The Ontario Securities Commission

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February 19, 2010

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

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Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

FEBRUARY 19, 2010

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
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Carol S. Perry	—	CSP
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

February 22 – March 1, 2010	**M P Global Financial Ltd., and Joe Feng Deng**
10:00 .m.	s. 127 (1)
	M. Britton in attendance for Staff
	Panel: DLK/MCH
February 22-24, 2010	**Barry Landen**
	s. 127
10:00 a.m.	H. Craig in attendance for Staff
	Panel: JEAT
February 25, 2010	**Tulsiani Investments Inc. and Sunil Tulsiani**
10:00 a.m.	s. 127
	M. Vaillancourt/T. Center in attendance for Staff
	Panel: JEAT
February 25, 2010	**Maple Leaf Investment Fund Corp. and Joe Henry Chau**
10:00 a.m.	s. 127
	M. Vaillancourt/T. Center in attendance for Staff
	Panel: JEAT
February 25, 2010	**Maple Leaf Investment Fund Corp., Joe Henry Chau (aka: Henry Joe Chau, Shung Kai Chow and Henry Shung Kai Chow), Tulsiani Investments Inc., Sunil Tulsiani and Ravinder Tulsiani**
10:00 a.m.	s.127
	M. Vaillancourt/T. Center in attendance for Staff
	Panel: JEAT

March 1, 2010 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: PJL/PLK
March 1-8, 2010 10:00 a.m.	**Teodosio Vincent Pangia** s. 127 J. Feasby in attendance for Staff Panel: TBA
March 3, 2010 10:00 a.m.	**Brilliante Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York** s. 127 S. Horgan in attendance for Staff Panel: TBA
March 5, 2010 10:00 a.m.	**Peter Robinson and Platinum International Investments Inc.** s. 127 M. Boswell in attendance for Staff Panel: DLK
March 5, 2010 10:30 a.m.	**Uranium308 Resources Inc., Uranium308 Resources PLC., Michael Friedman, George Schwartz, Peter Robinson, Alan Marsh Shuman and Innovative Gifting Inc.** s. 127 M. Boswell in attendance for Staff Panel: DLK
March 10, 2010 10:00 a.m.	**Global Energy Group, Ltd. And New Gold Limited Partnerships** s. 127 H. Craig in attendance for Staff Panel: TBA
March 22, 2010 10:00 a.m.	**Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited** s. 127 M. Britton/J.Feasby in attendance for Staff Panel: JDC/KJK
March 22, 2010 10:00 a.m.	**Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk** s. 37, 127 and 127.1 C. Price in attendance for Staff Panel: CSP
March 22, 2010 2:30 p.m.	**Paladin Capital Markets Inc., John David Culp and Claudio Fernando Maya** s. 127 C. Price in attendance for Staff Panel: DLK
March 25-26, 2010 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: TBA

March 25-26, 2010 10:00 a.m.	**W.J.N. Holdings Inc., MSI Canada Inc., 360 Degree Financial Services Inc., Dominion Investments Club Inc., Leveragepro Inc., Prosporex Investment Club Inc., Prosporex Investments Inc., Prosporex ltd., Prosporex Inc., Networth Financial Group Inc., Networth Marketing Solutions, Dominion Royal Credit Union, Dominion Royal Financial Inc., Wilton John Neale, Ezra Douse, Albert James, Elnonieth "Noni" James, David Whitely, Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Trudy Huynh, Dorlan Francis, Vincent Arthur, Christian Yeboah, Azucena Garcia, Angela Curry and Prosporex Forex SPV Trust** s. 127 H. Daley in attendance for Staff Panel: TBA
March 29; March 31– April 1; April 6-9, 2010 10:00 a.m. March 30, 2010 2:30 p.m.	**Shane Suman and Monie Rahman** s. 127 & 127(1) C. Price in attendance for Staff Panel: JEAT/PLK
April 12, 2010 10:00 a.m.	**Abel Da Silva** s.127 M. Boswell in attendance for Staff Panel: DLK
April 13, 2010 2:30 p.m.	**Axcess Automation LLC, Axcess Fund Management, LLC, Axcess Fund, L.P., Gordon Alan Driver and David Rutledge, Steven M. Taylor and International Communication Strategies** s. 127 M. Adams in attendance for Staff Panel: TBA
May 3-28, 2010 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: PJL/MCH
May 31-June 4, 2010 10:00 a.m.	**Lyndz Pharmaceuticals Inc., James Marketing Ltd., Michael Eatch and Rickey McKenzie** s.127(1) & (5) J. Feasby in attendance for Staff Panel: TBA
June 21, 2010 10:00 a.m.	**Rezwealth Financial Services Inc., Pamela Ramoutar, Chris Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc. and Sylvan Blackett** s.127(1) & (5) A. Heydon in attendance for Staff Panel: TBA
June 28, 2010 10:00 a.m.	**Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman** s. 127(7) and 127(8) M. Boswell in attendance for Staff Panel: TBA
June 29, 2010 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

July 9, 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: CSP
September 13-September 24, 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
March 7, 2011 10:00 a.m.	**Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton** s. 127 H. Craig in attendance for Staff Panel: TBA
TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell** s. 127 J. Waechter in attendance for Staff Panel: TBA
TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly** s. 127 K. Daniels in attendance for Staff Panel: TBA
TBA	**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

C. Price in attendance for Staff

Panel: TBA

TBA

MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric

s. 127 & 127(1)

D. Ferris in attendance for Staff

Panel: TBA

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: TBA

TBA

Gold-Quest International, Health and Harmoney, Iain Buchanan and Lisa Buchanan

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

Goldpoint Resources Corporation, Lino Novielli, Brian Moloney, Evanna Tomeli, Robert Black, Richard Wylie and Jack Anderson

s. 127(1) and 127(5)

M. Boswell in attendance for Staff

Panel: TBA

TBA

Sulja Bros. Building Supplies, Ltd. (Nevada), Sulja Bros. Building Supplies Ltd., Kore International Management Inc., Petar Vucicevich and Andrew DeVries

s. 127 & 127.1

M. Britton in attendance for Staff

Panel: TBA

TBA

Coventree Inc., Geoffrey Cornish and Dean Tai

s. 127

J. Waechter in attendance for Staff

Panel: TBA

TBA

IBK Capital Corp. and William F. White

s. 127

M. Vaillancourt in attendance for Staff

Panel: TBA

TBA **Lehman Cohort Global Group Inc., Anton Schnedl, Richard Unzer, Alexander Grundmann and Henry Hehlsinger**

s. 127

H. Craig in attendance for Staff

Panel: JEAT/CSP/SA

TBA **Goldbridge Financial Inc., Wesley Wayne Weber and Shawn C. Lesperance**

s. 127

J. Feasby in attendance for Staff

Panel: TBA

TBA **Maple Leaf Investment Fund Corp. and Joe Henry Chau**

s. 127

J. Superina in attendance for Staff

Panel: TBA

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

S. B. McLaughlin

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

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

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

Global Petroleum Strategies, LLC, Petroleum Unlimited, LLC, Aurora Escrow Services, LLC, John Andrew, Vincent Cataldi, Charlotte Chambers, Carl Dylan, James Eulo, Richard Garcia, Troy Gray, Jim Kaufman, Timothy Kaufman, Chris Harris, Morgan Kimmel, Roger A. Kimmel, Jr., Erik Luna, Mitch Malizio, Adam Mills, Jenna Pelusio, Rosemary Salveggi, Stephen J. Shore and Chris Spinler

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

Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson

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

1.1.2 CSA Staff Notice 23-307 – Order Protection Rule – Implementation Milestones

CSA STAFF NOTICE 23-307
ORDER PROTECTION RULE – IMPLEMENTATION MILESTONES

The Order Protection Rule (OPR), contained in National Instrument 23-101 *Trading Rules*, was published in January 2010 in its final form[1] and will come into force on February 1, 2011. OPR requires marketplaces to have policies and procedures that are reasonably designed to prevent trade-throughs. To implement this requirement, we anticipate that marketplaces will have to perform some technology development and changes. In addition, OPR imposes these policy and procedures obligations on marketplace participants that choose to use directed-action orders (DAOs).

In order to facilitate OPR implementation, CSA staff (we) have worked with the Trade-through Implementation Committee[2], to develop milestones, with dates, for marketplaces to meet from February 2010 to February 2011.

A. Milestones and relevant dates

The milestones described below outline steps that industry participants identified as necessary to implement OPR by February 1, 2011. We have also added a milestone for marketplace participants that intend to use DAOs.

To inform the CSA regarding the marketplaces' readiness to meet OPR's February 1, 2011 effective date, we ask that marketplaces, on each milestone date, provide us with information about their progress. However, if a marketplace does not expect to complete an activity by its milestone date, then we ask that the marketplace notify us as soon as possible. We encourage marketplaces to consider whether they should publicly disclose information related to their progress of OPR implementation.

Since marketplace participants' assumption of OPR obligations, through use of the DAO is optional, we are not asking them to provide information about their progress to us. Also, we are not asking vendors to send us information about their progress. However, we ask that all marketplaces, marketplace participants and vendors participate in an industry-wide test that will test the proper functioning of systems in an OPR environment.

A notice providing details about the industry-wide test will be issued in the coming months.

1 (2010) 33 OSCB 787; other CSA jurisdictions published the OPR electronically.

2 The Trade-through Implementation Committee is an open-membership committee comprised of representatives of dealers, marketplaces, and vendors.

Action	Details	Completion Date
Marketplaces – Identification of OPR solutions	Marketplaces will have identified OPR implementation issues and solutions, including those relating to the DAO marker (collectively, OPR solutions)	February 28, 2010
Marketplaces – Design and publication of OPR solutions	Marketplaces will have: • completed their OPR solutions design • drafted policies and procedures • published and distributed to industry (including dealers and vendors) technical documentation, including specification documents and changes to FIX and STAMP tags and specifications	April 1, 2010
Marketplaces – Internal building and testing of OPR solutions (April – August)	Marketplaces will have: • built their OPR solutions • completed internal quality assurance processes • placed their OPR solutions on their external test environments	August 3, 2010
Marketplaces – External testing of OPR solutions (August – November)	Marketplaces will have completed testing of their OPR solutions with the systems of parties, including vendors, to whom orders are directed for handling or execution	November 30, 2010
Vendors and Marketplace Participants – Development and testing of OPR solutions (April – November)	Vendors and marketplace participants developing proprietary systems will have: • designed and built OPR solutions • completed internal and integration testing of their OPR solutions	November 30, 2010
BLACKOUT – DECEMBER 2010		
INDUSTRY- WIDE TESTING - JANUARY 2011 (precise date to be determined)		
OPR IMPLEMENTATION February 1, 2011		

Questions may be referred to any of:

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Ontario Securities Commission
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Sonali GuptaBhaya
Ontario Securities Commission
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Serge Boisvert
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Lorenz Berner
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British Columbia Securities Commission
(604) 899-6819

February 19, 2010

1.1.3 CSA Staff Notice 11-312 (Revised) – National Numbering System

CSA STAFF NOTICE 11-312 (REVISED)
NATIONAL NUMBERING SYSTEM

February 19, 2010[1]

The Canadian Securities Administrators (CSA) follows a system in which securities regulatory instruments are assigned numbers that indicate the type and subject matter of the instrument.

The numbering system was designed so as to:

(i) convey as much information as possible about the particular instrument so that a user knows what type of instrument it is, whether the instrument is national or local and what subject matter it relates to;

(ii) permit all National Instruments, National Policies and CSA Notices to have the same numbers in all jurisdictions (as is currently the case); and

(iii) be flexible enough to permit Local Rules, Policies, Notices and implementing instruments of all jurisdictions to be numbered in accordance with the numbering system without affecting the numbering of National Instruments, National Policies and CSA Notices.

Under the numbering system, each instrument is assigned a five digit number, with a hyphen appearing between the second and third digit. There are four components to the number assigned to a document:

- The first digit represents the broad subject area.
- The second digit represents a sub-category of the broad subject area.
- The third digit represents the type of the document.
- The last two digits represent the number of the document within its document type in its sub-category (in sequential order starting at 01).

More specifically, these four components may be described as follows:

- The **first** digit relates to the subject matter category into which the instrument has been classified. The nine subject matter categories are:

  1. Procedures and Related Matters
  2. Certain Capital Market Participants (Self-Regulatory Organizations, Exchanges and Market Operations)
  3. Registration Requirements and Related Matters (Dealers, Advisers and other Registrants)
  4. Distribution Requirements (Prospectus Requirements and Prospectus Exemptions)
  5. Ongoing Requirements for Issuers and Insiders (Continuous Disclosure)
  6. Take-over Bids and Special Transactions
  7. Securities Transactions Outside the Jurisdiction
  8. Investment Funds
  9. Derivatives

  For example, in the context of 54-101, the number “5” indicates that the instrument relates to Ongoing Requirements for Issuers and Insiders.

[1] This Notice contains minor revisions to CSA Staff Notice 11-312, as published on February 6, 2009. The publishing of this staff notice coincided with the withdrawal of OSC Staff Notice 11-724 *Numbering System for Policy Reformulation Project* (19 O.S.C.B. 4258).

- The **second** digit relates to the sub-category of the subject matter category into which the instrument has been classified (see the "sub-category" column of the table below).

Using the 54-101 example, within the Ongoing Requirements for Issuers and Insiders category, a sub-category for instruments dealing with Proxy Solicitation is denoted by the number "4". Accordingly, all instruments dealing with this matter commence with the numbers "54".

- The **third** digit classifies the document as one of nine types of documents:

1. National[2] Instrument/Multilateral Instrument and any related Companion Policy or Form(s)
2. National Policy/Multilateral Policy
3. CSA Notice
4. CSA Concept Proposal or Discussion Paper
5. Local Rule, Regulation or Blanket Order or Ruling and any related Companion Policy or Form(s), except an Implementing Instrument described below.
6. Local Policy
7. Local Notice
8. Implementing Instrument[3]
9. Miscellaneous

Using the same example, the third digit in 54-101 indicates that the type of instrument is a National Instrument or Multilateral Instrument (or a related Companion Policy or Form).

- The **fourth** and **fifth** digits represent a number assigned to instruments of the same type in consecutive order from 01 to 99 within a particular sub-category.

Again, using the example 54-101, the number "01" indicates that the instrument is the first document of its type in the sub-category "Proxy Solicitation".

A Companion Policy or Form that is related to an Instrument or Local Rule will have the same number as the Instrument or Local Rule to which it relates, followed by "CP" in the case of a Companion Policy or "F" in the case of a Form. If there is more than one Form related to a particular instrument, the Forms will be numbered consecutively (F1, F2, F3, etc.).

[2] A National Instrument or Policy is an instrument or policy that has been adopted by all CSA jurisdictions, whereas a Multilateral Instrument or Policy is an instrument or policy that has not been adopted by one or more CSA jurisdictions.

[3] For this purpose, an Implementing Instrument is a local rule making consequential changes relating to the implementation of a National Instrument/Multilateral Instrument.

Category, Sub-Category and Document Type Numbers

Category (1st digit)	**Sub-Category** (2nd digit)	**Document Type** (3rd digit)
1 - Procedure and Related Matters	1 - General 2 - Applications 3 - Filings with Securities Regulatory Authority 4 - Definitions 5 - Hearings and Enforcement	1 - National or Multilateral Instrument (Rule) and any related Companion Policy and Form 2 - National or Multilateral Policy 3 - CSA Notice or CSA Staff Notice 4 - CSA Concept Proposal or Discussion Paper 5 - Local Rule, Regulation or Blanket Order or Ruling and any related Companion Policy or Form 6 - Local Policy 7 - Local Notice 8 - Implementing Instrument (Local Rule that gives effect to a National or Multilateral Instrument) 9 – Miscellaneous item (e.g., a Form that does not relate to another Instrument or Policy)
2 - Certain Capital Market Participants	1 - Stock Exchanges 2 - Other Markets 3 - Trading Rules 4 - Clearing and Settlement 5 - Other Participants	
3 - Registration and Related Matters	1 - Registration Requirements 2 - Registration Exemptions 3 - Ongoing Requirements Affecting Registrants 4 - Fitness for Registration 5 - Non-Resident Registrants	
4 - Distribution Requirements	1 - Prospectus Contents - Non-Financial Matters 2 - Prospectus Contents - Financial Matters 3 - Prospectus Filing Matters 4 - Alternative Forms of Prospectus 5 - Prospectus Exempt Distributions 6 - Requirements Affecting Distributions by Certain Issuers 7 - Advertising and Marketing 8 - Distribution Restrictions	
5 - Ongoing Requirements for Issuers and Insiders	1 - Disclosure - General 2 - Financial Disclosure 3 - Timely Disclosure 4 - Proxy Solicitation 5 - Insider Reporting 6 - Restricted Shares 7 - Cease Trading Orders 8 - Corporate Governance	
6 - Take-Over Bids and Special Transactions	1 - Special Transactions 2 - Take-over Bids	
7 - Securities Transactions Outside the Jurisdictions	1 - International Issuers 2 - Distributions Outside the Jurisdiction	
8 - Investment Funds	1 - Investment Fund Distributions	
9 – Derivatives[4]	1 - Trades in Derivatives	

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[4] Please note that in Québec, derivatives regulations will be made under the *Derivatives Act* (Québec) and not the *Securities Act* (Québec).

