Complete the following table for each Canadian and foreign jurisdiction where purchasers of the securities reside. Do not include in this table, securities issued as payment for commissions or finder's fees disclosed under item 8, below.

For Investment Contracts issued by CommunityLend:

Each jurisdiction where purchasers reside	**Number of purchasers**	**Total dollar value raised from purchasers in the jurisdiction (Canadian $)**
Quebec	***[Insert number of new Lenders/investors]***	**None**
British Columbia	***[Insert number of new Lenders/investors]***	**None**
Ontario	***[Insert number of new Lenders/investors]***	**None**
Total number of Purchasers	***[Insert number of new Lenders/investors]***	
Total dollar value of distribution in all jurisdictions (Canadian $)		**None**

For Loan Agreements issued by Borrowers/issuers using CommunityLend's website:

Each jurisdiction where purchasers reside	Number of purchasers	Total dollar value raised from purchasers in the jurisdiction (Canadian $)
Quebec	***[Insert number of Lenders/investors]***	***[Insert total amount of new Loans during reporting month]***
British Columbia	***[Insert number of Lenders/investors]***	***[Insert total amount of new Loans during reporting month]***
Ontario	***[Insert number of Lenders/investors]***	***[Insert total amount of new Loans during reporting month]***
Total number of Purchasers	***[Insert number of Lenders/investors]***	
Total dollar value of distribution in all jurisdictions (Canadian $)		***[Insert total amount of new Loans during reporting month]***

Commissions and finder's fee

Item 8: Complete the following by providing information for each person who has received or will receive compensation in connection with the distribution(s). Compensation includes commissions, discounts or other fees or payments of a similar nature. Do not include payments for services incidental to the distribution, such as clerical, printing, legal or accounting services.

If the securities being issued as compensation are or include convertible securities, such as warrants or options, please add a footnote describing the terms of the convertible securities, including the term and exercise price. Do not include the exercise price of any convertible security in the total dollar value of the compensation unless the securities have been converted.

For the reporting month,

- **aggregate Lender Administration Fees of $[*insert total amount*] were paid to CommunityLend by [*insert number*] Lenders/investors using CommunityLend's Website.**
- **aggregate Borrower Administration Fees of $[*insert total amount*] were paid to CommunityLend by [*insert number*] Borrowers/issuers using CommunityLend's Website.**
- **CommunityLend did not pay commissions, finder's fees or other compensation to any person in connection with the distribution of Investment Contracts by CommunityLend to Lenders/investors or the distribution of Loan Agreements by Borrowers/issuers to Lenders/investors.**

Item 9: If a distribution is made in Ontario, please include the attached "Authorization of indirect Collection of Personal Information for Distributions in Ontario". The "Authorization of indirect Collection of Personal Information for Distributions in Ontario" is only required to be filed with the Ontario Securities Commission.

Certificate

On behalf of the issuers, I certify that the statements made in this report are true.

Date: ***[Insert date of filing]***

COMMUNITYLEND INC. (for itself and as agent on behalf of the Borrowers/issuers who issued Loan Agreements on its Website)

By: ***[Insert signature]***
Roger Couldrey
Chief Operating Officer
(416) 646-2177 x102

Item 10: State the name, title and telephone number of the person who may be contacted with respect to any questions regarding the contents of this report, if different that the person signing the certificate.

Not applicable.

IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT.

Notice - Collection and Use of Personal Information

The personal information prescribed by this form is collected on behalf of and used by the securities regulatory authorities or, where applicable, the regulators under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

If you have any questions about the collection and use of this information, contact the securities regulatory authority or, where applicable, the regulator in the jurisdiction(s) where the form is filed, at the address(es) listed at the end of this report.

Authorization of Indirect Collection of Personal Information for Distributions in Ontario

The attached Schedule I contains personal information of Lenders/investors and Borrowers/issuers and details of the distribution(s). CommunityLend Inc. (for itself and as agent on behalf of the Borrowers/issuers who issued Loan Agreements on its Website) hereby confirms that each Lender/investor and Borrower/issuer listed in Schedule I of this report

(a) has been notified by CommunityLend Inc.

i. of the delivery to the Ontario Securities Commission of the information pertaining to the person as set out in Schedule I,

ii. that this information is being collected indirectly by the Ontario Securities Commission under the authority granted to it in securities legislation,

iii. that this information is being collected for the purposes of the administration and enforcement of the securities legislation of Ontario, and

iv. of the title, business address and business telephone number of the public official in Ontario, as set out in Form 45-106F1, who can answer questions about the Ontario Securities Commission's indirect collection of the information, and

(b) has authorized the indirect collection of the information by the Ontario Securities Commission.

PRIVATE AND CONFIDENTIAL

Schedule I

Complete the following table.

Do not include in this table, securities issued as payment of commissions or finder's fees disclosed under item 8 of this report.

The information in this schedule will not be placed on the public file of any securities regulatory authority or, where applicable, regulator. However, freedom of information legislation in certain jurisdictions may require the securities regulatory authority or, where applicable, regulator to make this information available if requested.

For Investment Contracts issued by CommunityLend:

[Complete the following table for each Lender/investor who transferred $100 to the Trust Account pursuant to their Lender Registration and Account during the reporting month]

Full name, residential address and telephone number of purchaser	**Type of securities purchased**	**Total purchase price (Canadian $)**	**Exemption relied on**	**Date of distribution**
[Insert full name, residential address and telephone number new Lender/investor]	**Investment Contract**	**None**	**s.2.3 of National Instrument 45-106**	***[Insert date on which Lender/investor transferred $100 to the Trust Account pursuant to his or her Lender Registration and Account Agreement]***

For Loan Agreements issued by Borrowers/issuers using CommunityLend's Website:

[*Complete the following tables for each Loan Agreement for which electronic confirmations were sent to the Borrower/issuer and each Lender/investor during the reporting month*]

Borrower/issuer:

Full name, residential address and telephone number of Borrower/issuer	**Total Loan amount**
[*Insert name, residential address and telephone number of Borrower/issuer*]	**[*Insert total Loan amount*]**

Lenders/investors:

Full name, residential address and telephone number of Lender/investor	Type of securities purchased	Total purchase price (Canadian $)	Exemption relied on	Date of distribution
[*Insert name, address and telephone number of each Lender/investor for each Loan Agreement of a Borrower/issuer*]	Loan Agreements	[*Insert amount contributed to each Loan to a Borrower/issuer*]	s.2.3 of National Instrument 45-106	[*Insert date for which electronic confirmations of Loan Agreement were sent to the Borrower/issuer and each Lender/investor*]

APPENDIX B

CONDITIONS

Accredited Investors

1. Only Accredited Investors will be allowed to participate in the System as Lenders/investors.

Applicable Jurisdictions

2. The Filer will not use section 4.7 of MI 11-102 to extend the Exemption Sought to other provinces or territories of Canada.

Structure

3. CommunityLend will not pay commissions, finders' fees or other compensation to any person in connection with the distribution of Investment Contracts or Loan Agreements to Lenders/investors.

4. CommunityLend will not pay commissions, bonuses or other forms of compensation to its registered individuals based predominately on transactional volumes on the System.

Protection of Lenders/investors

Disclosure

5. Each time before a Lender/investor submits a bid on a Loan Request, they will see a plain language warning that substantively states that:

   (a) CommunityLend has not verified the information in the Loan Request;

   (b) If the Borrower/issuer has made a misrepresentation in the Loan Request, the Lender/investor may have a right of action against the Borrower/issuer, but it may be impossible for the Lender/investor to prove a misrepresentation since they have no information on the identity of the Borrower/issuer;

   (c) If the Loan goes into default, they will not be able to bring a claim against the Borrower/issuer to collect the debt and may not recover unpaid principal and interest through CommunityLend's debt collection process; and

   (d) If CommunityLend discontinues its operations, Lenders/investors may not receive any unpaid principal or interest from the Borrower/issuer.

   This warning will contain a hyperlink to a page on the Filer's website that provides the following additional detail:

   (a) Lenders/investors must rely on CommunityLend's litigation policy in exercising any rights of action if the Borrower/issuer has made a misrepresentation in the Loan Request. The litigation policy provides for the disclosure of the Borrower/issuer's identity in very limited circumstances;

   (b) It may be impossible for the Lender/investor to prove a misrepresentation;

   (c) Lenders/investors must rely on CommunityLend's collection policy if the Loan goes into default, and will not be able to bring a claim directly against the Borrower/issuer to collect the delinquent Loan. Since this is an unsecured personal Loan, it may be impossible for the Lenders/investors to recover unpaid principal and interest; and

   (d) Lenders/investors must rely on provisions in the Lender Registration and Account Agreement for the assumption by a back-up servicing company of CommunityLend's responsibilities as agent of the Lender/investor in the event that CommunityLend discontinues its operations. There is no certainty that these back-up arrangements will be effective in the case of bankruptcy or liquidation of CommunityLend Inc and Lenders/investors may not receive any unpaid principal or interest from the Borrower/issuer in these circumstances.

6. CommunityLend shall provide Lenders/investors with a Risk Disclosure Statement. The Risk Disclosure Statement shall disclose risk factors relating to CommunityLend, the System, the Loans and any other matter that would be likely

to influence a Lender/investor's decision to invest in Loans. In particular, the Risk Disclosure Statement shall disclose that:

(a) A Lender/investor may lose some or all of their investment in a Loan because the Loans are highly risky and speculative and that only Lender/investors who can bear the loss of their entire investment should invest in Loans. Only Accredited Investors can be Lenders/investors on the System and the Loans are not suitable investments for retail investors.

(b) A Loan is an obligation of a Borrower/issuer only and is not secured by any collateral or guaranteed or insured by any third party.

(c) A Lender/investor must rely on CommunityLend and its designated third-party collection agencies to pursue collection against any Borrower/issuer.

(d) Credit information of a Borrower/issuer may be inaccurate or may not accurately reflect the Borrower/issuer's creditworthiness, which may cause a Lender/investor to lose part or all of their investment in a Loan. CommunityLend does not verify the information in a Loan Request. Subject to any selected verification that may be done during the final financial review, CommunityLend does not verify the income or employment of a Borrower/issuer.

(e) Information supplied by a Borrower/issuer in a Loan Request may be inaccurate or intentionally false.

(f) Default rates on Loans may be high.

(g) If payments on a Loan become more than 33 days overdue and the delinquent Loan is referred for collection, it may be impossible for the Lenders/investors to recover unpaid principal and interest.

(h) CommunityLend has a limited operating history. As an online company in the early stages of development, CommunityLend faces increased risks, uncertainties, expenses and difficulties. If CommunityLend becomes insolvent or bankrupt, a Lender/investor may find it difficult or impossible to service his or her Loans and may not recover his or her investment.

(i) Although securities regulatory authorities have granted exemptive relief to CommunityLend from certain requirements under securities legislation, no securities regulatory authority has approved or expressed an opinion about the securities offered on CommunityLend's website.

(j) A Lender/investor may lose his or her investment in a Loan that was fraudulently obtained as a result of identity theft or impersonation.

7. CommunityLend shall post and maintain the Loan performance data on its Public Pages as outlined in the written undertaking that it gave to securities regulatory authorities. CommunityLend shall start to post this data within 6 months after the System is launched. If the data is not statistically significant, CommunityLend shall post a disclaimer to this effect with the data.

Indemnities by CommunityLend

8. In each Lender Registration and Account Agreement, CommunityLend shall:

(a) agree to act as the Lender/investor's agent to fulfill any requirement imposed on the Lender/investor under applicable consumer and credit reporting legislation as a result of the CommunityLend Structure; and

(b) fully indemnify the Lender/investor for any claim made against, or losses suffered by, the Lender/investor as a direct result of CommunityLend's failure, in its capacity as agent of the Lender/investor, to fulfill any requirement imposed on the Lender/investor under applicable consumer and credit reporting legislation, except that such indemnity shall not extend to losses suffered by an Institutional Accredited Investor or a Non-Institutional Accredited Investor arising from the obligations of such a Lender/investor under any legislation other than under applicable consumer and credit reporting legislation.

Contractual rights of action granted by CommunityLend

9. In each Lender Registration and Account Agreement, CommunityLend will provide the Lender/investor with a contractual right of action if there is a misrepresentation in the CommunityLend Offering Memorandum or the Risk Disclosure Statement. This contractual right of action shall provide that:

(a) Where the CommunityLend Offering Memorandum or the Risk Disclosure Statement contains a misrepresentation (as defined in applicable securities legislation), a Lender/investor who invests in a Loan has, without regard to whether the Lender/investor relied on the misrepresentation when investing in the Loan, a right of action for damages against CommunityLend in respect of the Loan.

(b) CommunityLend shall not be liable under the contractual right of action if it proves that the Lender/investor invested in the Loan with knowledge of the misrepresentation.

(c) In an action for damages pursuant to the contractual right, CommunityLend is not liable for all or any portion of the damages that CommunityLend proves do not represent the loss of unpaid interest or principal on the Loan as a result of the misrepresentation relied upon.

(d) In no case shall the amount recoverable under the contractual right of action exceed the amount of unpaid interest and principal on the Loan.

For greater certainty, each Lender Registration and Account Agreement will provide that the contractual right of action will apply if:

(a) CommunityLend incorrectly reports a credit score of a Borrower/issuer on a Loan Request;

(b) CommunityLend incorrectly computes any rating that it prepares in respect of a Borrower/issuer on a Loan Request.

Enforcement of rights

10. Each Loan Agreement and Lender Registration and Account Agreement shall provide that:

(a) If a Lender/investor has a legal dispute with a Borrower/issuer in respect of a misrepresentation (as defined in applicable securities legislation) made by the Borrower/issuer in his or her Loan Request, the Loan Agreement provides that all legal disputes will be referred to a single arbitrator for binding arbitration at Lender/investor's option in accordance with the Litigation Policy.

(b) Should a Lender/investor opt to refer his or her dispute with the Borrower/issuer to arbitration, the Lender/investor will be required to have his or her dispute resolved in the manner set out in the Loan Agreement. CommunityLend will provide the Lender/investor with identifying information of the Borrower/issuers only for the purposes of enforcing the arbitrator's decision in court.

(c) Should a Lender/investor opt not to refer his or her dispute with the Borrower/issuer to arbitration, the Lender/investor will be required to pursue his or her claim by way of court action in which case the Lender/investor will be required to seek a court order compelling CommunityLend to provide the Lender/investor with the name and other relevant information that CommunityLend has on file for the Borrower/issuer. CommunityLend will put in place arrangements for ongoing loan servicing in the event of a discontinuance of its operations so that Lenders/investors will be able to obtain the name and other relevant information that CommunityLend has on file for the Borrower/issuer from a liquidator or other person authorized to administer CommunityLend's business pursuant to applicable insolvency legislation.

11. Should a Lender/investor opt, pursuant to CommunityLend's litigation policy and as set out in this decision, to sue a Borrower/issuer rather than seek a remedy through arbitration, CommunityLend will give such a Borrower/issuer, upon notice, access to all relevant documentation to enable such a Borrower/issuer to defend himself or herself in such a proceeding.

Protection of Borrowers/issuers

Disclosure

12. Each time a Borrower/issuer creates a Loan Request they will see a plain language warning that substantively states that:

(a) they may be considered to be offering a security under securities law and the Loan Request may be an offering memorandum under securities law;

(b) they are liable for any misrepresentation in the Loan Request;

(c) they can only offer the loan to accredited investors and they are relying on CommunityLend's determination of who is an accredited investor; and

(d) they are required to file reports of trade and the Loan Request with securities regulators and they are relying on CommunityLend to do so as their agent.

This warning will contain a hyperlink to a page on the Filer's website that provides the following additional detail:

(a) The Borrower/issuer may be considered to be offering a security under securities law and the Loan Request may be an offering memorandum under securities law;

(b) The Borrower/issuer is liable for any misrepresentations in the Loan Request and the Borrower/issuer must not post false information (which would include a false picture) in his or her Loan Request;

(c) The Borrower/issuer can only offer the Loan Agreements to Accredited Investors resident in one of the Applicable Jurisdictions and they are relying on CommunityLend's determination of who is an Accredited Investor;

(d) The Borrower/issuer is required to file reports of trade and the Loan Request with securities regulators and pay certain filing fees and they are relying on CommunityLend to do so as their agent;

(e) A description of statutory rights of action for damages and rights of rescission against Borrowers/issuers for misrepresentations in a Loan Request;

(f) A notice respecting the use of forward-looking information in an offering memorandum;

(g) A warning that Borrowers/issuers may be subject to penalties under applicable securities legislation should they fail to comply with applicable securities legislation.

Indemnities and contractual commitments by CommunityLend

13. The Borrower Registration Agreement shall provide that CommunityLend will fully indemnify the Borrower/issuer for any claim made:

(a) as a result of a Lender/investor not being an Accredited Investor; or

(b) in respect of information contained in a Loan Request that was presented exclusively by CommunityLend.

14. In each Borrower Registration Agreement, CommunityLend shall:

(a) agree to act as the Borrower/issuer's agent to fulfill any requirement imposed on the Borrower/issuer under applicable securities legislation to file properly-completed reports of trade in connection with the distribution of the Loan Agreements by the Borrower/issuer, to deliver the Borrower Offering Memorandum and to pay any filing fees as a result of the distribution of the Loan Agreements in the System; and

(b) fully indemnify the Borrower/issuer for any claim made as a result of CommunityLend failing to fulfill the requirement as the Borrower/issuer's agent.

15. Notwithstanding section 2(2)(a) of the *Consumer Protection Act* (Ontario)(the "**CPA**"), CommunityLend will contractually provide Borrowers/issuers with the substantially same protections as the CPA, as amended.

Restriction on indemnities by Lenders/investors and Borrowers/issuers

16. CommunityLend may only require an indemnity from a Lender/investor or a Borrower/issuer if the indemnity is in respect of losses suffered by CommunityLend as a result of an act or omission of a Lender/investor or of a Borrower/issuer. CommunityLend shall not require a Lender/investor or a Borrower/issuer to indemnify CommunityLend for any claim or loss resulting from CommunityLend's failure to comply with applicable legislation, including applicable securities legislation, or CommunityLend's contractual obligations.

2.1.6 ITG Canada Corp.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Coordinated Review – Registered investment dealer exempted from the requirements of subsection 36(1) of the Act to send trade confirmations to customers for DAP/RAP trades in equity securities executed on Canadian marketplaces that provide trade reporting transparency and for institutional investors in connection with trades in equity securities that are either (i) subject to NI 24-101 or (ii) matched in accordance with NI 24-101 but are not subject to NI 24-101 (e.g., US and foreign exchange trade equity securities). Relief restricted to DAP/RAP trades executed for "institutional customers" within the meaning of IIROC Rule 2700 that (i) have consented in writing not to receive from dealer trade confirmations of their DAP/RAP trades, (ii) are using the services of a matching service utility (**MSU**) within the meaning of NI 24-101 to process such DAP/RAP trades or trade matching technology that performs the same functions as a MSU, and (iii) have real-time access to, and can download into their own systems from the dealer's or MSU's systems, trade details of such DAP/RAP trades required for the NI 24-101 matching process that are similar to the prescribed information required in a trade confirmation. Relief expires the day after National Instrument 31-103 – Registration Requirements and Exemptions comes into effect (expected to be September 28, 2009).

Applicable Legislative Provisions

Subsection 36(1) and section 147 of the Securities Act (Ontario) and National Instrument 24-101 – Institutional Trade Matching and Settlement.

August 27, 2009

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUÉBEC, NEW BRUNSWICK
AND NOVA SCOTIA
(THE JURISDICTIONS)

AND

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

AND

IN THE MATTER OF
ITG CANADA CORP.
(THE FILER)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (**the Legislation**) for an exemption from the requirements (**the Requirements**) that registered dealers promptly send confirmations of trades (trade confirmations) to customers that are institutional investors in connection with trades in any equity securities that are either (i) subject to National Instrument 24-101 – Institutional Trade Matching and Settlement (**NI24-101**) or (ii) matched in accordance with NI24-101 but are not subject to NI24-101 (e.g., US and foreign exchange-traded equity securities) **(the Requested Exemptive Relief)**.

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

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

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

Interpretation

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

Representations

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

1. Filer is an unlimited liability company formed under the laws of the Province of Nova Scotia.

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

3. Filer is not in default of securities legislation in any jurisdiction.

4. Filer is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**). Filer is registered as an investment dealer in Ontario, Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan, and as a dealer (unrestricted practice) in Québec. Filer is a participating organization or member of the Toronto Stock Exchange, TSX Venture Exchange and CNSX.

5. Filer is a specialized agency brokerage and financial technology firm.

6. Filer provides customers with unique hybrid agency brokerage and technology solutions which includes various specialized electronic trading tools relating to decision support, order generation, execution, performance measurement, clearing, and settlement. These trading tools permit customers to leverage change, mitigate risk, improve efficiencies, and boost performance at each stage of the investment process.

7. Among other activities, Filer currently acts as executing broker as principal or agent for customers with respect to trades in equity securities executed on Canadian marketplaces. Filer has established an introducing broker/carrying broker relationship with TD Waterhouse Investor Services (Canada) Inc.

8. Filer only provides trading services to "institutional customer" as defined by IIROC Rule 2700.

9. The Legislation requires the prompt delivery trade confirmations containing certain prescribed information.

10. Filer is in compliance with the audit trail information requirements of NI23-101 – *Trading Rules* (**NI23-101**).

11. Filer is in compliance with industry best practices and standards with respect to minimum trade data elements for the purposes of trade matching, clearing and settlement.

12. The Legislation requires that Filer include, among other things, the following information on trade confirmations: (i) whether or not the registered dealer on a trade is acting as principal or agent, (ii) the name of the person or company from or to or through whom a security was bought or sold, if acting as agent in a trade, (iii) the date and name of the stock exchange, if any, upon which a transaction took place, and (iv) the name of the salesperson, if any, in a transaction. This required information is not included as part of the industry best practices and standards, and this information is already available to customers, as described in paragraphs 14, 15 and 16.

13. Additionally, the Legislation requires the Filer to state the commission, if any, charged in respect of a trade. Filer is unable to comply with this requirement because Filer's commission pricing models are formula based and affirmed though the matching process. Customers request significant customization of commission pricing models that are agreed to in writing prior to or at trade execution.

14. Filer provides various electronic tools that permit customers to have real-time access to trade details through proprietary Execution Management System or FIX trade reports.

15. At the customer's request, Filer can provide any or all of the information required to be maintained for audit trail purposes pursuant to NI23-101 through reports or graphical charts of where the customer's orders were executed by marketplace for one or many orders or for a time period of executions.

16. Filer will continue to provide each customer with a month-end statement with all activity for reporting and reconciliation.

17. Filer is seeking a decision from the Decision Maker that it be exempt from the Requirements to provide trade confirmations to institutional investors in connection with DAP/RAP trades within the meaning of NI24-101.

18. DAP/RAP trades are trades that are executed for a client trading account that permits settlement on a delivery against payment or receipt against payment basis through the facilities of a clearing agency, and for which settlement is made on behalf of the client by a custodian other than the dealer that executed the trade.

19. Providing trade confirmations to institutional investors in connection with DAP/RAP trades is redundant because each of the trade data elements has already been affirmed by the customer and/or its custodian and the trade has been allocated with instructions for delivery. The provision of a trade confirmation with the full trade details after the trade has been affirmed by the customer is not necessary and creates needless correspondence which is not relevant for the customer. Accordingly, granting the exemptive relief sought would not be prejudicial to the public interest.

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 provided that:

(i) The Requested Exemptive Relief only applies

a. to DAP/RAP trades that are executed by Filer on Canadian marketplaces that provide trade reporting transparency and for institutional investors in connection with trades in any equity securities that are either (i) subject to NI24-101 or (ii) matched in accordance with NI24-101 but are not subject to NI24-101 (e.g., US and foreign exchange-traded equity securities);

b. in respect of customers of Filer that are "institutional customers" within the meaning of IIROC Rule 2700;

c. where such customers

i. have consented in writing not to receive from Filer trade confirmations of such DAP/RAP trades;

ii. are using the services of a matching service utility (MSU) within the meaning of NI24-101 to process such DAP/RAP trades or trade matching technology that performs the same functions as a MSU; and

iii. have real-time access to, and can download into their own systems from the Filer's or MSU's systems, trade details of such DAP/RAP trades required for the NI24-101 matching process that are similar to the prescribed information required in a trade confirmation (except as otherwise described above in this decision under the Representations); and

(ii) The Requested Exemptive Relief will expire at midnight on the day after National Instrument 31-103 – *Registration Requirements and Exemptions* comes into effect.

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

"Paulette Kennedy"
Commissioner
Ontario Securities Commission

2.2 Orders

2.2.1 Shawn Lesperance

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

AND

IN THE MATTER OF
SHAWN LESPERANCE

ORDER

WHEREAS on October 14, 2008, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the "Act") in respect of a breach of an Order of the Ontario Securities Commission (the "Commission") by Shawn Lesperance ("Lesperance");

AND WHEREAS on August 31, 2009, Staff of the Commission filed a Statement of Allegations;

AND WHEREAS Shawn Lesperance entered into a Settlement Agreement dated September 1, 2009, (the "Settlement Agreement") in relation to the matters set out in the Statement of Allegations;

AND WHEREAS the Commission issued a Notice of Hearing dated August 31, 2009, setting out that it proposed to consider the Settlement Agreement;

UPON reviewing the Settlement Agreement, the Notice of Hearing, the Statement of Allegations, and upon considering submissions from Shawn Lesperance through his counsel and from Staff of the Commission;

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) The Settlement Agreement dated September 1, 2009, between Staff of the Commission and Lesperance is approved;

(2) Pursuant to s. 127(1)2, Lesperance is prohibited for 3 years from trading in securities, subject to the exception that he may continue to trade on his own behalf exclusively in a registered retirement savings plan account;

(3) Pursuant to s. 127(1)8, Lesperance is prohibited for 3 years from becoming or acting as a director or officer of any issuer; and,

(4) Pursuant to s. 127.1(1), Lesperance is to pay costs of the investigation of this matter to the Commission in the amount of $1000.00 within one week of the date of the order.

Dated at Toronto, Ontario this 2nd day of September, 2009.

"Patrick J. LeSage"

2.2.2 Global Petroleum Strategies, LLC et al. – ss. 127(1), (7), (8) and (10)

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

AND

**IN THE MATTER OF
GLOBAL PETROLEUM STRATEGIES, LLC,
PETROLEUM UNLIMITED, LLC AND
ROGER A. KIMMEL JR.**

**ORDER
(Section 127(1), (7), (8) and (10))**

WHEREAS the Ontario Securities Commission (the Commission) issued a temporary order on January 6, 2009 (the Temporary Order) against 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;

AND WHEREAS the Temporary Order ordered that: (1) trading in any securities by the respondents cease pursuant to subsection 127(5), paragraph 2 of subsection 127(1) and paragraph 4 of subsection 127(10) of the Act; and (2) any exemptions contained in Ontario securities law do not apply to the respondents pursuant to subsection 127(5), paragraph 3 of subsection 127(1) and paragraph 4 of subsection 127(10) 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 Petroleum Unlimited, LLC, Aurora Escrow Services, LLC, Morgan Kimmel and Roger A. Kimmel, Jr. were represented by counsel and were served with the Temporary Order, the Notice of Hearing dated January 6, 2009, the Statement of Allegations dated January 5, 2009 and the Affidavit of George Gutierrez sworn January 12, 2009 (the Gutierrez affidavit);

AND WHEREAS Staff have filed the Gutierrez Affidavit in support of Staff's request to extend the Temporary Order;

AND WHEREAS on January 15, 2009, the Commission extended the Temporary Order on the consent of Petroleum Unlimited, LLC, Aurora Escrow Services, LLC, Morgan Kimmel and Roger A. Kimmel, Jr., the other Respondents not appearing, until February 24, 2009 or further order of the Commission;

AND WHEREAS Staff served the Temporary Order, the extension of the Temporary Order, the Statement of Allegations dated January 5, 2009 and a letter providing notice of the hearing scheduled on February 24, 2009 on Global Petroleum Strategies LLC, by serving its principals: Michael Geraud and Robert Rossi by email and Joseph Valko and Jeffrey Jedlicki by courier;

AND WHEREAS Staff were unable, to serve the Temporary Order, the Notice of Hearing dated January 6, 2009, the Statement of Allegations dated January 5, 2009 on John Andrew, Vincent Cataldi, Charlotte Chambers, Carl Dylan, James Eulo, Richard Garcia, Troy Gray, Jim Kaufman, Timothy Kaufman, Chris Harris, Erik Luna, Mitch Malizio, Adam Mills, Jenna Pelusio, Rosemary Salveggi, Stephen J. Shore and Chris Spinler;

AND WHEREAS on January 6, 2009, the Alberta Securities Commission issued an amended Notice of Hearing with allegations against Global Petroleum Strategies, LLC, Petroleum Unlimited, LLC and Roger A. Kimmel Jr.;

AND WHEREAS on February 20, 2009, the Alberta Securities Commission scheduled a hearing into this matter to begin on May 11, 2009;

AND WHEREAS Staff served the amended Statement of Allegations dated February 23, 2009 on Global Petroleum Strategies, LLC by serving two of its principals: Michael Geraud and Robert Rossi by email and on Petroleum Unlimited, LLC and Roger A. Kimmel, Jr. by email to their counsel;

AND WHEREAS on February 24, 2009, Staff advised the Commission that Petroleum Unlimited, LLC and Roger A. Kimmel, Jr. are now self-represented;

AND WHEREAS on February 24, 2009, Staff appeared before the Commission, Roger A. Kimmel, Jr. having provided consent on his own behalf and on behalf of Petroleum Unlimited, LLC in writing. Global Petroleum Strategies, LLC not appearing, to extend the Temporary Order against Petroleum Unlimited, LLC and Roger A. Kimmel, Jr. and to adjourn the hearing to the conclusion of the proceeding commenced by the Alberta Securities Commission and a decision is rendered or such other date as is agreed by Staff and the respondents and is determined by the Office of the Secretary;

AND WHEREAS on February 24, 2009, Staff advised the Commission that it is not seeking an extension of the Temporary Order against Aurora Escrow Services, LLC, Morgan Kimmel, John Andrew, Vincent Cataldi, Charlotte Chambers, Carl Dylan, James Eulo, Richard Garcia, Troy Gray, Jim Kaufman, Timothy Kaufman, Chris Harris, Erik Luna, Mitch Malizio, Adam Mills, Jenna Pelusio, Rosemary Salveggi, Stephen J. Shore and Chris Spinler;

AND WHEREAS on February 24, 2009, the Commission ordered that the hearing is adjourned and the Temporary Order is extended against Global Petroleum Strategies LLC, Petroleum Unlimited, LLC, and Roger A. Kimmel, Jr. until the conclusion of the proceeding commenced by the Alberta Securities Commission ("ASC") and a decision is rendered, or such other date as is agreed

by Staff and the respondents and is determined by the Office of the Secretary;

AND WHEREAS on May 5, 2009, Staff filed the February 20, 2009 ASC order of substitutional service with respect to Global Petroleum Strategies LLC;

AND WHEREAS on August 28, 2009, Staff served notice of today's hearing and a draft order on Global Petroleum Strategies, LLC by email to Michael Geraud and Robert Rossi;

AND WHEREAS on September 2, 2009, Staff appeared before the Commission and filed the written consent of Petroleum Unlimited LLC and Roger A. Kimmel Jr. to the order requested, no one appearing for Global Petroleum Strategies LLC;

AND WHEREAS on September 2, 2009, Staff advised the Commission that on May 8, 2009, the ASC entered into a settlement agreement with Petroleum Unlimited LLC and Roger A. Kimmel Jr. pursuant to which Petroleum Unlimited LLC and Roger A. Kimmel Jr. gave an undertaking to the Executive Director of the ASC to: (i) cease trading in or purchasing securities for a period of seven years; and (ii) to not use any exemptions in the Alberta securities laws for a period of seven years. In addition, Roger A. Kimmel Jr. gave an undertaking to pay to the Executive Director of the ASC the sum of $20,000 towards settlement and $5,000 towards costs;

AND WHEREAS on September 2, 2009, Staff advised the Commission that on June 11, 2009, the ASC issued a decision on the merits against Global Petroleum Strategies LLC. The ASC found that Global Petroleum Strategies LLC traded and distributed securities of Petroleum Unlimited LLC in breach of the registration and prospectus requirements of the Alberta *Securities Act*, R.S.A. 2000, c.S-4.

AND WHEREAS on September 2, 2009, Staff advised the Commission that on August 14, 2009, the ASC issued a decision on sanctions against Global Petroleum Strategies LLC. The ASC ordered Global Petroleum Strategies LLC to cease trading in or purchasing securities and all of the exemptions contained in Alberta securities laws do not apply to Global Petroleum Strategies LLC permanently. The ASC further ordered Global Petroleum Strategies LLC to pay an administrative penalty of $300,000;

AND WHEREAS the Commission having heard Staff's submissions and having read the written consent of Roger A. Kimmel to the order requested against Petroleum Unlimited LLC and Roger A. Kimmel Jr. personally;

AND WHEREAS the Commission considers it to be in the public interest;

IT IS ORDERED THAT

1. Pursuant to paragraph 2 of subsection 127(1) of the Act, Petroleum Unlimited LLC and Roger A. Kimmel Jr. cease trading in or purchasing securities for a period of seven years, and;

2. apply to Petroleum Unlimited LLC and Roger A. Kimmel Jr. for a period of seven years;

3. Pursuant to paragraph 2 of subsection 127(1) of the Act, Global Petroleum Strategies LLC cease trading in or purchasing securities permanently, and;

4. Pursuant to paragraph 3 of subsection 127(1) of the Act, any of the exemptions contained in Ontario securities law do not apply to Global Petroleum Strategies LLC permanently.

DATED at Toronto this 2nd day of September 2009.

"Patrick J. LeSage"

2.2.3 Brilliante Brasilcan Resources Corp. et al. – ss. 127(1), (2) and (8)

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

AND

IN THE MATTER OF
BRILLIANTE BRASILCAN RESOURCES CORP.,
YORK RIO RESOURCES INC.,
BRIAN W. AIDELMAN, JASON GEORGIADIS,
RICHARD TAYLOR AND VICTOR YORK.

ORDER
(Subsections 127(1), (2) and (8))

WHEREAS on October 21, 2008, the Ontario Securities Commission ("Commission") ordered pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that all trading in the securities of Brilliante Brasilcan Resources Corp. ("Brilliante") shall cease and that Brilliante, York Rio Resources Inc. ("York Rio") and their representatives, including Brian W. Aidelman ("Aidelman"), Jason Georgiadis ("Georgiadis"), Richard Taylor ("Taylor"), and Victor York ("York") shall cease trading in all securities (the "Temporary Order");

AND WHEREAS on October 21, 2008, the Commission further ordered pursuant to subsection 127(6) of the Act that the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS the Commission issued a Notice of Hearing on October 23, 2008 to consider, among other things, whether to extend the Temporary Order;

AND WHEREAS on November 4, 2008 the Commission adjourned the hearing to November 14, 2008 at 10:00 a.m. and further extended the Temporary Order, on consent, until the close of business on November 14, 2008;

AND WHEREAS on November 14, 2008, the Commission adjourned the hearing to March 3, 2009 at 2:30 p.m. and further extended the Temporary Order, on consent, until the close of business on March 4, 2009;

AND WHEREAS on March 3, 2009, the Commission adjourned the hearing to September 3, 2009 at 10:00 a.m. and further extended the Temporary Order, until the close of business on September 4, 2009;

AND WHEREAS the Commission has been advised by Staff that Brilliante, Aidelman, and Georgiadis are consenting to the extension of the Temporary Order for a further period of six months until March 4, 2010, York Rio is taking no position and York is not opposed to the extension of the Temporary Order for a further period of six months until March 4, 2010;

AND WHEREAS the Commission is satisfied that reasonable steps have been taken by Staff to give all Respondents notice of the hearing and all Respondents, other than Taylor, have been duly served with such notice;

AND WHEREAS the Commission is of the opinion that the time required to conclude a hearing could be prejudicial to the public interest;

AND WHEREAS satisfactory information has not been provided by the Respondents to the Commission;

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

IT IS ORDERED pursuant to subsection 127(8) of the Act that the hearing is adjourned to March 3, 2010 at 10:00 a.m.;

IT IS FURTHER ORDERED pursuant to subsection 127(8) of the Act that the Temporary Order is extended until March 4, 2010, subject to further extension by order of the Commission;

IT IS FURTHER ORDERED pursuant to subsections 127(1) and (2) of the Act that, notwithstanding the Temporary Order, each of York, Aidelman, Georgiadis and Taylor are permitted to trade securities for the account of his registered retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have sole legal and beneficial ownership, provided that:

(i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;

(ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question;

(iii) he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only; and

(iv) he shall provide Staff with the particulars of the accounts (before any trading in the accounts under this order occurs) including the name of the registered dealer through which the trading will occur and the account numbers, and he shall instruct the registered dealer to provide copies of all trade confirmation notices with respect to the accounts directly to Staff at the same time that such notices are provided to him.

Dated at Toronto this 3rd day of September, 2009

"Mary G. Condon"

2.2.4 Y – s. 17

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

AND

IN THE MATTER OF
Y

ORDER
(Section 17 of the Securities Act)

WHEREAS Y was the subject of a proceeding before the Ontario Securities Commission (the "Commission"), commenced by a Notice of Hearing and accompanied by a Statement of Allegations issued by Staff with respect to Y, other individual respondents and Z Corporation, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), which is now a completed matter (the "Commission Proceeding");

AND WHEREAS an application (the "Application") has been made by the Royal Canadian Mounted Police (the "Applicant") for an order pursuant to subsection 17(1) of the Act authorizing the Applicant to use and disclose testimonial and documentary evidence of persons identified as C1, C3, C5, C6, C10, C11, C14, and N9 that was obtained by Staff of the Commission ("Staff") in respect of the subject matter of the Commission Proceeding under an order of the Commission made pursuant to section 11 of the Act, and to use and disclose the fact that N2/05 and O4 provided compelled testimony pursuant to section 13 of the Act in accordance with a Summons issued by the Commission (collectively, the "Evidence"), in order to provide assistance to the Applicant and Crown counsel in the criminal trial arising out of charges laid against Y under section 380(1)(a) of the *Criminal Code* (the "Criminal Proceeding");

AND WHEREAS the Commission heard the Application at a hearing held in camera on November 20, 2008;

AND WHEREAS subsequent to the hearing an additional Application (together the "Applications") was made requesting an order pursuant to subsection 17(1) of the Act authorizing the Applicant to use and disclose testimonial and documentary evidence of a person identified as N6;

AND WHEREAS C1, C3, C5, C6, C10, C11, C14, N6, N9, N2/05 and O4 (collectively, the "Respondents") received notice of the hearing but did not appear at the hearing;

AND WHEREAS the specific materials that are the subject of the Application with respect to C1, C3, C5, C6, C10, C11, C14, N6 and N9 are transcripts of examinations conducted under section 13 of the Act, documents that were the subject of the examinations, and other documents produced;

AND WHEREAS in furtherance of the Applications, Staff requests an Order under subsection 17(1) of the Act authorizing Staff to disclose the Evidence;

UPON CONSIDERING the written and oral submissions of the Applicant, the written and oral submissions of Staff and having found that it would be in the public interest to grant the relief sought by the Applicant in respect of C1, C3, C5, C6, C10, C11, C14, N6, N9 and O4, and that it would not be in the public interest to grant the relief sought by the Applicant in respect of N2/O5;

IT IS ORDERED THAT, pursuant to paragraph 17(1)(b) of the Act:

1. Staff may disclose to the Applicant and Crown counsel the Evidence provided by C1, C3, C5, C6, C10, C11, C14, N6 and N9 that was obtained by Staff pursuant to section 13 of the Act in accordance with a Summons;

2. Staff may disclose to the Applicant and Crown counsel the fact that O4 provided compelled testimony to the Commission pursuant to section 13 of the Act in accordance with a Summons;

3. Disclosure and use of the Evidence described in paragraphs 1 and 2, above, will be on the basis that:

    a. The Applicant and Crown counsel will not use the Evidence other than as expressly permitted by this Order;

    b. Except as expressly permitted by this Order, the Evidence shall be kept confidential;

c. Any use of the Evidence other than as expressly permitted by this Order will constitute a violation of this Order;

d. The Applicant and Crown counsel shall maintain custody and control over the Evidence so that copies of the Evidence and any other information in their possession which was obtained pursuant to or as a result of this Order are not disclosed or disseminated for any purpose other than the use expressly permitted by this Order;

e. Crown counsel will not file any part of the Evidence on the public record in the Criminal Proceeding unless it is necessary;

f. The Evidence shall not be used for any collateral or ulterior purpose;

g. The Applicant and Crown counsel shall, promptly after the completion of the trial and any appeals in the Criminal Proceeding, return all copies of the Evidence to Staff or confirm in writing that they have been destroyed; and

h. This Order does not affect any rights the Respondents may have relating to protection against self-incrimination granted by the *Canadian Charter of Rights and Freedoms* and the *Evidence Act* of Ontario.

i. This Order does not affect the prohibition on use of compelled testimony contained in section 18 of the Act.

j. This Order does not affect the obligation of the Crown to make appropriate disclosure in the Criminal Proceeding.

4. The Application with respect to N2/O5 is dismissed, without prejudice to the Applicant renewing its Application if circumstances change.

DATED at Toronto this 9th day of January, 2009.

“Lawrence E. Ritchie”

“Mary G. Condon”

2.2.5 Y – s. 17

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

AND

IN THE MATTER OF
Y

ORDER
(Section 17 of the Securities Act)

WHEREAS Y was the subject of a proceeding before the Ontario Securities Commission (the "Commission"), commenced by a Notice of Hearing and accompanied by a Statement of Allegations issued by Staff with respect to Y, other individual respondents and Z Corporation, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), which is now a completed matter (the "Commission Proceeding");

AND WHEREAS an application (the "Application") was made by the Royal Canadian Mounted Police (the "Applicant") for an order pursuant to subsection 17(1) of the Act authorizing the Applicant to use and disclose testimonial and documentary evidence of persons identified as C1, C3, C5, C6, C10, C11, C14, and N9 that was obtained by Staff of the Commission ("Staff") in respect of the subject matter of the Commission Proceeding under an order of the Commission made pursuant to section 11 of the Act, and to use and disclose the fact that N2/05 and O4 provided compelled testimony pursuant to section 13 of the Act in accordance with a Summons issued by the Commission, in order to provide assistance to the Applicant and Crown counsel in the criminal trial arising out of charges laid against Y under section 380(1)(a) of the *Criminal Code* (the "Criminal Proceeding");

AND WHEREAS the Commission heard the Application at a hearing held *in camera* on November 20, 2008;

AND WHEREAS subsequent to the hearing an additional Application (together the "Applications") was made requesting an order pursuant to subsection 17(1) of the Act authorizing the Applicant to use and disclose testimonial and documentary evidence of a person identified as N6;

AND WHEREAS on January 9, 2009, the Commission issued an Order with respect to the Applications;

AND WHEREAS on February 25, 2009 a new application was made requesting an order pursuant to subsection 17(1) of the Act authorizing the Applicant to use and disclose testimonial and documentary evidence of a person identified as O3;

AND WHEREAS on February 26, 2009 a new application was made requesting an order pursuant to subsection 17(1) of the Act authorizing the Applicant to use and disclose testimonial and documentary evidence of a person identified as N5/O6;

AND WHEREAS on March 11, 2009 a new application was made requesting an order pursuant to subsection 17(1) of the Act authorizing the Applicant to use and disclose testimonial and documentary evidence of a person identified as O2 (the new applications with respect to O3, N5/O6 and O2 are referred to, collectively, as the "New Applications");

AND WHEREAS the specific materials that are the subject of the New Applications with respect to O3, N5/O6 and O2 are transcripts of examinations conducted under section 13 of the Act, documents that were the subject of the examinations, and other documents produced (the "Evidence");

AND WHEREAS O3, N5/O6 and O2 received notice of the hearing but did not appear at the hearing;

AND WHEREAS O3, N5/06 and O2 have provided written consent to the order sought by the Applicant in respect of all information provided by them to the Commission;

AND WHEREAS in furtherance of the New Applications, Staff requests an Order under subsection 17(1) of the Act authorizing Staff to disclose the Evidence;

AND WHEREAS the Applicant has provided draft orders with the New Applications, which outline conditions for the use and disclosure of the Evidence in order to attempt to minimize the harm to O3, N5/O6 and O2;

AND WHEREAS it would be in the public interest to grant the relief sought by the Applicant in respect of O3, N5/O6 and O2;

IT IS ORDERED THAT, pursuant to paragraph 17(1)(b) of the Act:

1. Staff may disclose to the Applicant and Crown counsel the Evidence provided by O3, N5/O6 and O2 that was obtained by Staff pursuant to section 13 of the Act in accordance with a Summons;

2. Disclosure and use of the Evidence will be on the basis that:

    a. The Applicant and Crown Counsel will not use the Evidence other than as expressly permitted by this Order;

    b. Except as expressly permitted by this Order, the Evidence shall be kept confidential;

    c. Any use of the Evidence other than as expressly permitted by this Order will constitute a violation of this Order;

    d. The Applicant and Crown counsel shall maintain custody and control over the Evidence so that copies of the Evidence and any other information in their possession which was obtained pursuant to or as a result of this Order are not disclosed or disseminated for any purpose other than the use expressly permitted by this Order;

    e. Crown counsel will not file any part of the Evidence on the public record in the Criminal Proceeding unless it is necessary;

    f. The Evidence shall not be used for any collateral or ulterior purpose;

    g. The Applicant and Crown counsel shall, promptly after the completion of the trial and any appeals in the Criminal Proceeding, return all copies of the Evidence to Staff or confirm in writing that they have been destroyed; and

    h. This Order does not affect any rights the Respondents may have relating to protection against self-incrimination granted by the *Canadian Charter of Rights and Freedoms* and the *Evidence Act* of Ontario.

    i. This Order does not affect the prohibition on use of compelled testimony contained in section 18 of the Act.

    j. This Order does not affect the obligation of the Crown to make appropriate disclosure in the Criminal Proceeding.

DATED at Toronto this 12th day of March, 2009.

“Lawrence E. Ritchie”

“Mary G. Condon”

2.2.6 Y

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

AND

IN THE MATTER OF
Y

ORDER

WHEREAS Y (the "Applicant") was the subject of a proceeding before the Ontario Securities Commission (the "Commission"), commenced by a Notice of Hearing and accompanied by a Statement of Allegations issued by Staff with respect to Y, other individual respondents and Z Corporation, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), which is now a completed matter (the "Commission Proceeding");

AND WHEREAS an application (the "Application") has been made by the Applicant for an order pursuant to subsection 17(1) of the Act authorizing the Applicant to use and disclose testimonial and documentary evidence of certain persons that was obtained by Staff of the Commission ("Staff") in relation to the Commission Proceeding under an order of the Commission made pursuant to section 11 of the Act, in order to provide the Applicant with the ability to make full answer and defence in his criminal trial arising out of charges under section 380(1)(a) of the *Criminal Code* (the "Criminal Proceeding");

AND WHEREAS during the Application the Applicant made a motion for directions (the "Motion") for an order authorizing Staff to disclose to the Applicant and authorizing the Applicant to use and disclose testimonial and documentary evidence (the "Evidence") of persons who provided evidence to Staff on a voluntary basis, identified as C12, C13, N7, N8, N11 and N12, (the "Voluntary Witnesses"), in order to provide the Applicant with the ability to make full answer and defence in the Criminal Proceeding;

AND WHEREAS the specific materials that are the subject of the Motion are transcripts of examinations, documents that were the subject of the examinations, and other documents produced;

AND WHEREAS with the exception of N12, the Voluntary Witnesses received notice of the hearing of the Application (the "Notice of Hearing");

AND WHEREAS the Voluntary Witnesses did not appear at the hearing;

AND WHEREAS the Commission heard the Application and the Motion at a hearing held *in camera* on November 20, 2008;

AND WHEREAS on December 18, 2008 the Commission made an order concerning C13, who had indicated that he or she had no objection to the Motion as it relates to the Evidence he or she provided to the Commission;

AND WHEREAS on December 18, 2008 the Commission ordered that the Application with respect to N12 was adjourned *sine die*, until such time as N12 receives the Notice of Hearing as it relates to him or her;

AND WHEREAS C12 and N8 are on the Crown's witness list in the Criminal Proceeding (the "Crown's Witness List");

AND WHEREAS N7 and N11 are not on the Crown's Witness List and did not provide a response to the Notice of Hearing:

AND UPON CONSIDERING the written and oral submissions of the Applicant and the written and oral submissions of Staff;

AND WHEREAS the Commission has determined that it would be in the public interest to grant the Motion with respect C12 and N8;

AND WHEREAS the Commission has determined that it would not be in the public interest to grant the Motion with respect to N7 and N11;

IT IS ORDERED THAT:

1. Staff may disclose to the Applicant and his counsel the Evidence provided by C12 and N8.

2. The Applicant and his counsel may make disclosure of and use the Evidence provided by C12 and N8, solely for the purpose of the examination of any witness who testifies in the Criminal Proceeding, in order to allow the Applicant to make full answer and defence to the charges made against him in the Criminal Proceeding.

3. Disclosure and use of the Evidence provided by C12 and N8 will be on the basis that:

   a. The Applicant will pay all costs of photocopying of documents not previously copied and provided to Y;

   b. The Applicant and his counsel will not use the Evidence other than as expressly permitted by this Order;

   c. Except as expressly permitted by this Order, the Evidence shall be kept confidential;

   d. Any use of the Evidence other than as expressly permitted by this Order will constitute a violation of this Order;

   e. The Applicant and his counsel shall maintain custody and control over the Evidence so that copies of the Evidence and any other information in their possession which was obtained pursuant to or as a result of this Order are not disclosed or disseminated for any purpose other than the use expressly permitted by this Order;

   f. The Applicant's counsel will not file any part of the Evidence on the public record in the Criminal Proceeding unless it is necessary for the Applicant to make full answer and defence in the Criminal Proceeding;

   g. The Evidence shall not be used for any collateral or ulterior purpose;

   h. The Applicant and his counsel shall, promptly after the completion of the trial and any appeals in the Criminal Proceeding, return all copies of the Evidence to Staff or confirm in writing that they have been destroyed; and

   i. This Order does not affect any rights the Respondent has to protection against self-incrimination granted by the *Canadian Charter of Rights and Freedoms* and the *Evidence Act* of Ontario.

4. The Motion is dismissed with respect to N7 and N11, without prejudice to the Applicant renewing his Motion if circumstances change, including N7 and N11 being added to the Crown Witness List.

DATED at Toronto this 9th day of January, 2009.

“Lawrence E. Ritchie”

“Mary G. Condon”

2.2.7 Y

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

AND

IN THE MATTER OF
Y

ORDER

WHEREAS Y (the "Applicant"), was the subject of a proceeding before the Ontario Securities Commission (the "Commission"), commenced by a Notice of Hearing and accompanied by a Statement of Allegations issued by Staff with respect to Y, other individual respondents and Z Corporation, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), which is now a completed matter (the "Commission Proceeding");

AND WHEREAS an application (the "Application") has been made by the Applicant for an order pursuant to subsection 17(1) of the Act authorizing the Applicant to use and disclose testimonial and documentary evidence of certain persons that was obtained by Staff of the Commission ("Staff") in relation to the Commission Proceeding under an order of the Commission made pursuant to section 11 of the Act, in order to provide the Applicant with the ability to make full answer and defence in his criminal trial arising out of charges under section 380(1)(a) of the *Criminal Code* (the "Criminal Proceeding");

AND WHEREAS during the Application the Applicant made a motion for directions (the "Motion") for an order authorizing the Applicant to use and disclose testimonial and documentary evidence of a person who provided evidence to Staff on a voluntary basis, identified as C13 (the "Voluntary Witness"), in order to provide the Applicant with the ability to make full answer and defence in the Criminal Proceeding;

AND WHEREAS the specific materials that are the subject of the Motion are transcripts of examinations, documents that were the subject of the examinations, and other documents produced (the Evidence");

AND WHEREAS the Voluntary Witness received notice of the hearing for the Application;

AND WHEREAS the Voluntary Witness did not appear at the hearing, but has indicated that he/she has no objection to the order sought by the Applicant in respect of all information provided by them to the Commission;

AND WHEREAS the Commission heard the Application and the motion for directions at a hearing held *in camera* on November 20, 2008;

AND UPON CONSIDERING the written and oral submissions of the Applicant and the written and oral submissions of Staff;

AND WHEREAS the Commission has determined that it would be in the public interest to grant the Applicant's request for use and disclosure of the Evidence provided by C13 for the purposes of the Applicant's full answer and defence in the Criminal Proceeding;

IT IS ORDERED THAT:

1. The Applicant's counsel may make disclosure of and use the Evidence solely for the purpose of the examination of any witness who testifies in the Criminal Proceeding, in order to allow the Applicant to make full answer and defence to the charges made against him in the Criminal Proceeding.

2. Disclosure and use of the Evidence will be on the basis that:

   a. The Applicant and his counsel will not use the Evidence other than as expressly permitted by this Order;

   b. Except as expressly permitted by this Order, the Evidence shall be kept confidential;

   c. Any use of the Evidence other than as expressly permitted by this Order will constitute a violation of this Order;

d. The Applicant and his counsel shall maintain custody and control over the Evidence so that copies of the Evidence and any other information in their possession which was obtained pursuant to or as a result of this Order are not disclosed or disseminated for any purpose other than the use expressly permitted by this Order;

e. The Applicant's counsel will not file any part of the Evidence on the public record in the Criminal Proceeding unless it is necessary for the Applicant to make full answer and defence in the Criminal Proceeding;

f. The Evidence shall not be used for any collateral or ulterior purpose;

g. The Applicant and his counsel shall, promptly after the completion of the trial and any appeals in the Criminal Proceeding, return all copies of the Evidence to Staff or confirm in writing that they have been destroyed; and

h. This Order does not affect any rights the Respondent has to protection against self-incrimination granted by the *Canadian Charter of Rights and Freedoms* and the *Evidence Act* of Ontario.

DATED at Toronto this 18th day of December, 2008.