1.1.4 CSA Notice 11-313 – Withdrawal of Notices and Policies

CANADIAN SECURITIES ADMINISTRATORS NOTICE 11-313
WITHDRAWAL OF NOTICES AND POLICIES

February 19, 2010

This notice formally withdraws a number of CSA and local notices and policies. In general, the withdrawn material will remain available for historical research purposes in the CSA members' websites that permit comprehensive access to CSA notices.

CSA Notices

Staff of the members of the CSA have reviewed a number of CSA Notices. They have determined that some are outdated, no longer relevant, or no longer required. The following CSA Notices are therefore withdrawn, in the applicable CSA jurisdictions in which they have not already been withdrawn, effective immediately.

11-303	*The Uniform Securities Legislation Project*
11-304	*Responses to Comments Received on Concept Proposal Blueprint for Uniform Securities Laws for Canada*
11-306	*Extension of Comment Period for Consultation Drafts of the Uniform Securities Act and the Model Securities Administration Act*
11-307	*Responses to Comments Received on Consultation Drafts for a Uniform Securities Act and a Model Securities Administration Act*
11-308	*Guidelines for Use of Mobility Exemptions Under Part 5 of Multilateral Instrument 11-101 Principal Regulator System*
11-402	*Concept Proposal for Uniform Securities Legislation*
11-404	*Consultation Drafts of the Uniform Securities Act and the Model Administration Act*
12-303	*Exemptive Relief Applications and Year End*
12-401	*National Application System Concept Proposal*
13-306	*Guidance for SEDAR Users*
13-307	*Notice of Amendments to the SEDAR Filer Manual*
13-308	*Increases to SEDAR Annual Filing Service Charges*
13-314	*2005 Changes to SEDAR Annual Filing Service Charges*
13-316	*Amendments to the SEDAR Filer Manual*
21-301	*Canadian Venture Exchange*
21-302	*Confidentiality of Forms Filed under National Instrument 21-101 Marketplace Operation*
23-305	*Status of the Transaction Reporting and Electronic Audit Trail System (TREATS)*
31-308	*Frequently Asked Questions Regarding NI 31-101 National Registration System and NP 31-201 National Registration System*
31-309	*Proposed National Instrument 31-103 Registration Requirements and Proposed Companion Policy 31-103CP Registration Requirements*
31-310	*Proposed NI 31-103 Registration Requirements and Proposed 31-103CP Registration Requirements*
33-304	*CSA Distribution Structures Committee Position Paper*

33-307 *List of Canadian Registrant and Non-registrant Firms that Completed the CSA STP Readiness Assessment Survey*

33-401 *Canadian Capital Market Association – T+1 White Paper*

33-402 *Joint Forum Requests Comments on Principles and Practices for the Sale of Products and Services in the Financial Sector*

41-304 *Income Trusts: Prospectus Disclosure of Distributable Cash*

43-305 *CSA Mining Technical Advisory and Monitoring Committee*

44-401 *Concept Proposal for an Integrated Disclosure System*

45-302 *Frequently Asked Questions Regarding the Resale Rules*

45-305 *Frequently Asked Questions Regarding National Instrument 45-106 Prospectus and Registration Exemptions*

46-302 *Consent to Amend Existing Escrow Agreements*

51-301 *Conversion of Corporate Issuers to Trusts*

51-305 *Canadian Capital Markets Association - Corporate Actions and Other Entitlements White Paper - October 2002*

51-315 *Guidance Regarding the Determination of Constant Prices for Bitumen Reserves under National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities*

51-401 *Concept Proposal for an Integrated Disclosure System*

51-402 *Illegal Insider Trading in Canada: Recommendations on Prevention, Detection and Deterrence Report*

52-319 *Status of Proposed Repeal and Replacement of Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings*

52-401 *Discussion Paper – Financial Reporting in Canada's Capital Markets*

58-301 *Extension of Comment Period for Proposed Multilateral Policy 58-201 Effective Corporate Governance and Proposed Multilateral Instrument 58-101 Disclosure Of Corporate Governance Practices*

58-302 *Implementation of Corporate Governance Policy and Related Disclosure Instrument*

58-304 *Review of National Instrument 58-101 Disclosure of Corporate Governance Practices and National Policy 58-201 Corporate Governance Guidelines*

62-201 *Bids Made Only in Certain Jurisdictions*

62-301 *Implementation of the Zimmerman Amendments Governing the Conduct of Take-over and Issuer Bids*

62-303 *Identifying the Offeror in a Take-over Bid*

62-304 *Conditions in Financing Arrangements for Take-over Bids and Issuer Bids*

72-301 *Distributions Outside the Local Jurisdiction Proposed Multilateral Instrument 72-101*

81-310 *Frequently Asked Questions – Fund of Fund Amendments*

ASC Notices and Policies

Staff of the Alberta Securities Commission have reviewed a number of ASC Notices and Policies. They have determined that some are outdated, no longer relevant, or no longer required. The following ASC Notices and Policies are therefore withdrawn, effective immediately.

22-701 *Notice of Public Forum to Discuss "Nets" and Market Fragmentation*

33-601 *Surrender of Registration and Rescission of Uniform Act Policy No. 2-07*

10 *Cease Trade Orders Issued Due to Delinquency In Filing Financial Statements*

57-603 *Defaulting Reporting Issuers – OSC Proposed Policy 57–603*

OSC Notices

Staff of the Ontario Securities Commission have reviewed a number of OSC Notices. They have determined that some are outdated, no longer relevant, or no longer required. The following OSC Notices are therefore withdrawn, effective immediately.

11-721 *Policy Reformulation Table of Concordance and List of New Instruments*

11-725 *Policy Reformulation Table of Concordance and List of New Instruments*

11-726 *Assignment of Policy Numbers*

11-727 *Assignment of Policy Numbers*

11-730 *Policy Reformulation Table of Concordance and List of New Instruments*

11-731 *Policy Reformulation Table of Concordance and List of New Instruments*

11-732 *Proposal for the Ontario Securities Administration Act*

11-733 *Policy Reformulation Table of Concordance and List of New Instruments*

11-734 *Policy Reformulation Table of Concordance and List of New Instruments*

11-735 *IOSCO and International Joint Forum Publish Reports on Outsourcing of Financial Services for Public Comment*

11-736 *North American Securities Administrators Association (NASAA) Seeks Public Comment on Proposal to Extend the Model Secondary Market Trading Exemption for Qualifying Canadian Securities to TSX Venture Exchange*

11-738 *IOSCO Seeks Public Comment on Draft Code of Conduct Fundamentals for Credit Rating Agencies*

11-740 *International Joint Forum Publishes Consultation Report on Credit Risk Transfer*

11-741 *IOSCO Publishes Draft Consultation Policy and Procedures for Public Comment*

11-743 *IOSCO Publishes Consultation Report Concerning Governance of Collective Investment Schemes*

11-744 *IOSCO and International Joint Forum Publish Final Recommendations about Outsourcing of Financial Services*

11-745 *IOSCO Publishes for Consultation Best Practices Standards on Anti-Market Timing and Anti-Money Laundering Guidance for Collective Investment Schemes*

11-746 *IOSCO Publishes Consultation Report: Policies on Error Trades*

11-747 *IOSCO and Basel Committee Publish Consultation Document on the Application of Basel II to Trading Activities and the Treatment of Double Default Effects*

11-748 *IOSCO Publishes a Discussion Paper of the Compliance Function at Market Intermediaries*

11-749 *International Joint Forum Publishes Final Report on Credit Risk Transfer*

11-750 *IOSCO Releases Survey Report on the Regulation and Oversight of Auditors*

11-751 *IOSCO Finalizes Consultation Policy and Procedures*

45-706 *OSC Small Business Advisory Committee*

51-703 *Implementation of Reporting Issuer Continuous Disclosure Review Program, Corporate Finance Branch*

51-704 *Office of the Chief Accountant MD&A Guide*

51-708 *Continuous Disclosure Review Program Report – August 2002*

51-712 *Corporate Finance Review Program Report – August 2003*

51-715 *Corporate Finance Review Program Report – October 2004*

52-715 *CICA Assurance Standards Board Exposure Draft – Auditor Assistance to Underwriters and Others*

52-716 *Filing Extensions for Continuous Disclosure Financial Statements*

AMF Notices

Staff of the Autorité des marchés financiers have reviewed a number of AMF Notices. They have determined that some are outdated, no longer relevant, or no longer required. The following AMF Notices are therefore withdrawn, effective immediately.

CVMQ notice dated March 9, 2001 *Offres publiques – Entrée en vigueur dans certaines provinces le 31 mars 2001 de modifications concernant les règles de conduite des offres publiques – la situation au Québec*

CVMQ notice dated March 7, 2003 *Forum conjoint des autorités de réglementation du marché financier – Projet de principes et pratiques relatifs à la vente de produits et services dans le secteur financier*

Questions regarding this notice may be directed to:

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British Columbia Securities Commission
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Kari Horn
Alberta Securities Commission
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February 19, 2010

1.1.5 CSA Staff Notice 13-315 (Revised) – Securities Regulatory Authority Closed Dates 2010

CANADIAN SECURITIES ADMINISTRATORS' STAFF NOTICE 13-315 (REVISED)
SECURITIES REGULATORY AUTHORITY CLOSED DATES 2010*

We have a review system for prospectuses (including long form, short form and mutual fund prospectuses), prospectus amendments, pre-filings, and waiver applications. It is described in National Policy 11-202 - *Process for Prospectus Reviews in Multiple Jurisdictions* (NP 11-202).

Under NP 11-202, a filer that receives a receipt from the principal regulator will be deemed to have a receipt in each passport jurisdiction where the prospectus was filed. However, the principal regulator's receipt will only evidence that the OSC has issued a receipt if the OSC is open on the date of the principal regulator's receipt and has indicated that it is "clear for final". If the OSC is not open on the date of the principal regulator's receipt, the principal regulator will issue a second receipt that evidences that the OSC has issued a receipt on the next day that the OSC is open.

A dealer may solicit expressions of interest in a non-principal jurisdiction only after a receipt has been issued by that jurisdiction. In addition, an issuer may distribute its securities in the non-principal jurisdiction only at that time.

The following is a list of the closed dates of the securities regulatory authorities for 2010. These dates should be noted by issuers in structuring their affairs.

1. Saturdays and Sundays (all)
2. Friday January 1, 2010 (all)
3. Monday January 4 (QC)
4. Monday February 15 (AB, SK, MB, ON, PE)
5. Friday February 26 (YT)
6. Monday March 15 (NL)
7. Friday April 2 (all)
8. Monday April 5 (all except AB, SK, ON, NL)
9. Monday April 19 (NL)
10. Monday May 24 (all)
11. Monday June 21 (NT, NL)
12. Thursday June 24 (QC)
13. Thursday July 1 (all)
14. Friday July 2 (SK)
15. Friday July 9 (NU)
16. Monday July 12 (NL)
17. Monday August 2 (all except QC, NL, PE)
18. Wednesday August 4 (NL**)
19. Monday August 16 (YT)
20. Friday August 20 (PE)
21. Monday September 6 (all)
22. Monday October 11 (all)
23. Thursday November 11 (all except AB, ON, QC)
24. Friday December 24 (QC, NT)
25. Friday December 24 after 12:00 p.m. (AB, MB, NB, NS, PE, YU); after 1:00 p.m. (BC)
26. Monday December 27 (all)
27. Tuesday December 28 (all)
28. Friday December 31 (QC, NT)
29. Friday December 31 after 12:00 p.m. (NB); after 1:00 p.m. (BC)
30. Monday January 3, **2011** (all)
31. Tuesday January 4, **2011** (QC)

February 19, 2010

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* Bracketed information indicates those jurisdictions that are closed on the particular date.

** Weather permitting, otherwise observed on the first following acceptable weather day, such determination made on morning of holiday.

1.1.6 Notice of Commission Approval – Amendments to Section 35 of MFDA By-law No. 1 – MFDA IPC

MUTUAL FUND DEALERS ASSOCIATION OF CANADA (MFDA)

AMENDMENTS TO SECTION 35 OF MFDA BY-LAW NO. 1 NO ACTIONS AGAINST THE CORPORATION

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission has approved amendments to section 35 of MFDA By-law No. 1 regarding the MFDA Investor Protection Corporation (MFDA IPC). In addition, the Alberta Securities Commission, the Manitoba Securities Commission, the New Brunswick Securities Commission, the Nova Scotia Securities Commission, and the Saskatchewan Financial Services Commission have approved, and the British Columbia Securities Commission has not objected to, the MFDA's proposal. The amendments extend the protection from actions and proceedings by MFDA Members and Approved Persons to the MFDA IPC. In addition, the amendments codify the relationship between MFDA Members and the MFDA IPC and the obligations of MFDA Members with regard to that relationship.

The proposed amendments were published for comment on June 26, 2009, at (2009) 32 OSCB 5351. Certain non-material changes were made to the MFDA's proposal since its initial publication. A blacklined copy of the amendments, showing the changes from the previously published version, is published at Chapter 13 of this Bulletin, together with the MFDA's summary of the comments received on the proposal and the MFDA's responses to those comments.

1.1.7 Notice of Commission Approval – IIROC Amendments to Investment Industry Regulatory Organization of Canada (IIROC) Dealer Member Rule 2900

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC) AMENDMENTS TO IIROC DEALER MEMBER RULES 2900

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission approved amendments to IIROC's Dealer Member Rule 2900 to reinstate proficiency requirements for Supervisors of Approved Persons dealing with institutional client accounts trading in futures contracts, futures contract options and options trading. The proficiency requirements existed in IIROC's Dealer Member Rules before various amendments to these rules to implement the Registration Reform Project became effective on September 28th, 2009, but were inadvertently excluded and had to be reinstated. The British Columbia Securities Commission did not object to, and the Alberta Securities Commission, the Autorite des marchés financiers, the New Brunswick Securities Commission, the Nova Scotia Securities Commission, the Financial Services Regulation Division of the Department of Government Services for Newfoundland and Labrador and the Saskatchewan Financial Services Commission have approved these rule amendments.

As these rule amendments would not introduce new requirements, and will only reinstate requirements that were accidentally removed, they were not published for comment. They are published in Chapter 13 of this Bulletin.

1.2 Notices of Hearing

1.2.1 Maple Leaf Investment Fund Corp. et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
MAPLE LEAF INVESTMENT FUND CORP.,
JOE HENRY CHAU (aka: HENRY JOE CHAU,
SHUNG KAI CHOW AND HENRY SHUNG KAI CHOW),
TULSIANI INVESTMENTS INC., SUNIL TULSIANI
AND RAVINDER TULSIANI

NOTICE OF HEARING
(Sections 127 and 127.1)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on February 25, 2010 at 10:00 a.m., or as soon thereafter as the hearing can be held, to consider:

(i) whether, in the opinion of the Commission, it is in the public interest, pursuant to ss. 127 and 127.1 of the Act to order that:

(a) trading in any securities by the Respondents cease permanently or for such period as is specified by the Commission;

(b) the acquisition of any securities by the Respondents is prohibited permanently or for such other period as is specified by the Commission;

(c) any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such period as is specified by the Commission;

(d) the Respondents be reprimanded;

(e) Joe Henry Chau, Sunil Tulsiani and Ravinder Tulsiani (collectively the "Individual Respondents") resign one or more positions that they hold as a director or officer of any issuer, registrant or investment fund manager;

(f) the Individual Respondents be prohibited from becoming or acting as a director or officer of any issuer, a registrant or investment fund manager;

(g) the Respondents be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(h) the Respondents each pay an administrative penalty of not more than $1 million for each failure by that Respondent to comply with Ontario securities law;

(i) each of the Respondents disgorge to the Commission any amounts obtained as a result of non-compliance by that Respondent with Ontario securities law; and,

(j) the Respondents be ordered to pay the costs of the Commission investigation and the hearing;

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

BY REASON OF the allegations as set out in the Statement of Allegations of Staff of the Commission dated February 12, 2010 and such additional allegations as counsel may advise and the Commission may permit;

AND BY REASON OF the evidence filed with the Commission and the testimony heard by the Commission;

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

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

DATED at Toronto this 12th day of February, 2010

"John Stevenson"

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

AND

IN THE MATTER OF
MAPLE LEAF INVESTMENT FUND CORP.,
JOE HENRY CHAU (aka: HENRY JOE CHAU,
SHUNG KAI CHOW AND HENRY SHUNG KAI CHOW),
TULSIANI INVESTMENTS INC., SUNIL TULSIANI
AND RAVINDER TULSIANI

STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION

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

I. OVERVIEW

1. This proceeding relates to the sale of securities of Maple Leaf Investment Fund Corp. ("MLIF") to over 80 investors. Staff allege that the MLIF securities were sold to investors in breach of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") and in a manner that was contrary to the public interest.