“Lawrence E. Ritchie”

“Mary G. Condon”

2.2.8 Y – s. 17

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

AND

IN THE MATTER OF
Y

ORDER
(Section 17 of the Securities Act)

WHEREAS Y (the "Applicant") was the subject of a proceeding before the Ontario Securities Commission (the "Commission"), commenced by a Notice of Hearing and accompanied by a Statement of Allegations issued by Staff with respect to Y, other individual respondents and Z Corporation, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), which is now a completed matter (the "Commission Proceeding");

AND WHEREAS an application (the "Application") has been made by the Applicant for an order pursuant to subsection 17(1) of the Act authorizing the Applicant to use and disclose testimonial and documentary evidence of persons identified as C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12, C14, C15, N1, N2, N3, N4, N5, N6, N7, N8, N9, N10, N11, N12, O1, O2, O3 and O4 (the "Respondents") that was obtained by Staff of the Commission ("Staff") in respect of the subject matter of the Commission Proceeding under an order of the Commission made pursuant to section 11 of the Act, in order to provide the Applicant with the ability to make full answer and defence in his criminal trial arising out of charges under section 380(1)(a) of the *Criminal Code* (the "Criminal Proceeding");

AND WHEREAS the specific materials that are the subject of the Application are transcripts of examinations conducted under section 13 of the Act, documents that were the subject of the examinations, and other documents produced (the "Evidence");

AND WHEREAS the Commission heard the Application at a hearing held *in camera* on November 20, 2008;

AND WHEREAS, with the exception of N1 and N12, the Respondents received notice of the hearing of the Application (the "Notice of Hearing");

AND WHEREAS on December 18, 2008, the Commission made an order concerning C1, C3, C5, C6, C10, C11, C14, N4, N9 and O1 (the "Non-Objecting Respondents"), who indicated that they had no objection to the order sought by the Applicant in respect of all information provided by them to the Commission;

AND WHEREAS on December 18, 2008, the Commission made an order that the Application with respect to N1 and N12 was adjourned sine die, until such time as those Respondents receive the Notice of Hearing as it relates to them;

AND WHEREAS C4, C9, N3, N6, N5/O6, N10, O2, O3 and O4 provided compelled testimony to the Commission in the Commission Proceeding and are on the Crown's Witness List in the Criminal Proceeding (the "Crown's Witness List");

UPON CONSIDERING the written and oral submissions of the Applicant, the written and oral submissions of Staff, the written submissions of counsel for O2, and the oral submissions of counsel for N4;

AND WHEREAS the Commission has determined that it would be in the public interest to grant the relief sought by the Applicant in respect of use and disclosure of the evidence provided by C4, C9, N3, N6, N10, O2, O3 and O4 (the "Evidence"), for the purposes of the Applicant's full answer and defence in the Criminal Proceeding;

AND WHEREAS the Commission has determined that it would not be in the public interest to grant the relief sought by the Applicant at this time in respect of use and disclosure of the evidence provided by N2/O5, who is opposed to the Application and who is not on the Crown's Witness List;

IT IS ORDERED THAT, pursuant to paragraph 17(1)(b) of the Act:

1. Staff may disclose to the Applicant and his counsel the Evidence provided by C4, C9, N3, N6, N5/O6, N10, O2, O3 and O4.

2. The Applicant and his counsel may make disclosure of the Evidence obtained from C4, C9, N3, N6, N5/O6, N10, O2, O3 and O4, solely for the purpose of the examination of any witness who testifies in the Criminal Proceeding, in order to allow the Applicant to make full answer and defence to the charges made against him in the Criminal Proceeding.

3. Disclosure and use of the Evidence obtained from C4, C9, N3, N6, N5/O6, N10, O2, O3 and O4 will be on the basis that:

   a. Staff shall not make disclosure to the Applicant of testimonial and documentary evidence of C4, C9, N3, N6, N5/O6, N10, O2, O3 and O4 for a period of seven days from the date of this Order;

   b. The Applicant and his counsel will not use the Evidence other than as expressly permitted by this Order;

   c. Except as expressly permitted by this Order, the Evidence shall be kept confidential;

   d. Any use of the Evidence other than as expressly permitted by this Order will constitute a violation of this Order;

   e. The Applicant and his counsel shall maintain custody and control over the Evidence so that copies of the Evidence and any other information in their possession which was obtained pursuant to or as a result of this Order are not disclosed or disseminated for any purpose other than the use expressly permitted by this Order;

   f. The Applicant's counsel will not file any part of the Evidence on the public record in the Criminal Proceeding unless it is necessary for the Applicant to make full answer and defence in the Criminal Proceeding;

   g. The Evidence shall not be used for any collateral or ulterior purpose;

   h. The Applicant and his counsel shall, promptly after the completion of the trial and any appeals in the Criminal Proceeding, return all copies of the Evidence to Staff or confirm in writing that they have been destroyed;

   i. This Order does not affect any rights the Respondents may have relating to protection against self-incrimination granted by the Canadian Charter of Rights and Freedoms and the Evidence Act of Ontario; and

   j. This Order does not affect the prohibition on use of compelled testimony contained in section 18 of the Act.

4. The Application is dismissed with respect to N2/O5, without prejudice to the Applicant renewing his Motion if circumstances change, including N2/O5 being added to the Crown Witness List.

DATED at Toronto this 9th day of January, 2009.

“Lawrence E. Ritchie”

“Mary G. Condon”

2.2.9 Y – s. 17

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

AND

IN THE MATTER OF
Y

ORDER
(Section 17 of the Securities Act)

WHEREAS Y (the "Applicant"), was the subject of a proceeding before the Ontario Securities Commission (the "Commission"), commenced by a Notice of Hearing and accompanied by a Statement of Allegations issued by Staff with respect to Y, other individual respondents and Z Corporation, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), which is now a completed matter (the "Commission Proceeding");

AND WHEREAS an application (the "Application") has been made by the Applicant for an order pursuant to subsection 17(1) of the Act authorizing him to use and disclose testimonial and documentary evidence of persons identified as C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12, C14, C15, N1, N2, N3, N4, N5, N6, N7, N8, N9, N10, N11, N12, O1, O2, O3 and O4 (the "Respondents") that was obtained by Staff of the Commission ("Staff") in respect of the subject matter of the Commission Proceeding under an order of the Commission made pursuant to section 11 of the Act, in order to provide him with the ability to make full answer and defence in his criminal trial arising out of charges under section 380(1)(a) of the *Criminal Code* (the "Criminal Proceeding");

AND WHEREAS the specific materials that are the subject of the Application are transcripts of examinations conducted under section 13 of the Act, documents that were the subject of the examinations, and other documents produced (the "Evidence");

AND WHEREAS, with the exception of N1 and N12, the Respondents received notice of the hearing;

AND WHEREAS with the exception of N4, whose counsel made oral submissions, and O2, whose counsel made written submissions, the Respondents did not appear at the hearing;

AND WHEREAS C1, C3, C5, C6, C10, C11, C14, N4, N9 and O1 (the "Non-Objecting Respondents") have indicated that they have no objection to the order sought by the Applicant in respect of all information provided by them to the Commission;

AND WHEREAS the Commission heard the Application at a hearing held in camera on November 20, 2008;

UPON CONSIDERING the written and oral submissions of the Applicant, the written and oral submissions of Staff, the written submissions of counsel for O2 and the oral submissions of counsel for N4, and having found that it would be in the public interest to grant certain of the relief sought by the Applicant in respect of use and disclosure of the Evidence provided by the Non-Objecting Respondents for the purposes of the Applicant's full answer and defence in the Criminal Proceeding;

IT IS ORDERED THAT, pursuant to paragraph 17(1)(b) of the Act:

1. The Applicant's counsel may make disclosure of and use the Evidence obtained from the Non-Objecting Respondents, solely for the purpose of the examination of any witness who testifies in the Criminal Proceeding, in order to allow the Applicant to make full answer and defence to the charges made against him in the Criminal Proceeding.

2. Disclosure and use of the Evidence will be on the basis that:

   a. The Applicant and his counsel will not use the Evidence other than as expressly permitted by this Order;

   b. Except as expressly permitted by this Order, the Evidence shall be kept confidential;

   c. Any use of the Evidence other than as expressly permitted by this Order will constitute a violation of this Order;

d. The Applicant and his counsel shall maintain custody and control over the Evidence so that copies of the Evidence and any other information in their possession which was obtained pursuant to or as a result of this Order are not disclosed or disseminated for any purpose other than the use expressly permitted by this Order;

e. The Applicant's counsel will not file any part of the Evidence on the public record in the Criminal Proceeding unless it is necessary for the Applicant to make full answer and defence in the Criminal Proceeding;

f. The Evidence shall not be used for any collateral or ulterior purpose;

g. The Applicant and his counsel shall, promptly after the completion of the trial and any appeals in the Criminal Proceeding, return all copies of the Evidence to Staff or confirm in writing that they have been destroyed; and

h. This Order does not affect any rights the Respondents may have relating to protection against self-incrimination granted by the *Canadian Charter of Rights and Freedoms* and the *Evidence Act* of Ontario.

i. This Order does not affect the prohibition on use of compelled testimony contained in section 18 of the Act.

3. The Application with respect to N1, and N12 is adjourned sine die, until such time as those Respondents receive notice of the hearing of the Application as it relates to them;

4. The Commission reserves its decision as to the relief otherwise sought in the Application.

DATED at Toronto this 18th day of December, 2008.

“Lawrence E. Ritchie”

“Mary G. Condon”

2.2.10 Y – s. 17

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

AND

IN THE MATTER OF
Y

ORDER
(Section 17 of the Securities Act)

WHEREAS Y (the "Applicant") was the subject of a proceeding before the Ontario Securities Commission (the "Commission"), commenced by a Notice of Hearing and accompanied by a Statement of Allegations issued by Staff with respect to Y, other individual respondents and Z Corporation, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), which is now a completed matter (the "Commission Proceeding");

AND WHEREAS an application (the "Application") has been made by the Applicant for an order pursuant to subsection 17(1) of the Act authorizing the Applicant to use and disclose documentary evidence of Z Corporation that was obtained by Staff of the Commission ("Staff") in respect of the Commission Proceeding under an order of the Commission made pursuant to section 11 of the Act, in order to provide the Applicant with the ability to make full answer and defence in his criminal trial arising out of charges under section 380(1)(a) of the *Criminal Code* (the "Criminal Proceeding");

AND WHEREAS the specific materials that are the subject of the Application are all documents produced by Z Corporation which were subsequently disclosed to the Applicant for use in the Commission Proceeding (the "Z Corporation Evidence");

AND WHEREAS the documents in the possession of Staff over which Z Corporation claims privilege were never disclosed to the Applicant for use in the Commission Proceeding and are not the subject of the Application;

AND WHEREAS Z Corporation has indicated that it consents to the order sought by the Applicant in respect of the Z Corporation Evidence, with the exception of privileged documents collected by Staff during the investigation in the Commission Proceeding;

UPON CONSIDERING the written submissions of the Applicant, the written submissions of Staff and the written submissions of counsel for Z Corporation, and having found that it would be in the public interest to grant the relief sought by the Applicant in respect of use and disclosure of the Evidence provided by Z Corporation for the purposes of the Applicant's full answer and defence in the Criminal Proceeding;

IT IS ORDERED THAT, pursuant to paragraph 17(1)(b) of the Act:

1. Staff may disclose the Z Corporation Evidence to the Applicant and his counsel.

2. The Applicant and his counsel may make use and disclosure of the Z Corporation Evidence, solely for the purpose of the examination of any witness who testifies in the Criminal Proceeding, in order to allow the Applicant to make full answer and defence to the charges made against him in the Criminal Proceeding.

3. Disclosure and use of the Z Corporation Evidence will be on the basis that:

    a. The Applicant will pay all costs of photocopying of documents not previously copied and provided to him;

    b. The Applicant and his counsel will not use the Evidence other than as expressly permitted by this Order;

    c. Except as expressly permitted by this Order, the Evidence shall be kept confidential;

    d. Any use of the Evidence other than as expressly permitted by this Order will constitute a violation of this Order;

e. The Applicant and his counsel shall maintain custody and control over the Evidence so that copies of the Evidence and any other information in their possession which was obtained pursuant to or as a result of this Order are not disclosed or disseminated for any purpose other than the use expressly permitted by this Order;

f. The Applicant's counsel will not file any part of the Evidence on the public record in the Criminal Proceeding unless it is necessary for the Applicant to make full answer and defence in the Criminal Proceeding;

g. The Evidence shall not be used for any collateral or ulterior purpose;

h. The Applicant and his counsel shall, promptly after the completion of the trial and any appeals in the Criminal Proceeding, return all copies of the Evidence to Staff or confirm in writing that they have been destroyed;

i. This Order does not affect any rights the Respondents may have relating to protection against self-incrimination granted by the Canadian Charter of Rights and Freedoms and the Evidence Act of Ontario; and

j. This Order does not affect the prohibition on use of compelled testimony contained in section 18 of the Act.

DATED at Toronto this 9th day of January, 2009.

“Lawrence E. Ritchie”

“Mary G. Condon”

2.2.11 Keefe, Bruyette & Woods, Inc. – s. 218 of the Regulatin

Headnote

Application for an order, pursuant to section 218 of Regulation 1015 (the Regulation) of the Ontario Securities Act (the Act), exempting the Applicant from the requirement in section 213 of the Regulation that the Applicant be a company incorporated, or a person formed or created, under the laws of Canada or a province or territory of Canada, for the Applicant to be registered under the Act as a dealer in the category of limited market dealer.

Regulation Cited

R.R.O. 1990, Regulation 1015, am. to O. Reg. 500/06, ss. 213, 218.

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

AND

IN THE MATTER OF
R.R.O. 1990, REGULATION 1015,
AS AMENDED
(the Regulation)

AND

IN THE MATTER OF
KEEFE, BRUYETTE & WOODS, INC.

ORDER
(Section 218 of the Regulation)

UPON the application (the **Application**) of Keefe, Bruyette & Woods, Inc. (the Applicant) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to section 218 of the Regulation, exempting the Applicant from the requirement in section 213 of the Regulation that the Applicant be a company incorporated, or a person formed or created, under the laws of Canada or a province or territory of Canada, in order for the Applicant to be registered under the Act as a dealer in the category of limited market dealer;

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a company formed under the laws of the State of New York, U.S.A. The head office of the Applicant is located in New York, New York, U.S.A.

2. The Applicant is currently registered with the Commission as a dealer in the category of international dealer.

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

4. The Applicant's primary business activities are trading in securities, acting as agent, for primarily institutional investors and high net-worth individuals.

5. In Ontario, the Applicant intends to, among other things, market and sell to accredited investors and other exempt purchasers. The clients would include large institutional investors. These limited market activities may be undertaken directly, or in conjunction with or through another registered dealer, including providing and receiving referrals to and from such dealer.

6. Section 213 of the Regulation provides that a registered dealer that is not an individual must be a company incorporated, or a person formed or created, under the laws of Canada or a province or territory of Canada.

7. The Applicant is not resident in Canada and does not require a separate Canadian company in order to carry out its proposed limited market dealer activities in Ontario. It is more efficient and cost-effective to carry out those activities through the existing company.

8. Without the relief requested, the Applicant would not meet the requirements of the Regulation for registration as a dealer in the category of limited market dealer as the Applicant is not a company incorporated, or a person formed or created, under the laws of Canada or a province or territory of Canada.

AND UPON being satisfied that to make this order would not be prejudicial to the public interest;

IT IS ORDERED, pursuant to section 218 of the Regulation, and in connection with the registration of the Applicant as a dealer under the Act in the category of limited market dealer, section 213 of the Regulation shall not apply to the Applicant, provided that:

1. The Applicant appoints an agent for service of process in Ontario.

2. The Applicant shall provide to each client resident in Ontario a statement in writing disclosing the non-resident status of the Applicant, the Applicant's jurisdiction of residence, the name and address of the agent for service of process of the Applicant in Ontario, and the nature of risks to clients that legal rights may not be enforceable.

3. The Applicant will not change its agent for service of process in Ontario without giving the Commission 30 days prior notice of such change by filing a new Submission to Jurisdiction and Appointment of Agent for Service of Process.

4. The Applicant and each of its registered salespersons, officers, directors and partners irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial, and administrative tribunals of Ontario and any administrative proceedings in Ontario, in any proceedings arising out of or related to or concerning its registration under the Act or its activities in Ontario as a registrant.

5. The Applicant will not have custody of, or maintain customer accounts in relation to, securities, funds, and other assets of clients resident in Ontario.

6. The Applicant will inform the Director immediately upon the Applicant becoming aware:

   (a) that it has ceased to be registered as a broker-dealer in the United States;

   (b) of its registration in any other jurisdiction not being renewed or being suspended or revoked;

   (c) that it is the subject of a regulatory proceeding, investigation or disciplinary action by any financial services or securities regulatory authority or self-regulatory authority;

   (d) that the registration of its salespersons, officers, directors, or partners who are registered in Ontario have not been renewed or have been suspended or revoked in any Canadian or foreign jurisdiction; or

   (e) that any of its salespersons, officers, directors, or partners who are registered in Ontario are the subject of a regulatory proceeding, investigation or disciplinary action by any financial services or securities regulatory authority or self-regulatory authority in any Canadian or foreign jurisdiction.

7. The Applicant will pay the increased compliance and case assessment costs of the Commission due to the Applicant's location outside Ontario, including the cost of hiring a third party to perform a compliance review on behalf of the Commission.

8. The Applicant will make its books and records outside Ontario, including electronic records, readily accessible in Ontario, and will produce physical records for the Commission within a reasonable time if requested.

9. If the laws of the jurisdiction in which the Applicant's books and records are located prohibit production of the books and records in Ontario without the consent of the relevant client the Applicant shall, upon a request by the Commission:

   (a) so advise the Commission; and

   (b) use its best efforts to obtain the client's consent to the production of books and records.

10. The Applicant will, upon the Commission's request, provide a representative to assist the Commission in compliance and enforcement matters.

11. The Applicant and each of its registered salespersons, officers, directors and partners will comply, at the Applicant's expense, with requests under the Commission's investigation powers and orders under the Act in relation to the Applicant's dealings with Ontario clients, including producing documents and witnesses in Ontario, submitting to audit or search and seizure process or consenting to an asset freeze, to the extent such powers would be enforceable against the Applicant if the Applicant were resident in Ontario.

12. If the laws of the Applicant's jurisdiction of residence that are otherwise applicable to the giving of evidence or production of documents prohibit the Applicant or the witnesses from giving the evidence without the consent or leave of the relevant client or any third party, including a court of competent jurisdiction, the Applicant shall:

   (a) so advise the Commission; and

   (b) use its best efforts to obtain the client's consent to the giving of the evidence.

13. The Applicant will maintain appropriate registration and regulatory organization member-ship, in the jurisdiction of its principal operations and if required, in its jurisdiction of residence.

September 4, 2009.

"Patrick J. LeSage"
Commissioner
Ontario Securities Commission

"Mary G. Condon"
Commissioner
Ontario Securities Commission

2.2.12 Howard Graham – ss. 127(1), 127(10)

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

AND

**IN THE MATTER OF
HOWARD GRAHAM**

**ORDER
(Section 127(1), (10) of the Act)**

WHEREAS on February 20, 2007, the United States Securities and Exchange Commission ("SEC") filed a civil securities fraud complaint against Braintree Energy, Inc. and Howard Graham in the United States District Court - District of Massachusetts (the "Complaint");

AND WHEREAS on December 23, 2008, the United States District Court - District of Massachusetts entered a final judgment against Howard Graham (the "Final Judgment");

AND WHEREAS Howard Graham consented to entry of the Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction);

AND WHEREAS Staff of the Ontario Securities Commission (the "Commission") made an application under section 127(1) and (10) of the *Securities Act*, R.S.O., 1990, c. S.5, as amended (the "Act") for an order against Howard Graham on the grounds that it is in the public interest to make an order against Howard Graham;

AND WHEREAS Howard Graham was represented by counsel and was served with the Statement of Allegations and the Notice of Hearing;

AND WHEREAS on March 26, 2009, a panel of the Commission granted Howard Graham's request for an adjournment to April 9, 2009;

AND WHEREAS, the Commission held a hearing on April 9, 2009 to consider the Statement of Allegations and the record filed by Staff;

AND WHEREAS at the hearing, the Commission considered Staff's submissions, no one appeared on behalf of Howard Graham;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make an order against Howard Graham;

T**HE COMMISSION ORDERS THAT:**

1. trading in any securities by or of Howard Graham cease permanently pursuant to paragraph 2 of section 127(1) of the Act;
2. acquisition of any securities by Howard Graham is prohibited permanently pursuant to paragraph 2.1 of section 127(1) of the Act;
3. any exemptions contained in Ontario securities laws do not apply to Howard Graham pursuant to paragraph 3 of section 127(1) of the Act;
4. Howard Graham resign any position he holds as a director or officer of an issuer pursuant to paragraph 7 of section 127(1) of the Act;
5. Howard Graham is prohibited from becoming or acting as a director or officer of any issuer pursuant to paragraph 8 of section 127(1) of the Act;

DATED at Toronto, this 4th day of September, 2009.

Patrick J. LeSage"

"Suresh Thakrar"

2.2.13 Oversea Chinese Fund Limited Partnership 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
OVERSEA CHINESE FUND LIMITED PARTNERSHIP,
WEIZHEN TANG AND ASSOCIATES INC.,
WEIZHEN TANG CORP. AND WEIZHEN TANG

ORDER
Subsections 127(7) and (8)

WHEREAS on the 17th day of March, 2009, pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), the Ontario Securities Commission (the "Commission") made the following temporary orders (the "Temporary Order") against Oversea Chinese Fund Limited Partnership ("Oversea"), Weizhen Tang and Associates Inc. ("Associates"), Weizhen Tang Corp. ("Corp.") and Weizhen Tang, (collectively the "Respondents"):

1. that all trading in securities of Oversea, Associates and Corp. shall cease;

2. that all trading by the Respondents shall cease; and

3. that the exemptions contained in Ontario securities law do not apply to the Respondents;

AND WHEREAS on March 17, 2009, pursuant to subsection 127(6) of the Act the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS on March 18, 2009 the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on April 1, 2009 at 2:00 p.m.;

AND WHEREAS the Notice of Hearing sets out that the Hearing is to consider, inter alia, whether, in the opinion of the Commission, it is in the public interest, pursuant to subsections 127(7) and (8) of the Act to extend the Temporary Order until such further time as considered necessary by the Commission;

AND WHEREAS prior to the April 1, 2009 Hearing date, Staff of the Commission ("Staff") served the Respondents with copies of the Temporary Order, Notice of Hearing, and Staff's supporting materials;

AND WHEREAS on April 1, 2009, counsel for the Respondents advised the Commission that the Respondents did not oppose the extension of the Temporary Order;

AND WHEREAS on April 1, 2009, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest to extend the Temporary Order until September 10, 2009;

AND WHEREAS on April 1, 2009, the Commission ordered that the Temporary Order be extended, pursuant to section 127(8) of the Act, to September 10, 2009 and the Hearing be adjourned to September 9, 2009;

AND WHEREAS counsel for the Respondents has advised Staff that counsel for the Respondents requires an adjournment of the Hearing to allow materials to be filed in support of a request that Weizhen Tang be permitted to trade, under supervision, on behalf of certain named investors;

AND WHEREAS the parties have advised the Commission that there will be a contested hearing with respect to Weizhen Tang's request on September 25, 2009.

AND WHEREAS Staff of the Commission has informed the Commission that they will be opposing this request;

AND WHEREAS the Commission considered the parties' correspondence and counsel for Staff and counsel for the Respondents consented to an order extending the Temporary Order until September 26, 2009 and adjourning the Hearing until September 25, 2009 at 10:00 a.m.;

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

AND WHEREAS pursuant to section 127(8) of the Act, satisfactory information has not been provided to the Commission by any of the Respondents;

AND WHEREAS the Commission has considered the consent of the parties;

IT IS HEREBY ORDERED that the Temporary Order is extended until September 26, 2009; and

IT IS FURTHER ORDERED that the Hearing in this matter is adjourned to September 25, 2009 at 10:00 a.m or as soon thereafter as the hearing can be held.

DATED at Toronto this 8th day of September, 2009.

"David L. Knight"

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and RulingsIN THE MATTER OF THE SECURITIES ACT

3.1.1 Goldbridge Financial Inc. et al.

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

AND

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

**SETTLEMENT AGREEMENT BETWEEN
SHAWN LESPERANCE AND
STAFF OF THE ONTARIO SECURITIES COMMISSION**

PART I – INTRODUCTION

1. By Notice of Hearing dated August 31, 2009, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), it is in the public interest for the Commission to make certain orders in respect of Shawn Lesperance (the "Respondent" or "Lesperance").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") recommend settlement with the Respondent of the proceeding commenced by Notice of Hearing dated August 31, 2009 (the "Proceeding") according to the terms and conditions set out in Part VI of this Settlement Agreement. The Respondent agrees to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III - AGREED FACTS

3. For the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority in Canada, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

4. Staff and the Respondent agree that this Settlement Agreement is without prejudice to the Respondent in any past, present or future civil proceeding which may be brought by any person. Nothing in this Settlement Agreement is intended to be an admission of civil liability by the Respondent to any person or company; such liability is expressly denied.

5. Lesperance is a resident of LaSalle, Ontario. He was at all material times the Treasurer and a Director of Goldbridge Financial Inc. ("Goldbridge").

6. Lesperance has never been registered to trade in securities or act as an advisor under s. 25(1) of the Act.

7. Goldbridge is a company incorporated pursuant to the laws of Ontario, with its head office in Toronto. Goldbridge is not registered to trade in securities or act as an advisor under s. 25(1) of the Act.

8. Weber is a resident of Richmond Hill, Ontario, and the President, Corporate Secretary and a Director of Goldbridge. Weber is not registered to trade in securities or act as an advisor under s. 25(1) of the Act.

9. On October 28, 2008, the Commission issued a Temporary Order in this proceeding (the "Temporary Order") that included the following terms:

IT IS ORDERED pursuant to clause 2 of subsection 127(1) of the Act that all trading in securities by Goldbridge, Weber and Lesperance shall cease, subject to the exception below;

IT IS FURTHER ORDERED notwithstanding the foregoing order, Goldbridge may trade solely as principal in one account ("the account") in accordance with the following conditions:

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

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

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

10. In December 2008, while the Temporary Order remained in effect, Goldbridge accepted a loan of $10,000 in cash from Dean Forgie, which was placed in Goldbridge's account to facilitate trading in securities, in breach of the Temporary Order. Weber signed the loan agreement on behalf of Goldbridge. Lesperance, as Treasurer and a Director of Goldbridge, authorized, permitted or acquiesced in the loan agreement transaction and the acceptance and disposition of the funds provided pursuant to that transaction.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

11. Through these acts, the Respondent has engaged in conduct that he was prohibited to engage in by the terms of the Temporary Order.

12. The Respondent's conduct is in breach of Ontario securities law and the public interest.

PART V – RESPONDENT'S POSITION

13. The Respondent requests that the settlement hearing panel consider the following circumstances in mitigation of sanction:

(a) Due to Weber's trading losses, Lesperance lost all of the $50,000 he invested in Goldbridge, the majority of which he obtained through a line of credit and his credit card;

(b) Lesperance is employed in a company that supplies the auto industry in the Windsor/Detroit area and has suffered a significant reduction in income in the last year as a result of the downturn in that industry; and,

(c) As a result of the two above circumstances, Lesperance has no present ability to pay a higher costs order than the $1000 proposed;

PART VI – TERMS OF SETTLEMENT

14. The Respondent agrees to the following terms of settlement listed below.

15. The Commission will make an order that:

(1) This Settlement Agreement between Staff of the Commission and Lesperance is approved;

(2) Pursuant to s. 127(1)2 of the Act, Lesperance is prohibited for 3 years from trading in securities, subject to the exception that he may continue to trade on his own behalf exclusively in a registered retirement savings plan account;

(3) Pursuant to s. 127(1)8 of the Act, Lesperance is prohibited for 3 years from becoming or acting as a director or officer of any issuer; and,

(4) Pursuant to s. 127.1(1) of the Act, Lesperance is to pay costs of the investigation of this matter to the Commission in the amount of $1000.00 within one week of the date of the order.

PART VII – STAFF COMMITMENT

16. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 17 below.

17. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

18. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for September 2, 2009, or on another date agreed to by Staff and the Respondent, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.

19. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondent's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

20. If the Commission approves this Settlement Agreement, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

21. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

22. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

23. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

    (a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and,

    (b) Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

24. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

25. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

26. A faxed copy of any signature will be treated as an original signature.

Dated this 1st day of September, 2009.

ONTARIO SECURITIES COMMISSION

"Tom Atkinson"
Director of Enforcement
Ontario Securities Commission

"Shawn C. Lesperance"
Shawn C. Lesperance

"Dino Bavetta"
Witness

"Schedule A"

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

AND

IN THE MATTER OF
SHAWN LESPERANCE

ORDER

WHEREAS on October 14, 2008, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the "Act") in respect of a breach of an Order of the Ontario Securities Commission (the "Commission") by Shawn Lesperance ("Lesperance");

AND WHEREAS on August 31, 2009, Staff of the Commission filed a Statement of Allegations;

AND WHEREAS Shawn Lesperance entered into a Settlement Agreement dated September 1, 2009, (the "Settlement Agreement") in relation to the matters set out in the Statement of Allegations;

AND WHEREAS the Commission issued a Notice of Hearing dated August 31, 2009, setting out that it proposed to consider the Settlement Agreement;

UPON reviewing the Settlement Agreement, the Notice of Hearing, the Statement of Allegations, and upon considering submissions from Shawn Lesperance through his counsel and from Staff of the Commission;

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) The Settlement Agreement dated September 1, 2009, between Staff of the Commission and Lesperance is approved;

(2) Pursuant to s. 127(1)2, Lesperance is prohibited for 3 years from trading in securities, subject to the exception that he may continue to trade on his own behalf exclusively in a registered retirement savings plan account;

(3) Pursuant to s. 127(1)8, Lesperance is prohibited for 3 years from becoming or acting as a director or officer of any issuer; and,

(4) Pursuant to s. 127.1(1), Lesperance is to pay costs of the investigation of this matter to the Commission in the amount of $1000.00 within one week of the date of the order.

Dated at Toronto, Ontario this day of , 2009.

_____

3.1.2 MAG Silver Corp. and Fresnillo plc – ss. 104, 127 of the Act and s. 4.3 of the OSC Rules of Procedure

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

AND

IN THE MATTER OF
MULTILATERAL INSTRUMENT 61-101 –
PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS

AND

IN THE MATTER OF
A PROPOSED INSIDER BID FOR MAG SILVER CORP. BY FRESNILLO PLC
(Sections 104 and 127 of the Securities Act, Rule 4.3 of the Commission's Rules of Procedure)

ORAL RULING AND REASONS FOR DECISION ON A
DOCUMENTARY DISCLOSURE MOTION

Hearing:	June 16-17, 2009		
Reasons:	August 31, 2009 (Written Decision in support of Oral Ruling delivered on June 18, 2009)		
Panel:	Lawrence E. Ritchie	–	Vice-Chair
Appearances:	J. Sasha Angus Cullen Price Shannon O'Hearn	–	For Staff of the Commission
	Andrea Burke	–	For MAG Silver Corp.
	L. David Roebuck Melissa J. MacKewn	–	For Fresnillo plc and Fresbal Investments

The following text has been prepared for the purpose of publication in the Ontario Securities Commission Bulletin and is based on excerpts of the transcript of the hearing. The excerpts have been edited and supplemented and the text has been approved by the Chair of the Panel for the purpose of providing a public record of the decision.

ORAL RULING AND REASONS FOR DECISION

I. BACKGROUND

[1] MAG Silver Corp. ("**MAG**" or the "**Target**"), is the potential target of a intended insider take-over bid by Fresnillo plc, through its wholly owned subsidiary, Fresbal Investments Ltd. (collectively, "**Fresnillo**" or the "**Bidder**"). Fresnillo announced its intended bid by press conference on December 1, 2008. Although more than six (6) months had passed since the announcement of its intention, Fresnillo had not yet made a formal offer.[1]

[2] Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* (2008), 31 O.S.C.B. 1321 ("**MI 61-101**") requires an insider bidder, at its own expense, to obtain a formal valuation of the target by a qualified and independent valuator, and requires the target to determine who the valuator will be, supervise the preparation of the formal valuation, and use its best efforts to ensure that the formal valuation is completed and provided to the bidder in a timely manner. This requirement is intended to address the fact that an insider bidder may have an informational advantage over the shareholders of the target. Both the bidder and the target are required to cooperate in obtaining the formal valuation. Both the bidder and the target may comment on the formal valuation in their respective circulars.

[3] In accordance with MI 61-101, MAG established an Independent Committee, which selected and retained Toronto Dominion Securities Inc. ("**TDSI**") as Independent Valuator ("**Independent Valuator**"), and Scott Wilson Roscoe Postle Assoc. ("**SWRPA**") as Technical Advisor to the Independent Valuator, to prepare an Independent Valuation of MAG (the "**Valuation**").

[1] On June 22, 2009, Fresnillo announced that it would not proceed with its intended bid.

[4] On February 1, 2009, MAG's Independent Committee suspended the Valuation on the basis that Fresnillo had failed to provide the Independent Valuator with certain material undisclosed documents and information in the exclusion possession, power or control of Fresnillo (the "**Merits Documents**").

[5] On May 8, 2009, MAG brought an application under sections 104 and 127 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"). In its application, MAG sought an order that Fresnillo provide the Merits Documents to the Independent Valuator and enjoining Fresnillo from taking any steps to proceed with the intended bid or any other bid for MAG until the completion of the Valuation (the "**Application**"). MAG submits that Fresnillo is delaying the Valuation, and that the delay is causing serious financial and other detriments to MAG's shareholders. Fresnillo submits that MAG is delaying the Valuation, and that at least some of the Merits Documents do not exist and are, in any event, beyond the scope of what it is required to provide under MI 61-101.

[6] Fresnillo has a 56 percent interest in a Mexican joint venture company (the "**Juanicipio Joint Venture**") and operates it pursuant to a **Joint Venture Agreement**. MAG owns the remaining 44 percent of the Juanicipio Joint Venture. MAG submits that Fresnillo has complete control over all information concerning the development of the Joint Venture Property.

[7] The Juanicipio Joint Venture owns a mining concession in respect of a property in Mexico that includes three silver veins: the Jarillas Vein, the Saucito Vein, and the Valdecañas Vein. MAG submits that the Valdecañas Vein "is widely considered to be one of the world's most significant undeveloped silver deposits as a result of its scale, grade and, importantly, its close proximity to substantial existing infrastructure." Fresnillo wholly owns and operates a nearby mine (the "**Fresnillo Mine**"), and wholly owns lands adjacent to the Joint Venture Property.

[8] In the Application, MAG submits that the Independent Valuator cannot ascertain the true value of MAG's shares unless it has information known only to Fresnillo about the development and development potential of the adjacent lands owned by Fresnillo. In particular, MAG alleges that Fresnillo is in the course of developing a new mine ("**Fresnillo II**") adjacent to the Fresnillo Mine. MAG submits that material undisclosed information in Fresnillo's possession relating to the development of Fresnillo II is critical to permit the Independent Valuator to produce a Valuation of MAG that complies with MI 61-101. In the Application, MAG submits that its shares cannot be valued solely by valuing its 44 percent interest in the Juanicipio Joint Venture.

[9] Fresnillo denies that the Merits Documents exist, and submits that, in any event, MI 61-101 only requires it to disclose information that it possesses about the Juanicipio Joint Venture by virtue of being an insider of MAG. Fresnillo submits that it has fulfilled its obligations under MI 61-101 and is not required to disclose proprietary information about its business and/or about the lands adjacent to the Joint Venture Property that it does not possess in its capacity as an insider of MAG.

[10] The Application is scheduled to be heard by the Commission on June 23, July 7, 8 and 10, 2009 (the "**Application Hearing**").

[11] Within the context of the Application, MAG brought a prehearing disclosure motion (the "Motion") pursuant to Rule 4.3 of the Commission's *Rules of Procedure* (2009), 32 O.S.C.B. 10 (the "**Rules**"), and section 5.4 of the *Statutory Powers Procedure Act*, R.S.O. c. S.22, as amended (the "**SPPA**").

[12] MAG's request for pre-hearing disclosure was first set out in paragraph 3 of the Application, but has subsequently been revised. The Motion before me concerns the Further Revised and Clarified Scope of Documentary Disclosure Requested by MAG, which is Schedule "A" to Exhibit "A" of the affidavit of Debra Bilous dated June 15, 2009 (the "**June 15, 2009 Disclosure Request**"). The June 15, 2009 Disclosure Request is included in these reasons as Appendix A.

[13] MAG submits that it requires the documents included in the June 15, 2009 Disclosure Request (the "**Requested Documents**") to prepare its case on the Application, and that these documents more than satisfy the "semblance of relevance" or "arguable relevance" test known in civil procedure. Specifically, MAG submits that it requires the Requested Documents in order to contest Fresnillo's claim that certain of the Merits Documents do not exist, and that the Commission will not be in a position to order disclosure of the Merits Documents at the Application Hearing unless it is satisfied that the documents exist. MAG further submits that the order requested falls within the Commission's authority to order pre-hearing disclosure under the Rules and the SPPA, and that *Sears Canada Inc. et al.* (2006), 29 O.S.C.B. 6147 ("*Sears*") and *Re Hudbay Minerals Inc.* (2009), 32 O.S.C.B. 4406 ("*Hudbay*") provide precedents for ordering pre-hearing disclosure of arguably relevant documents in the take-over bid context.

[14] Fresnillo submits that the requested order is over-broad and is akin to a civil search warrant. Fresnillo argues that MAG is on a "fishing expedition", is motivated to defeat or delay the bid and is unfairly trying to obtain the Merits Documents in advance of the Application Hearing. Fresnillo submits that *Sears* and *Hudbay* are not helpful because, among other reasons, the orders in *Sears* were made on consent and the order in *Hudbay*, which was made at a pre-hearing conference, included no detail about the scope of disclosure sought or ordered. Further, Fresnillo submits that the cost and inconvenience of complying

with the order sought in this case would be overwhelming and would far exceed any benefit to MAG, to the process and to the public.

[15] Staff of the Commission ("**Staff**") agrees with MAG that the Commission has authority to order disclosure of the Requested Documents. Staff further submits that the Commission will not be able to fully consider the issues before it in the Application Hearing if the Motion is denied. Staff also urges me to address the issues raised by MAG as a pre-hearing matter, prior to the hearing of the merits of the Application. Staff argues that further delay will ensue, leading to further shareholder uncertainty if the issues raised by MAG in this motion are not resolved at this time.

II. REASONS AND DECISION

A. The Motion and the Application

[16] This Motion is not about the merits of the Application. The dispute about the nature and scope of Fresnillo's duty to disclose documents and information to the Independent Valuator pursuant to MI 61-101 (having been raised by the Application) will be heard and decided by a quorum of the Commission in accordance with subsections 3(11) and 3.5(3) of the Act. Subsection 3(11) states that two members of the Commission constitute a quorum. Despite subsection 3(11), subsection 3.5(3) allows the Commission "to authorize one member of the Commission to exercise any of the powers and perform any of the duties of the Commission, except the power to conduct contested hearings on the merits, and a decision of the member shall have the same force and effect as if made by the Commission." My decision and these Reasons address only MAG's June 15, 2009 Disclosure Request and not the "contested hearing on the merits".

B. The Commission's Authority to Order Pre-Hearing Disclosure of the Requested Documents

[17] I am satisfied that the Commission has authority to order pre-hearing disclosure of the Requested Documents pursuant to the Commission's Rules and the SPPA.

[18] I note, first of all, that section 12 of the SPPA authorizes the Commission to "require any person, including a party, by summons",

> (a) to give evidence on oath or affirmation at an oral or electronic hearing; and
>
> (b) to produce in evidence at an oral or electronic hearing documents and things specified by the tribunal,

relevant to the subject-matter of the proceeding and admissible at a hearing.

[19] The Commission's summonses are issued under the authority of the SPPA and in accordance with Rule 4.7, which states:

> (1) At the request of a party, a summons to a witness may be issued pursuant to section 12 of the SPPA.
>
> (2) The issuance of or a refusal to issue a summons may be reviewed by a Panel by motion filed in accordance with Rule 3 [Motions].
>
> (3) Once a summons is served, it is effective for the duration of the hearing as long as the witness is advised of the adjourned dates.

[20] Accordingly, MAG could formally request a summons requiring Fresnillo to produce the Requested Documents at the Application Hearing, and in response, Fresnillo could bring a Motion to challenge the summons. Given the imminent commencement of the Application Hearing, this would likely result in an adjournment of the hearing of an Application in which each party submits that the other is delaying the Valuation required by MI 61-101.

[21] Section 5.4 of the SPPA gives the Commission power to order pre-hearing disclosure except for privileged information. The relevant provision in this Motion is subsection 5.4(1), which states:

> 5.4(1) If the tribunal's rules made under section 25.1 deal with disclosure, the tribunal may, at any stage of the proceeding before all hearings are complete, make orders for,
>
> (a) the exchange of documents;
>
> (b) the oral or written examination of a party;
>
> (c) the exchange of witness statements and reports of expert witnesses;

(d) the provision of particulars;

(e) any other form of disclosure.

[22] The Commission's Rules, made under section 25.1 of the SPPA, deal with disclosure in Rule 4. For example, the Commission's Rule 4.3(1) requires each party to a proceeding to "deliver to every other party copies of all documents that the party intends to produce or enter as evidence at the hearing . . . ." MAG's June 15, 2009 Disclosure Request is not limited to documents on which Fresnillo intends to rely; it extends to documents which MAG submits are relevant to the Application and may tend to support it. Therefore, the request is not explicitly authorized by the Rules.

[23] This notwithstanding, I am satisfied that the Commission has power to order disclosure of the documents requested in the June 15, 2009 Disclosure Request.

[24] MAG relies on *Ontario Human Rights Commission v. Dofasco Inc.* (2001), 57 O.R. (3d) 693 ("*Dofasco*"), in which the Ontario Court of Appeal stated:

> Section 5.4(1) of the *Statutory Powers Procedure Act*, which confers power on the board to "make orders for (a) the exchange of documents", should be read as meaning the exchange of documents to carry out the basic purposes of pre-hearing disclosure and so should not be read as confined to documents on which a party intends to rely.

[25] In my view, this statement from *Dofasco* is persuasive support for MAG's position in the Motion.

[26] Moreover, I find MAG's interpretation to be consistent with the purposes and scheme of the Rules and the SPPA. For example, Rule 4.2 gives the Commission broad discretion to make appropriate disclosure orders. It states:

> At any stage in a proceeding, the Panel may order that a party:
>
> (a) provide to another party and to the Panel any particulars that the Panel considers necessary for a full and satisfactory understanding of the subject of the proceeding; and
>
> (b) make any other disclosure required by this Rule, within the time limits and on any conditions that the Panel may specify.

[27] In interpreting the Rules, I adopt the principle set out in Rule 1.2(3), which states:

> The Rules shall be construed to secure the most expeditious and least expensive determination of every proceeding before the Commission on its merits, consistent with the requirements of natural justice.

[28] Rule 1.2(3) is consistent with section 2 of the SPPA, which is as follows:

> This Act, and any rule made by a tribunal under subsection 17.1(4) [costs] or section 25.1 [practice and procedure], shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits.

[29] Moreover, Rule 1.4 sets out the Commission's power to make procedural orders in the course of a proceeding. The relevant provisions state:

> (2) A Panel may issue procedural directions or orders with respect to the application of the Rules in respect of any proceeding before it, and may impose any conditions in the direction or order as it considers appropriate.
>
> (3) A Panel may waive or vary any of the Rules in respect of any proceeding before it, if it is of the opinion that to do so would be in the public interest or that it would otherwise be advisable to secure the just and expeditious determination of the matters in issue.
>
> (4) In considering a request to waive or vary any of the Rules or to hold a hearing on an expedited basis, a Panel may consider factors including:
>
> (a) the nature of the matters in issue;

(b) whether adherence to the time periods set out in Rules would be likely to cause undue delay or prejudice to any of the parties;

(c) costs; and

(d) any other factors a Panel considers relevant in the public interest.

[30] Rule 1.4 is consistent with and reflects section 25.0.1 of the SPPA, which states as follows:

A tribunal has the power to determine its own procedures and practices and may for that purpose,

(a) make orders with respect to the procedures and practices that apply in any particular proceeding; and

(b) establish rules under section 25.1.

[31] I conclude that the Commission's Rules and the SPPA authorize me to order pre-hearing disclosure of the Requested Documents.

C. Application of these Principles to this Motion

[32] I am satisfied that the Requested Documents are relevant to the issues in the Application.

[33] MI 61-101 imposes a unique and inevitably uncomfortable obligation on a target company to oversee a valuation of itself, with full knowledge that the valuation will be used to the detriment of the incumbent board, hitherto supported by the shareholders. The shareholders have a right, in the circumstances of a hostile insider bid, to ensure that that valuation is founded on a sufficient fact base. In the circumstances of this case, it is asserted by the special committee of the Target that the inside Bidder has, within its possession, salient facts and information which it needs to ground a proper valuation. Without determining whether this assertion is true, the Applicant seeks, and in my view, is entitled, to put forward its best case in its endeavour, since, if the assertion is true, the information sought will advance the matter to the benefit of the shareholders of the Target. Fairness to the shareholders requires that the appropriate information is made available to the Independent Valuator. However, the pursuit of this information should be reasonable and not impose an unfair burden on the Bidder. Accordingly, it is my task to balance the ability of the special committee to assess what information exists, against fairness to the bidder, and the reasonableness of the request.

[34] I agree with MAG and Staff that an order for pre-hearing disclosure in this case is consistent with the Commission's public interest role in resolving take-over bid disputes. These disputes are usually contentious, time sensitive and require quick decisions from the Commission to ensure the purposes of our regime are met – namely, ensuring fairness to shareholders of the target.

[35] At the same time, I recognize and am concerned about the impact that an onerous pre-hearing disclosure order on a pre-hearing motion of this kind may have on the Bidder in this case and bidders in general.

[36] In my consideration of the public interest, even if the Requested Documents are relevant to the matters at issue in the Application, I must also weigh the costs to MAG of not receiving requested disclosure of the Requested Documents against the costs Fresnillo will incur in complying with the disclosure order and the risk that these costs will be incurred unnecessarily, in the event the Commission ultimately accepts Fresnillo's position on the Application. MAG has not offered to pay Fresnillo's costs of disclosing the Requested Documents or undertaken to pay such costs in the event that the Commission determines that MAG is not entitled to the Merits Documents. Nonetheless, in my view, the public interest in fair and efficient resolution of the Application favours pre-hearing disclosure.

D. The Requested Documents

[37] I turn now to the specifics of the June 15, 2009 Disclosure Request.

[38] I am satisfied that paragraph 1(a), as qualified by MAG's clarification that the request pertains only to Jaime Lomelin, David Giles, Octavio Alvidrez Sr., Mario Arreguin, Manuel Luevanos, Sadot Gomez, Javier Garcia Fons, Andreas Raczynski, Ruben Pella (collectively, the "**Nine Custodians**"), Carlos Del Hoyo, and anyone else who was substantially involved in Fresnillo's responding to information requests from TDSI, SWRPA or Staff, is a reasonable request that is unlikely to prove unduly onerous to Fresnillo.

[39] I am also satisfied that paragraph 1(b), as qualified by MAG's agreement, at the hearing of the Motion, that the request concerns only the Saucito, Jarillas, and Valdecañas veins, is a reasonable request that is unlikely to prove unduly onerous for Fresnillo.

[40] I make the same finding with respect to subparagraphs (ii) through (vii) of paragraph 1(c), again, taking note of the clarifications noted by MAG in the June 15, 2009 Disclosure Request.

[41] Accordingly, the Motion is granted with respect to paragraphs 1(a), 1(b), and subparagraphs (ii) through (vii), inclusive, of paragraph 1(c) of the June 15, 2009 Disclosure Request, subject to the clarifications described above.

[42] However, with respect to subparagraph (i) of paragraph 1(c), I am concerned about the breadth of the request made in respect of emails of the Nine Custodians, the uncertain costs associated with it, and the fact that MAG has not offered to cover or contribute to those costs, even on a conditional basis, depending on the outcome of the proceeding on the merits. I am not satisfied that ordering disclosure of these documents is in the public interest. The Motion is denied with respect to subparagraph (i) of paragraph 1(c) of the June 15, 2009 Disclosure Request.

[43] With respect to paragraph 2 of the June 15, 2009 Disclosure Request, I will make the requested direction consistent with Ms. Burke's submission, on that point, requesting Fresnillo to distribute a "preservation notice" to its employees, if the parties do not agree otherwise.

[44] Further, I have considered MAG's submission at the hearing of the Motion that it is prepared to agree to appropriate confidentiality protections for the documents disclosed in compliance with this Order, including that the documents will not be provided to the Independent Valuator. I note, as well, MAG's submission that the intended use of the documents is for cross-examination of Fresnillo's witnesses at the hearing.

[45] MAG had originally asked that disclosure be completed by June 22, 2009. At that time, it was anticipated that the Motion hearing would conclude by the end of the day on June 16, 2009. It is now June 18, and a deadline of June 22 would only give Fresnillo two business days to comply with the order. In all the circumstances, it is my view that it is reasonable to give Fresnillo at least a week to comply with the Order. For that reason, Fresnillo shall be required to comply with the Order by 5:00 p.m. on June 26, 2009, unless the parties agree otherwise.

[46] I am asking the parties to work out the specific terms of this Order, particularly with respect to confidentiality, and limitations and restrictions on the access to and use of the documents, and provide the Secretary's Office with a draft order for me to consider. If there are any unresolved matters, I can be spoken to about them, preferably on June 23, 2009.

DATED IN TORONTO as of 18th day of June, 2009, this August 31, 2009.

"Lawrence E. Ritchie"
Lawrence E. Ritchie

APPENDIX A: THE JANUARY 15, 2009 DISCLOSURE REQUEST

SCHEDULE "A" - FURTHER REVISED AND CLARIFIED SCOPE OF DOCUMENTARY DISCLOSURE REQUESTED BY MAG

1.

(a) to produce all documents in its possession, power, custody or control, relating to Fresnillo's responses to requests for information made by TD Securities Inc. (the "Independent Valuator"), Scott Wilson Roscoe Postle Associates Inc. ("Scott Wilson RPA") or by Staff of the Commission ("Staff") **[By way of further clarification/refinement, the electronic documents/data search is to be restricted to the following custodians: Jaime Lomelin; David Giles; Octavio Alvidrez, Sr.; Mario Arreguin; Manuel Luevanos; Sadot Gomez; Javier Garcia Fons; Andreas Raczynski; Ruben Pella (collectively, the "Nine Custodians"); and Carlos Del Hoyo; and any other individuals (unknown to MAG, but presumably easily identifiable by Fresnillo), if any, who were substantially involved in Fresnillo's responses to such requests.]**;

(b) to produce a complete list of all consultants and contractors (the "Consultants and Contractors") that have been involved in providing services or advice in connection with, or that have otherwise been engaged in, the development of a further underground mine adjacent to the existing Fresnillo mine referred to as the "Fresnillo II development project" in Fresnillo's May 2008 prospectus, which development project includes any or all of the Saucito Vein, Jarillas Vein, Sta. Natalia Vein, Madroño Vein, Mezquite Vein, Valdecañas Vein and Juanicipio Vein, and which development project is delineated as "Fresnillo II" on the map (prepared by Fresnillo) which is attached hereto as Schedule A (referred to herein as "Fresnillo II"), including:

(i) SRK Consulting;

(ii) Wardrop;

(iii) Industrias Petioles, S.A.B. de C.V.; and

(iv) SNC Lavalin;

(c) to produce copies of the following documents in its possession, power, custody or control relating to, referring to or otherwise concerning the development of Fresnillo II **[We note that the foregoing qualifies all categories of documents in the list below]**:

(i) the correspondence and other communications, including letters, memoranda and e-mails (with attachments), from the period beginning March 1, 2008 to the date of the Order (the "Period") to and from the following individuals:

(A) Jaime Lomelin;

(B) David Giles;

(C) Octavio Alvidrez, Sr.;

(D) Mario Arreguin;

(E) Manuel Luevanos;

(F) Sadot Gomez;

(G) Javier Garcia Fons;

(H) Andreas Raczynski;

(I) Ruben Pena;

(J) ~~any secretaries and/or assistants to the individuals listed above;~~

[By way of clarification/refinement: The scope of custodians is reduced to remove secretaries and/or assistants to these nine individuals.]

(ii) all documents provided to the syndicate of underwriters (comprised of JP Morgan Cazenove Limited, Canaccord Adams Limited, Citigroup Global Markets U.K. Equity Limited, J.P. Morgan Securities Ltd. and UBS Limited) in connection with Fresnillo's initial public offering (the "IPO"); **[By way of clarification: MAG confirms that it is only seeking production of documents that were provided to the underwriters in connection with their due diligence related to Fresnillo II and the disclosure that was made about Fresnillo II in Fresnillo's May 2008 IPO Prospectus. These are the documents that were provided by Fresnillo to its underwriters to justify the statements it made in its May 2008 IPO Prospectus relating to the development of Fresnillo II. This should be a straightforward and simple exercise and such documents should be readily available both to Fresnillo and to Fresnillo's counsel who acted with respect to the IPO.]**

(iii) all due diligence questionnaires and transcripts of responses to such questionnaires in connection with Fresnillo's IPO; **[By way of clarification: MAG confirms that this is a very straightforward and constrained request. Collecting such documents, which go to the due diligence the underwriters conducted regarding the statements made by Fresnillo about Fresnillo II in its May 2008 IPO Prospectus, should be a straightforward exercise and they should be readily available both to Fresnillo and to Fresnillo's counsel who acted with respect to the IPO.]**

(iv) all requests for proposals issued in the Period;

(v) all written communications, including all emails (with attachments), during the Period with the Consultants and Contractors; **[By way of clarification/refinement, MAG is willing to limit this request to those communications between the Consultants and Contractors and the Nine Custodians listed in (c)(i), above, plus any other individuals (unknown to MAG, but presumably easily identifiable by Fresnillo), if any, who were substantially involved in communicating with the Consultants and Contractors.]**

(vi) all reports and draft reports prepared by the Consultants and Contractors during the Period; and

(vii) all contracts and/or engagement letters and/or other documents relating to instructions to and/or scope of work to be provided by the Consultants and Contractors; and

(d) to the extent necessary, to provide access to, or produce complete copies of, all other documents in its possession, power, custody and control relating to, referring to or otherwise concerning the development of Fresnillo II from the Period ("All Other Documents"). **[By way of clarification and as per our advice in writing on May 29, 2009 and again on June 1, 2009, MAG is not seeking this relief at the return of its motion on June 16, 2009.]**

2. An Order that it take all necessary steps to ensure that All Other Documents are preserved pending the final determination of these proceedings and any and all appeals therefrom. **[By way of clarification/refinement: MAG confirms that the electronic data and documents of the 80 to 180 employee custodians identified by Mr. Del Hoya need not be imaged for preservation purposes. Rather, and in the event the relief in paragraph 2 is granted, we confirm that MAG merely expects that Fresnillo will issue a Preservation Notice to all possible custodians to ensure that relevant documents are not destroyed or deleted. Such preservation notices are standard practice when any litigation is commenced, and as they simply require dissemination of a memorandum to relevant custodians, they are not onerous in any way.]**

3. An Order that the "documents" ordered to be produced and preserved shall include all documents in electronic form including archived and deleted files, regardless of where or how such documents are stored, including computer hard drives and servers, backup media, USB storage devices, CDs and DVDs, laptop computers and personal digital assistants (devices like Blackberries and Palm Pilots).

4. In the event that Fresnillo is permitted to summons and cross-examine witnesses from the Independent Valuator and/or Scott Wilson RPA to give viva voce evidence at the return of MAG's Disclosure Motion (to which MAG objects), an Order adjourning MAG's Disclosure Motion to permit MAG to also call witnesses including one or more witnesses from the list included in subpara. 1(c)(i) of this Notice of Motion to give viva voce evidence at MAG's Disclosure Motion.

[Emphasis in original and reflects MAG’s clarifications of its disclosure request.]