2. Staff allege that the conduct at issue transpired during the period June 2007 up to and including April 2009 ("Material Time").

II. BACKGROUND

A. The Corporate Respondents

3. None of the corporate respondents were registered with the Commission in any capacity during the Material Time.

4. MLIF is an Ontario company incorporated on January 11, 2007. MLIF purports to be an investment company. During the Material Time, MLIF represented to investors that MLIF was going to construct and operate a hotel, casino and condominiums on the island of Curaçao in the Netherlands Antilles in the Caribbean (the "Project").

5. Tulsiani Investments Inc. ("Tulsiani Investments") is an Ontario company incorporated on May 28, 2007. Tulsiani Investments purports to offer investors high-yield revenue properties that hold great potential for growth. During the period of at least December 2008 up to and including January 2009, Tulsiani Investments operated an investment club named Private Investment Club ("PIC") which provided investment opportunities to fee paying members.

B. The Individual Respondents

6. None of the individual respondents were registered in any capacity with the Commission during the Material Time.

7. Joe Henry Chau, also known as Henry Joe Chau, Shung Kai Chow and Henry Shung Kai Chow ("Chau") was a resident of Markham, Ontario during part of the Material Time. Chau is the president, chief executive officer and a director of MLIF.

8. Sunil Tulsiani ("Sunil") is a resident of Brampton, Ontario. Sunil is the president and a director of Tulsiani Investments.

9. Ravinder Tulsiani ("Ravinder") is a resident of Brampton, Ontario. From at least December 2008 up to and including January 2009, Ravinder was the chief executive officer and a director of Tulsiani Investments. Ravinder is a former registrant in various capacities, whose registration with the Commission ended on April 25, 2006.

C. The Sale and Promotion of MLIF securities

10. From June 2007 up to and including January 2009, MLIF and Chau sold four series of MLIF bonds to the public, namely the 100, 200, 300 and 400 bond series. In particular, Chau and MLIF:

    a. maintained a website for MLIF promoting the Project and MLIF bonds;

b. placed advertisements in newspapers promoting the MLIF bonds;

c. employed and/or contracted telemarketers to promote and sell MLIF bonds;

d. conducted seminars and meetings and provided written materials to investors promoting the Project and MLIF bonds;

e. accepted funds from investors for the purchase of MLIF bonds;

f. drafted and provided forms to investors for the purchase of MLIF bonds, including subscription agreements (the "Forms"); and

g. assisted and directed investors on how to complete the Forms.

11. From December 2008 up to and including January 2009, Sunil, Ravinder and Tulsiani Investments sold the MLIF 400 bond series to the public, mainly to PIC members. In particular, Sunil, Ravinder and/or Tulsiani Investments:

a. invited potential investors to attend meetings and/or seminars to learn about the MLIF bond series;

b. made representations to potential investors about the bonds at meetings, seminars and/or in emails;

c. accepted funds from investors for the purchase of bonds and delivered the funds to a lawyer to be placed in his trust account;

d. controlled the use of investor funds; and

e. assisted and directed investors on how to complete forms relating to the bonds;

12. In addition, in selling the MLIF 400 bond series, Sunil and Tulsiani Investments provided advice to potential investors with regard to the MLIF 400 bond series, including providing opinions on the merits of the investments and their level of risk and by expressly or impliedly recommending or endorsing them.

13. In total, Chau, MLIF, Sunil, Ravinder and Tulsiani Investments raised over $4.5 million from the sale of MLIF bonds to over 80 investors. Approximately $1.4 million of this amount was returned to investors as "interest" and/or "redemptions".

TRADING IN SECURITIES OF MLIF

14. Staff allege that, in relation to the conduct referred to above, Chau, MLIF, Sunil, Ravinder and Tulsiani Investments traded in securities of MLIF and that Sunil and Tulsiani Investments advised investors to invest in MLIF securities.

15. The sale of MLIF bonds referred to above were trades in securities not previously issued and were therefore distributions. MLIF has never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of MLIF securities.

16. During the Material Time, none of Chau, MLIF, Sunil, Ravinder or Tulsiani Investments was registered with the Commission to trade in securities and none of Sunil or Tulsiani Investments was registered with the Commission to advise in securities.

PROHIBITED REPRESENTATIONS

17. Staff allege that Chau and MLIF made prohibited representations to investors with the intention of effecting a trade in securities of MLIF, that such security would be listed on a stock exchange. In particular,

a. Chau and MLIF represented to potential investors of MLIF bonds that the bonds were convertible into MLIF founder shares which shares would be listed on the TSX Venture; and

b. Chau and MLIF represented to potential investors of MLIF founder shares that MLIF expected that these shares would be listed on the TSX Venture.

FRAUDULENT CONDUCT

18. Staff allege that Chau and MLIF engaged in acts, practices or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on investors and that was contrary to the public interest by:

    a. making representations to investors in the 100, 200 and 300 bond series, which they knew or reasonably ought to have known were false, inaccurate and misleading, that:

        i. investor funds would be placed in a GIC at the TD Bank, where they would remain;

        ii. investor funds were to be used as collateral to assist MLIF in obtaining a construction loan for the Project; and

        iii. investors would be paid interest on their bonds, partly from the GIC at the TD Bank and partly from MLIF;

    b. failing to maintain investor funds in GICs as represented to investors and cashing the GICs shortly after purchasing them;

    c. paying amounts purporting to be "interest" to investors in the absence of any revenue, profit or retained earnings by MLIF;

    d. paying earlier investors "interest" and "redemptions" with new investor funds; and

    e. using investor funds, in part, for Chau's personal purposes and for purposes unrelated to the Project.

STAFF'S ALLEGATIONS — Conduct Contrary to Ontario Securities Law and Contrary to the Public Interest

19. The specific allegations advanced by Staff are:

    a. Chau, MLIF, Sunil, Ravinder and Tulsiani Investments traded in securities of MLIF without being registered to trade in securities, contrary to section 25(1)(a) of the Act and contrary to the public interest;

    b. Sunil and Tulsiani Investments engaged in advising with respect to investing in securities of MLIF without being registered to advise in securities, contrary to section 25(1)(c) of the Act and contrary to the public interest;

    c. Chau and MLIF made representations without the written permission of the Director, with the intention of effecting a trade in securities of MLIF that such security would be listed on a stock exchange or quoted on any quotation and trade reporting system, contrary to section 38(3) of the Act and contrary to the public interest;

    d. Chau and MLIF traded in securities of MLIF when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to section 53(1) of the Act and contrary to the public interest;

    e. Chau and MLIF engaged or participated in acts, practices or courses of conduct relating to MLIF securities that Chau and MLIF knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to section 126.1(b) of the Act and contrary to the public interest;

    f. Chau being a director and officer of MLIF, did authorize, permit or acquiesce in the commission of the violations of sections 25, 38, 53 and 126.1 of the Act, by MLIF; and

    g. Sunil and Ravinder, being directors of Tulsiani Investments did authorize, permit or acquiesce in the commission of the violations of section 25 of the Act, set out above, by Tulsiani Investments.

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

Dated at Toronto this 12th day of February, 2010

1.3 News Releases

1.3.1 CSA's 'Financial Fitness Challenge' offers Canadian youth a chance to win $2,000 for demonstrating financial smarts

FOR IMMEDIATE RELEASE
February 17, 2010

CSA'S 'FINANCIAL FITNESS CHALLENGE'
OFFERS CANADIAN YOUTH
A CHANCE TO WIN $2,000 FOR DEMONSTRATING FINANCIAL SMARTS

Montreal - Young Canadians are invited to increase their financial literacy by taking the Financial Fitness Challenge, a contest sponsored by the Canadian Securities Administrators (CSA) to raise awareness among youth around concepts like budgeting, saving and investing.

The Financial Fitness Challenge, which runs February 15 to April 15, 2010, uses a new, interactive website to quiz Canadian youth on their financial knowledge. This year, visitors to the annual Challenge website (FinancialFitnessChallenge.ca) will find the site has a fresh look and many interactive tools and simulations.

"It's important for youth to learn about money matters, especially those between the ages of 15 and 21, who are about to start earning money and making some of their own financial decisions," said Jean St-Gelais, Chair of the CSA and President & Chief Executive Officer of the Autorité des marchés financiers (Québec). "The Financial Fitness Challenge is a great way to engage youth in financial education."

The Financial Fitness Challenge website features exciting online activities where participants can compete with their friends or with other youth at a local and national level. The site also features its own Facebook page where young Canadians can exchange ideas and tips about managing money.

While anyone can visit the site, the bilingual contest is open to Canadians ages 15 to 21 with a quiz featuring financial literacy questions and facts. Thirteen entries – one from each province and territory – will be randomly selected from eligible participants to win a notebook computer, and a national grand prize winner will be awarded $2,000.

Teachers are also encouraged to use the Financial Fitness Challenge as a fun and informative learning tool to support the development of good financial behaviour among their students.

"We encourage youth, teachers and parents to visit our entertaining and instructional site," said St-Gelais. "Saving, budgeting and investing may seem like uninteresting subjects, but the Financial Fitness Challenge allows participants to learn, compete and have a good time."

Teachers can go to FinancialFitnessChallenge.ca/Teachers to check out the Teacher Resource Centre and download classroom materials, including complete lesson plans.

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

For more information:

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Autorité des marchés financiers
514-940-2176

Robert Merrick
Ontario Securities Commission
416-593-2315

Ken Gracey
British Columbia Securities Commission
604-899-6577

Mark Dickey
Alberta Securities Commission
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Wendy Connors-Beckett
New Brunswick Securities Commission
506 643-7745

Ainsley Cunningham
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204-945-4733

Natalie MacLellan
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Linda Peters
Office of the Attorney General
Prince Edward Island
902-368-4552

Fred Pretorius
Yukon Securities Office
867-667-5225

Donn MacDougall
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867-920-8984

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

Louis Arki
Nunavut Securities Office
867-975-6587

1.4 Notices from the Office of the Secretary

1.4.1 Franklin Danny White et al.

FOR IMMEDIATE RELEASE
February 11, 2010

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

AND

IN THE MATTER OF
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

TORONTO – The Commission issued its Reasons and Decision on the merits in the above named matter.

A copy of the Reasons and Decision dated February 10, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

Wendy Dey
Director, Communications & Public Affairs
416-593-8120

Theresa Ebden
Senior Communications Specialist
416-593-8307

Robert Merrick
Senior Communications Specialist
416-593-2315

For investor inquiries:

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

1.4.2 Maple Leaf Investment Fund Corp. et al.

FOR IMMEDIATE RELEASE
February 16, 2010

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

AND

IN THE MATTER OF
MAPLE LEAF INVESTMENT FUND CORP., JOE HENRY CHAU (aka: HENRY JOE CHAU, SHUNG KAI CHOW AND HENRY SHUNG KAI CHOW), TULSIANI INVESTMENTS INC., SUNIL TULSIANI AND RAVINDER TULSIANI

TORONTO – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on February 25, 2010 at 10:00 a.m. or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated February 12, 2010 and Statement of Allegations of Staff of the Ontario Securities Commission dated February 12, 2010 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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416-593-2315

For investor inquiries:

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1-877-785-1555 (Toll Free)

1.4.3 New Life Capital Corp. et al.

FOR IMMEDIATE RELEASE
February 16, 2010

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

AND

IN THE MATTER OF
NEW LIFE CAPITAL CORP.,
NEW LIFE CAPITAL INVESTMENTS INC.,
NEW LIFE CAPITAL ADVANTAGE INC.,
NEW LIFE CAPITAL STRATEGIES INC.,
1660690 ONTARIO LTD., L. JEFFREY POGACHAR,
PAOLA LOMBARDI AND ALAN S. PRICE

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing on the merits is adjourned to the weeks of September 13 and 20, 2010, with the exception of September 14, 2010 when the Commission will not sit, or to such other dates as are agreed by the parties and fixed by the Office of the Secretary.

A copy of the Order dated February 16, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1-877-785-1555 (Toll Free)

1.4.4 Irwin Boock et al.

FOR IMMEDIATE RELEASE
February 17, 2010

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

AND

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

TORONTO – The Commission issued its Reasons and Decision on Disclosure in the above named matter.

A copy of the Reasons and Decision dated February 9, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.5 Maple Leaf Investment Fund Corp. et al.

FOR IMMEDIATE RELEASE
February 17, 2010

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

AND

IN THE MATTER OF
MAPLE LEAF INVESTMENT FUND CORP.
AND JOE HENRY CHAU (aka: HENRY JOE CHAU,
SHUNG KAI CHOW AND HENRY SHUNG KAI CHOW)

TORONTO – The Commission issued an Order in the above noted matter which provides that the Temporary Order is continued in respect of the Respondents until February 26, 2010 and this matter shall return before the Commission on February 25, 2010 at 10:00 a.m.

A copy of the Order dated February 17, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 TriStar Oil & Gas Ltd. et al.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions– Application for exemptive relief to permit issuer and underwriter, acting as agent for the issuer, to enter into equity distribution agreement to make "at the market" (ATM) distributions of trust units to investors through the facilities of the Toronto Stock Exchange (TSX) – ATM distributions to be made pursuant to shelf prospectus procedures in Part 9 of NI 44-102 Shelf Distributions – issuer will issue a press release and file agreement on SEDAR – application for relief from prospectus delivery requirement – delivery of prospectus not practicable in circumstances of an ATM distribution – relief from prospectus delivery requirement has effect of removing two-day right of withdrawal and remedies of rescission or damages for non-delivery of the prospectus – application for relief from certain prospectus form requirements – standard certification by issuer does not work in an ATM distribution since no other supplement to be filed in connection with ATM distribution – relief granted to permit modified forward-looking certificate language – relief granted on terms and conditions set out in decision document - decision will terminate 25 months after the issuance of a receipt for the shelf prospectus.

Applicable Ontario Statutory Provisions

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

Applicable Ontario Rules

National Instrument 41-101 General Prospectus Requirements and related Amendments.
National Instrument 44-101 Short Form Prospectus Distributions, Part 8; and Item 20 of Form 44-101F1.
National Instrument 44-102 Shelf Distributions, Part 9; and s. 1.1 of Appendix A.