3.1.3 Y – s. 17

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

AND

**IN THE MATTER OF
Y**

AND

**IN THE MATTER OF
AN APPLICATION BY THE CROWN
UNDER SECTION 17 OF THE SECURITIES ACT**

REASONS AND DECISION

Hearing:	November 20, 2008		
Decision:	August 31, 2009		
Panel:	Lawrence E. Ritchie	–	Vice Chair and Chair of the Panel
	Mary G. Condon	–	Commissioner
Counsel:	Karen Manarin Melanie Adams Michelle Spain	–	For the Ontario Securities Commission
	David Finley	–	For the Crown

REASONS AND DECISION

I. BACKGROUND

A. The Commission Proceeding and the Criminal Proceeding

[1] This is an application (the "**Crown Application**") brought by the Royal Canadian Mounted Police (the "**Applicant**") for an order, pursuant to subsection 17(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "**Act**"), authorizing the disclosure to the Applicant of certain testimonial and documentary evidence that was obtained by the Ontario Securities Commission (the "**Commission**") pursuant to section 13 of the Act (the "**Evidence**").

[2] The Evidence was obtained in the course of an investigation relating to matters that became the subject of a Notice of Hearing and Statement of Allegations. Staff alleged that Y, other individual respondents and Z Corporation failed to ensure that Z Corporation filed financial statements in Z Corporation's prospectus that contained full, true and plain disclosure (the "**Commission Proceeding**").

[3] The Commission has approved Settlement Agreements between Staff and Y and the other individual respondents, and Staff withdrew the allegations against Z Corporation. As a result, there are no outstanding matters before the Commission in the Commission Proceeding.

[4] Y has been charged with 12 counts of fraud over $5,000 contrary to section 380(1)(a) of the *Criminal Code* relating to Z Corporation. Y seeks access to the Evidence in order to make full answer and defence to the criminal charges in the upcoming trial (the "**Criminal Proceeding**").

[5] Y filed three Notices of Application to Produce Third Party Records, commonly known as *O'Connor* applications (in respect of the decision in *R v. O'Connor*, [1995] 4 S.C.R 411 (SCC)) in the Criminal Proceeding. While Z Corporation, amongst others, was the subject of the *O'Connor* applications, the Commission was not.

B. The Y Application and the Crown Application

[6] The Crown Application was heard on November 20, 2008 (the "**Hearing**"). On the same day, immediately following the Hearing, we heard a related application and motion for directions brought by Y (the "**Y Application**").

[7] The Crown Application and the Y Application were held in separate *in camera* proceedings pursuant to subsection 9(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22. Y and his counsel did not attend the hearing of the Crown Application, and counsel for the Crown ("**Crown Counsel**") did not attend the hearing of the Y Application. Moreover, Y and his counsel did not know what Evidence was sought by the Applicant in the Crown Application, and the Crown did not know what Evidence was sought by Y in the Y Application. Further, Y took no position concerning the Crown Application.

[8] The Crown requests an order allowing disclosure and use of the Evidence where (i) the witness who provided the Evidence provided written consent to the order ("**Consenting Respondent**"); and (ii) the Commission allows the application brought by Y for disclosure and use of that Respondent's Evidence.

[9] All of the Consenting Respondents received notice of the hearing, and none appeared at the hearing.

C. The Y Orders

[10] After considering the written and oral submissions of the parties in the Y Application, we issued two Confidential Orders on December 18, 2008, and issued three additional Confidential Orders on January 9, 2009 (the "**Y Orders**").

D. The Crown Orders

[11] On January 9, 2009, we issued a Confidential Order in the Crown Application. Considering the Y Orders and the written consents from Respondents filed by the Crown, we made the following order:

IT IS ORDERED THAT, pursuant to paragraph 17(1)(b) of the Act:

1. Staff may disclose to the Applicant and Crown counsel the Evidence provided by C1, C3, C5, C6, C10, C11, C14, N6 and N9 that was obtained by Staff pursuant to section 13 of the Act in accordance with a Summons;

2. Staff may disclose to the Applicant and Crown counsel the fact that O4 provided compelled testimony to the Commission pursuant to section 13 of the Act in accordance with a Summons;

3. Disclosure and use of the Evidence described in paragraphs 1 and 2, above, will be on the basis that:

    a. The Applicant and Crown counsel will not use the Evidence other than as expressly permitted by this Order;

    b. Except as expressly permitted by this Order, the Evidence shall be kept confidential;

    c. Any use of the Evidence other than as expressly permitted by this Order will constitute a violation of this Order;

    d. The Applicant and Crown counsel shall maintain custody and control over the Evidence so that copies of the Evidence and any other information in their possession which was obtained pursuant to or as a result of this Order are not disclosed or disseminated for any purpose other than the use expressly permitted by this Order;

    e. Crown counsel will not file any part of the Evidence on the public record in the Criminal Proceeding unless it is necessary;

    f. The Evidence shall not be used for any collateral or ulterior purpose;

    g. The Applicant and Crown counsel shall, promptly after the completion of the trial and any appeals in the Criminal Proceeding, return all copies of the Evidence to Staff or confirm in writing that they have been destroyed; and

    h. This Order does not affect any rights the Respondents may have relating to protection against self-incrimination granted by the *Canadian Charter of Rights and Freedoms* and the *Evidence Act* (Ontario).

i. This Order does not affect the prohibition on use of compelled testimony contained in section 18 of the Act.

j. This Order does not affect the obligation of the Crown to make appropriate disclosure in the Criminal Proceeding.

4. The Application with respect to N2/O5 is dismissed, without prejudice to the Applicant renewing its Application if circumstances change.

[12] On March 12, 2009, we issued a second Confidential Order in the Crown Application. Considering the Y Orders and further written consents from Respondents filed by the Crown, we made the following order:

IT IS ORDERED THAT, pursuant to paragraph 17(1)(b) of the Act:

1. Staff may disclose to the Applicant and Crown counsel the Evidence provided by O3, N5/O6 and O2 that was obtained by Staff pursuant to section 13 of the Act in accordance with a Summons;

2. Disclosure and use of the Evidence will be on the basis that:

a. The Applicant and Crown Counsel will not use the Evidence other than as expressly permitted by this Order;

b. Except as expressly permitted by this Order, the Evidence shall be kept confidential;

c. Any use of the Evidence other than as expressly permitted by this Order will constitute a violation of this Order;

d. The Applicant and Crown counsel shall maintain custody and control over the Evidence so that copies of the Evidence and any other information in their possession which was obtained pursuant to or as a result of this Order are not disclosed or disseminated for any purpose other than the use expressly permitted by this Order;

e. Crown counsel will not file any part of the Evidence on the public record in the Criminal Proceeding unless it is necessary;

f. The Evidence shall not be used for any collateral or ulterior purpose;

g. The Applicant and Crown counsel shall, promptly after the completion of the trial and any appeals in the Criminal Proceeding, return all copies of the Evidence to Staff or confirm in writing that they have been destroyed; and

h. This Order does not affect any rights the Respondents may have relating to protection against self-incrimination granted by the *Canadian Charter of Rights and Freedoms* and the *Evidence Act* (Ontario).

i. This Order does not affect the prohibition on use of compelled testimony contained in section 18 of the Act.

j. This Order does not affect the obligation of the Crown to make appropriate disclosure in the Criminal Proceeding.

E. Publication of the Orders and Reasons

[13] After the Hearing, we invited the parties to the Crown Application to give written submissions on whether the Orders and Reasons in the Crown Application should be released to the public, and if so, on what basis, including the timing of publication and whether monikers should be retained, rather than identifying the Respondents.

[14] In the Crown Application, Staff submitted that the Orders and Reasons should be published immediately, while retaining the use of monikers rather than identifying Respondents by name. The Applicant did not disagree with Staff's position. After considering the parties' submissions, we concluded that publishing the Orders and Reasons, while retaining the use of monikers rather than names, is consistent with the open courts principle and with the confidentiality and disclosure provisions of Part VI of the Act. We also concluded that, in keeping with the open courts principle, the Orders and Reasons should be published in anonymized form without further delay without awaiting the completion of the Criminal Proceeding.

F. The Crown Reasons and the Y Reasons

[15] These reasons should be read together with the Y Reasons, where we address, in some detail, the Commission's subsection 17(1) jurisdiction and the factors the Commission considers in determining whether it is in the public interest to authorize disclosure of compelled evidence. We do not find it necessary to repeat those general principles here.

II. THE LAW

[16] Subsection 17(1)(b) of the Act provides:

> 17(1) If the Commission considers that it would be in the public interest, it may make an order authorizing the disclosure to any person or company of,
>
> (b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13;

[17] Pursuant to subsection 17(4) of the Act, an order under subsection 17(1) "may be subject to terms and conditions imposed by the Commission."

[18] Subsection 17(3) is as follows:

> 17(3) Without the written consent of the person from whom the testimony was obtained, no order shall be made under subsection (1) authorizing the disclosure of testimony given under subsection 13(1) to,
>
> (a) a municipal, provincial, federal or other police force or to a member of a police force; or
>
> (b) a person responsible for the enforcement of the criminal law of Canada or of any other country or jurisdiction.

III. THE ISSUES

[19] The Commission must determine:

(i) whether the Respondents whose Evidence is sought by the Applicant have given written consent to disclosure of the Evidence, as required by subsection 17(3) of the Act; and

(ii) if the answer to (i) is "yes", whether it is in the public interest to authorize the disclosure of that Evidence pursuant to subsection 17(1) of the Act, and if so, under what terms and conditions.

IV. ANALYSIS

[20] We have reviewed the written consents filed by the Crown and we are satisfied that they comply with subsection 17(3) of the Act.

[21] Accordingly, the remaining issue is whether it would be in the public interest to authorize disclosure of the Evidence of the Consenting Respondents, and if, so, under what terms and conditions.

[22] For the purposes of the Crown Application and the Y Application, the leading case is *Re Black* (2008), 31 O.S.C.B. 10397 ("*Re Black*"). In that case, two of the respondents in a Commission proceeding applied under subsection 17(1) of the Act for disclosure of compelled evidence to allow them to make full answer and defence to criminal charges brought against them in the United States. In a two to one decision of the Commission, the majority (Commissioners Wigle and Perry) refused (with one exception) to authorize the requested disclosure on the basis that neither an order of the Commission nor an undertaking by counsel could control the use and dissemination of the compelled evidence once it was used in the U.S. criminal proceeding, and the witnesses who gave compelled evidence to the Commission would no longer have protection against self-incrimination under section 18 of the Act, section 9 of the *Evidence Act* (Ontario), R.S.O. 1990, c. E.23, as amended (the "**Evidence Act (Ontario)**"), section 14 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**"), section 5 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5., as amended (the "**Canada Evidence Act**") or sections 7 and 13 of the *Charter of*

Rights and Freedoms (the "**Charter**"). Therefore, the Commission ordered disclosure only with respect to a corporate witness who did not object to the application on the basis that by not objecting, the witness had waived its right to confidentiality and protection against self-incrimination for the purposes of the application, and the integrity of Commission investigations would be maintained because Staff could continue to assure future witnesses that their evidence will remain confidential unless they consent to disclosure (*Re Black*, *supra* at para. 243).

[23] The majority made the following comment about the importance of protection against self-incrimination in their decision:

> In our view, any disclosure of evidence obtained under Part VI of the Act would be appropriate where the Commission or an Ontario court could exercise control over the use and derivative use in order to ensure that the witnesses' rights against self-incrimination would be protected. The Applicants' requested order does not meet this requirement.
>
> (*Re Black*, *supra* at para. 232)

[24] In his dissenting reasons, Commissioner LeSage indicated that he would have granted the disclosure under section 17(1) as he believed that an order could be drafted that would allow the Commission to maintain control over the permitted use of the evidence sought.

[25] In *Re Black*, the Commission stated that the factors to be considered in weighing the public interest under subsection 17(1) of the Act include:

1. The high degree of confidentiality associated with compelled evidence and the strict limitations on its disclosure and use imposed by sections 16, 17 and 18 of the Act;

2. The reasonable expectations of witnesses compelled to provide evidence;

3. The potential harm to witnesses as a result of the Commission authorizing use and disclosure of their compelled evidence;

4. The protections against self-incrimination provided by the Charter, the Canada Evidence Act and the Ontario Evidence Act; and

5. The integrity of Commission investigations.

(*Re Black*, *supra*, at para. 135)

[26] The Commission added in *Re Black* that this was not meant to be an exhaustive list:

> . . . the challenge faced by the Commission in applications under Part VI of the Act involves striking a balance between the continued requirement for confidentiality and our assessment of the public interest at stake.
>
> In exercising the Commission's public interest discretion under subsection 17(1) of the Act, we must also consider the specific purpose for which the evidence is sought and the unusual or exceptional circumstances of the case and determine whether the disclosure of the evidence would serve a useful public purpose.
>
> (*Re Black*, *supra* at paras. 137-138)

[27] In the Y Reasons, we reaffirmed the finding of the majority in *Re Black* that "the balance of factors in the public interest is very different" with respect to the Non-Objecting Respondents, who, in the Y Application, included Consenting Respondents, Non-Opposing Respondents, and No Objection Respondents (*Re Black*, *supra* at para. 243, Y Reasons, para. 16). We find that the same principle applies even more strongly to the Consenting Respondents in the Crown Application, who provided express written consent to disclosure of their Evidence to the Crown. We find that in these circumstances, the public interest requires us to give less weight to the potential harm or prejudice to Consenting Respondents, and further that disclosure of their Evidence does not affect Staff's ability to give confidentiality assurances to future witnesses, thus maintaining the integrity of Commission investigations.

[28] The more difficult issue in the Crown Application is whether Y may be prejudiced by an order authorizing disclosure of the Evidence of Consenting Respondents to the Crown. As both Staff and Crown Counsel acknowledged at the hearing of the Crown Application, Y is under no obligation to disclose to the Crown any information about his defence in the Criminal Proceeding.

[29] We are satisfied that the disclosure sought by the Crown will not prejudice Y. First, we find it significant that Waxman, who was represented by his criminal defence counsel in the Y Application, received notice of the Crown Application but did not object to it or attend the Hearing.

[30] Crown Counsel submits that the Crown seeks disclosure only with respect to Consenting Respondents whose Evidence we order disclosed to Y in the Y Application. The Crown does not seek disclosure of the fruits of Y's independent defence investigation. Nor does the Crown seek disclosure of evidence obtained by the Commission, except where the Evidence of a Consenting Respondent was ordered disclosed to Y in the Y Application. Finally, Crown Counsel assured us at the Hearing that, with respect to the Evidence disclosed, he will comply with his disclosure obligations under *Regina v. Stinchcombe* (1991), 68 C.C.C. (3d) ("*Stinchcombe*").

[31] In the Y Application, we ordered disclosure subject to terms and conditions that included limitations on the use of the disclosed evidence, including that Y and his counsel are authorized to disclose and use the Evidence "solely for the purpose of the examination of any witness who testifies in the Criminal Proceeding, in order to allow [Y] to make full answer and defence to the charges made against him in the Criminal Proceeding." Y submitted that the disclosed evidence was for cross-examination of Crown witnesses, in case of inconsistency between the evidence given in the Criminal Proceeding and the evidence given in the Commission Proceeding.

[32] Because of the restricted scope of the Crown Application, the effect of our Orders will be to authorize disclosure *only* with respect to Consenting Respondents (respondents in the Crown Application who have given the Crown express written consent to disclosure), who *either* consented to, made no objection to or did not oppose the Y Application *or* were on the Crown Witness List. In this context, we are not satisfied there is any prejudice to Y in the Crown obtaining the same Evidence. Moreover, we find that authorizing disclosure to the Crown, subject to appropriate constraints, is contemplated by Part VI of the Act, and will tend to further the administration of justice in the Criminal Proceeding, which we find to be in the public interest.

DATED in Toronto, Ontario this 31st day of August, 2009.

"Lawrence E. Ritchie"

"Mary G. Condon"

3.1.4 Y – s. 17

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

AND

IN THE MATTER OF
Y

AND

IN THE MATTER OF
AN APPLICATION BY Y
UNDER SECTION 17 OF THE SECURITIES ACT

REASONS AND DECISION

Hearing:	November 20, 2008		
Decision:	August 31, 2009		
Panel:	Lawrence E. Ritchie	–	Vice Chair and Chair of the Panel
	Mary G. Condon	–	Commissioner
Counsel:	Karen Manarin Melanie Adams Michelle Spain	–	For the Ontario Securities Commission
	Brian H. Greenspan Jill D. Makepeace Aaron Shachter	–	For Y
	Andrew Gray	–	For N4

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REASONS AND DECISION

I. BACKGROUND

A. Overview

[1] These are the reasons for our orders dated December 18, 2008 and January 9, 2009.

[2] This is an application (the "**Application**") brought by Y pursuant to subsection 17(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "**Act**"), seeking orders from the Ontario Securities Commission (the "**Commission**"), authorizing the use and disclosure of certain testimonial and documentary evidence that was obtained by the Commission pursuant to section 13 of the Act (the "**Compelled Evidence**") and certain evidence that was provided to the Commission voluntarily (the "**Voluntary Evidence**").

[3] The Compelled Evidence and the Voluntary Evidence (collectively, the "**Evidence**") was obtained in the course of an investigation relating to matters that became the subject of a Notice of Hearing and Statement of Allegations. Staff alleged that Y, other individual respondents and Z Corporation failed to ensure that Z Corporation filed financial statements in Z Corporation's prospectus that contained full, true and plain disclosure (the "**Commission Proceeding**").

[4] The Commission has approved Settlement Agreements between Staff and Y and the other individual respondents, and Staff withdrew the allegations against Z Corporation. As a result, there are no outstanding matters before the Commission in the Commission Proceeding.

[5] Staff disclosed the Evidence to Y in meeting its disclosure obligations in the course of the Commission Proceeding. With the exception of Volume 42F, which Y is not able to locate, Y returned the Evidence at the conclusion of the Commission Proceeding pursuant to an undertaking given to staff.

[6] Y has been served with a "Wells Notice" by the Securities and Exchange Commission (the "**SEC**"). The SEC alleged that Y "violated and/or aided and abetted and/or caused violations" of United States securities legislation. No proceedings have been instituted against Y by the SEC.

[7] A number of related civil proceedings were instituted against Z Corporation's officers and directors, other affiliated entities and Z Corporation's auditor during the relevant time period. Several of these civil proceedings continue to be outstanding.

[8] Y has been charged with 12 counts of fraud over $5,000 contrary to section 380(1)(a) of the *Criminal Code* relating to Z Corporation. Y seeks access to the Evidence in order to make full answer and defence to the criminal charges in the upcoming trial (the "**Criminal Proceeding**").

[9] Y filed three Notices of Application to Produce Third Party Records, commonly known as *O'Connor* applications (in respect of the decision in *R v. O'Connor*, [1995] 4 S.C.R 411 (SCC)) in the Criminal Proceeding. While Z Corporation, amongst others, was the subject of the *O'Connor* applications, the Commission was not.

[10] The Application was heard on November 20, 2008 (the "**Hearing**"). After considering the written and oral submissions of the parties, we gave an oral ruling, which we confirmed by two written orders issued on December 18, 2008, while reserving in part. We issued two additional orders on January 9, 2009, disposing of the remaining issues in the Application.

[11] After the Hearing, an additional response was filed by Z Corporation, which consented to the Application. Staff did not oppose the disclosure of this evidence. Accordingly, we issued an order with respect to Z Corporation's Compelled Evidence on January 9, 2009.

B. The Application

[12] Y moves for orders authorizing the following:

(a) Disclosure of the Evidence given to the Commission by Z Corporation and by 31 persons identified as C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12, C13, C14, C15, N1, N2/05, N3, N4, N5/06, N6, N7, N8, N9, N10, N11, N12, O1, O2, O3 and O4 (collectively the "Respondents"); and

(b) That the Evidence given to the Commission by the Respondents may be used by counsel for Y in the examination of any witness who testifies in the criminal trial.

[13] Except for Respondents N1 and N12, who could not be located (the "**Not Located Respondents**"), all of the Respondents received written notice of the Application, either from Y directly or with the assistance of Staff. The following is a summary of the responses received:

(a) Respondents N9 and Z Corporation (the "**Consenting Respondents**") consented to the Application;

(b) Respondents C1, C3, C5, C6, C10, C11, C13 and N4 (the "**Non-Opposing Respondents**") indicated that they "do not oppose" the Application;

(c) Respondents O1 and C14 (the "**No Objection Respondents**") indicated that they have "no objection" to the Application;

(d) Respondents C4, C9 and C12 (the "**No Position Respondents**") took no position with regard to the Application;

(e) Respondents N3, N6, N7, N8, N10 and N11 (the "**Non-Responding Respondents**") did not respond to the Application;

(f) Respondents N2/05, N5/06, O2, O3, O4 (the "**Opposing Respondents**") oppose the Application; and

(g) Respondents C2, C7, C8 and C15, who provided testimony to the SEC (the "**SEC Respondents**") took no position with regard to the Application.

[14] All of the individual Respondents are on the Crown's witness list in the Criminal Proceeding (the "**Crown Witness List**"), except for the following ten individuals:

(a) N9 (a Consenting Respondent);

(b) C1, C3, C5, C6 and C10 (Non-Opposing Respondents);

(c) N7 and N11 (Non-Responding Respondents);

(d) N2/O5 (an Opposing Respondent); and

(e) N12 (a Not Located Respondent).

[15] On November 14, 2008, Staff contacted all the Respondents who could be located, other than the SEC Respondents. Y contacted the SEC Respondents directly and notified them that "counsel for [Y] will be bringing a motion to seek disclosure of the testimony that you gave to the Staff of the Ontario Securities Commission. The hearing in this matter will take place on Thursday November 20, 2008 at 11:15 a.m. in the Large Hearing Room …".

[16] Staff does not oppose the disclosure of the Evidence provided by the Consenting Respondents, Non-Opposing Respondents, and No Objection Respondents (collectively, the "**Non-Objecting Respondents**") but does oppose the disclosure of the Evidence provided by the No Position Respondents, Non-Responding Respondents and Opposing Respondents. In addition, Staff brought a motion for directions with regard to the Respondents who provided Voluntary Evidence.

II. THE LAW

[17] Subsection 17(1)(b) of the Act provides:

> 17(1) If the Commission considers that it would be in the public interest, it may make an order authorizing the disclosure to any person or company of,
>
> (b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13;

[18] Pursuant to subsection 17(4) of the Act, an order under subsection 17(1) "may be subject to terms and conditions imposed by the Commission."

III. THE ISSUES

[19] The Commission must determine whether it is in the public interest to authorize the disclosure of the Evidence to Y pursuant to subsection 17(1) of the Act.

IV. POSITIONS OF THE PARTIES

A. Y

1. Jurisdiction of the Commission

[20] Y submits that subsection 17(1) of the Act grants the Commission power to order that testimonial and documentary evidence that was compelled pursuant to section 13 of the Act be disclosed and used for purposes outside of a Commission proceeding. In Y's submission, the sole limitation on the broad discretion granted to the Commission by subsection 17(1) is that it must be exercised in the public interest. Further, subsection 17(2) of the Act states: "No order shall be made under subsection 17(1) unless the commission has, where practicable, given reasonable notice" of the Application and an opportunity to respond. Y submits that he provided reasonable notice by corresponding with the Respondents on several occasions to provide notice of his intention to seek section 17(1) orders and ascertain their positions. In his view, the Non-Responding Respondents should be deemed not to oppose the Application.

2. Public Interest Considerations

a) Overview

[21] Y submits that the Commission has broad discretion to determine what is in the public interest and in exercising that discretion must balance the interests of the party seeking disclosure against the expectation of privacy and confidentiality of witnesses who gave Compelled Evidence. Y also submits that the Supreme Court of Canada ("SCC") has held that subsection 17(1) disclosure orders should be confined to the extent necessary for the Commission to carry out its mandate under the Act. In support of this proposition, Y cites *Deloitte & Touche LLP v. Ontario Securities Commission*, [2003] 2 S.C.R. 713 at paras. 21, 29-30 ("***Deloitte SCC***"). Y also relies on the Commission's decision in *Re X and A Co.* (2007), 30 O.S.C.B. 327 ("***Re X and A Co.***") at para. 28.

[22] In *Deloitte SCC*, Deloitte was compelled to provide documents to the Commission concerning a corporate respondent in a Commission proceeding, and certain of Deloitte's officers were compelled to provide testimony to the Commission. In order to satisfy its disclosure obligation, Staff sought an order under subsection 17(1) of the Act to permit the disclosure of the compelled evidence to the respondents in the Commission proceeding. The order was granted, despite Deloitte's objection. The Divisional Court allowed Deloitte's appeal of the Commission's order. The Ontario Court of Appeal overturned that decision and restored the Commission's order ("***Deloitte CA***"). On further appeal, the SCC upheld the Court of Appeal decision. The SCC found that the Commission's decision was reasonable and stated that the Commission "is obligated to order disclosure only to the extent necessary to carry out its mandate under the Act" (*Deloitte SCC*, *supra* at para. 29).

[23] Y submits that the balancing exercise involved in determining an application under subsection 17(1) is altered where a respondent does not oppose the application. Y cites *Re Black* (2008), 31 O.S.C.B. 10397 at para. 243 ("***Re Black***") for this proposition.

[24] In *Re Black*, two of the respondents in a Commission proceeding applied under subsection 17(1) of the Act for disclosure of compelled evidence to allow them to make full answer and defence to criminal charges brought against them in the United States. In a two to one decision of the Commission, the majority (Commissioners Wigle and Perry) refused (with one exception) to authorize the requested disclosure on the basis that neither an order of the Commission nor an undertaking by applicants' counsel could control the use and dissemination of the compelled evidence once it was used in the U.S. criminal proceeding, and the respondents would no longer have protection against self-incrimination under section 18 of the Act, section 9 of the *Evidence Act* (Ontario), R.S.O. 1990, c. E.23, as amended (the "**Evidence Act (Ontario)**"), section 14 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**"), section 5 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5., as amended (the "**Canada Evidence Act**") or sections 7 and 13 of the *Charter of Rights and Freedoms* (the "**Charter**"). Therefore, the Commission ordered disclosure only with respect to a respondent who did not object to the application on the basis that by not objecting, the respondent had waived its right to confidentiality and protection against self-incrimination for the purposes of the application, and the integrity of Commission investigations would be maintained because Staff could continue to assure future witnesses that their evidence will remain confidential unless they consent to disclosure (*Re Black*, *supra* at para. 243).

[25] In his dissenting reasons, Commissioner LeSage indicated that he would have granted the disclosure under section 17(1) as he believed that an order could be drafted that would allow the Commission to maintain control over the permitted use of the evidence sought.

[26] The majority made the following comment about the importance of protection against self-incrimination in their decision:

> In our view, any disclosure of evidence obtained under Part VI of the Act would be appropriate where the Commission or an Ontario court could exercise control over the use and derivative use in order to ensure that the witnesses' rights against self-incrimination would be protected. The Applicants' requested order does not meet this requirement.
>
> (*Re Black*, *supra* at para. 232)

[27] Y submits that the orders he seeks in this Application satisfy the criteria set out in *Re Black* and other authorities.

b) Relevance

[28] Y submits that the relevance of the testimonial and documentary evidence to the proceeding in which its use is sought is an important consideration.

[29] Y refers to *Re Black*, where the Commission ruled that "we must consider the relevance of the evidence to the U.S. Criminal Proceeding in our consideration of the public interest" (*Re Black*, *supra*, at paras. 84-86). Y also refers to *Coughlan v. WMC International Ltd*, [2000] O.J. No. 5109 at para. 52 (Div. Ct.) ("***Coughlan***") and *Re X and Y* (2004), 27 O.S.C.B. 49 ("***Re X and Y***") at para. 28.