Citation: TriStar Oil & Gas Ltd., Re, 2009 ABASC 295

July 7, 2009

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

AND

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

AND

IN THE MATTER OF
TRISTAR OIL & GAS LTD. (the Issuer),
FIRSTENERGY CAPITAL CORP. (FCC) AND
SOCIÉTÉ GÉNÉRALE VALEURS MOBILIÈRES INC.
(SGVM, and together with FCC, the Underwriters, and together with FCC and the Issuer, the Filers)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application (the **Application**):

(a) from the Underwriters for a decision under the securities legislation in each Jurisdiction (the **Legislation**) that the requirement that a dealer not acting as agent of the purchaser who receives an order or subscription for a security offered in a distribution to which the prospectus requirement applies deliver to the purchaser or its agent the latest prospectus and any amendment to the prospectus (the **Prospectus Delivery Requirement**) does not apply to the Underwriters or any other Toronto Stock Exchange (**TSX**) participating organization acting as selling agent for the Underwriters (such other TSX participating organization, a **Selling Agent**) in connection with an at-the-market distribution (the **ATM Distribution**), as defined in National Instrument 44-102 *Shelf Distributions* (**NI 44-102**), made by the Issuer pursuant to the Equity Distribution Agreement (as defined below);

(b) from the Issuer for a decision under the Legislation that the requirement to include in a prospectus:

(i) a certificate of the Issuer in the form specified in section 1.1 of Appendix A to NI 44-102, and

(ii) the statement respecting purchasers' statutory rights of withdrawal and remedies of rescission or damages in the form prescribed by item 20 of Form 44-101F1,

(the **Prospectus Form Requirements**) do not apply to a prospectus filed in connection with the ATM Distribution; and

(c) from the Filers for a decision under the Legislation that the Application and this decision (the **Confidential Material**) be kept confidential and not be made public until the earlier of: (i) the date on which the Issuer and the Underwriters enter into the Equity Distribution Agreement; (ii) the date the Filers advise the Decision Makers that there is no longer any need for the Confidential Material to remain confidential; and (iii) the date that is 90 days after the date of this decision.

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

(a) the Alberta Securities Commission (the Commission) is the principal regulator for the Application,

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

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

Interpretation

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

Representations

The Issuer

1. The Issuer is a corporation amalgamated under the *Business Corporations Act* (Alberta). The head office of the Issuer is located in Calgary, Alberta.

2. The Issuer is a reporting issuer or the equivalent under the Legislation and is in compliance in all material respects with the applicable requirements of the Legislation.

3. Common shares (**Shares**) of the Issuer are listed on the TSX.

The Underwriters

4. FCC is based in Calgary, Alberta and is registered as an investment dealer under the Legislation.

5. SGVM is based in Montréal, Québec and is registered as an investment dealer under the Legislation.

Proposed ATM Distribution

6. The Issuer is proposing to enter into an equity distribution agreement (the **Equity Distribution Agreement**) with the Underwriters relating to an ATM Distribution by the Issuer pursuant to the shelf prospectus procedures prescribed by Part 9 of NI 44-102.

7. Prior to making an ATM Distribution, the Issuer will have filed in the Jurisdictions in connection with the ATM Distribution (i) a shelf prospectus (the **Shelf Prospectus**), and (ii) a prospectus supplement describing the terms of the Equity Distribution Agreement (the **Prospectus Supplement**).

8. The Issuer will issue a news release regarding entering into the Equity Distribution Agreement and will file the agreement on SEDAR. The news release will indicate that the Shelf Prospectus and Prospectus Supplement have been filed on SEDAR and specify where and how purchasers may obtain copies. A copy of the news release will also be posted on the Issuer's website.

9. Under the proposed ATM Distribution, the Issuer may issue and sell Shares in an amount not to exceed 10% of the aggregate market value of the outstanding Shares calculated in accordance with section 9.2 of NI 44-102.

10. The Underwriters will, in turn, sell Shares in Canada through methods constituting an ATM Distribution, including sales made on the TSX through the Underwriters, directly or through a Selling Agent.

11. The Underwriters will act as the sole underwriters on behalf of the Issuer in connection with the sale of the Shares on the TSX and will be the only entities paid an underwriting fee or commission by the Issuer in connection with such sales. The Underwriters will sign an underwriters' certificate in the Prospectus Supplement filed on SEDAR. The Underwriters will effect the ATM Distributions on the TSX either themselves or through a Selling Agent. If the sales are effected through a Selling Agent, the Selling Agent will be paid a seller's commission for effecting the trades on the Underwriters' behalf. A purchaser's rights and remedies under the Legislation against the Underwriters as underwriters of an ATM Distribution through the TSX will not be affected by a decision to effect the sale directly or through a Selling Agent.

12. The number of Shares sold on the TSX pursuant to the ATM Distribution on any trading day will not

exceed 25% of the trading volume of the Shares on the TSX on that day.

13. The Equity Distribution Agreement will provide that at the time of each sale of Shares pursuant to an ATM Distribution, the Issuer will make a representation to the Underwriters that the prospectus contains full, true and plain disclosure of all material facts relating to the Issuer and Shares being distributed. The Issuer would therefore be unable to proceed with sales pursuant to an ATM Distribution when it is in possession of undisclosed information that would constitute a material fact or a material change in respect of the Shares.

14. If, after the Issuer delivers a sell notice to the Underwriters, the sale of Shares specified in the notice, taking into consideration prior sales, would constitute a material fact, the Issuer would have to suspend sales under the Equity Distribution Agreement until either: (i) it had filed a material change report or amended the prospectus, or (ii) circumstances had changed so that the sales would no longer constitute a material fact or material change.

15. In determining whether the sale of the number of Shares specified in the sell notice would constitute a material fact or material change, the Issuer will take into account a number of factors, including, without limitation: (i) the parameters of the sell notice including the number of Shares proposed to be sold; (ii) the percentage of the outstanding Shares that number represents; (iii) trading volume and volatility of Shares; (iv) recent developments in the business, affairs and capital structure of the Issuer; and (v) prevailing market conditions generally.

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

17. The underwriters' certificate signed by the Underwriters included in the Prospectus Supplement will be in the form prescribed by section 2.2 of Appendix B to NI 44-102.

Prospectus Delivery Requirement

18. Pursuant to the Prospectus Delivery Requirement, a dealer effecting the trade of Shares on the TSX on behalf of the Issuer as part of an ATM Distribution is required to deliver a prospectus to all investors who purchase Shares on the TSX.

19. The delivery of a prospectus is not practicable in the circumstances of an ATM Distribution as neither the Underwriters nor the Selling Agent effecting the trade will know the identity of the purchasers.

20. A purchaser is deemed to have relied upon a misrepresentation in a prospectus if it was a misrepresentation at the time of purchase, without regard to whether or not they received the prospectus.

Withdrawal Right

21. Pursuant to the Legislation, an agreement to purchase securities is not binding on the purchaser if a dealer receives, not later than midnight on the second day exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of the latest prospectus or any amendment to the prospectus, a notice in writing that the purchaser does not intend to be bound by the agreement of purchase (the **Withdrawal Right**).

22. The Withdrawal Right is not workable in the context of an ATM Distribution because the prospectus will not be delivered.

Right of Rescission or Damages for Non-Delivery

23. Pursuant to the Legislation, a purchaser of securities has a right of rescission or damages against a dealer for non-delivery of the prospectus (the **Right of Action for Non-Delivery**).

24. The Right of Action for Non-Delivery is not workable in the context of an ATM Distribution because the prospectus will not be delivered.

Disclosure of Securities Sold in ATM Distribution

25. The Issuer will file on SEDAR a report disclosing the number and average price of Shares distributed over the TSX by the Issuer pursuant to the prospectus filed in connection with the ATM Distribution as well as gross proceeds, commission and net proceeds within seven calendar days after the end of the month with respect to sales during the prior month.

26. The Issuer will also disclose the number and average price of Shares sold under the ATM Distribution as well as gross proceeds, commission and net proceeds in the ordinary

course in its annual and interim financial statements and MD&A filed on SEDAR.

Prospectus Form Requirements

27. Exemptive relief from the Prospectus Form Requirements for the Issuer's forward-looking certificate in the Shelf Prospectus is required to reflect that no pricing supplement will be filed subsequent to the Prospectus Supplement. Accordingly, the Issuer will file the Shelf Prospectus with the following certificate in substitution for the certificate prescribed by the Prospectus Form Requirements:

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

28. Exemptive relief from the Prospectus Form Requirements is required to reflect the Issuer's relief from the Prospectus Delivery Requirement. Accordingly, the following language will be included in the Prospectus Supplement in substitution for the language prescribed by the Prospectus Form Requirements:

> Securities legislation in the Jurisdictions provides purchasers with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. However, purchasers of Shares under the Issuer's at-the-market distribution will not have any right to withdraw from an agreement to purchase the Shares and will not have remedies of rescission or, in some jurisdictions, revision of the price, or damages for non-delivery of the prospectus because the prospectus relating to Shares purchased by such purchaser will not be delivered as permitted under a decision document dated ●, 2009.
>
> Securities legislation in the Jurisdictions also provides purchasers with remedies for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contain a misrepresentation, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. Any remedies under securities legislation in the Jurisdictions that a purchaser of Shares under the Issuer's at-the-market distribution may have against the Issuer or the Underwriters, for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contain a misrepresentation remain unaffected by the non-delivery of the prospectus and the decision referred to above.
>
> Purchasers should refer to the applicable provisions of the securities legislation and the decision document referred to above for the particulars of their rights or consult with a legal adviser.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

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

(a) provided that the disclosure described in sections 25, 27 and 28 is made, the Prospectus Form Requirements do not apply under the Legislation to the prospectus of the Issuer filed in connection with the ATM Distribution;

(b) provided that the representations in sections 8, 10, 11 and 15 are complied with, the Prospectus Delivery Requirement under the Legislation does not apply to the Underwriters or any Selling Agent and, as a result, the Withdrawal Right and the Right of Action for Non-Delivery will not apply to the ATM Distribution;

(c) the Confidential Material will be kept confidential and not be made public until the earlier of: (i) the date on which the Issuer enters into the Equity Distribution Agreement with the Underwriters; (ii) the date the Filers advise the Decision Makers that there is no longer any need for the Confidential Material to remain

confidential; and (iii) the date that is 90 days after the date of this decision; and

(d) this decision will terminate 25 months after the issuance of a receipt for the Shelf Prospectus.

"William S. Rice, QC"
Alberta Securities Commission

"Glenda A. Campbell, QC"
Alberta Securities Commission

2.1.2 Xenos Group Inc.

Headnote

National Policy 11-203 – Process for Exemptive Relief in Multiple Jurisdictions – National Instrument 51-102 – Continuous Disclosure Obligations, s. 13.1 – Interim financial statements – An issuer wants relief from the requirements to file and/or deliver interim financial statements for a particular period – A compulsory acquisition procedure pursuant to corporate legislation has been undertaken, prior to the filing deadline, in relation to the issuer and its shareholders pursuant to which all of the issuer's securities will be acquired by the offer by a fixed date.

National Instrument 52-109 – Certification of Disclosure in Issuer's Annual and Interim Filings, s. 8.6 – An issuer wants relief from the requirements in Part 5 of NI 52-109 to prepare officer certifications – The issuer has applied for and received an exemption from filing interim financial statements.

Applicable Legislative Provisions

Section 13.1 of NI 51-102.
Section 8.6 of NI 52-109.

February 11, 2010

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

AND

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

AND

IN THE MATTER OF
XENOS GROUP INC. (the "Filer")

DECISION

Background

1. The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **"Legislation"**) for a decision that Xenos Group Inc. (**"Xenos"**) be exempt from the requirements: (a) under National Instrument 51-102 *Continuous Disclosure Obligations* (**"NI 51-102"**), to prepare, file and, where required, deliver to shareholders interim financial statements and management's discussion and analysis for the three months ended December 31, 2009, (the **"Interim Filings"**); and (b) under National Instrument 52-109 *Certification of Disclosure* (**"NI 52-109"**), to file interim certificates (the **"Officer Certificates"**) relating to the Interim Filings (together, the **"Requested Relief"**).

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

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

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

Interpretation

3. Defined terms contain in National Instrument 14-101 *Definitions* have the same meaning in this decision unless otherwise defined.

Representations

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

1. Xenos is a corporation existing under the *Business Corporations Act* (Ontario) (the **"OBCA"**). Xenos' head office and mailing address is at 95 Mural Street, Suite 201, Richmond Hill, Ontario, L4B 3G2.

2. Xenos is a reporting issuer in the Jurisdictions and is not in default of securities legislation in any of the Jurisdictions.

3. For the purposes of NP 11-203, Xenos has selected Ontario as its principal regulator.

4. Xenos is a Canadian technology company that specializes in the development of information technology solutions for organizations in numerous industries around the world.

5. The Common Shares of Xenos are listed on the Toronto Stock Exchange under the symbol "XNS". No securities of Xenos other than the Common Shares are issued and outstanding or publicly held as of the date hereof.

6. On December 23, 2009, Actuate Canada International Corporation (**"ACIC"**), a wholly-owned subsidiary of Actuate Corporation (**"Actuate"**), commenced an offer (the **"Offer"**) to acquire all of the outstanding common shares (**"Common Shares"**) including Common Shares that became issued and outstanding after the date of the Offer but before the expiry of the Offer upon the conversion, exchange or exercise of options to purchase Common Shares, at a price of Cdn.$3.50 cash per Common Share.

7. On February 1, 2010, ACIC acquired approximately 95.2% of the issued and outstanding Common Shares on a fully diluted basis. Prior to this date, neither of Actuate nor ACIC held any Common Shares. The Offer expired at 5:00 p.m. (Toronto time) on February 1, 2010. In a press release dated February 1, 2010 announcing the completion of the Offer, Xenos announced that it would be seeking an exemption from applicable requirements to file and deliver certain continuous disclosure materials (including its interim financial statements and related materials, as at and for the three month period ended December 31, 2009) pending its anticipated acquisition of those Common Shares not deposited under the Offer.

8. In the take-over bid circular dated December 23, 2009 accompanying the Offer, ACIC disclosed that if the Offer was accepted by shareholders who, in the aggregate, held not less than 90% of the issued and outstanding Common Shares (excluding Common Shares held by ACIC or any affiliates or associates thereof), ACIC intended to acquire those Common Shares which remained outstanding held by holders of Common Shares who did not accept the Offer (and each person who subsequently acquired any of such Common Shares) pursuant to the provisions of Part 15 of the OBCA.

9. ACIC has indicated that it expects to, by no later than February 4, 2010, send to those shareholders of Xenos who did not accept the Offer (the **"Dissenting Offerees"**) (which definition includes any person who subsequently acquires such Common Shares) written notice (the **"Acquisition Notice"**) that ACIC will acquire the Common Shares held by the Dissenting Offerees pursuant to, and in accordance with, Section 188 of the OBCA (the **"Compulsory Acquisition"**).

10. Section 188 of the OBCA provides that once the Offeror Notice has been sent, ACIC is entitled to acquire all of the Common Shares held by the Dissenting Offerees for a price equal to (and on the same terms) as provided for in the Offer,

or, at the election of a Dissenting Offeree, the "fair value" of such Common Shares as determined in accordance with Sections 188(13) – (21) of the OBCA.

11. Pursuant to Section 188 of the OBCA, a Dissenting Offeree is entitled to make an application to the Ontario Superior Court of Justice (the **"Court"**) in connection with any proposed Compulsory Acquisition. The Court may, by order, set the price and terms for payment for the Common Shares and make consequential orders and give such directions as the Court considers appropriate.

12. Under the provisions of Section 188 of the OBCA, ACIC is required to deliver to Xenos within twenty days of the date of delivery of the Offeror Notice a cash payment in the amount equal to the number of Common Shares held by the Dissenting Offerees multiplied by Cdn.$3.50, (being approximately Cdn.$1,671,621) (the **"Acquisition Amount"**), the aggregate amount the Dissenting Offerees are entitled to receive as payment for their Common Shares pursuant to the Compulsory Acquisition, assuming that each Dissenting Offeree elects, or is deemed to have elected, to receive such amount for each Common Share held thereby. On February 2, 2010, ACIC provided the Acquisition Amount to the transfer agent of Xenos pursuant to a direction from Xenos to ACIC.

13. Section 188 of the OBCA provides that ACIC will be deemed to have acquired all Common Shares held by Dissenting Offerees: (a) where a Dissenting Offeree has demanded payment of the "fair value" of his, her or its Common Shares and has applied to the Court for an order requiring ACIC to provide additional security for payment to Dissenting Offerees, upon compliance by ACIC with such order as the Court may make in respect of such application; or (b) where no such application is made prior to the thirtieth day following the date that the Offeror Notice is sent to Dissenting Offerees, upon the expiration of that period (the **"Acquisition Date"**).

14. The Dissenting Offerees will continue as shareholders of Xenos until the Acquisition Date. The Common Shares will continue to be listed on the Toronto Stock Exchange until after the Acquisition Date.

15. Immediately after the Acquisition Date, Xenos intends to cause the Common Shares to be delisted from the Toronto Stock Exchange. As soon as practicable thereafter, Xenos also intends to apply to the securities regulatory authorities of the Jurisdictions for an order that Xenos cease to be a "reporting issuer" under the laws of the Jurisdictions. It is expected that Xenos will be 100% owned by ACIC by no later than March 6, 2010 and will cease to be a reporting issuer by the end of March 2010.

16. Absent the Requested Relief being granted, Xenos is, pursuant to the provisions of Sections 4.3, 4.6, 5.1 and 5.6 of NI 51-102, required, on or before February 12, 2010, to file the Interim Filings with the securities regulatory authorities of the Jurisdictions and to deliver copies of the Interim Filings to its shareholders.

17. Pursuant to the provisions of Part 5 of NI 52-109, Xenos is required to file the prescribed certification form of its Chief Executive Officer and Chief Financial Officer in respect of the three month period ended December 30, 2009 concurrently with the filing of the Interim Filings (the **"Officer Certificates"**).

Decision

The Decision Maker is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Maker under the Legislation is that the Requested Relief is granted.

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

2.1.3 SEAMARK Asset Management Ltd. – s. 1(10)

Headnote

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

Ontario Statutes

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

February 11, 2010

Ms. Basia Dzierzanowska
McInnes Cooper
Purdy's Wharf Tower II
PO Box 730
1300-1969 Upper Water Street
HALIFAX NS B3J 2V1

Dear Ms. Dzierzanowska:

Re: SEAMARK Asset Management Ltd. (the "Applicant") - Application for a decision under the securities legislation of Nova Scotia, Newfoundland and Labrador, Prince Edward Island, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, Yukon, Northwest Territories and Nunavut (the "Jurisdictions") that the Applicant is not a reporting issuer

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

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

"H. Leslie O'Brien"
Chairman
Nova Scotia Securities Commission

2.1.4 Eldorado Gold Corporation

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions - An issuer wants relief from the requirement to audit acquisition statements in accordance with Canadian or U.S. GAAS - The issuer acquired or will acquire a business whose historical financial statements have not been audited in accordance with Canadian or U.S. GAAS - The issuer is required to file a business acquisition report within 75 days after the date of the acquisition containing financial statements of the acquired business - The acquired business' financial statements have been audited in accordance with Australian GAAS - It would be impractical to re-audit the business' financial statements in accordance with Canadian or U.S. GAAS - The audit report will be accompanied by a statement by the auditor that describes any material differences in the report as compared to a Canadian GAAS audit report and indicates that the report, if prepared in accordance with Canadian GAAS, would not contain a reservation.

Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency, ss. 6.2 and 9.1.
National Instrument 51-102 Continuous Disclosure Obligations, Part 8.

February 11, 2010

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

AND

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

AND

IN THE MATTER OF
ELDORADO GOLD CORPORATION
(THE FILER)

DECISION

Background

¶ 1 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 requirement in section 6.2 of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) that the financial statements for Sino Gold Mining Limited (Sino) that are required to be included in a business acquisition report (BAR) prepared under NI 51-102 be audited in accordance with Canadian GAAS or U.S. generally accepted auditing standards (U.S. GAAS) (the Exemption Sought).

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

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

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

¶ 2 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

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

1. the Filer, a gold producing, exploration and development company, is a corporation governed under the laws of Canada and its head office is located in Vancouver, British Columbia;

2. the Filer is a reporting issuer in each provincial jurisdiction of Canada and is not currently in default of its obligations as a reporting issuer under the securities legislation of these jurisdictions;

3. the Filer's common shares are listed for trading on the Toronto Stock Exchange and the New York Stock Exchange;

4. on December 15, 2009, the Filer completed the acquisition (the Acquisition) of Sino, pursuant to schemes of arrangement under Australian law that were approved by security holders of Sino and the Federal Court of Australia;

5. Sino is a corporation governed under the laws of the Australia and is wholly owned by Eldorado Pacific Pty Limited, a wholly-owned subsidiary of the Filer;

6. the Acquisition constitutes a "significant acquisition" for the purposes of Part 8 of National Instrument 51-102 – *Continuous Disclosure Requirements* and the Filer is required to file a BAR within 75 days after the date of acquisition;

7. Sino advised the Filer that, prior to the Acquisition:

   (a) Sino was a reporting issuer in British Columbia, Québec and Newfoundland and Labrador and was a designated foreign issuer for the purposes of National Instrument 71-102 – *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* and NI 52-107; and

   (b) Sino's securities were listed on the Australian Securities Exchange and the Hong Kong Stock Exchange;

8. the Filer will be providing the following financial information as part of its BAR:

   (a) Sino's balance sheets as at December 31, 2007 and 2008 and the income statement and statements of changes of equity and cash flows for the financial years ending December 31, 2007 and December 31, 2008, together with the notes thereon and in the case of the year ended December 31, 2008, an auditor's report (the Annual Financial Statements);

   (b) Sino's unaudited balance sheets as at September 30, 2009 and December 31, 2008 and the unaudited income statement and statements of changes of equity and cash flows for the period commencing January 1, 2009 and ending September 30, 2009 and the comparable period in the preceding financial year together with the notes thereon (the Interim Financial Statements);

   (c) a pro forma balance sheet of the Filer as at September 30, 2009 that gives effect to the Acquisition as if it had taken place as at that date;

   (d) a pro forma income statement of the Filer to give effect to the Acquisition for each of:

      (i) the most recently completed financial year of the Filer, being the year ended December 31, 2008; and

      (ii) the most recently completed interim period of the Filer, being the interim period ended September 30, 2009;

   in each case, as if the Acquisition had taken place on January 1, 2008; and

   (e) pro forma earnings per share based on the foregoing pro forma financial statements;

9. Sino has prepared the Annual Financial Statements for the financial year ended December 31, 2008 in accordance with the Australian Accounting Standards and the Australian equivalent of International Financial Reporting Standards (collectively AIFRS) and they have been audited in accordance with Australian Auditing Standards (AAS); Sino will be reissuing the Annual Financial Statements to include a note that provides reconciliation to Canadian GAAP as required under section 6.1 of NI 52-107 with respect to the statements for the financial year ended December 31, 2008; Sino's auditor, Ernst & Young, will reissue its report in respect of the Annual Financial Statements for the financial year ended December 31, 2008;

10. Sino's Interim Financial Statements are being prepared in accordance with AIFRS which will include a reconciliation note prepared in accordance with the requirements of section 6.1 of NI 52-107 in respect of the interim period ended September 30, 2009;

11. Sino's auditor has represented to the Filer that it has expertise and experience in AAS;

12. the Annual Financial Statements have, in accordance with the Australian Corporations Act 2001 (Cth), been audited

using Australian Auditing Standards; the annual financial statements of an Australian public company must be sent to shareholders of that company and lodged with the Australian Securities and Investments Commission (ASIC); the annual financial statements are publicly available from ASIC; these facts will be disclosed in the BAR.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that the Annual Financial Statements are accompanied by an auditor's report that contains, or is accompanied by, a statement by the auditor that:

(a) describes the material differences in the form and content of the auditor's report prepared in accordance with AAS as compared to an auditor's report prepared in accordance with Canadian GAAS; and

(b) indicates that an auditor's report prepared in accordance with Canadian GAAS would not contain a reservation.

"Martin Eady", CA
Director, Corporate Finance
British Columbia Securities Commission

2.1.5 Trilogy Energy Trust

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions - exemption granted from the requirement to include historical financial statements for an issuer for which securities are being distributed in connection with a restructuring transaction – the business, directors and management of the resulting entity immediately following the completion of the business combination will be exactly the same as the reporting issuer's business, directors and management immediately before the completion of the business combination

Applicable Legislative Provisions

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

December 10, 2009

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

AND

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

AND

IN THE MATTER OF
TRILOGY ENERGY TRUST
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirement under section 14.2 of Form 51-102F5 *Information Circular* (**Form 51-102F5**) of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) to provide historical and pro forma financial statements of 360networks (Cdn fiber) ltd. (**360 fiber**) in the management information circular of the Filer which may be delivered to unitholders of the Filer (the **Unitholders**) in connection with a special meeting of the Unitholders which may be held to approve a proposed restructuring transaction involving the Filer and 360 fiber under which securities of the Filer and 360 fiber would be changed, exchanged, issued or distributed (the **Exemption Sought**); and

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

(a) the Alberta Securities Commission is the principal regulator for the 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, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut; and

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

Interpretation

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

Representations

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

Possible Business Combination

1. The Filer is in discussions with 360 fiber and its shareholders, 360networks Corporation and 360networks Canada ltd., regarding a possible business combination (the **Possible Business Combination**) between the Filer and 360 fiber.

2. The definitive terms and conditions of the Possible Business Combination have not yet been agreed to by the parties and neither the Filer nor 360 fiber has obtained board approval in respect of the Possible Business Combination.

3. The Possible Business Combination, if completed, would result in the Unitholders owning shares or other securities of 360 fiber (**New Trilogy**) with the business, directors and management of New Trilogy immediately following the completion of the Possible Business Combination to be exactly the same as the Filer's business, directors and management immediately before the completion of the Possible Business Combination.

4. New Trilogy would be a reporting issuer or the equivalent in each of the provinces and territories of Canada and, subject to the approval of the Toronto Stock Exchange (**TSX**), its shares would be listed on the TSX.

5. It will be a condition to the closing of the Possible Business Combination that, among other conditions, 360 fiber shall not have at closing any assets or liabilities other than its tax pools. To accomplish this, it is expected that prior to the completion of the Possible Business Combination, all of 360 fiber's assets will be spunout to, and all of its actual and contingent liabilities (other than its tax pools) will be assumed by, one or more affiliates of 360 fiber. In addition, at closing of the Possible Business Combination one or more affiliates of 360 fiber will indemnify New Trilogy in respect of certain matters (the **New Trilogy Indemnity**). The terms of the New Trilogy Indemnity have not as yet been discussed in detail between the Filer and 360 fiber.

6. The Possible Business Combination is anticipated to be effected by way of an arrangement requiring the approval of the Unitholders and the court and is expected to constitute a "restructuring transaction" for the Filer under applicable securities laws.

The Filer

7. The Filer is an open-ended unincorporated investment trust governed by the laws of the Province of Alberta and its head office is located in Calgary, Alberta.

8. The Filer is a reporting issuer or the equivalent in each of the provinces and territories of Canada.

9. The Filer is not in default of any applicable securities laws.

10. The Filer indirectly holds oil and natural gas properties and related assets, mainly in the Kaybob and Grande Prairie areas of Alberta, through directly and indirectly held wholly-owned limited partnerships.

360 fiber

11. 360 fiber is a corporation governed by the laws of the Province of British Columbia and its head office is located in Vancouver, British Columbia.

12. 360networks Corporation and 360networks Canada ltd. are the only shareholders of 360 fiber.

13. 360 fiber is not a reporting issuer or the equivalent in any jurisdiction of Canada and its shares are not listed on any stock exchange.

14. 360 fiber emerged from protection under the *Companies' Creditors Arrangement Act* (Canada) (**CCAA**) in November 2002 and subsequently sold substantially all of its assets (other than debts owing from, and investments in, affiliates of 360 fiber) in a sale to Bell Canada in November 2004 (the **Bell Sale**). Both before emerging from CCAA

protection and after its emergence up until the Bell Sale, 360 fiber was in the telecom business.

15. In connection with the Bell Sale, 360 fiber provided an indemnity to Bell (the **Bell Indemnity**) for a one year duration in respect of (i) failure by 360 fiber to fulfill its covenants in the sale agreement and (ii) breaches of 360 fibers representations and warranties in the sale agreement.

16. The Bell Indemnity is indefinite in the case of fraud and the following representations of 360 fiber: (i) that 360 fiber had proper authority to enter into the sale agreement; (ii) that the authorized and issued capital of certain subsidiaries of 360 fiber was as represented in the sale agreement; and (iii) that 360 fiber did not enter into any other agreements to sell the assets and shares that were the subject of the sale agreement and that 360 fiber had proper title to such assets and shares.

17. No claims have been made by Bell under the Bell Indemnity since the Bell Sale and to the knowledge of the Filer at this time there are no other outstanding indemnities given by 360 fiber.

18. Since the Bell Sale, 360 fiber's business activities have involved the collection of receivables and attempting to realize on the value of certain residual telecom assets primarily comprised of dark fiber and associated equipment.

Proposed Trust Circular Disclosure

19. In order to obtain Unitholder approval for the arrangement to effect the Possible Business Combination, the Filer must send an information circular to the Unitholders (the **Trust Circular**) that complies with Form 51-102F5.

20. The Filer will include in the Trust Circular, in lieu of the historical and pro forma financial statements of 360 fiber required pursuant to section 14.2 of Form 51-102F5 (the **360 fiber Financials**), a pro forma balance sheet as at the date of the most recent balance sheet of the Filer to be incorporated by reference in the Trust Circular which will give effect to the Possible Business Combination as if it had taken place as at such date (the **Proposed Pro Forma Balance Sheet**), with subsequent events and pro forma adjustments.

21. The Trust Circular will otherwise comply with applicable securities laws and will contain disclosure regarding 360 fiber's tax pools and how the tax position of New Trilogy following the completion of the Possible Business Combination will differ from the tax position of the Filer prior to the completion of the Possible Business Combination.

22. The Trust Circular will contain disclosure regarding the Bell Indemnity and the New Trilogy Indemnity as well as the risks related to such indemnities.

23. Including the 360 fiber Financials in the Trust Circular will not assist the Unitholders with their assessment of the Possible Business Combination since:

    (a) 360 fiber will have no assets or liabilities other than its tax pools at closing of the Possible Business Combination; and

    (b) following the completion of the Possible Business Combination New Trilogy will not carry on any of the business previously carried on by 360 fiber.

24. Including the disclosure detailed in paragraph 20 above in the Trust Circular will provide Unitholders with all of the material information they need to assess the Possible Business Combination and will ensure that Unitholders understand that following the completion of the Possible Business Combination New Trilogy will not have any assets or liabilities of 360 fiber other than its tax pools nor will it carry on any of the business previously carried on by 360 fiber.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that the Filer includes in the Trust Circular the Proposed Pro Forma Balance Sheet.

Furthermore, the decision of the principal regulator and the securities regulatory authority or regulator in Ontario is that the Application and this decision be kept confidential and not be made public until the earlier of: (i) the date on which the Filer publicly announces that it has entered into a definitive agreement in respect of the Possible Business Combination; (ii) the date the Filers advise the Decision Makers that there is no longer any need for the application in this decision to remain confidential; and (iii) the date that is 90 days after the date of this decision.

"Blaine Young"
Associate Director, Corporate Finance
Alberta Securities Commission

2.1.6 9200-7574 Québec Inc.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions - Application for an order that the issuer is not a reporting issuer – issuer is in default of certain continuous disclosure obligations.

Applicable Legislative Provisions

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

February 10, 2010

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

AND

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

AND

IN THE MATTER OF
9200-7574 QUÉBEC INC.
(the "Filer")

DECISION

Background

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

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

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

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

Interpretation

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

Representations

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

1. The Filer results from an amalgamation that took effect on December 23, 2009 between Cossette Inc. and 9209-6841 Québec Inc. ("**Newco**"), a newly incorporated company (the "**First Amalgamation**"), followed by an amalgamation on December 24. 2009 between the company that resulted from the First Amalgamation, Cossette Inc. ("**Cossette**") and 9200-7574 Québec Inc. ("**Parentco**") to form the Filer (the "**Second Amalgamation**", collectively with the First Amalgamation, the "**Amalgamations**"). The Amalgamations were carried out under Part IA of the Companies Act (Québec) (the "**QCA**").

2. The Filer has its head office at 801 Grande Allée West, Suite 200, Québec City, Québec.

3. On December 18, 2009, the First Amalgamation was approved by a majority of the shareholders of Cossette Inc. Pursuant to the First Amalgamation that occurred on December 23, 2009, the security holders of Cossette Inc., with the exception of Newco and Parentco, received redeemable shares from Cossette Inc. in exchange for their shares. The redeemable shares were all redeemed by Cossette Inc., after the First Amalgamation, at the price of $8.10 per share, payable in cash. After the First Amalgamation, Cossette Inc. became an indirect wholly-owned subsidiary of Mill Road Capital, L.P. ("**Mill Road**").

4. On December 24, 2009, Cossette amalgamated with Parentco under Part IA of the QCA. The Filer is the company that resulted from the Second Amalgamation and is an indirect wholly-owned subsidiary of Mill Road.

5. Prior to the Amalgamations, Cossette Inc. was a reporting issuer in each of the Jurisdictions. After the Amalgamations, the Filer, as the successor entity to Cossette Inc., became a reporting issuer in each of the Jurisdictions.