[30] Y submits that Staff's allegations in the Commission Proceeding and the charges in the Criminal Proceeding arise out of the same factual foundation and the Evidence in the Commission Proceeding covers the same subject matter as the Criminal Proceeding. He submits that because of the similarity and overlapping nature of the Commission Proceeding and the Criminal Proceeding, the Application satisfies the relevance threshold.

[31] Y submits that the Evidence sought in this Application is relevant to:

(a) the credibility of the Crown witnesses formerly employed by Z Corporation;

(b) the propriety of all business conducted by Z Corporation;

(c) the reliability of Z Corporation documentation to be used in the Criminal Proceeding; and

(d) the reliability of the conclusions reached by the Crown's forensic accounting expert in the forensic accounting report ("**Forensic Accounting Report**").

[32] With respect to credibility, Y submits that the Evidence will enable him to test the consistency between the testimony of a Crown witness at the Criminal Proceeding and the testimony the witness gave the Commission. In support of this position, Y cites *R v. Foster*, [1994] O.J. No. 4190 ("***Foster***"). Y submits that in *Foster* the court held that the most valuable means of assessing credibility was to examine the consistency between evidence at trial and what was said on prior occasions.

[33] Further, Y submits that the majority of the Respondents are expected to testify at the criminal trial.

[34] With respect to the propriety of the business conducted by Z Corporation, Y submits that the Evidence will allow him to challenge the reliability of the Crown's documentation. He submits that many of the expected Crown witnesses were either directly responsible for, or had knowledge of, the alleged widespread practice of altering and manipulating documents at Z Corporation, and that his ability to cross-examine on this issue, and thus to make full answer and defence, will be severely impaired if he does not have disclosure of the Evidence.

[35] Finally, Y submits that the Evidence is relevant to the Forensic Accounting Report, which, in essence, outlines the Crown theory of the case, and will enable him to cross-examine the Crown's forensic accounting expert, who is expected to testify in the Criminal Proceeding.

c) Right to Make Full Answer and Defence

[36] Y submits that the right of an accused to make full answer and defence is constitutionally guaranteed as a principle of fundamental justice in section 7 of the Charter as established in *R v. Seaboyer* (1991), 66 C.C.C. (3d) 321 (S.C.C.) ("***Seaboyer***") and *Regina v. Stinchcombe* (1991), 68 C.C.C. (3d) ("***Stinchcombe***").

[37] Y distinguishes the facts of this case from those in *Re Black*, where the Commission could not guarantee that the use of any disclosed material would be consistent with Charter protection against self-incrimination.

[38] Therefore, Y submits that his right to make full answer and defence is the only constitutionally protected right at stake in the Application and that the Commission is obliged to weigh it heavily in its assessment of public interest.

d) Purported Use – Serious Criminal Charges

[39] Y submits that there could exist no more compelling purpose for granting a subsection 17(1) order than to enable the Applicant to defend himself against serious criminal charges in a Criminal Proceeding in which his liberty is at stake. Y notes that criminal courts have ordered production of evidence obtained by the Commission in the absence of the Commission's consent, and in cases in which the Commission was not a party to the proceedings. As examples of this, Y cites *R. v. Awde*, [1998] O.J. No 2959 (Ont. Prov. Ct.) at para. 8, and *Re Ontario Securities Commission and Crownbridge Industries Inc. et al*, [1989] O.J. No. 1811 (Ont. C.A.) at para. 13.

e) No Harm or Prejudice

[40] Y submits that specific harm to the person whose testimony is sought is a relevant factor for the Commission to consider.

[41] Y submits that the Respondents will not be prejudiced by the requested order because they are protected from self-incrimination under section 18 of the Act, section 5 of the Canada Evidence Act and section 13 of the Charter.

f) Commission Proceedings have Concluded

[42] Y submits that the absence of an ongoing investigation that might be compromised by the disclosure is a relevant factor to be considered. In *Coughlan*, *supra* at para. 57, the court agreed that "[t]he fact that there is no ongoing investigation that might be compromised by disclosure is a relevant factor to be taken into account in determining the public interest in disclosure."

[43] Y submits that there is no outstanding investigation in the instant case as all matters have been resolved pursuant to settlement agreements. Y distinguishes the present case from *Re Black*, which was decided in the context of an ongoing Commission proceeding.

g) Respondent's Co-operation with the Police and the Crown

[44] Y submits that a respondent's co-operation with the police and the Crown effectively diminishes the expectation of privacy the respondent has with regard to the evidence. Y cites *Foster* for support of this proposition. In *Foster*, the witness whose testimony was being sought had testified before the Commission and in the criminal proceeding in question. The court ruled that these facts lessened the "the … concern about violating a person's right to privacy and the requirement of a heightened sensitivity." (*Foster*, *supra*, at para. 9. See also: *Hill v. Gordon-Daly Grenadier Securities*, [2001] O.J. No. 4181 (Ont. Div. Ct.)

[45] Y submits that the Respondents who are opposed to this Application have fully co-operated with police and are expected to be Crown witnesses in the Criminal Proceeding.

B. Staff

[46] Staff does not oppose disclosure of the Evidence provided by the Non-Objecting Respondents, but does oppose disclosure of the Evidence provided by the No Position Respondents, Non-Responding Respondents and Opposing Respondents.

1. Voluntary Evidence

[47] Staff submits that while Voluntary Evidence is not subject to section 17 of the Act, its disclosure to Y during the Commission Proceeding was subject to the implied undertaking rule against its use for any purpose other than making full answer and defence in the Commission Proceeding, and the Applicant's former counsel signed express acknowledgements that this material could not be used for any purpose other than making full answer and defence in the Commission Proceeding.

[48] Accordingly, Staff brought a motion for directions with regard to the Respondents who provided Voluntary Evidence.

2. The SEC Respondents

[49] Staff submits that the SEC advised that they have no process similar to the Commission's section 17 process through which Y can get a copy of the SEC transcripts. Staff therefore arranged a process between itself, the SEC and Y whereby the SEC will consent to Staff giving a copy of the transcript of the testimony of the SEC Respondents to the Crown. The Crown will then include this material in its disclosure to Y in the Criminal Proceeding.

[50] Accordingly, no Order is required and there is no need for us to consider the SEC Respondents any further in these reasons.

3. The Non-Objecting Respondents

[51] Relying on *Re Black*, Staff submits that it is in the public interest to authorize the use and disclosure of documents and testimony produced by the Non-Objecting Respondents for the purpose of Y's full answer and defence in the Criminal Proceeding.

[52] Staff's submissions focused on the Application with respect to the Opposing, Non-Responding, No Position and Not Located Respondents.

4. Opposing, Non-Responding, No Position and Not Located Respondents

a) The Commission's Discretion to make Orders under section 17

[53] Staff submits that when considering the term "public interest" in section 17 of the Act, the Commission must "evaluate the extent to which the policies of the Act [are] served by the purpose for which disclosure [is] sought and the harm done by disclosure to confidentiality interests or other individual interests." The Commission "must weigh and balance these competing interests in determining whether the public interest favour[s] disclosure" (*Deloitte CA*, *supra*, at para. 31).

[54] Staff also submits that "the OSC is obligated to order disclosure only to the extent necessary to carry out its mandate under the Act" (*Deloitte SCC*, *supra*, at para. 29, quoted in *Re Black*, *supra*, at para. 75).

b) The Public Interest Jurisdiction of the Commission

[55] Staff submits that the Commission should look to its discretion in public interest proceedings under section 127 of the Act to guide its decision with regard to the public interest under section 17.

[56] Staff submits that the Commission has a "very wide discretion" to determine the meaning of the public interest with regard to the making of an order under section 127 of the Act. Staff submits that in so doing, the Commission should consider both of the purposes of the Act described in section 1.1, namely providing protection to investors from unfair, improper or fraudulent practices and fostering fair and efficient capital markets and confidence in capital markets (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 (S.C.C.) ("***Asbestos***") at para. 41).

[57] Staff submits that the principles set out in *Asbestos* in the context of a section 127 proceeding apply with equal force to the commission's exercise of its public interest jurisdiction under section 17 of the Act, and therefore the Commission has the same broad latitude to determine "whether and how" to exercise its public interest discretion under section 17 of the Act.

c) Application of the General Principles

[58] Staff submits that it is not in the public interest to authorize the use and disclosure of the Evidence produced by the Not Located Respondents or the No Position, Non-Responding, or Opposing Respondents. Staff submits that its position is consistent with Re Black, where the Commission ordered disclosure only with respect to the individuals who consented.

[59] Further, Staff submits that Y bears the onus of demonstrating that disclosing the Evidence is in the public interest, and has failed to meet that onus. Staff submits that Y is engaged in a "fishing expedition" and has not provided sufficient particulars to demonstrate that the Evidence sought is relevant. Staff contrasts *Foster*, where the court ruled that the defendants who requested disclosure were not going on a "fishing expedition" as they knew that the items being requested contained "statements by the complainants relating to the very charges their clients are facing" (*Foster*, *supra* at para. 32).

[60] Staff submits that an *O'Connor* application in the Criminal Proceeding may be the more appropriate forum for the application with regard to the Not Located Respondents and the No Position, Non-Responding and Opposing Respondents because the Evidence Y seeks is relevant to the Criminal Proceeding, there being no ongoing Commission Proceeding.

V. ANALYSIS

A. Jurisdiction and Forum

[61] We do not accept Staff's submission that Y's motion should be brought in the Criminal Proceeding in the form of an *O'Connor* application. We find that the Act gives the Commission authority to determine the issues raised in this application for the following reasons:

(a) The Evidence was obtained in an investigation conducted by Staff.

(b) Part VI of the Act is intended to facilitate and protect the Commission's investigations. It would therefore be inappropriate for the Commission to abdicate its responsibility to protect its investigations.

(c) Part VI of the Act contemplates disclosure and use of compelled evidence outside a Commission proceeding. Subsection 17(1) grants the Commission a broad discretion to authorize disclosure and use of compelled evidence where it would be in the public interest, and does not restrict to whom disclosure may be made or the purposes for which the compelled evidence may be used, subject to subsection 17(3), subsection 17(7) and section 18. (Re Black, supra, at para. 70).

(d) Finally, the Commission has the expertise necessary to determine the issues that arise in a subsection 17(1) application.

B. General Principles

[62] Staff submits that the Commission has the same broad latitude in exercising its public interest discretion under section 17 of the Act as it does when exercising its public interest discretion under section 127. However as this Commission stated in *Re X and A Co.*:

> Section 17, unlike s. 127, is part of Part VI of the Act which has a narrow purpose relating to investigations and compelled testimony. Accordingly, the term "public interest" in s. 17 of the Act should be interpreted in the context of Part VI of the Act: to enable the Commission to conduct fair and effective investigations and to give those investigated assurance that investigations will be conducted with due safeguards to those investigated, thus encouraging their co-operation in the process.
>
> (*Re X and A Co.*, *supra*, at para. 28, quoted in *Re Black*, *supra* at para 74)

[63] We find that "the public interest referred to in section 17 relates to a balancing of the integrity and efficacy of the investigative process and the right of those investigated to their privacy and confidences, all in the context of certain proceedings taken or to be taken by the Commission under the Act" (*Re X and A Co.*, *supra*, at para. 31).

[64] In *Deloitte SCC*, the Supreme Court of Canada considered the balancing exercise required under section 17. Justice Iacobucci stated, on behalf of the Court:

> I believe the OSC properly balanced the interests of disclosure of Philip and the officers, along with the protection of confidentiality expectations and interest of Deloitte. In this respect I am of the view that in making a disclosure order in the public interest under s. 17, the OSC has a duty to parties like Deloitte to protect its privacy interests and confidences. That is to say that [the] OSC is obligated to order disclosure only to the extent necessary to carry out its mandate under the Act.
>
> (*Deloitte SCC*, *supra* at para 29, followed in *Re X and A Co.*, *supra*, at para. 29)

[65] In *Re Black*, after considering *Re X and A Co.* and *Deloitte SCC*, the Commission reaffirmed that "the Commission's public interest requires balancing the rights of individuals and companies that have been investigated against the Commission's mandate under the Act." (*Re Black*, *supra* at para 77)

[66] We accept that in determining the public interest under subsection 17(1), we must balance Y's right to make full answer and defence against the Respondents' reasonable expectations that their privacy interests will be protected.

[67] The Commission has established that a section 17(1) applicant bears a heavy burden of showing that disclosure is in the public interest:

> The Applicants accept that they have the onus of demonstrating that the requested use and disclosure of the Evidence is in the public interest under subsection 17(1) of the Act. There is a high expectation of privacy with respect to all testimony under section 13 of the Act which renders satisfying this onus a heavy burden.
>
> (*Re Black*, *supra* at para 78)

[68] In *Re Black*, the Commission stated that the factors to be considered in weighing the public interest under subsection 17(1) of the Act include:

1. The high degree of confidentiality associated with compelled evidence and the strict limitations on its disclosure and use imposed by sections 16, 17 and 18 of the Act;

2. The reasonable expectations of witnesses compelled to provide evidence;

3. The potential harm to witnesses as a result of the Commission authorizing use and disclosure of their compelled evidence;

4. The protections against self-incrimination provided by the Charter, the Canada Evidence Act and the Ontario Evidence Act; and

5. The integrity of Commission investigations.

(*Re Black*, *supra* at para. 135)

[69] The Commission in *Re Black* added that this was not meant to be an exhaustive list:

> . . . the challenge faced by the Commission in applications under Part VI of the Act involves striking a balance between the continued requirement for confidentiality and our assessment of the public interest at stake.
>
> In exercising the Commission's public interest discretion under subsection 17(1) of the Act, we must also consider the specific purpose for which the evidence is sought and the unusual or exceptional circumstances of the case and determine whether the disclosure of the evidence would serve a useful public purpose.
>
> (*Re Black*, *supra* at paras. 137-138)

[70] These are the general principles we have applied in determining the public interest in this Application.

C. Application of the General Principles to this Case

[71] We find it appropriate to consider the three categories of Respondents separately – the Not Located Respondents, the Non-Objecting Respondents, and the Opposing Respondents.

1. The Not Located Respondents

[72] Subsection 17(2)(b) of the Act states: "No order shall be made under subsection (1) unless the Commission has, where practicable, given reasonable notice and an opportunity to be heard" to "the person or company that gave the testimony or from which the information was obtained."

[73] Though attempts were made to serve all of the Respondents, N1 and N12 could not be located. In the circumstances, we were not prepared to order the disclosure of their Evidence. Accordingly, the Application with respect to N1 and N12 was adjourned *sine die*, until such time as those Respondents receive Notice of the Application. We made an oral ruling to that effect at the Hearing, and confirmed it by written order issued on December 18, 2008.

2. The Non-Objecting Respondents

[74] As stated in *Re Black*, we find that "the balance of factors in the public interest is very different" with respect to Non-Objecting Respondents (*Re Black*, *supra* at para. 243). We find that in these circumstances, the public interest requires us to give less weight to the potential harm or prejudice to Non-Objecting Respondents, and further that disclosure of their Evidence does not affect Staff's ability to give confidentiality assurances to future witnesses, thus maintaining the integrity of Commission

investigations. Therefore, we find that it is in the public interest to authorize disclosure with respect to the Non-Objecting Respondents.

[75] Accordingly, we gave the following oral rulings with respect to the Non-Objecting Respondents at the conclusion of the Hearing and confirmed them by Confidential Orders dated December 18, 2008:

(a) a Confidential Order on a Motion for Directions, allowing disclosure and use of Voluntary Evidence, on terms, in respect of Respondent C13 (a Non-Objecting Respondent); and

(b) a Confidential Order, pursuant to subsection 17(1) of the Act, allowing disclosure and use of Compelled Evidence, on terms, in respect of Respondents C1, C3, C5, C6, C10, C11, C14, N4, N9 and O1 (Non-Objecting Respondents).

[76] After the Hearing, we received an application for disclosure and use of Compelled Evidence provided to the Commission by Z Corporation, along with Z Corporation's consent to the order sought, with respect to privileged documents obtained by Staff during the investigation in the Commission Proceeding which were never disclosed to Y. On January 9, 2009, we issued a Confidential Order, pursuant to subsection 17(1) of the Act, allowing disclosure and use, on terms, of the Compelled Evidence provided by Z Corporation.

3. The No Position, Non-Responding and Opposing Respondents

[77] At the conclusion of the Hearing, we reserved our decision with regard to the No Position Respondents (C4, C9 and C12), the Non-Responding Respondents (N3, N6, N7, N8, N10 and N11) and the Opposing Respondents (N2/O5, N5/O6, O2, O3 and O4).

[78] By Confidential Orders issued on January 9, 2009, we authorized disclosure and use, on terms, with regard to No Position, Non-Responding and Opposing Respondents who are on the Crown Witness List, and dismissed the Application with regard to No Position, Non-Responding and Opposing Respondents who are not on the Crown Witness List.

[79] In making these rulings, we considered the following factors:.

a) Relevance

[80] Staff submits that whereas its allegations against Y in the Commission Proceeding related to failure to make full, true and plain disclosure in Z Corporation's prospectus, the Criminal Proceeding concerns charges of fraud. Staff submits that Y is engaging in a "fishing expedition" in this Application and has not satisfied his onus of demonstrating that the Evidence is relevant to the Criminal Proceeding.

[81] We do not agree. We find that the subject matter and factual foundation of the charges in the Criminal Proceeding overlaps with the subject matter and factual foundation of Staff's allegations in the Commission Proceeding. Further, many of the Respondents have been identified by the Crown as possible witnesses in the Criminal Proceeding, suggesting that the Crown believes that the Evidence they provided to the Commission is also relevant to the Criminal Proceeding.

[82] We find that the Evidence given to the Commission in the Commission Proceeding is likely to be relevant in testing the credibility of the Crown witnesses and the reliability of the documentary evidence concerning the conduct of business at Z Corporation in the Criminal Proceeding.

b) Right to make Full Answer and Defence

[83] Y submits that if the Application is not granted, his counsel in the Criminal Proceeding may be unable to assess the consistency of the evidence given by Crown witnesses who also gave Evidence to Staff, and further that Y, who did receive disclosure of the Evidence during the Commission Proceeding, will not be able to inform his counsel of any inconsistency of which he is aware.

[84] In *Stinchcombe*, the SCC stated:

> [The] Common law right [to make full answer and defence] has acquired new vigour by virtue of its inclusion in s. 7 of the [Charter] as one of the principles of fundamental justice…. The right to make full answer and defence is one of the pillars of criminal justice on which we heavily depend to ensure that the innocent are not convicted.
>
> (*Stinchcombe*, *supra* at 9)

[85] Further, in *Seaboyer*, the SCC stated:

> The right of the innocent not to be convicted is dependent on the right to present full answer and defence. This, in turn, depends on being able to call the evidence necessary to establish a defence and to challenge the evidence called by the prosecution. As one writer has put it (*Doherty*, *ibid.*, at p. 67):
>
> > If the evidentiary bricks needed to build a defence are denied the accused, then for that accused the defence has been abrogated as surely as it would be if the defence itself was held to be unavailable to him.
>
> In short, the denial of the right to call and challenge evidence is tantamount to the denial of the right to rely on a defence to which the law says one is entitled. The defence which the law gives with one hand, may be taken away with the other. Procedural limitations make possible the conviction of persons who the criminal law says are innocent.
>
> (*Seaboyer*, *supra* at 389)

[86] The Commission has held that disclosure should not be authorized just because a party to an action seeks production of compelled evidence for use in civil litigation (*Coughlan*, *supra* at para. 38, *Re X and A Co.*, *supra*, at para. 32, *Re Black*, *supra* at para. 82). That is not the situation in this case. Y has been charged with 12 counts of fraud over $5,000, contrary to section 380(1)(a) of the *Criminal Code*. Conviction on these charges may result in a sentence of incarceration. Accordingly, Y's right to make full answer and defence is a significant factor in our considerations.

c) The Commission's Power to Compel Testimony

[87] Balanced against Y's right to make full answer and defence, we must consider the reasons for the confidentiality provisions in Part VI of the Act. As the Commission noted in *Re Black*:

> The power of the Commission to compel a person to come forward and give statements under oath is a broad and unusual power afforded by the Legislature to the Commission to enable it to carry out its responsibilities to the public under the Act. The Court of Appeal has recognized that the right to compel a witness to make a statement under oath is "perhaps the most important tool which Staff has in conducting investigations". (*Biscotti v. Ontario Securities Commission* (1991), 1 O.R. (3d) 409 at para. 10 (C.A.).)
>
> (*Re Black*, *supra* at para. 112)

[88] The extraordinary nature of the Commission's power to compel testimony requires that we consider the reasonable expectations of a witness who provides compelled testimony, any potential harm and prejudice to the witness as a result of disclosure, and whether disclosure impinges on the witness's right to protection against self-incrimination or the integrity of the Commission's investigative powers.

[89] In *Re Black*, the Commission considered the harm and prejudice that could befall respondents if their compelled evidence was ordered disclosed for use in criminal proceedings in the U.S., because of differences between the Canadian and American protections against self-incrimination. The majority of the Panel concluded:

> The difficulty with the draft order and draft undertakings [that the Applicants' defence counsel will comply with the draft order] is that neither the Commission nor the Applicant's counsel will have any control over the use made of the Evidence once it is used in the U.S. Criminal proceeding. Any order made by the Commission will not and cannot have extra-territorial effect and, as such, will not constrain the U.S. Attorney or others who may come into possession of the Evidence.
>
> (*Re Black*, *supra*, at para. 230)

[90] However, the majority stated that disclosure "would be appropriate where the Commission or an Ontario court could exercise control over the use and derivative use in order to ensure that the witnesses' rights against self-incrimination would be protected" (*Re Black*, *supra*, at para. 232).

[91] In this case, disclosure is sought for use in a criminal proceeding in Canada. Therefore, we find that the protections against self incrimination offered by section 18 of the Act, sections 7 and 13 of the Charter and section 5 of the Canada Evidence Act provide sufficient protection for the Respondents such that disclosure will not result in harm, prejudice or self-

incrimination. Further, because the Commission Proceeding has concluded, we find that ordering disclosure in this case will not negatively impact the Commission's investigative powers in this case.

[92] We note that the orders sought by the Applicant include terms restricting the use of the Evidence. This is consistent with the principle that Compelled Evidence should be disclosed for limited purposes only where and to the extent that the Commission is satisfied that disclosure is in the public interest.

d) The Crown Witness List

[93] For the reasons given above, we find that for the No Position, Non-Responding and Opposing Respondents who received notice of the Application, a demarcation can be made between those who are on the Crown Witness List and those who are not.

[94] We are satisfied that where the Crown has named a Respondent as a potential witness, that Respondent's Evidence is relevant to the Criminal Proceeding, and further, that Y's right to make full and answer and defence strongly favours that disclosure should be made where a Respondent is on the Crown Witness List. In these circumstances, we believe that disclosure will generally not adversely impact the Respondent's reasonable expectations of confidentiality and protection against self-incrimination, absent evidence to the contrary. We are of the view that the Commission's power to craft appropriate safeguards around the use of disclosed evidence, its power to enforce compliance with its orders and the statutory and constitutional protections against self-incrimination discussed above, vitiate any potential harm or prejudice to a witness in these circumstances.

[95] We are not prepared to order disclosure of the Evidence of No Position, Non-Responding or Opposing Respondents who are not on the Crown Witness List because we are not satisfied that Y needs their Evidence to make full answer and defence in the Criminal Proceeding. In these circumstances, we find that these Respondents' reasonable expectations of privacy and confidentiality must prevail and disclosure should not be ordered.

[96] Accordingly, we issued the following written orders on January 9, 2009:

(a) a Confidential Order on a Motion for Directions, allowing disclosure and use, on terms, of the Voluntary Evidence provided by Respondents C12 (a No Position Respondent) and N8 (a Non-Responding Respondent), who received notice of the Application and are on the Crown Witness List, and dismissing it with respect to Respondents N7 and N11 (Non-Responding Respondents), who received notice of the Application but are not on the Crown Witness List, without prejudice to the Applicant renewing his Motion if circumstances change, including N7 and N11 being added to the Crown Witness List; and

(b) a Confidential Order, pursuant to section 17 of the Act, allowing disclosure and use, on terms, of the Compelled Evidence provided by Respondents C4, C9, N3, N6, N5/O6, N10, O2, O3 and O4 (No Position, Non-Responding and Opposing Respondents), who received notice of the Application and are on the Crown Witness List, and dismissing it with respect to Respondent N2/O5 (an Opposing Respondent), who received notice of the Application but is not on the Crown Witness List, without prejudice to the Applicant renewing his Application if circumstances change, including N2/O5 being added to the Crown Witness List.

VI. CONCLUSION

[97] After the Hearing, we invited the parties' written submissions on whether the Orders and these Reasons should be released to the public, and if so, on what basis, including the timing of publication and whether monikers should be retained, rather than identifying the Respondents. In written submissions, Y and Staff agreed that Respondents should not be identified by name but only by moniker. While Staff submitted that the Orders and Reasons should be published immediately, while retaining the use of monikers, Y submitted that publication should be deferred pending the completion of the Criminal Proceeding.

[98] After considering the parties' submissions, we concluded that publishing the Orders and Reasons, while retaining the use of monikers rather than names, is consistent with the open courts principle and also with the confidentiality and disclosure provisions of Part VI of the Act. However, we have concluded that, in keeping with the open courts principle, the Orders and Reasons should be published in anonymized form without further delay without awaiting the completion of the Criminal Proceeding.

[99] For the reasons discussed above, we issued the following Confidential Orders, which are to be made public concurrently with the publication of these Reasons:

(a) a Confidential Order, dated December 18, 2008, on a Motion for Directions, allowing disclosure and use, on terms, of the Voluntary Evidence provided by Respondent C13 (a Non-Objecting Respondent);

(b) a Confidential Order, dated December 18, 2008, pursuant to section 17 of the Act, allowing disclosure and use, on terms, of the Compelled Evidence provided by Respondents C1, C3, C5, C6, C10, C11, C14, N4, N9 and O1 (Non-Objecting Respondents), and adjourning the Application *sine die* with respect to N1 and N12 (Not Located Respondents);

(c) a Confidential Order, dated January 9, 2009, on a Motion for Directions, allowing disclosure and use, on terms, of the Voluntary Evidence provided by Respondents C12 (a No Position Respondent) and N8 (a Non-Responding Respondent), who received notice of the Application and are on the Crown Witness List, and dismissing it with respect to Respondents N7 and N11 (Non-Responding Respondents), who received notice of the Application but are not on the Crown Witness List, without prejudice to the Applicant renewing his Motion if circumstances change, including N7 and N11 being added to the Crown Witness List;

(d) a Confidential Order, dated January 9, 2009, pursuant to section 17 of the Act, allowing disclosure and use, on terms, of the Compelled Evidence provided by Respondents C4, C9, N3, N6, N5/O6, N10, O2, O3 and O4 (No Position, Non-Responding and Opposing Respondents), who received notice of the Application and are on the Crown Witness List, and dismissing it with respect to Respondent N2/O5 (an Opposing Respondent), who received notice of the Application but is not on the Crown Witness List, without prejudice to the Applicant renewing his Application if circumstances change, including N2/O5 being added to the Crown Witness List; and

(e) a Confidential Order, dated January 9, 2009, pursuant to subsection 17(1) of the Act, allowing disclosure and use, on terms, of the Compelled Evidence provided by Respondent Z Corporation.

[100] Where disclosure and use of Voluntary Evidence has been ordered, we have imposed the following terms:

1. The Applicant's counsel may make disclosure of and use the Evidence solely for the purpose of the examination of any witness who testifies in the Criminal Proceeding, in order to allow the Applicant to make full answer and defence to the charges made against him in the Criminal Proceeding.