6. At the close of the markets on December 29, 2009, the common shares of Cossette were delisted from the Toronto Stock Exchange.

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

8. No outstanding securities of the Filer are traded on a market place as defined in National Instrument 21-101 *Marketplace Operation*.

9. The Filer has currently no intention to make an offering of its securities to the public.

10. The Filer is applying for a decision that it is not a reporting issuer in the Jurisdictions in which it is currently a reporting issuer.

11. The Filer is not in default of any of its obligations under the Legislation as a reporting issuer, except that it has not filed, on or prior to December 29, 2009, its annual information form for the year ended September 30, 2009 as required under National Instrument 51-102 *Continuous Disclosure Obligations*.

12. The Filer is unable to use the simplified procedure under *CSA Staff Notice 12-307 – Applications for a Decision that an Issuer is not a Reporting Issuer* because it does not meet all of the simplified procedure criteria.

13. Upon the grant of the Exemptive Relief Sought, the Filer will not be a reporting issuer in any Jurisdiction.

Decision

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

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

"Alida Gualtieri"
Manager, Continuous Disclosure
Autorité des marches financiers

2.1.7 Canadian Energy Services L.P. – s. 1(10)

Headnote

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

Applicable Legislative Provisions

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

Citation: Canadian Energy Services L.P., Re, 2010 ABASC 25

January 26, 2010

Blake, Cassels & Graydon LLP
3500 Bankers Hall East Tower
855 - 2 Street SW
Calgary, AB T2P 4J8

Attention: Kevin Long

Dear Sir:

Re: Canadian Energy Services L.P. (the Applicant) - Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the Jurisdictions) that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions for a decision under the securities legislation (the **Legislation**) of the Jurisdictions to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

Blaine Young
Associate Director, Corporate Finance

2.1.8 Legg Mason Canada Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Plan Sponsor, CAP Members, and certain existing and future pooled funds exempted from the dealer registration and prospectus requirements in the Legislation in respect of trades in securities of mutual funds to a tax-assisted capital accumulation plan, subject to certain terms and conditions – Plan Sponsor acts as the service provider to the CAP.

Statutes Cited

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

Rules Cited

National Instrument 81-102 – Mutual Funds.
National Instrument 45-106 – Prospectus and Registration Exemptions.

Published Documents Cited

Amendments to NI 45-106 – Registration and Prospectus Exemption for Certain Capital Accumulation Plans, October 21, 2005 (2005), 25 OSCB 8681.

February 12, 2010

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
LEGG MASON CANADA INC.
(THE FILER)
AND
THE FUNDS LISTED IN APPENDIX A

DECISION

Background

The principal regulator in the Jurisdiction (the **Principal Regulator**) has received an application from the Filer, as the plan sponsor and administrator of the Legg Mason Canada group registered retirement savings plan (the **Plan**), the officers and employees acting on behalf of the Filer and the Legg Mason Canada funds identified in Appendix A hereto, and any other funds managed by the Filer that are selected for the Plan sponsored by the Filer

(collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for an exemption from:

(a) the dealer registration requirements of the Legislation in respect of trades in the securities of the Funds under the Plan for which the Filer is the sponsor and administrator, to a member of such a Plan (a **Plan Member**) as part of the Plan Member's participation in the Plan (the **Dealer Registration Relief**); and

(b) the prospectus requirements of the Legislation in respect of the distribution of securities of the Funds to a Plan Member as part of the Plan Member's participation in the Plan, without a prospectus (the **Prospectus Relief**);

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

(a) the Ontario Securities Commission is the principal regulator for the 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 respect of the Dealer Registration Relief and Prospectus Relief in Quebec (the **Other Province**).

Interpretation

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

Representations

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

1. The Filer is a corporation established under the laws of Canada and has its head office in Toronto, Ontario.

2. The Filer is registered as a portfolio manager under the securities legislation of all provinces and territories of Canada and in Ontario and Newfoundland and Labrador, as an exempt market dealer and also in Ontario as an adviser in the category of commodity trading manager under the *Commodity Futures Act* (Ontario).

3. The Filer is the plan sponsor of the Plan, pays for all administrative services in respect of the Plan and provides the order processing services of the Plan.

4. The Plan is a group registered retirement savings plan. As such, the Plan is a "capital accumulation plan" (**CAP** or **CAP Plan**) as that term is defined under the proposed amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**) (collectively, the **Proposed CAP Exemption**) which were published by the Canadian Securities Administrators on October 21, 2005 and adopted in the form of a blanket exemption (the **Blanket Orders**) in each province and territory of Canada other than Ontario, Quebec, Newfoundland and Labrador, the Yukon and Nunavut.

5. The Filer established the Plan for the benefit of individual Plan Members. Plan Members are current and former officers and employees and/or their spouses by spousal contribution. The active Plan Members are resident solely in Ontario and Quebec.

6. The Plan only allows Funds managed by the Filer to be investment options for Plan Members under the Plan.

7. The Filer matches the contribution of Plan Members up to a prescribed limit.

8. The Funds are mutual fund trusts but are not reporting issuers. The Funds are sold only on a private placement basis by way of an Offering Memorandum ("OM") to members of the Plan. Each of the Funds complies with Part 2 of National Instrument 81-102 *Mutual Funds*. The Filer acts as trustee of the Funds.

9. The Filer is not in default of securities legislation in any province or territory of Canada. The Funds are not in default of securities legislation in any province or territory of Canada.

10. The Filer has ceased to offer funds subject to National Instrument 81-102 *Mutual Funds* and only offers investment funds that are not reporting issuers.

11. The Filer is the investment fund manager and portfolio manager of the Fund and delegates its portfolio management duties to affiliates of the Filer. Certain of the affiliates are either currently registered in Ontario as a portfolio manager (international adviser) and in the future may rely on either an "exempt international adviser" status or the sub-adviser exemption in section 7.3 of OSC Rule 35-502 *Non-Resident Advisers* in providing their services to the Funds.

12. The Filer, as plan sponsor of the Plan, currently trades in securities of the Funds to Plan Members in reliance on certain prospectus and dealer registration exemptions in securities legislation set out in National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**). Plan Members are provided with an offering memorandum and may make initial investment decisions and subsequent changes to those

investment decisions, with or without the assistance of an adviser selected by the Plan Member (which is not the Filer). Plan Members provide these instructions to the Filer and the Filer then places the orders directly with the Funds. The interest in the securities of the Funds of the Plan Members is registered in the name of the Plan Member. The Filer also deals with all other administrative aspects of the Plan, including any necessary communications with the Plan Members.

13. The dealer registration exemption relied on by the Filer in Part 3 of NI 45-106 will expire on March 27, 2010 under section 8.5 of NI 45-106. As such, the Filer requires the Dealer Registration Relief to continue trading securities of the Funds to a Plan Member after March 27, 2010. The Filer and the Funds seek the Prospectus Relief to enable the Plan to operate in accordance with the conditions of the Proposed CAP Exemption and wish to no longer rely on the prospectus exemption in Part 2 of NI 45-106 going forward.

14. The Filer may have active Plan Members in provinces other than Ontario and Quebec in the future. Accordingly, the Filer and the Funds wish to trade securities of the Funds to Plan Members uniformly in accordance with the conditions specified in the Proposed CAP Exemption which has been adopted by Blanket Order in certain other jurisdictions of Canada. Such proposal contemplates both a dealer registration exemption and a prospectus exemption based on certain conditions.

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:

1. the Dealer Registration Relief is granted provided that the Filer, as plan sponsor of the Plan:

   (a) selects the Funds that Plan Members will be able to invest in under the Plan;

   (b) establishes a policy, and provides Plan Members with a copy of the policy and any amendments to it, describing what happens if a Plan Member does not make an investment decision;

   (c) provides Plan Members, in addition to any other information that the Filer believes is reasonably necessary for a Plan Member to make an investment decision within the Plan, and unless that information has previously been provided, with the following information about each Fund the Plan Member may invest in:

      (i) the name of the Fund;

      (ii) the name of the manager of the Fund and its portfolio adviser;

      (iii) the fundamental investment objective of the Fund;

      (iv) the investment strategies of the Fund or the types of investments the Fund may hold;

      (v) a description of the risks associated with investing in the Fund;

      (vi) where a Plan Member can obtain more information about each Fund's portfolio holdings; and

      (vii) where a Plan Member can obtain more information generally about each Fund, including any continuous disclosure;

   (d) provides Plan Members with a description and amount of any fees, expenses and penalties relating to the Plan that are borne by Plan Members, including:

      (i) any costs that must be paid when the Fund is bought or sold;

      (ii) costs associated with accessing or using any of the investment information, decision-making tools or investment advice provided by the Filer;

      (iii) Fund management fees;

      (iv) Fund operating expenses;

      (v) record keeping fees;

      (vi) any costs for transferring among investment options, including penalties, book and market value adjustments and tax consequences;

      (vii) account fees; and

      (viii) fees for services provided by service providers,

provided that the Filer may disclose the fees, penalties and expenses on an aggregate basis, if the Filer discloses the nature of the fees, expenses and penalties, and the aggregated fees do not include fees that arise because of a choice that is specific to a particular Plan Member;

(e) at least annually, provides the Plan Members with performance information about each Fund the Plan Members may invest in, including:

(i) the name of the Fund for which the performance is being reported;

(ii) the performance of the Fund, including historical performance for one, three, five and 10 years if available;

(iii) a performance calculation that is net of investment management fees and Fund expenses;

(iv) the method used to calculate the Fund's performance return calculation, and information about where a Plan Member can obtain a more detailed explanation of that method;

(v) the name and description of a broad-based securities market index, selected in accordance with National Instrument 81-106 – *Investment Fund Continuous Disclosure*, for the Fund, and corresponding performance information for that index; and

(vi) a statement that past performance of the Fund is not necessarily an indication of future performance;

(f) at least annually, informs Plan Members if there were any changes in the choice of Funds that Plan Members could invest in and where there was a change, provides information about what Plan Members need to do to change their investment decision, or make a new investment;

(g) provides Plan Members with investment decision-making tools that the Filer reasonably believes are sufficient to assist them in making an investment decision within the Plan;

(h) provides the information required by paragraphs (b), (c), (d) and (g) prior to the Plan Member making an investment decision under the Plan ; and

(i) if the Filer makes investment advice from a registrant available to Plan Members, the Filer must provide Plan Members with information about how they can contact the registrant; and

2. the Prospectus Relief is granted provided that:

(a) the conditions set forth in paragraph 1 above are met; and

(b) the Funds comply with Part 2 of National Instrument 81-102 – *Mutual Funds*; and

3. (a) the Dealer Registration Relief will terminate upon the coming into force in NI 45-106, or proposed National Instrument 31-103 – *Registration Requirements* or another instrument, of a dealer registration exemption for trades in a security of a mutual fund to a Plan, or 60 days after the Decision Maker publishes in its Bulletin a notice or a statement to the effect that it does not propose to provide such a dealer registration exemption; and

(b) the Prospectus Relief will terminate upon the coming into force in NI 45-106 of a prospectus exemption for trades in a security of a mutual fund to a Plan, or 60 days after the Decision Maker publishes in its Bulletin a notice or a statement to the effect that it does not propose to provide such a prospectus exemption.

"Paulette L. Kennedy"
Commissioner

"Mary G. Condon"
Commissioner

APPENDIX A

NAME OF FUNDS

Legg Mason Western Asset Canadian Money Market Fund
Legg Mason Western Asset Canadian Core Bond Fund
Legg Mason Batterymarch Canadian Core Equity Fund
Legg Mason Batterymarch North American Equity Fund
Legg Mason Batterymarch Canadian Small Cap Fund
Legg Mason Batterymarch U.S. Equity Fund
Legg Mason U.S. Value Fund
Legg Mason GC International Equity Fund
Legg Mason Accufund
Legg Mason Diversifund

2.1.9 Kangaroo Media Inc. – s. 1(10)

Headnote

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

Applicable Legislative Provisions

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

Translation

February 3, 2010

Kangaroo Media Inc.
C/0 Davies Ward Phillips & Vineberg LLP
1501, McGill College Ave., 26th floor
Montréal (Québec)
H3A 3N9

Attention to: Trevor Rowles

Dear Sir:

Re: Kangaroo Media Inc. (the Applicant) – application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the Jurisdictions) that the Applicant is not a reporting issuer

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

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

Alida Gualtieri
Manager, Continuous Disclosure
Autorité des marchés financiers

2.2 Orders

2.2.1 Mill Run Golf Club – s. 144

Headnote

Application by issuer for an order revoking a cease trade order made by the Commission - cease trade order issued as a result of the issuer's failure to file certain continuous disclosure documents required by Ontario securities law - defaults substantially remedied - cease trade order revoked.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127 and 144.

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

AND

IN THE MATTER OF
MILL RUN GOLF CLUB
(formerly known as Mill Run Golf & Country Club)

ORDER
(Section 144)

WHEREAS a Director of the Ontario Securities Commission (the "Commission") issued a temporary cease trade order dated May 5, 2005 under section 127 of the *Securities Act* (the "Act") as extended by an order dated May 17, 2005 under section 127 of the Act (collectively, the "Cease Trade Order") directing that all trading in the securities of Mill Run Golf Club (formerly known as Mill Run Golf & Country Club) (the "Applicant") cease until further order by the Director;

AND WHEREAS the Applicant has applied to the Commission for an order pursuant to section 144 of the Act revoking the Cease Trade Order;

AND WHEREAS the Applicant has represented to the Commission that:

The Applicant

1. The Applicant was created as a joint venture known as Firefighter's Mill Run Golf and Country Club pursuant to a Joint Venture Agreement dated January 10, 1985 (the "Joint Venture Agreement").

2. The Applicant's head office is located at 269 Durham Rd. #8, Uxbridge, Ontario L9P 1R1.

3. The Applicant is a reporting issuer under the securities legislation of the province of Ontario and is not a reporting issuer in any other jurisdiction in Canada.

4. The authorized securities of the Applicant consist of an unlimited number of Units. The Units are not listed or posted for trading on any marketplace in Canada.

5. The Applicant's sole business is the operation of a golf and country club facility in Uxbridge, Ontario.

6. Pursuant to the Joint Venture Agreement, each Unit has an equal individual ownership interest in the lands and assets of which the Applicant is the beneficial owner. The legal ownership of the lands and assets are held by 590954 Ontario Inc., the trustee of the joint venture.

7. As of the date hereof, there are approximately 871 unit holders that own, in the aggregate, 1,086 Units in the Applicant.

8. The Applicant became a reporting issuer in Ontario pursuant to the filing and receipt of a final long-form prospectus dated January 10, 1985 with respect to an initial public offering of 500 Units.

9. The Applicant has a board of directors (the "Board") that is elected by the unit holders at annual meetings pursuant to the provisions of the Joint Venture Agreement.

10. The Applicant's fiscal year end is December 31.

Cease Trade Order

11. The Cease Trade Order was issued as a result of the Applicant's failure to file with the Commission, as required under Ontario securities law (the "Default"), its audited annual financial statements (the "2004 Financial Statements") and related management's discussion and analysis ("2004 MD&A") for the financial year ended December 31, 2004.

12. On August 9, 2005, the Applicant filed the 2004 Financial Statements with the Commission. However, the Applicant failed to file the 2004 MD&A and annual officer certificates required by Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the instrument and its successor instrument collectively referred to as "NI 52-109") relating to the 2004 Financial Statements.

13. In addition, following the issuance of the Cease Trade Order, the Applicant failed to file the following documents with the Commission:

    a. unaudited financial statements for the first, second and third interim periods of the 2005, 2006, 2007 and 2008 financial years and related MD&A;

    b. officer certifications required by NI 52-109 for the first, second and third interim periods of the 2005, 2006, 2007 and 2008 financial years;

    c. the annual management information circulars relating to the applicable annual meetings of unit holders for the 2005, 2006 and 2007 financial years; and

    d. a material change report with respect to a material change that occurred in the affairs of the Applicant in May, 2005.

14. The Applicant filed by the required deadlines audited annual financial statements for the financial years ending December 31, 2005, 2006 and 2007, however did not file the corresponding MD&A or officer certificates required by NI 52-109.

15. The Applicant made all filings required by Ontario securities law with the Commission for the 2008 financial year in accordance with required deadlines other than as noted above.