2. Disclosure and use of the Evidence will be on the basis that:

   a. The Applicant and his counsel will not use the Evidence other than as expressly permitted by this Order;

   b. Except as expressly permitted by this Order, the Evidence shall be kept confidential;

   c. Any use of the Evidence other than as expressly permitted by this Order will constitute a violation of this Order;

   d. The Applicant and his counsel shall maintain custody and control over the Evidence so that copies of the Evidence and any other information in their possession which was obtained pursuant to or as a result of this Order are not disclosed or disseminated for any purpose other than the use expressly permitted by this Order;

   e. The Applicant's counsel will not file any part of the Evidence on the public record in the Criminal Proceeding unless it is necessary for the Applicant to make full answer and defence in the Criminal Proceeding;

   f. The Evidence shall not be used for any collateral or ulterior purpose;

   g. The Applicant and his counsel shall, promptly after the completion of the trial and any appeals in the Criminal Proceeding, return all copies of the Evidence to Staff or confirm in writing that they have been destroyed; and

   h. This Order does not affect any rights the Respondent has to protection against self-incrimination granted by the *Canadian Charter of Rights and Freedoms* and the *Evidence Act* of Ontario.

[101] The following additional safeguard was added to the disclosure orders made pursuant to subsection 17(1) in respect of Compelled Evidence:

i. This Order does not affect the prohibition on use of compelled testimony contained in section 18 of the Act.

DATED in Toronto, Ontario this 31st day of August, 2009.

“Lawrence E. Ritchie”

“Mary G. Condon”

3.1.5 Howard Graham – s. 127

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

AND

IN THE MATTER OF
HOWARD GRAHAM

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

Hearing:	April 9, 2009		
Decision:	September 4, 2009		
Panel:	Patrick J. LeSage, Q.C.	–	Commissioner (Chair of the Panel)
	Suresh Thakrar	–	Commissioner
Counsel:	Emily C. Cole	–	for Staff of the Ontario Securities Commission
		–	no one appeared for the respondent Howard Graham

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REASONS AND DECISION

I. BACKGROUND

[1] This matter came before the Ontario Securities Commission (the "Commission") on April 9, 2009 pursuant to s. 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") to consider whether it is in the public interest to make a permanent order imposing certain sanctions against Howard Graham ("Graham").

[2] A Notice of Hearing was issued by the Commission on March 18, 2009, in relation to a Statement of Allegations issued by Staff of the Commission ("Staff") on the same date.

[3] On December 23, 2008, the United States District Court for the District of Massachusetts entered a final judgment (the "Final Judgment") against Graham (a resident of Kingston, Ontario) and against Braintree Energy Inc. ("Braintree"), a corporation domiciled in the United States (the U.S.). This flowed from a civil fraud complaint against Graham and Braintree in the United States District Court – District of Massachusetts (the "Complaint") filed by the United States Securities and Exchange Commission (the "SEC"), relating specifically to the fraudulent offering and sale of unregistered securities, investment contracts and/or fractional interests in oil and gas leases.

[4] Staff asserts that the conduct of Graham which formed the basis of the Final Judgment, is conduct contrary to the public interest, and is applying under s. 127(10) of the Act (the inter-jurisdictional enforcement provision) for a permanent order against Graham on such grounds.

[5] Staff relies on s. 127(10) para. 3 of the Act, which provides that the Commission may make an order under s. 127(1) or s. 127(5) "in respect of a person or company if … [t]he person or company has been found by a court in any jurisdiction to have contravened the laws of the jurisdiction respecting the buying or selling of securities."

[6] This panel's role is to determine whether it is in the public interest that such sanctions be imposed.

[7] Graham is a Canadian citizen who resides in Kingston, Ontario. Graham was the President of and/or controlled Braintree during the relevant time. He has never been registered with the Commission nor has he ever applied for any exemptions from the registration requirements of the Act.

[8] This hearing was originally scheduled to take place on March 26, 2009, but was adjourned at the request of Graham's U.S. counsel, Richard Hewitt ("Hewitt"), and with Staff's consent to April 9, 2009 (the "Adjournment Order").

[9] Staff filed written submissions in advance of the hearing to accompany their oral arguments.

[10] Graham was not present at the hearing, but Staff informed us that Hewitt, on behalf of his client, neither opposes nor supports the permanent order sought by Staff.

II. PRELIMINARY ISSUES

A. Service and Failure to Appear at the Hearing

[11] It is well established that if an oral hearing is held, a party is entitled to notice of it and to be present at all times while evidence and submissions are being presented. However, pursuant to s. 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990 c. S.22 (the "SPPA"), where a party who has been given proper notice of a hearing fails to respond or to attend, the tribunal may proceed in the party's absence and the party is not entitled to any further notice in the proceeding.

[12] Graham was not present at the hearing, but we are satisfied that he received a copy of the Notice of Hearing, a copy of the Statement of Allegations, as well as a copy of the Adjournment Order. Staff served Graham through his counsel by email, and Graham's counsel confirmed receipt of the Notice of Hearing and Statement of Allegations by email.

III. ANALYSIS

A. The Final Judgment

[13] Staff submits that Graham's conduct in the United States, which resulted in the Final Judgment being made against him, is conduct contrary to the public interest.

[14] On February 20, 2007, the SEC filed the Complaint. The Complaint asserts that Graham orchestrated a scheme that involved a "fraudulent offering and sale of unregistered securities" through Braintree, a company incorporated in the state of Massachusetts. Braintree's principal office was located in Cheshire, Massachusetts, and was in the business of selling investment contracts and/or fractional interests in oil and gas leases for drilling projects operated by Premier Minerals Inc.

[15] The SEC alleged that Graham was the principal of Braintree and controlled the company at all relevant times. Graham was listed as the president and a director in Braintree's 2003 Annual Report, filed with Massachusetts' Corporations Division.

[16] In particular, the SEC alleged in the Complaint that Graham orchestrated a scheme through Braintree involving a fraudulent offering and sale of unregistered securities in the form of investment contracts and/or fractional interests in oil and gas leases, and in doing so:

> … made numerous oral and written misrepresentations between at least 2000 through 2006 to more than 200 investors nationwide and in foreign countries regarding the investors' expected rate of return and their associated investment risks. Defendants routinely communicated to investors that they could expect to earn between 500-900% on their investments, with little or no risk. Moreover, Defendants failed to disclose many material facts to the investors, including that Graham intended to and was routinely diverting up to 30% of investor funds for his personal use. As a result of the scheme detailed herein, Defendants obtained at least [US] $9 million in investor funds and Graham diverted approximately [US] $3 million towards his personal use.

[17] Furthermore, the SEC asserted that Graham and Braintree raised at least US $9 million from at least 200 investors residing in the United States and other countries, and that "most investors have received no profits … have not even recovered their initial investments … [and have] suffered significant losses".

[18] The SEC also alleged that throughout the relevant period, Graham "acted intentionally, knowingly, recklessly and/or negligently".

[19] As noted earlier, on December 23, 2008, the United States District Court – District of Massachusetts entered a Final Judgment against Graham. Graham consented to the entry of the Final Judgment without admitting or denying the allegations of the Complaint, with the exception that he accepted that the court had jurisdiction over the matter. Graham also waived findings of fact or conclusions of law and any right to appeal the Final Judgment.

[20] The Final Judgement, amongst other things, ordered that Graham be permanently restrained and enjoined from violating directly or indirectly s. 10(b) and s. 5(a) of the *Securities Exchange Act of 1934*, 15 U.S.C. § 78a [U.S.A.], and s. 17(a), s. 5(a), and s. 5(c) of the *Securities Act of 1933*, 15 U.S.C. § 77a [U.S.A.]. That judgment also ordered Graham to disgorge US $3,149,903.60 which represents "profits gained as a result of the conduct alleged in the Complaint" together with prejudgment interest, and that he pay a civil penalty in the amount of US $120,000.

B. Section 127(10) of the Act and the Permanent Order Sought by Staff

[21] Section 127(10) of the Act, which came into force on November 27, 2008, provides the following:

> 127(10) **Inter-jurisdictional enforcement** – Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:
>
> 1. The person or company has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities.
>
> 2. The person or company has been convicted in any jurisdiction of an offence under a law respecting the buying or selling of securities.
>
> 3. The person or company has been found by a court in any jurisdiction to have contravened the laws of the jurisdiction respecting the buying or selling of securities.
>
> 4. The person or company is subject to an order made by a securities regulatory authority in any jurisdiction imposing sanctions, conditions, restrictions or requirements on the person or company.
>
> 5. The person or company has agreed with a securities regulatory authority in any jurisdiction to be made subject to sanctions, conditions, restrictions or requirements.

[22] Staff submit that there is significant evidence of misconduct by Graham which is harmful to the public interest, and consequently seek a permanent order against Graham in order to protect Ontario capital markets. They seek the following order:

a) trading in any securities by Graham cease permanently pursuant to s. 127(1) para. 2 of the Act;

b) the acquisition of any securities by Graham be prohibited permanently pursuant to s. 127(1) para. 2.1 of the Act;

c) any exemptions contained in Ontario securities laws do not apply to Graham pursuant to s. 127(1) para. 3 of the Act;

d) Graham resigns any positions he holds as a director or officer of an issuer pursuant to s. 127(1) para. 7 of the Act; and that,

e) Graham be prohibited from becoming or acting as a director or officer of any issuer pursuant to s. 127(1) para. 8 of the Act.

C. Findings

[23] Staff submits that s. 127(10) is applicable to these proceedings because the Final Judgment is a decision of a Court that its laws of its jurisdiction respecting the buying or selling of securities have been contravened. We agree.

[24] Having determined that Staff may rely on s. 127(10) para. 3 in this case, the question becomes whether sanctions are in the public interest and, if so whether the permanent order proposed by Staff is appropriate, taking into account all the circumstances.

D. Should Sanctions be Imposed?

[25] In considering whether the public interest requires that an order be made against Graham, we are guided by the underlying purposes of the Act, as set out in s. 1.1:

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

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

[26] We are also guided by the fundamental principles of the Act as enunciated by s. 2.1 which include:

- restrictions on fraudulent and unfair market practices and procedures;
- requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants;
- effective and responsive securities regulation requires timely, open and efficient administration and enforcement of the Act by the Commission; and
- integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes.

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

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

[28] Although the United States District Court did not make specific findings of fact in its judgment, Staff submits, and we agree, that we may consider the facts set out in the Complaint because they form the basis of the judgment. As stated in *In the Matter of Marshall E. Melton and Asset Management & Research, Inc.*, 2003 SEC LEXIS 1767 at p.8 (SEC)(Lexis) ("*Melton*"), in which the SEC outlined its approach to consent injunctions:

> We hereby take this opportunity to refine and expand, for future cases, our policy for administrative disciplinary proceedings based on consent injunctions – and, in particular, antifraud injunctions – that are both agreed to and entered by a court in Commission enforcement actions after issuance of this opinion. The policy reflects our view of the meaning that a settlement in a Commission injunctive action will have for a disciplinary proceedings against the same party.
>
> …
>
> As noted above, the … *Act* draws no distinction between injunctions entered after litigation or by consent. **We do not believe that the statutes require the Enforcement Division to prove the allegations of an injunctive complaint in a follow-on administrative proceeding before any disciplinary action can be taken.**
>
> …
>
> For purposes of consent injunctions that are agreed to and entered by a court after issuance of this opinion, we will construe the "neither admit nor deny" language as precluding a person who has consented to an injunction in a Commission enforcement action from denying the factual allegations of the injunctive actions must understand that, if the Commission institutes an administrative proceeding against them based on an injunction to which they consented after issuance of this opinion, **they may not dispute the factual allegations of the injunctive complaint in the administrative proceeding. Moreover, those allegations potentially can be dispositive of what remedial action is appropriate in the public interest.**
>
> [Emphasis added]

[29] The rationale and the comments in *Melton* are relevant both to the Act and this case.

[30] Graham was obviously aware that his consent to final judgment would result in factual allegations as set out in the Complaint being used against him in the administrative proceedings before the SEC, notwithstanding his consent was on a "neither admit nor deny" basis. We accept that it is fair and in the public interest for the purpose of this s. 127(10) application that the factual allegations in the Complaint which gave rise to the consent judgment, are proper and relevant information for us to consider in determining whether an order should be issued in this application.

[31] In view of the factual allegations contained in the Complaint, we considered the following factors in determining whether sanctions against Graham are necessary in order to protect the public interest:

- the proposed sanctions by Staff are prospective in nature, and only affect Graham if he attempts to participate in the capital markets in Ontario;
- the proposed sanctions by Staff correspond with the fundamental principles that the Commission restrict "fraudulent and unfair market practices and procedures", and maintain "high standards" of fitness and business conduct to ensure honest and responsible conduct by market participants" (s. 2.1 para. 2 of the Act);
- relying on the Final Judgment in a s. 127.(10) application, represents a timely, open and efficient administration and enforcement of the Act by the Commission (s. 2.1 para. 3 of the Act);
- Graham engaged in aggressive sales tactics, and made misrepresentations to investors regarding the expected rate of return of the securities and their associated investment risks, which included representations to investors, that they could earn between 500-900% on their investments, and that investments in Braintree were more safe than investments in certificates of deposit, despite the fact that earlier investors had lost their entire investments; and
- the scale of Graham's violation of the *Securities Act of 1933*, 15 U.S.C. §77a et seq., was large and egregious; Graham misappropriated for his personal use approximately US $3 million of the at least US $9 million raised from at least 200 investors through unregistered offerings; and
- the Complaint refers to the fact that most investors have received no profits and most have not even recovered their initial investments. Instead, most suffered significant losses.

[32] The terms of the Final Judgment indicates that Graham's conduct was a serious threat to the public interest.

[33] In our opinion, if Graham's conduct, as described in the Complaint, had occurred in Ontario with Ontario investors, that conduct would have amounted to egregious violations of Ontario securities laws, including s. 25.(1)(a) of the Act for trading in securities without registration, s. 53.(1) of the Act for distributing securities without a prospectus or receipt from the Director, s. 126.1(b) of the Act for perpetrating a fraud on investors, s. 126.2(1) of the Act for making misleading or untrue statements to investors, and s. 127.(1) of the Act for acts contrary to the public interest.

[34] In light of the reasons listed above, we find that there is strong evidence that Graham presents a potential risk to Ontario investors and that sanctions are necessary in order to protect the public interest and ensure the integrity of the Ontario capital markets.

E. The Appropriate Sanctions

[35] In determining the nature and duration of the appropriate sanctions, we consider a number of factors which include:

a) the seriousness of the allegations;

b) the respondent's experience in the marketplace;

c) the level of a respondent's activity in the marketplace;

d) whether or not there has been recognition of the seriousness of the improprieties;

e) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered but any like-minded people from engaging in similar abuses of the capital markets; and

f) any mitigating factors.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743, at paras. 25-26)

[36] In addition, we recognize that the Supreme Court of Canada in *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 has affirmed that the Commission may properly impose sanctions which are a general deterrent, stating "…it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative."

[37] We are also mindful that in determining the appropriate sanctions in this matter, we must consider the specific circumstances to ensure that the sanctions are proportionate to the conduct involved (see *Re M.C.J.C. Holdings Inc. and Michael Cowpland*, (2002), 25 O.S.C.B. 1133 ("*Re M.C.J.C. Holdings*") at para. 26.)

[38] Graham did not make any submissions, and hence we did not have the benefit of any evidence which might tend to mitigate the risk Graham poses to the capital markets.

[39] Consequently, we find that Staff's proposed sanctions further the goals of the Act, and reflect a fair and proportionate outcome relative to Graham's conduct.

IV. CONCLUSION

[40] For the aforementioned reasons, we find it is in the public interest that: trading in any securities by Graham cease permanently; Graham be permanently prohibited from acquiring any securities; that any exemptions contained in Ontario securities law do not apply to Graham; Graham resign any position he holds as a director or officer of an issuer; and Graham be prohibited from acting as a director or officer of any issuer, as set out in our order dated September 4, 2009.

[41] Dated at Toronto this 4th day of September, 2009.

"Patrick J. LeSage"

"Suresh Thakrar"

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
Everbright Capital Corporation	24 Aug 09	04 Sept 09	04 Sept 09	
Copper Mesa Mining Corporation	27 Aug 09	08 Sept 09	08 Sept 09	
Adaltis Inc.	26 Aug 09	08 Sept 09	08 Sept 09	
Bioxel Pharma Inc.	03 Sept 09	15 Sept 09		
Broadband Learning Corporation	04 Sept 09	16 Sept 09		
Specialty Foods Group Income Fund	04 Sept 09	16 Sept 09		

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Wedge Energy International Inc.	04 May 09	15 May 09	15 May 09	08 Sept 09	
Medifocus Inc.	07 Aug 09	19 Aug 09	19 Aug 09	03 Sept 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	08 Sept 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	19 Aug 09	03 Sept 09	
Norwall Group Inc.	02 Sept 09	14 Sept 09			

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
08/26/2009	1	4198832 Canada Inc. - Units	0.00	N/A
07/31/2009	1	ABC Fundamental Value Fund - Units	175,000.00	15,238.98
08/21/2009	16	Acero-Martin Exploration Inc. - Units	360,000.00	9,000,000.00
08/20/2009 to 08/27/2009	16	AgriMarine Holdings Inc. - Units	640,700.00	2,162,800.00
07/30/2009	5	Air Canada - Warrants	0.00	N/A
10/22/2008	7	Amarillo Gold Corporation - Non-Flow Through Units	3,029,000.00	4,327,142.00
08/14/2009	12	American Casino & Entertainment Properties LLC - Notes	17,216,109.00	19,000,000.00
07/22/2009	10	Amerix Precious Metals Corporation - Units	121,050.00	4,050,000.00
08/21/2009	32	Amerpro Resources Inc. - Units	3,000,000.00	10,800,000.00
07/31/2009	2	Arch Coal, Inc. - Common Shares	849,712.50	45,000.00
07/22/2009	5	Augen Gold Corp. - Common Shares	63,800.00	130,000.00
07/15/2009	165	Aura Minerals Inc. - Receipts	125,126,000.00	227,500,000.00
08/25/2009	1	Auramex Resource Corp. - Common Shares	80,000.00	2,000,000.00
08/20/2009	1	AVI BioPharma Inc. - Units	2,635,000.00	1,700,000.00
08/13/2009	35	Azure Dynamics Corporation - Common Shares	9,999,999.93	58,823,529.00
08/20/2009	15	Balaton Power Inc. - Units	194,382.00	6,000,000.00
07/31/2009	5	Basic Energy Services Inc. - Notes	6,203,542.00	6,000,000.00
08/06/2009	39	BCGold Corp. - Flow-Through Shares	1,065,300.00	7,305,000.00
08/14/2009	8	Bunge Limited - Common Shares	74,127,057.40	1,028,828.00
07/23/2009	1	Castle Gold Corporation - Common Shares	86,034.46	150,000.00
07/31/2009	190	China Wind Power International Corp. - Common Shares	27,319,158.00	27,319,158.00
08/14/2009	7	Clean harbors Inc. - Notes	1,321,280.87	1,243,000.00
08/20/2009 to 08/29/2009	14	CMC Markets UK plc - Contracts for Differences	116,001.00	14.00
07/20/2009	1	Consolidated Thompson Iron Mines Limited - Common Shares	105,212,382.56	38,681,023.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
06/19/2009	2	CONSUMER DISCRETIONARYSELT - Common Shares	1,081,961.28	40,000.00
08/20/2009	90	Cougar Minerals Corp. - Non-Flow Through Units	1,284,500.00	N/A
07/24/2009	26	Counsel Corporation - Common Shares	23,661,815.97	16,164,471.00
08/18/2009	2	CPM Holdings Inc. - Notes	3,789,249.22	N/A
07/01/2009	1	Crestline Offshore Opportunity Fund Partners, L.P. - Limited Partnership Units	54,038,688.11	N/A
02/01/2008 to 11/01/2008	3	Crestline Offshore Opportunity Fund, Ltd. - Common Shares	120,903,405.00	120,903.41
08/19/2009	4	Development Notes Limited Partnership - Units	200,049.00	200,049.00
07/29/2009	4	Dianor Resources Inc. - Common Shares	1,500,000.00	20,000,000.00
08/20/2009	15	El Nino Ventures Inc. - Units	452,800.00	5,660,000.00
07/10/2009	3	Endurance Gold Corporation - Common Shares	5,000.00	100,000.00
07/31/2009	1	FideliSoft Inc. - Preferred Shares	1,500,000.00	10,000,000.00
06/02/2009 to 06/11/2009	3	FINANCIAL SELECT SECTOR SPDR - Common Shares	4,561,564.79	319,200.00
07/27/2009	36	Fire River Gold Corp. - Units	1,480,213.00	4,934,044.00
08/25/2009	2	First Leaside Fund - Trust Units	10,126.00	10,126.00
08/19/2009	1	First Leaside Investors Limited Partnership - Units	48,269.00	48,269.00
08/20/2009	1	First Leaside Premier Limited Partnership - Units	49,999.20	45,146.00
07/23/2009	1	First Nickel Inc. - Common Shares	11,776,000.00	2,150,000.00
08/26/2009	121	FT Capital Investment Fund - Units	1,079,500.00	2,159.00
08/17/2009 to 08/21/2009	2	Fuel Transfer Technologies Inc. - Preferred Shares	15,275.00	4,700.00
08/24/2009	22	Galore Resources Inc. - Units	451,250.04	2,654,412.00
08/10/2009	6	GeneNews Limited - Common Shares	297,259.00	1,189,036.00
07/20/2009 to 07/24/2009	3	General Motors Acceptance Corporation of Canada Limited - Notes	851,899.24	851,899.24
07/27/2009 to 07/31/2009	8	General Motors Acceptance Corporation of Canada, Limited - Notes	3,375,715.00	3,375,715.00
08/10/2009 to 08/14/2009	5	General Motors Acceptance Corporation of Canada, Limited - Notes	776,972.53	776,972.53
07/31/2009	3	Genesis Worldwide Inc. - Common Shares	300,000.00	600,000.00
07/27/2009	6	Genesis Worldwide Inc. - Common Shares	1,675,000.00	N/A
08/14/2009	356	Glamis Resources Ltd. - Common Shares	90,000,000.00	72,000,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
06/05/2009 to 07/13/2009	1	GMO Equity Allocation Fund- III - Units	83,503,281.83	11,186,020.58
01/21/2009 to 03/17/2009	1	GMO International Core Equity Fund-III - Units	12,904,500.56	534,818.01
03/13/2009 to 05/27/2009	1	GMO International Instrinsic Value Fund-II - Units	212,956.76	11,204.57
07/15/2009	1	God's Lake Resources Inc. - Common Shares	30,000.00	300,000.00
07/21/2009 to 07/28/2009	7	Golden Predator Royalty & Development Corp. - Common Shares	465,000.00	N/A
07/22/2009	3	Goldman Sachs Group Inc. - Notes	5,527,185.20	N/A
08/26/2009	1	Goodman Group - Special Trust Securities	1,854,140.00	5,097,709.00
08/18/2009	1	GSI Commerce Inc. - Common Shares	1,876,000.00	100,000.00
08/20/2009	416	GTO Resources Inc. - Receipts	179,400,000.00	N/A
08/21/2009	9	In Motion Technology Inc. - Preferred Shares	2,496,001.73	N/A
08/24/2009	1	Intelligent Mechatronic Systems Inc. - Common Shares	30,000,000.00	30,000,000.00
07/06/2009	14	Intertainment Media Inc. - Debentures	1,415,430.50	N/A
08/27/2009	25	Investicare Seniors Housing Corp. - Units	600,000.00	N/A
06/01/2009 to 06/30/2009	3	iSHARES CDN S&P/TSX 60 INDEX FUND - Common Shares	2,182,534.51	117,401.00
06/24/2009	1	iSHARES DJ US TRANSPORT INDX - Common Shares	921,668.37	13,900.00
06/01/2009	1	iSHARES INC CDAINDEX FUND - Common Shares	145,326.14	5,300.00
06/01/2009 to 06/02/2009	2	iSHARES INC MSCI JAPAN INDEX - Common Shares	413,775.83	37,200.00
06/01/2009	1	iSHARES INC MSCI SWITZERLAND - Common Shares	32,464.59	1,500.00
06/01/2009	1	iSHARES INC MSCI UNITED KINGDOM - Common Shares	60,738.42	3,700.00
06/01/2009	1	iSHARES INC PACIFIC EXJAPAN - Common Shares	15,398.66	400.00
06/30/2009	1	iSHARES IUNITS INCM TRST - Common Shares	152,696.20	14,000.00
06/01/2009 to 06/19/2009	3	iSHARES MSCI EMERGING MKTS INDEX - Common Shares	24,685,372.27	626,900.00
06/08/2009 to 06/11/2009	1	iSHARES RUSSELL 2000 - Common Shares	429,681.08	7,000.00
06/01/2009 to 06/23/2009	1	iSHARES S&P NA TECH SW IDX FUND - Common Shares	2,125,747.37	48,300.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
06/08/2009	1	iSHARES TR S&P EURO PLUS - Common Shares	242,882.07	6,500.00
08/26/2009	45	KFG Resources Ltd. - Common Shares	500,000.00	8,333,333.00
07/31/2009	11	Kingwest Avenue Portfolio - Units	951,000.00	40,489.97
08/15/2009	1	Kingwest Aveune Portfolio - Units	50,000.00	2,060.19
08/15/2009	2	Kingwest U.S. Equity Portfolio - Units	57,049.15	5,245.37
08/26/2009	2	Largo Resources Ltd. - Units	400,000.00	4,000,000.00
08/25/2009	1	Leprechaun Resources Ltd. - Units	30,000.00	N/A
08/19/2009	85	Lincoln Mining Corporation - Units	8,918,054.80	29,255,057.00
08/20/2009	1	Linear Gold Corp. - Common Shares	800,000.00	727,272.00
07/17/2009	8	Long Harbour Capital Corp. - Common Shares	140,000.00	2,800,000.00
08/24/2009	29	Maritimes & Northest Pipeline Limited Partnership - Notes	179,992,800.00	N/A
06/22/2009	1	MARKET VECTORS AGRIBUSINESS - Common Shares	406,526.69	10,400.00
05/31/2009	20	Marport Deep Sea Technologies Inc. - Common Shares	802,500.00	3,210,000.00
08/31/2009	30	Masuparia Gold Corporation - Common Shares	900,000.00	8,000,000.00
08/28/2009	18	McConachie Development Investment Corporation - Units	513,400.00	51,340.00
08/21/2009	16	McConachie Development Limited Partnership - Units	1,322,570.00	132,257.00
08/18/2009	1	Melco Crown Entertainment Limited - American Depository Shares	42,825,000.00	7,500,000.00
04/06/2009	1	Micromem Technologies Inc. - Common Shares	100,000.00	N/A
05/14/2009	8	Micromem Technologies Inc. - Units	375,000.00	N/A
02/11/2009	1	Micromem Technologies Inc. - Units	623,076.84	N/A
04/06/2009	1	Micromem Technologies Inc. - Units	1,000,000.00	N/A
06/23/2009	2	MIDCAP SPDR TRUST SERIES 1 - Common Shares	2,426,714.26	20,700.00
07/24/2009	3	Mint Technology Corp. - Common Shares	49,650.00	280,000.00
06/15/2009 to 06/22/2009	1	Mint Technology Corp. - Debentures	40,000.00	N/A
07/09/2009	1	Mint Technology Corp. - Debentures	10,000.00	10,000.00
08/24/2009	26	Molycor Gold Corporation - Units	224,180.00	2,802,250.00
08/04/2009	40	Mountain Province Diamonds Inc. - Units	4,500,000.00	3,000,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
06/01/2009 to 06/15/2009	2	MSCI EMU IDX FD - Common Shares	413,347.92	11,200.00
08/05/2009	88	Multiplied Media Corporation - Common Shares	2,918,623.02	48,643,717.00
07/29/2009	30	National Australia Bank Limited - Common Shares	13,859,012.30	711,827.00
08/20/2009	30	Nevada Exploration Inc. - Units	422,045.45	8,038,961.00
09/01/2009	27	New World Lenders Corp. - Bonds	1,348,600.00	N/A
07/02/2009 to 07/03/2009	8	Newport Canadian Equity Fund - Units	120,700.00	1,085.11
08/06/2009 to 08/12/2009	11	Newport Canadian Equity Fund - Units	539,800.00	4,795.01
07/07/2009 to 07/15/2009	35	Newport Canadian Equity Fund - Units	570,300.00	5,251.54
07/24/2009 to 08/04/2009	22	Newport Canadian Equity Fund - Units	876,318.99	7,794.84
06/26/2009 to 07/03/2009	20	Newport Fixed Income Fund - Units	1,496,940.00	14,355.31
08/06/2009 to 08/13/2009	29	Newport Fixed Income Fund - Units	2,005,900.00	18,938.50
07/07/2009 to 07/15/2009	35	Newport Fixed Income Fund - Units	1,083,563.80	10,396.19
07/27/2009 to 08/04/2009	15	Newport Fixed Income Fund - Units	2,336,203.11	22,227.97
06/29/2009 to 07/02/2009	5	Newport Global Equity Fund - Units	63,000.00	1,118.86
08/10/2009 to 08/13/2009	5	Newport Global Equity Fund - Units	125,000.00	2,179.81
07/30/2009 to 08/04/2009	3	Newport Global Equity Fund - Units	270,000.00	4,712.93
06/29/2009 to 07/03/2009	31	Newport Yield Fund - Units	2,138,764.68	20,895.08
08/05/2009 to 08/13/2009	27	Newport Yield Fund - Units	577,312.00	5,501.08
07/07/2009 to 07/15/2009	32	Newport Yield Fund - Units	627,310.91	6,129.34
07/24/2009 to 08/04/2009	30	Newport Yield Fund - Units	1,773,646.83	17,060.84
08/01/2009	1	North American Capital Inc. - Preferred Share	200,000.00	1.00
08/01/2009	5	North American Financial Group Inc. - Debt	409,000.00	5.00
07/30/2009	5	Northern Superior Resources Inc. - Common Shares	1,000,000.00	10,000,000.00
07/10/2009 to 07/17/2009	46	NWM Strategic Income Fund - Trust Units	2,933,400.00	366,124.68