Trades in Contravention of the Cease Trade Order

16. The Applicant did not properly understand the provisions of the Cease Trade Order. Specifically, the Applicant was under the mistaken belief that the Cease Trade Order exclusively prohibited the Applicant from issuing new Units. As a result, subsequent to the issuance of Cease Trade Order, there were certain trades of previously issued Units that occurred between individual unit holders. The following Units were traded by individual unit holders: (a) 25 Units were traded in 25 separate transactions in 2005; (b) 53 Units were traded in 53 separate transactions in 2006; (c) 27 Units were traded in 27 separate transactions in 2007; and (d) 14 Units were traded in 14 separate transactions in 2008.

17. No new Units have been issued by the Applicant since the Cease Trade Order was issued.

Defaults Prior to the Cease Trade Order

18. On August 18, 1992 the Applicant was granted an exemptive relief order by the Commission (the "Relief Order") that, subject to certain conditions, exempted the Applicant from the requirements to file with the Commission interim financial statements and related MD&A relating to the first, second and third interim periods of each financial year of the Applicant.

19. In 1995, the Applicant underwent a material change involving the resignation of certain key management personnel and members of its Board.

20. Pursuant to its provisions, the Relief Order automatically terminated sixty (60) days

subsequent to the occurrence of the material change referred to in paragraph 19 hereof. However, the Applicant mistakenly believed that it could continue to rely on the exemptions provided by the Relief Order. Furthermore, the Applicant did not appreciate that the Relief Order only granted relief from the requirement to file certain interim financial statements and related MD&A and did not apply to continuous disclosure obligations generally. As a result, from 1995 until the issue of the Cease Trade Order, the Applicant failed to comply with many continuous disclosure requirements of Ontario securities law (the "Prior Default"), including the requirements to file with the Commission:

a. annual MD&A relating to its annual financial statements filed with the Commission;

b. annual management information circulars relating to the annual meetings of unit holders;

c. unaudited financial statements for the first, second and third interim periods of each financial year and related MD&A;

d. officer certificates required for interim financial periods beginning on or after January 1, 2004; and

e. material change reports.

Current Filings

21. On October 7, 2009 the Applicant filed the following materials with the Commission through SEDAR:

a. annual MD&A for the financial years ending December 31, 2006 and 2007;

b. annual officer certificates for the financial years ending December 31, 2006 and 2007; and

c. annual management information circulars relating to the annual meetings of unit holders (including the disclosure required under National Instrument 52-110 – *Audit Committees* and National Instrument 58-101 – *Disclosure of Corporate Governance Practices*) in the prescribed form for the financial years ended December 31, 2006 and 2007.

22. The Applicant has made all required filings under Ontario securities law to date for the 2009 financial year.

Other Representations

23. As noted above, the Applicant remains in default of the following filing requirements under Ontario securities law. Specifically, the Applicant has not filed:

a. MD&A and officers certificates required by NI 52-109 for the financial years ended December 31, 2004 and 2005;

b. unaudited financial statements for the first, second and third interim periods of the 2005, 2006, 2007 and 2008 financial years;

c. related MD&A and officer certificates required by NI 52-109 for the foregoing interim financial periods;

d. management information circulars relating to the annual meetings of unit holders for the 2005 financial year; and

e. continuous disclosure documents relating to the Prior Default.

24. The Applicant has not filed the interim financial statements, related MD&A and officer certificates referred to in paragraphs 23(b) and (c) above because its audited annual financial statements for the 2005, 2006, 2007 and 2008 financial years have been filed within the Commission and, therefore, historical interim finanical statements and related MD&A will not enhance the ability for current and potential investors to understand the financial and operational performance of the Applicant.

25. The Applicant has not filed the MD&A and officer certificates for the financial years ended December 31, 2004 and 2005 referred to in paragraph 23(a) above because the age of the information makes it no longer relevant to understanding the current financial position of the Applicant;

26. The Applicant has not filed the management information circular relating to the annual meeting of unitholders for the 2005 financial year because of the length of time that has passed since the meeting was held and a lack of access to records which makes it difficult to prepare a circular for that specific meeting;

27. The Applicant does not propose to remedy the Prior Default because of the length of time that has passed since the Applicant ceased to be able to rely on the Relief Order and the fact that these historical documents would not provide relevant information with respect to the Applicant's current business and operations;

28. The Applicant has continued to hold annual meetings of unit holders in accordance with the requirements of the Joint Venture Agreement. The most recent annual meeting was held on May 3, 2009 with respect to the December 31, 2008 financial year.

29. On December 15, 2009 the Applicant filed on SEDAR an omnibus press release and related material change report ("Updated Material Change Report") to update the market place with respect to certain material changes that have occurred since the Prior Default and also to provide background information relating to the Cease Trade Order.

30. Since the issue of the Cease Trade Order, the Board has taken substantial steps (the "Steps") to ensure that it will comply with all relevant securities law and regulations which affect a reporting issuer in Ontario.

31. Such Steps include retaining experienced securities law legal counsel as well as an external financial consultant to advise the Board with respect to applicable requirements, educating management on securities law and compliance (including having a Board member attend a workshop organized by the TSX Venture Exchange relating to managing a public company); establishing and implementing various internal policies (including a Disclosure Policy, a Code of Conduct Policy, and a Corporate Governance Policy), all as appropriate for a reporting issuer in order to ensure continued securities law compliance; and establishing and implementing a Disclosure Committee and a Governance Committee to oversee the implementation of such Policies.

32. Except as described above, the Applicant is not otherwise in default of any of the requirements of the Act or the rules and regulations made pursuant thereto.

33. There have been no material changes to the Applicant's business or operations since the date of the Cease Trade Order, except as otherwise described in the Updated Material Change Report.

34. The Applicant was subject to a Temporary Cease Trade Order issued by the Commission on May 7, 1987 for a failure to file interim financial statements for the interim financial period ended December 31, 1986 (the "1986 Order"). The 1986 Order was revoked on May 21, 1987 following the filing of the outstanding financial statements.

35. The Applicant was subject to a Temporary Cease Trade Order issued by the Commission on February 27, 1989 for a failure to file annual audited financial statements for the financial year ended September 30, 1988 (the "1988 Order"). The 1988 Order was revoked on March 1, 1989 following the filing of the outstanding financial statements.

36. Other than the Cease Trade Order, the 1986 Order and the 1988 Order, the Applicant has not been subject to any other cease trade orders.

37. The Applicant has paid all outstanding fees to the Commission, including all applicable activity and participation fees and late filing fees.

38. The Applicant's issuer profiles on SEDAR and SEDI are up-to-date.

39. Upon the issuance of this order revoking the Cease Trade Order, the Applicant will issue and file a press release and material change report with the Commission through SEDAR.

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

AND WHEREAS the Director being satisfied that it would not be prejudicial to the public interest to revoke the Cease Trade Order;

IT IS ORDERED pursuant to section 144 of the Act that the Cease Trade Order is revoked.

DATED at Toronto this 26th day of January, 2010.

"Jo-Anne Matear"
Assistant Manager, Corporate Finance

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

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

AND

IN THE MATTER OF
NEW LIFE CAPITAL CORP.,
NEW LIFE CAPITAL INVESTMENTS INC.,
NEW LIFE CAPITAL ADVANTAGE INC.,
NEW LIFE CAPITAL STRATEGIES INC.,
1660690 ONTARIO LTD., L. JEFFREY POGACHAR,
PAOLA LOMBARDI AND ALAN S. PRICE

ORDER
(Section 127)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AND WHEREAS on October 23, 2008 Staff, counsel for New Life and counsel for Pogachar and Lombardi attended before the Commission, New Life brought a motion to seek a variation to the Direction for certain purposes and the Commission ordered that (1) the Temporary Order is continued until November 7, 2008 and the hearing in this matter is adjourned to November 6, 2008 at 9:00 a.m.; and (2) the Direction is varied to permit the release of $60,000.00 to pay Gowling Lafleur Henderson LLP to cover unpaid accounts;

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

AND WHEREAS a hearing was held on December 5, 2008 at which Staff and counsel for Pogachar and Lombardi attended, Staff having been advised as to the consent to proposed hearing dates by counsel for New Life and counsel for Price, and the Commission ordered that the Temporary Order is continued until the conclusion of the hearing on the merits in this matter or until further order of the Commission and the hearing is adjourned to the weeks of August 10 and 17, 2009 but for August 18, 2009;

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

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

AND WHEREAS on December 18, 2009, the Commission received a Notice of Intention to Act in Person from Price;

AND WHEREAS Staff advised the Commission on January 13, 2010 that they obtained new documents which demonstrate a need for further investigation and requested an adjournment to February 16, 2010 at 9:00 a.m., at which time Staff would advise what, if any, further time may be necessary to investigate and a new date for the hearing on the merits would be set;

AND WHEREAS Staff advised the Commission that Price consented to the requested adjournment and Staff and counsel for Pogachar and Lombardi and counsel for KPMG Inc., the court-appointed receiver for New Life, appeared before the Commission on January 13 and the Commission adjourned the hearing to February 16, 2010;

AND WHEREAS, on February 16, 2010, Staff, counsel for New Life and counsel for Pogachar and Lombardi attended before the Commission and Staff requested that the hearing on the merits be adjourned to the weeks of September 13 and 20, 2010 to permit further investigation and to accommodate the schedules of counsel for both Staff and the parties;

AND WHEREAS Staff advise that Price and counsel for KPMG Inc. as court-appointed receiver have consented to the requested adjournment and counsel for Pogachar and Lombardi takes no position;

IT IS ORDERED that the hearing on the merits is adjourned to the weeks of September 13 and 20, 2010, with the exception of September 14, 2010 when the Commission will not sit, or to such other dates as are agreed by the parties and fixed by the Office of the Secretary.

DATED at Toronto this 16th day of February, 2010.

"James E. A. Turner"

2.2.3 Maple Leaf Investment Fund Corp. et al. – s. 127(8)

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

AND

**IN THE MATTER OF
MAPLE LEAF INVESTMENT FUND CORP.
AND JOE HENRY CHAU (aka: HENRY JOE CHAU,
SHUNG KAI CHOW AND HENRY SHUNG KAI CHOW)**

**ORDER
(Section 127(8))**

WHEREAS on May 5, 2009, the Ontario Securities Commission (the "Commission") made an order pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), in respect of Maple Leaf Investment Fund Corp. and Joe Henry Chau (aka: Henry Joe Chau, Shung Kai Chow and Henry Shung Kai Chow) (collectively, the "Respondents") that all trading in securities by the Respondents cease, and that any exemptions contained in Ontario securities law do not apply to the Respondents (the "Temporary Order");

AND WHEREAS a hearing was held on May 15, 2009 to consider the extension of the Temporary Order and the Commission ordered, pursuant to subsection 127(8) of the Act, that the Temporary Order as against the Respondents be extended until November 19, 2009;

AND WHEREAS, on November 10, 2009, the Commission ordered, on consent, pursuant to subsection 127(8) of the Act, that the Temporary Order as against the Respondents be extended until February 19, 2010 and that the matter return before the Commission on February 17, 2010 at 10:00 a.m.;

AND WHEREAS on February 12, 2010, the Commission issued a Notice of Hearing, pursuant to s.127 and 127.1 of the Act accompanied by a Statement of Allegations with respect to the Respondents and other respondents for a hearing to commence on February 25, 2010;

AND WHEREAS Staff advise that on February 12, 2010, the Respondents were served with the Notice of Hearing and Statement of Allegations dated February 12, 2010;

AND WHEREAS the Commission held a hearing on February 17, 2010 to consider the extension of the Temporary Order, where counsel for Staff attended in person and the Respondents, although notified of the hearing, did not attend;

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

IT IS ORDERED that the Temporary Order is continued in respect of the Respondents until February 26, 2010 and this matter shall return before the Commission on February 25, 2010 at 10:00 a.m.

DATED at Toronto this 17th day of February, 2010.

"Carol S. Perry"

2.3 Rulings

2.3.1 Nexus Investment Management Inc. – ss. 74(1), 144(1)

Headnote

Relief from the prospectus requirement of the Act to permit the distribution of pooled fund securities to managed accounts held by non-accredited investors on an exempt basis – NI 45-106 containing carve-out for managed accounts in Ontario prohibiting portfolio manager from making exempt distributions of securities of its proprietary pooled funds to its managed account clients in Ontario unless managed account client qualifies as accredited investor or invests $150,000 – portfolio manager providing bona fide portfolio management services to high net worth clients – Not all managed account clients are accredited investors – portfolio manager permitted to make exempt distributions of proprietary pooled funds to its managed accounts provided written notice is delivered to clients advising them of the relief granted – portfolio manager is restricted from distributing proprietary pooled fund securities to parties other than its managed account clients.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53, 74(1), 144(1).

Rules Cited

National Instrument 45-106 Prospectus and Registration Exemptions.
National Instrument 31-103 Registration Requirements and Exemptions.

February 9, 2010

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

AND

IN THE MATTER OF
NEXUS INVESTMENT MANAGEMENT INC.
(the "Filer")

RULING
(Subsections 74(1) and 144(1) of the Act)

Background

The Ontario Securities Commission (the "**Commission**") has received an application from the Filer, on behalf of itself and any open-ended investment fund that is not a reporting issuer and for which the Filer acts or will act as manager and portfolio manager (the "**Nexus Funds**") for a ruling:

(i) pursuant to subsection 74(1) of the Act, that distributions of securities of the Nexus Funds to managed accounts of Clients (as defined below) for which the Filer provides discretionary investment management services will not be subject to the prospectus requirement under section 53 of the Act (the "**Prospectus Requirement**"); and

(ii) pursuant to subsection 144(1) of the Act, to revoke and replace the Current Relief (as defined below)

(collectively, the **Requested Relief**).

Interpretation

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

Representations

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

1. The Filer is incorporated under the laws of Ontario. Its head office is in Toronto, Ontario.

2. The Filer is registered as an adviser in the categories of investment counsel and portfolio manager and as a limited market dealer with the Commission. The Filer is also registered as an adviser in British Columbia, Alberta, Quebec and New Brunswick.

3. The Filer is or will be the manager and portfolio manager of the Nexus Funds. RBC Dexia Investor Services Trust is the trustee of the currently existing Nexus Funds.

4. The Filer offers investment management and financial counselling services, primarily to high net worth individuals (each, a "**Client**") through a managed account ("**Managed Account**").

5. The Filer generally acts as portfolio manager to Clients who are "accredited investors" within the meaning of National Instrument 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**"). However, from time to time, the Filer may agree to provide services to Clients who are not "accredited investors".

6. The Filer's normal minimum aggregate balance for all the Managed Accounts of a Client is $250,000. This minimum may be waived at the Filer's discretion. From time to time, the Filer may accept certain Clients with less than $250,000 under management.

7. A significant majority of the Filer's Clients are accredited investors. Any Client that is not an

"accredited investor" will typically have a close relationship with a Client that is an accredited investor or met the Filer's minimum account balance at the time of opening the Managed Account.

8. The vast majority of non-accredited investor Clients are "**Secondary Clients**" as that term is defined under exemptive relief granted to the Filer by the Commission on August 28, 2007 (the "**Current Relief**"). The Current Relief grants the Filer relief from the Prospectus Requirement to distribute securities of the Nexus Funds to such Secondary Clients in amounts that are less than $150,000. A condition of the Current Relief is that the Secondary Clients meet that definition at all times.

9. From time to time, the Filer may also have Managed Accounts that are held by Clients who are not accredited investors or Secondary Clients ("**Non-Exempt Clients**"). These Non-Exempt Clients are typically Clients (i) who meet the Filer's minimum account balance (or met the Filer's minimum account balance at the time of opening the Managed Account), or (ii) who, due to a change in circumstances, are no longer accredited investors or Secondary Clients, or (iii) who may otherwise have a relationship with a current Client but the relationship does not meet the definition of a Secondary Client under the Current Relief.

10. The Filer cannot rely on the accredited investor exemption in NI 45-106 or on the Current Relief to provide its services to Managed Accounts held by Non-Exempt Clients.

11. All of the Managed Accounts are serviced by individual portfolio managers of the Filer who meet the proficiency requirements of an advising officer or advising representative (or associate advising officer or associate advising representative) under Ontario securities law.

12. Each Client who wishes to receive the investment management services of the Filer executes a written agreement (the "**Investment Counsel Agreement**") whereby the Client appoints the Filer to act as portfolio manager in connection with an investment portfolio of the Client with full discretionary authority to trade in securities for the Managed Account without obtaining the specific consent of the Client to the trade. The Investment Counsel Agreement further sets out how the Managed Account operates and informs the Client of the Filer's various rules, procedures and policies.