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
08/18/2009	1	Orion Marine Group Inc. - Common Shares	130,440.00	N/A
07/22/2009	2	Orix Corporation - Common Shares	13,059,542.37	230,900.00
07/16/2009	29	Oroco Resource Corp. - Units	870,000.00	N/A
07/31/2009	3	Oroco Resource Corp. - Units	105,000.00	N/A
07/31/2009	2	Pacific & Western Credit Corp. - Notes	9,000,000.00	N/A
08/19/2009	4	Pan Terra Industries Inc. - Debentures	38,000.00	N/A
08/19/2009	20	Pavilion Energy Corp. - Common Shares	1,300,000.00	1,040,000.00
07/15/2009	9	Pharmagap Inc. - Units	114,720.00	717,000.00
07/27/2009	1	Pinnacle Entertainment Inc. - Notes	3,250,500.00	N/A
07/23/2009	1	Plastipak Holdings Inc. - Notes	543,350.00	543,350.00
06/24/2009	1	POWERSHARE DB CMDTYIDXTRACK UNIT - Common Shares	6,002.38	225.00
06/04/2009 to 06/15/2009	2	POWERSHARES QQQ NASDAQ 100 - Common Shares	22,153,641.55	524,600.00
07/31/2009	14	Prestigious Investment & Management (PRISM) A- Limited Partnership - Limited Partnership Units	1,065,500.00	2,344.00
08/14/2009	2	Quicksilver Resources Inc. - Notes	11,811,052.00	N/A
08/07/2009	5	Radiant Energy Corporation - Debentures	699,000.00	N/A
08/13/2009	8	Rainy River Resources Ltd. - Common Shares	211,775.00	107,500.00
07/15/2009	8	Romios Gold Resources Inc. - Units	212,500.00	2,125,000.00
07/29/2009	24	Royal Bank of Canada - Notes	4,220,000.00	N/A
08/19/2009	3	R.R. Donnelley & Sons Company - Notes	40,016,294.09	N/A
08/17/2009	4	Sacre-Coeur Minerals Ltd. - Units	1,212,750.00	1,865,769.00
07/15/2009	1	Solarvest BioEnergy Inc. - Common Shares	100,000.00	500,000.00
08/13/2009	34	Solitaire Minerals Corp. - Non-Flow Through Units	672,960.00	56,080,000.00
06/10/2009 to 06/11/2009	1	SPDR S&P RETAIL ETF - Common Shares	164,167.81	5,000.00
08/07/2009	3	Spider Resources Inc. - Flow-Through Shares	750,000.00	25,000,000.00
08/01/2009	1	Stacey Muirhead Limited Partnership - Limited Partnership Units	2,400.00	74.45
08/01/2009	1	Stacey Muirhead RSP Fund - Trust Units	22,440.00	2,543.76
07/20/2009	7	Sterlite Industries (India) Limited - American Depository Shares	1,664,604.00	120,000.00
08/19/2009	1	Streetlight Intelligence Inc. - Options	500,000.00	N/A

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
06/01/2009 to 06/29/2009	5	S&P DEPOSITORY RECEIPTS TR UNIT - Common Shares	116,118,722.90	1,079,139.00
07/21/2009	1	Tactical Global Bond ETF Fund - Trust Units	37,835,379.24	3,783,537.92
08/12/2009	1	Tactical Global Bond ETF Fund - Trust Units	3,312,697.12	328,163.01
07/03/2009	18	Tarsis Resources Ltd. - Units	250,000.00	2,500,000.00
08/18/2009	41	Teryl Resources Corp. - Units	528,156.92	7,042,092.00
08/04/2009	4	The Investment Partners Fund - Trust Units	151,093.32	10,072.89
06/30/2009	1	The McElvaine Investment Trust - Trust Units	7,123.02	600.32
07/31/2009	4	The McElvaine Investment Trust - Trust Units	352,500.00	25,024.85
07/30/2009	3	The Toronto-Dominion Bank - Notes	3,000,000.00	N/A
07/30/2009	4	The Toronto-Dominion Bank - Notes	3,000,000.00	N/A
08/14/2009	1	TNR Gold Corp. - Flow-Through Shares	500,000.00	2,000,000.00
08/14/2009	2	Tricrest Corporation - Preferred Shares	151,800.00	N/A
08/21/2009	31	True North Gems Inc. - Units	191,000.00	1,910,000.00
08/26/2009	8	UC Resources Ltd. - Common Shares	351,910.00	1,000,000.00
06/09/2009	9	United Rentals (North America) Inc. - Notes	535,709,320.00	N/A
06/08/2009 to 06/09/2009	2	UNITED STATES OIL FUND LP - Common Shares	3,816,962.85	86,700.00
07/31/2009	51	Vertex Fund - Trust Units	4,520,310.29	N/A
07/31/2009	4	Vertex Managed Value Portfolio - Trust Units	262,430.71	0.00
07/21/2009	2	Virgin Media Finance PLC - Notes	274,551.67	250,000.00
08/07/2009	7	Virgina Energy Resources Inc. - Units	2,077,800.00	4,155,600.00
07/07/2009	48	Viterra Inc. - Notes	300,000,000.00	300,000,000.00
07/13/2009	2	Wallbridge Mining Company Limited - Common Shares	50,000.00	500,000.00
07/21/2009 to 07/23/2009	7	Wallbridge Mining Company Limited - Flow-Through Shares	596,600.00	1,500,000.00
08/04/2009	5	Wallbridge Mining Company Limited - Flow-Through Shares	153,400.00	1,394,545.00
07/21/2009 to 07/24/2009	2	Wallbridge Mining Company Limited - Units	200,000.00	500,000.00
07/28/2009 to 07/31/2009	5	Wallbridge Mining Company Limited - Units	90,000.00	250,000.00
08/25/2009	20	Walton AZ Sawtooth Investment Corporation - Common Shares	383,080.00	38,308.00
08/18/2009	35	Walton AZ Sawtooth Ivnestment Corporation - Common Shares	664,100.00	66,410.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
08/18/2009	3	Walton AZ Sawtooth Limited Partnership - Limited Partnership Units	730,601.27	65,909.00
08/21/2009	19	Walton AZ Vista Del Monte 2 Investment Corporation - Common Shares	316,620.00	31,662.00
08/25/2009	3	Walton AZ Vista Del Monte 2 Investment Corporation - Common Shares	318,420.00	31,842.00
08/25/2009	2	Walton AZ Vista Del Monte Limited Partnership - Units	425,712.75	39,675.00
08/21/2009	30	Walton TX Cornerstone Investment Corporation - Common Shares	562,000.00	56,200.00
08/21/2009	3	Walton TX Cornerstone Limited Partnership - Limited Partnership Units	710,197.80	64,740.00
08/28/2009	4	Walton TX Cornerstone Limited Partnership - Limited Partnership Units	511,826.74	46,691.00
08/21/2009	27	Walton TX Garland Heights Investment Corporation - Common Shares	547,760.00	54,776.00
07/10/2009	14	Western Copper Corporation - Units	4,000,000.00	4,000,000.00
07/10/2009	4	Western Copper Corporation - Warrants	2,002,500.00	N/A
06/30/2009	1	XM Satellite Radio Inc. - Notes	2,325,000.00	N/A
08/20/2009	12	Yale Resources Ltd. - Units	232,000.00	5,800,000.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
ACME Resources Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated September 4, 2009
NP 11-202 Receipt dated September 8, 2009
Offering Price and Description:
Minimum Offering: $200,000.00 (1,000,000 Common Shares); Maximum Offering: $1,000,000.00 (5,000,000 Common Shares) Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Integral Wealth Securities Limited
Promoter(s):
Kees C. Van Winters
James M. Patterson
David Constable
Brian Cloney
Harry Burgess
Paul Ankcorn
Project #1473528

Issuer Name:
Axiom All Equity Portfolio
Axiom Balanced Growth Portfolio
Axiom Balanced Income Portfolio
Axiom Canadian Growth Portfolio
Axiom Diversified Monthly Income Portfolio
Axiom Foreign Growth Portfolio
Axiom Global Growth Portfolio
Axiom Long-Term Growth Portfolio
Renaissance Corporate Bond Fund
Renaissance Corporate Bond Yield Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated September 4, 2009
NP 11-202 Receipt dated September 8, 2009
Offering Price and Description:
Class A, F, O and Premium Class Units
Underwriter(s) or Distributor(s):
CIBC Asset Management Inc.
Promoter(s):
CIBC Asset Management Inc.
Project #1473459

Issuer Name:
Bellamont Exploration Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 2, 2009
NP 11-202 Receipt dated September 2, 2009
Offering Price and Description:
$6,200,000.00 - 10,000,000 Class A Shares Price: $0.62 per Class A Share
Underwriter(s) or Distributor(s):
FirstEnergy Capital Corp
GMP Securities L.P.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Promoter(s):
-
Project #1472675

Issuer Name:
Brookfield Properties Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated September 3, 2009
NP 11-202 Receipt dated September 4, 2009
Offering Price and Description:
$250,000,000.00 - 10,000,000 Class AAA Preference Shares, Series L
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Scotia Capital Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Brookfield Financial Corp.
Blackmont Capital Inc.
Canaccord Capital Corporation
Genuity Capital Markets
Macquarie Capital Markets Canada Ltd.
Thomas Weisel Partners Canada Inc.
Promoter(s):
-
Project #1473312

Issuer Name:
Canadian Imperial Bank of Commerce
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Base Shelf Prospectus dated September 1, 2009
NP 11-202 Receipt dated September 2, 2009
Offering Price and Description:
$2,000,000,000.00 - Medium Term Notes (Principal at Risk Structured Notes)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1472345

Issuer Name:
CFI Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Base Shelf Prospectus dated September 3, 2009
NP 11-202 Receipt dated September 4, 2009
Offering Price and Description:
Up to $500,000,000.00 of Receivables-Backed Notes
Underwriter(s) or Distributor(s):
-
Promoter(s):
CorpFinance International Limited
Project #1473361

Issuer Name:
Cominar Real Estate Investment Trust
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated September 8, 2009
NP 11-202 Receipt dated
Offering Price and Description:
$100,000,000.00 Series D 6.50% Convertible Unsecured Subordinated Debentures Price: $1,000 per $1,000 principal amount of Debentures
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Desjardins Securities Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
Canaccord Capital Corporation
Blackmont Capital Inc.
Genuity Capital Markets G.P.
Promoter(s):
-
Project #1473698

Issuer Name:
Copper Mountain Mining Corporation
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated September 4, 2009
NP 11-202 Receipt dated September 4, 2009
Offering Price and Description:
$50,000,000.00 - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Canaccord Capital Corporation
Jennings Capital Inc.
Wellington West Capital Markets Inc.
Promoter(s):
-
Project #1473418

Issuer Name:
Creststreet 2009 Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 3, 2009
NP 11-202 Receipt dated September 4, 2009
Offering Price and Description:
$20,000,000.00 (Maximum Offering); $5,000,000.00 (Minimum Offering) A maximum of 2,000,000 and a minimum of 500,000 Limited Partnership Units ISSUE PRICE: $10.00 Per UnitMINIMUM PURCHASE: 250 Units
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Canaccord Capital Corporation
GMP Securities L.P.
Raymond James Ltd.
Macquarie Capital Markets Canada Ltd.
Wellington West Capital Markets Inc.
Promoter(s):
Creststreet General Partner Limited
Cresstreet Asset Management Limited
Project #1473364

Issuer Name:
Creststreet Alternative Energy Class
Creststreet Managed Equity Index Class
Creststreet Resource Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated September 2, 2009
NP 11-202 Receipt dated September 3, 2009
Offering Price and Description:
Series B, F and 2010 Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
Creststreet Asset Management Limited
Project #1473049

Issuer Name:
Faircourt Exploration Flow-Through 2009 Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 2, 2009
NP 11-202 Receipt dated September 3, 2009
Offering Price and Description:
Maximum Offering: $25,000,000.00 (2,500,000 Units);
Minimum Offering: $3,000,000.00 (300,000 Units)
Minimum Subscription: 250 Units ($2,500) Subscription Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
Blackmont Capital Inc.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Desjardins Securities Inc.
Dundee Securities Corporation
Research Capital Corporation
Haywood Securities Inc.
M Partners Inc.
Jory Capital Inc.
Rothenberg Capital Management Inc.
Promoter(s):
Faircourt Exploration Flow-Through 2009 Management Ltd.
Project #1472875

Issuer Name:
Front Street Flow-Through 2009-II Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated August 31, 2009
NP 11-202 Receipt dated September 2, 2009
Offering Price and Description:
$50,000,000.00 - (Maximum Offering – 2,000,000 Units)
Subscription Price: $25.00 per Unit; Price: $25.00 per Unit
MINIMUM PURCHASE: 200 Units
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Blackmont Capital Inc.
Canaccord Capital Corporation
GMP Securities L.P.
Manulife Securities Inc.
Raymond James Ltd.
Tuscarora Capital Inc.
Wellington West Capital Markets Inc.
Promoter(s):
Front Street Capital Management General Partner II Corp.
Project #1472643

Issuer Name:
Greenscape Capital Group Inc.
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Prospectus Long Form dated September 3, 2009
NP 11-202 Receipt dated September 8, 2009
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Wolverton Securities Ltd.
Promoter(s):
Bryan Slusarchuk
Project #1446770

Issuer Name:
Harvest Banks & Buildings Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 1, 2009
NP 11-202 Receipt dated September 2, 2009
Offering Price and Description:
Maximum: $* (* Units); $12.00 per Unit Price: $12.00 per Unit (Minimum Purchase: 200 Units)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
HSBC Securities (Canada) Inc.
Canaccord Capital Corporation
Raymond James Ltd.
Blackmont Capital Inc.
Dundee Securities Corporation
Wellington West Capital Markets Inc.
Desjardins Securities Inc.
GMP Securities L.P.
Industrial Alliance Securities Inc.
Promoter(s):
Harvest Portfolios Group Inc.
Project #1472310

Issuer Name:
Marret Investment Grade Bond Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 1, 2009
NP 11-202 Receipt dated September 2, 2009
Offering Price and Description:
Maximum $ * Units - (Maximum * Units) Price: $12.00 per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
TD Securities Inc.
GMP Securities L.P.
BMO Nesbitt Burns Inc.
Dundee Securities Corporation
National Bank Financial Inc.
Scotia Capital Inc.
Blackmont Capital Inc.
Canaccord Capital Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Laurentian Bank Securities Inc.
Manulife Securities Incorporated
Promoter(s):
Marret Asset Management Inc.
Project #1472506

Issuer Name:
Mavrix Explore 2009 - II FT Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 2, 2009
NP 11-202 Receipt dated September 3, 2009
Offering Price and Description:
Maximum offering: $25,000,000.00 (2,500,000 Units)
Minimum offering: $2,000,000.00 (200,000 Units)
Minimum Subscription: 250 Units Subscription Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Canaccord Capital Corporation
Scotia Capital Inc.
Raymond James Ltd.
Blackmont Capital Inc.
Desjardins Securities Inc.
GMP Securities L.P.
M Partners Inc.
Wellington West Capital Markets Inc.
Industrial Alliance Securities Inc.
Queensbury Securities Inc.
Research Capital Corporation
Promoter(s):
Mavrix Explore 2009 - II FT Management Limited
Mavrix Fund Management Inc.
Project #1472768

Issuer Name:
Moly Mines Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated September 2, 2009
NP 11-202 Receipt dated September 2, 2009
Offering Price and Description:
$• - • Subscription Receipts each representing the right to receive one ordinary share
Price: $ • per Subscription Receipt
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
GMP Securities L.P.
CIBC World Markets Inc.
Promoter(s):
-
Project #1472622

Issuer Name:
Morguard Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated September 4, 2009
NP 11-202 Receipt dated September 4, 2009
Offering Price and Description:
$90,000,000.00 - 6.50% Convertible Unsecured Subordinated Debentures due September 30, 2014
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
TD Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
HSBC Securities (Canada) Inc.
Blackmont Capital Inc.
Brookfield Financial Corp.
Canaccord Capital Corporation
Promoter(s):
-
Project #1473387

Issuer Name:
Norrep Performance 2009 Flow-Through Limited Partnership
Principal Regulator - Alberta
Type and Date:
Preliminary Long Form Prospectus dated September 2, 2009
NP 11-202 Receipt dated September 4, 2009
Offering Price and Description:
$30,000,000.00 (Maximum Offering) $3,000,000.00 (Minimum Offering); A minimum of 300,000 Limited Partnership Units and a maximum of 3,000,000 Limited Partnership Units Purchase Price: $10.00 per Unit Minimum Purchase: 500 Units ($5,000)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
GMP Securities Inc.
Blackmont Capital Inc.
Canaccord Capital Corporation
Haywood Securities Inc.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Promoter(s):
Hesperian Capital Management Ltd.
Project #1473432

Issuer Name:
North American Financials Capital Securities Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 2, 2009
NP 11-202 Receipt dated September 3, 2009
Offering Price and Description:
$ * - * Class A and Class F Units Price: $25.00 per Class A Unit and Class F Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Blackmont Capital Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
GMP Securities L.P.
Raymond James Ltd.
Desjardins Securities Inc.
Research Capital Corporation
Wellington West Capital Markets Inc.
Promoter(s):
Connor, Clark & Lunn Capital Markets Inc.
Project #1472746

Issuer Name:
O'Leary Founder's Series Income & Growth Fund
Principal Regulator - Quebec
Type and Date:
Preliminary Long Form Prospectus dated September 3, 2009
NP 11-202 Receipt dated September 3, 2009
Offering Price and Description:
$ * - * Units Price: $ 12.00 per Unit Minimum Purchase: 100 Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Blackmont Capital Inc.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Dundee Securities Corporation
Manulife Securities Incorporated
MGI Securities Inc.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Promoter(s):
O'Leary Funds Management LP, by its GP, O'Leary Funds Management Inc.
Project #1472927

Issuer Name:
Royal Bank of Canada
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Base Shelf Prospectus dated September 4, 2009
NP 11-202 Receipt dated
Offering Price and Description:
$15,000,000,000.00:
Debt Securities (Unsubordinated Indebtedness)
Debt Securities (Subordinated Indebtedness)
First Preferred Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1473340

Issuer Name:
Stone 2009 Flow-Through Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated August 31, 2009
NP 11-202 Receipt dated September 3, 2009
Offering Price and Description:
$25,000,000.00 (Maximum Offering); $4,000,000.00 (Minimum Offering) Maximum of 1,000,000 and Minimum of 160,000 Units Subscription Price: $25 per Unit Minimum Subscription: 100 Units
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Canaccord Capital Corporation
Manulife Securities Incorporated
Raymond James Ltd.
Wellington West Capital Inc.
Blackmont Capital Inc.
HSBC Securities (Canada) Inc.
Burgeonvest Bick Securities Ltd.
GMP Securities L.P.
M Partners Inc.
Research Capital Corporation
Promoter(s):
Stone 2009 Flow-Through GP Inc.
Stone & Co. Limited
Project #1472943

Issuer Name:
Superior Plus Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 4, 2009
NP 11-202 Receipt dated September 4, 2009
Offering Price and Description:
$45,059,500.00 - 3,970,000 Common Shares Price: $11.35 per Common Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
Scotia Capital Inc.
National Bank Financial Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Cormark Securities Inc.
Promoter(s):
-
Project #1473355

Issuer Name:
Vuzix Corporation
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Long Form PREP Prospectus dated September 4, 2009
NP 11-202 Receipt dated September 8, 2009
Offering Price and Description:
A Maximum Offering of $12,500,000.00; A Minimum Offering of $6,000,000.00 - Up to 50,000,000 Units (each Unit consisting of one share of common stock and one-half of one common stock purchase warrant)
Price: $ * per Unit
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Bolder Investment Partners, Ltd.
Promoter(s):
-
Project #1443965

Issuer Name:
YM BioSciences Inc.
Type and Date:
Preliminary Short Form Base Shelf Prospectus dated September 8, 2009
Receipted on September 8, 2009
Offering Price and Description:
US $75,000,000 .00:
Common Shares
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1473681

Issuer Name:
Bell Canada
Principal Regulator - Quebec
Type and Date:
Final Short Form Base Shelf Prospectus dated September 3, 2009
NP 11-202 Receipt dated September 3, 2009
Offering Price and Description:
$3,000,000,000.00 - Debt Securities (Unsecured)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1455905

Issuer Name:
Crescent Point Energy Corp.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated September 8, 2009
NP 11-202 Receipt dated September 8, 2009
Offering Price and Description:
$200,100,000.00 - 5,800,000 Common Shares $34.50 per Common Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Market Inc.
RBC Dominion Securities Inc.
FirstEnergy Capital Corp.
TD Securities Inc.
National Bank Financial Inc.
GMP Securities L.P.
Peters & Co. Limited
MACQUARIE CAPITAL MARKETS CANADA LTD.
Promoter(s):
-
Project #1469058

Issuer Name:
Exchange Income Corporation
Principal Regulator - Manitoba
Type and Date:
Final Short Form Prospectus dated September 4, 2009
NP 11-202 Receipt dated September 4, 2009
Offering Price and Description:
$30,000,000.00 - 7.50% SERIES G CONVERTIBLE SENIOR SECURED DEBENTURES
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Wellington West Capital Inc.
CIBC World Markets Inc.
Raymond James Ltd.
Research Capital Corporation
Promoter(s):
-
Project #1465682

Issuer Name:
New Gold Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated September 3, 2009
NP 11-202 Receipt dated September 3, 2009
Offering Price and Description:
C$100,125,000.00 - 26,700,000 Common Shares Price: C$3.75 per Common Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Canaccord Capital Corporation
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
National Bank Financial Inc.
Paradigm Capital Inc.
Wellington West Capital Markets Inc.
Promoter(s):
-
Project #1466660

Issuer Name:
North American Energy Partners Inc.
Principal Regulator - Alberta
Type and Date:
Final Shelf Prospectus dated September 2, 2009
NP 11-202 Receipt dated September 2, 2009
Offering Price and Description:
Cdn$150,000.00 of Common Shares by the Company - 9,2224,731 Common Shars by the Selling Shareholders
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1455925

Issuer Name:
Uranerz Energy Corporation
Type and Date:
Final MJDS Prospectus dated August 26, 2009
Receipted on September 3, 2009
Offering Price and Description:
$50,000,000.00:
Common Shares
Debt Securities
Warrants
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1446197

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Generic Capital Corporation	Limited Market Dealer	September 2, 2009
Change of Category	I3 Advisors Inc. Information, Innovation and Independence	From: Investment Counsel To: Investment Counsel & Portfolio Manager	September 3, 2009
Consent to Suspension (Rule 33-501 Surrender of Registration)	Covenant Financial Inc.	Mutual Fund Dealer And Limited Market Dealer	September 3, 2009
New Registration	First Resource Capital Corp	Limited Market Dealer	September 3, 2009
Change of Category	Baskin Financial Services Inc.	From: Limited Market Dealer, Investment Counsel and Portfolio Manager. To: Investment Counsel and Portfolio Manager	September 4, 2009
Change of Category	Credit Suisse Securities (Canada), Inc.	From: Broker & Investment Dealer To: Investment Dealer under the *Securities Act* and Futures Commission Merchant under the *Commodity Futures Act.*	September 8, 2009
New Registration	XDG Capital Inc.	Investment Counsel & Portfolio Manager & Limited Market Dealer	September 8, 2009
Voluntary Surrender of Registration	Exceder Investment Management Inc.	Investment Counsel & Portfolio Manager	September 9, 2009

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 MFDA Sets Date for David Irwin Hearing in Toronto, Ontario

NEWS RELEASE
For immediate release

MFDA SETS DATE FOR
DAVID IRWIN HEARING IN TORONTO, ONTARIO

September 2, 2009 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of David William John Irwin by Notice of Hearing dated May 20, 2009.

As specified in the Notice of Hearing, the first appearance in this proceeding took place today before a three-member Hearing Panel of the MFDA's Central Regional Council.

The hearing of this matter on its merits has been scheduled to take place before the Hearing Panel on February 1-3, 2010 commencing at 10:00 a.m. (Eastern), or as soon thereafter as the hearing can be held, in the Hearing Room located at the offices of the MFDA at 121 King Street West, Suite 1000, Toronto, Ontario.

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:
Marco Wynnyckyj
Hearings Coordinator
416-945-5146 or mwynnyckyj@mfda.ca

13.1.2 MFDA Hearing Panel Approves Settlement Agreement with De Thomas Financial Corp.

NEWS RELEASE
For immediate release

MFDA HEARING PANEL APPROVES
SETTLEMENT AGREEMENT WITH
DE THOMAS FINANCIAL CORP.

September 3, 2009 (Toronto, Ontario) – A Settlement Hearing in the matter of De Thomas Financial Corp. (the "Respondent") was held today before a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (the "MFDA").

The Hearing Panel approved the Settlement Agreement between the Respondent and MFDA Staff, as a consequence of which the Respondent:

- Has paid a fine in the amount of $10,000;
- Has paid the costs of the proceeding in the amount of $2,500;
- Shall retain an independent monitor at its expense and in accordance with the terms set out in Schedule "B" to the Settlement Agreement to resolve all existing deficiencies and any deficiencies that the independent monitor identifies during its review; and
- Shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.2.1, 2.2.2 and 2.5 and MFDA Policy No. 2.

The Hearing Panel will issue written reasons for its decision in due course. Copies of the Settlement Agreement and the Hearing Panel's Order are available on the MFDA website at www.mfda.ca.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its 145 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Shaun Devlin
Vice-President, Enforcement
416-943-4672 or sdevlin@mfda.ca

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