13. At the initial meeting between a new Client and a portfolio manager, the portfolio manager establishes the Client's general investment goals and objectives, which are then generally documented in an investment objectives letter ("**IPS**") that describes the strategies that the Filer shall employ to meet these objectives and includes specific information on matters such as asset allocation, risk tolerance and liquidity requirements. To the extent that a Client's goals or circumstances have changed, a new IPS is created to reflect those changes.

14. After the initial meeting, the Filer's portfolio manager offers to meet at least once per year with his/her Clients (or more frequently as required) to review the performance of their account and their investment goals.

15. The custodian of each Client sends the Client a monthly statement showing all transactions carried out in their Managed Account during the month. On a quarterly basis, the Filer sends its Clients a statement showing all holdings in their Managed Account and providing commentary on the investments contained in their Managed Account portfolio. The portfolio manager is available to review and discuss with Clients all account statements. In addition, Clients are invited to a quarterly lunch which discusses the performance and investments of the Nexus Funds.

16. The Filer has determined that to best fulfill its fiduciary duty to its Clients, all or a portion of the asset mix in each Client's portfolio should be invested in the Nexus Funds.

17. The Nexus Funds are, or will be, established by the Filer with a view to achieving efficiencies in the delivery of portfolio management services to its Clients' Managed Accounts. The Filer will not be paid any compensation with respect to the distribution of the Nexus Funds' securities to the Managed Accounts.

18. Investments in individual securities may not be appropriate for the Clients with smaller Managed Accounts, since they may not receive the same asset diversification benefits and may, as a result of the minimum commission charges, incur disproportionately higher brokerage commissions relative to the Clients with larger Managed Accounts.

19. To give all of its Clients the benefit of asset diversification, access to investment products with a very high minimum investment threshold and economies of scale on brokerage commission charges, the Filer proposes to cause its Clients, including those that do not qualify as "accredited investors", to invest in securities of the Nexus Funds, without the Client needing to invest a minimum of $150,000 in each Nexus Fund, subject to each Client's risk tolerance.

20. Currently, none of the Nexus Funds charge a commission or a management fee directly to investors. Instead, under the Investment Counsel

Agreements between each Client and the Filer, the Client agrees to pay the Filer a management fee based upon a percentage of assets under management in the Managed Account. Terms of the fees are detailed in each Client's Investment Counsel Agreement.

21. Each Nexus Fund will pay all administration fees and expenses relating to its operation. If, in the future, the Filer charges management fees or performance fees to a Nexus Fund and the Filer invests, on behalf of a Managed Account, in securities of such Nexus Fund, the necessary steps will be taken to ensure that there will be no duplication of fees between a Managed Account and the Nexus Funds.

22. While a Managed Account qualifies as an "accredited investor" in each province and territory outside Ontario, NI 45-106 contains a carve out for Managed Accounts in Ontario when the securities being purchased by the Managed Account are those of an investment fund. Absent the relief being requested, the Nexus Funds are prohibited in Ontario from distributing, and the Filer is effectively prohibited from investing in, securities of the Nexus Funds for the Managed Accounts, in reliance upon the "accredited investor" exemption in NI 45-106 in circumstances where the individual Client who is the beneficial owner of the Managed Account is not otherwise qualified as an "accredited investor". Reliance upon the $150,000 minimum investment exemption available under NI 45-106 may not be appropriate for smaller Managed Accounts as this might require a disproportionately high percentage of the account to be invested in a Nexus Fund.

23. Under the exempt distribution rule applicable in each province and territory outside Ontario, there is no restriction on the ability of Managed Accounts to purchase investment fund securities on an exempt basis. Under NI 45-106, a Managed Account in each province and territory outside Ontario can acquire securities of the Nexus Funds as an "accredited investor".

Ruling

The Commission being satisfied that the relevant test contained in subsection 74(1) of the Act has been met, the Commission rules pursuant to subsection 74(1) of the Act that relief from the Prospectus Requirement is granted in connection with the distribution of securities of the Nexus Funds to Clients provided that:

(a) securities of the Nexus Funds distributed pursuant to the relief from the Prospectus Requirement contained in this ruling shall only be distributed to Managed Accounts;

(b) for each Client that becomes a Client of the Filer after the date of this ruling that will invest in securities of one or more Nexus Funds through a Managed Account pursuant to this ruling, the Filer shall deliver to such Client, prior to effecting a trade in securities of a Nexus Fund in reliance on this ruling, written disclosure advising of:

(i) the nature of the relief granted under this ruling, and

(ii) the fact that the ruling permits the Client to invest in an investment fund product which the Client otherwise would not be allowed to invest in on an exempt basis through their Managed Account; and

(c) this ruling will terminate upon the coming into force of any legislation or rule of the Commission exempting a trade by a fully managed account in Ontario in securities of investment funds from the Prospectus Requirement.

"Carol S. Perry"
Commissioner
Ontario Securities Commission

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

2.3.2 Perennial Asset Management Corp. – s. 74(1)

Headnote

Relief from the prospectus requirement of the Act to permit the distribution of pooled fund securities to managed accounts held by non-accredited investors on an exempt basis – NI 45–106 contains a carve-out for managed accounts in Ontario which prohibits portfolio manager from making exempt distributions of securities of its proprietary pooled funds to its managed account clients in Ontario unless managed account client qualifies as accredited investor or invests $150,000 – portfolio manager provides bona fide portfolio management services to high net worth clients – not all managed account clients are accredited investors – portfolio manager permitted to make exempt distributions of proprietary pooled funds to its managed accounts provided written notice is sent to clients advising them of the relief granted – portfolio manager is restricted from distributing proprietary pooled fund securities to parties other than its managed account clients.

Applicable Legislative Provisions

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

Rules Cited

National Instrument 45-106 Prospectus and Registration Exemptions.
National Instrument 31-103 Registration Requirements and Exemptions.

February 12, 2010

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

AND

IN THE MATTER OF
PERENNIAL ASSET MANAGEMENT CORP.
(the "Filer")

RULING
(Subsection 74(1) of the Act)

Background

The Ontario Securities Commission (the **"Commission"**) has received an application from the Filer, on behalf of itself and any open-ended investment fund that is not a reporting issuer and is currently, or will be after the date of this ruling, established and managed by the Filer (together the **"Funds"**, individually, a **"Fund"**) for a ruling, pursuant to subsection 74(1) of the Act, that distributions of units of the Funds to Managed Accounts (as defined below) to which the Filer provides discretionary investment management services will not be subject to the prospectus requirement under section 53 of the Act (the **"Prospectus Requirement"**).

Interpretation

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

Representations

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

1. The Filer is federally incorporated under the laws of Canada. Its head office is in Toronto, Ontario.

2. The Filer is registered with the Commission as a portfolio manager and as an exempt market dealer and is also registered with the applicable securities regulatory authorities in British Columbia and Alberta.

3. The Filer is the manager, portfolio advisor and principal distributor of the Funds. The Funds are not, and will not be, reporting issuers under the Act, and are, or will be, distributed in Ontario, British Columbia and Alberta under applicable statutory exemptions from dealer registration and prospectus requirements.

4. The Filer offers discretionary portfolio management services to individuals, corporations and other entities (each, a **"Client"**) seeking wealth management or related services (**"Managed Services"**) through a managed account (**"Managed Account"**).

5. The Filer's minimum aggregate balance for the Managed Accounts of a Client is $500,000. This minimum may be waived at the Filer's discretion. From time to time, the Filer may accept certain Clients with less than $500,000 under management.

6. The Filer provides Managed Services to Clients who are predominantly "accredited investors" within the meaning of National Instrument 45-106 *Prospectus and Registration Exemptions* (**"NI 45-106"**). However, from time to time, the Filer may agree to provide services to Clients who are not "accredited investors".

7. The Managed Accounts are serviced by portfolio managers of the Filer who meet the proficiency requirements of an advising representative (or associate advising representative) under National Instrument 31-103 *Registration Requirements and Exemptions*.

8. The Filer ensures that each Client completes an investment management agreement (**"Investment Management Agreement"**). The Investment

Management Agreement authorizes the Filer to make investment decisions for the Managed Account and has full discretionary authority to trade in securities for the Managed Account without obtaining the specific consent of the Client to the trade. The Investment Management Agreement further sets out how the Managed Account operates and informs the Client of the Filer's various rules.

9. Each Client also completes an investment policy statement and a client information form which set out the Client's investment objectives, asset allocation, risk tolerance and investment time horizon.

10. The Filer meets at least once per year with his/her Clients (or more frequently as required) to review the performance of their account and their investment goals.

11. The Filer sends the Client a quarterly statement showing current holdings and a summary of all transactions carried out in their Managed Account during the quarter. The portfolio manager is available to review and discuss with Clients all account statements.

12. The Filer has determined that to best fulfill its fiduciary duty to its Clients, all or a portion of the asset mix in many Clients' portfolios should be invested in the Funds. The Filer's clients have expressed an interest in having their accounts invested in such investment funds.

13. The Funds are, or will be, established by the Filer with a view to achieving efficiencies in the delivery of portfolio management services to its Clients' Managed Accounts. The Filer will not be paid any compensation with respect to the distribution of the Funds' securities to the Managed Accounts.

14. Investments in individual securities may not be appropriate for the Clients with smaller Managed Accounts, since they may not receive sufficient asset diversification and may, as a result of the minimum commission charges, incur disproportionately higher brokerage commissions relative to the Clients with larger Managed Accounts.

15. To give all of its Clients the benefit of asset diversification, access to investment products with a very high minimum investment threshold and economies of scale on brokerage commission charges, the Filer proposes to cause certain of its Clients, including those that do not qualify as "accredited investors", to invest in securities of the Funds, without the Client needing to invest a minimum of $150,000 in each Fund, subject to each Client's risk tolerance.

16. Currently, none of the Funds charge a commission or a management fee directly to investors. Instead, under the Investment Management Agreement between each Client and the Filer, the Client agrees to pay the Filer a management fee based upon a percentage of assets under management in the Managed Account. Terms of the fees are detailed in each Client's Investment Management Agreement.

17. Each Fund will pay all administration fees and expenses relating to its operation. If the Filer charges management fees or performance fees to a Fund and the Filer invests, on behalf of a Managed Account, in securities of such Fund, the necessary steps will be taken to ensure that there will be no duplication of fees between a Managed Account and the Funds.

18. While a Managed Account qualifies as an "accredited investor" in each province and territory outside Ontario, NI 45-106 contains a carve out for Managed Accounts in Ontario when the securities being purchased by the Managed Account are those of an investment fund. Absent the requested relief, the Funds are prohibited in Ontario from distributing, and the Filer is effectively prohibited from investing in, securities of the Funds for the Managed Accounts, in reliance upon the "accredited investor" exemption in NI 45-106 in circumstances where the individual Client who is the beneficial owner of the Managed Account is not otherwise qualified as an "accredited investor". Reliance upon the $150,000 minimum investment exemption available under NI 45-106 may not be appropriate for smaller Managed Accounts as this might require a disproportionately high percentage of the account to be invested in a single Fund.

19. Under the exempt distribution rule applicable in each province and territory outside Ontario, there is no restriction on the ability of Managed Accounts to purchase investment fund securities on an exempt basis. Under NI 45-106, a Managed Account in each province and territory outside Ontario can acquire securities of the Funds as an "accredited investor".

Ruling

The Commission being satisfied that the relevant test contained in subsection 74(1) of the Act has been met, the Commission rules pursuant to subsection 74(1) of the Act that relief from the Prospectus Requirement is granted in connection with the distribution of securities of the Funds to Clients provided that:

(a) securities of the Funds distributed pursuant to relief from the Prospectus Requirement contained in this ruling shall only be distributed to Managed Accounts;

(b) for each Client that becomes a Client of the Filer after the date of this ruling that will invest in securities of one or more Funds through a Managed Account pursuant to this ruling, the Filer shall deliver to such Client, prior to effecting a trade in securities of a Fund in reliance on this ruling, written disclosure advising of:

(i) the nature of the relief granted under this ruling, and

(ii) the fact that the ruling permits the Client to invest in an investment fund product which the Client otherwise would not be allowed to invest in on an exempt basis through their Managed Account; and

(c) this ruling will terminate upon the coming into force of any legislation or rule of the Commission exempting a trade by a fully managed account in Ontario in securities of investment funds from the Prospectus Requirement.

"Paulette L. Kennedy"
Commissioner
Ontario Securities Commission

Mary G. Condon"
Commissioner
Ontario Securities Commission

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Franklin Danny White et al.

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

AND

IN THE MATTER OF
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

REASONS AND DECISION

Hearing:	March 23, 24, 25 and 27, 2009		
Decision:	February 10, 2010		
Panel:	Patrick J. LeSage	–	Commissioner and Chair of the Panel
	Suresh Thakrar	–	Commissioner
Counsel:	Cullen Price	–	For the Ontario Securities Commission
			No one appeared for any of the Respondents.

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REASONS AND DECISION

1. Overview

A. Background

[1] This was a hearing before the Ontario Securities Commission (the "Commission") pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether Franklin Danny White ("White"), Naveed Ahmad Qureshi ("Qureshi"), WNBC The World Network Business Club Ltd. ("WNBC"), MMCL Mind Management Consulting ("MMCL"), Capital Reserve Financial Group ("Capital Reserve"), and Capital Investments of America ("Capital Investments") (collectively, the "Respondents") breached the Act and acted contrary to the public interest.

[2] A Statement of Allegations and a Notice of Hearing were filed by Staff of the Commission ("Staff") on February 7, 2008. In the Statement of Allegations, Staff alleged that during the period from May 2002 to March 2005 White and Qureshi established, promoted and operated an investment opportunity called Eggvestments which were sold to investors raising a total of approximately 1 million Canadian dollars. Of this amount, it is alleged that while some investors have been repaid by the Respondents, approximately two-thirds of the funds raised have not been repaid to investors. White and Qureshi used the companies they operated (the other respondents) to handle the money for the Eggvestment program.

[3] Staff alleges that this conduct is in breach of subsections 25(1)(a) of the Act (trading without registration), 25(1)(c) of the Act (advising without registration), and 53(1) of the Act (engaging in a distribution of securities without fulfilling the Act's prospectus requirements) in respect of which no exemptions were available under the Act. Staff further alleges that the Respondents' conduct was contrary to the public interest and harmful to the integrity of Ontario capital markets.

B. History of the Proceeding

[4] The first appearance in this matter was held on February 28, 2008 and a second appearance was held on March 18, 2008. During the second appearance, the hearing on the merits was set down to commence on January 12, 2009. Subsequently, three pre-hearing conferences were held on June 24, 2008, December 17, 2008 and January 9, 2009.

[5] On January 12, 2009, an adjournment motion was brought by White. Subsequent appearances were held on February 13, 2009 and March 13, 2009 and the hearing on the merits was set down to commence on March 23, 2009.

[6] On March 23, 24, and 25, 2009, we heard evidence on the merits in this matter and on March 27, 2009 we heard closing submissions from Staff. None of the Respondents were present or represented by legal counsel.

[7] The following are our reasons and decision on the merits in this matter.

C. The Respondents

i. The Individual Respondents

[8] White is a resident of Pontypool, Ontario, and Qureshi is a resident of Toronto, Ontario. Neither individual has ever been registered with the Commission; however, Qureshi has stated that he was formerly a registrant in New York State.

[9] In 2002, White and Qureshi created Eggvestments, an investment offered to WNBC members, whereby the members (investors) bought "Eggs" for US$ 1,000 per "Egg". The funds were collected by White and were to be used by Qureshi to trade in the foreign currency markets.

ii. The Corporate Respondents

[10] None of the corporate respondents, WNBC, MMCL, Capital Reserve and Capital Investments, have ever been registered in Ontario or reporting issuers in Ontario.

[11] WNBC and MMCL are operated by White. White also owned a sole-proprietorship called World Network Business Club, which had Ontario-based bank accounts. According to White, the sole proprietorship was the operating business. White ran the investment club using the sole proprietorship.

[12] Capital Reserve and Capital Investments are operated by Qureshi.

WNBC

[13] WNBC was incorporated in Ontario on June 29, 2000 and White was at all times the sole director and officer of WNBC. Its incorporation was cancelled on February 26, 2007. According to White, he incorporated WNBC in order to establish offshore bank accounts. WNBC's website defines the company as a membership based organization providing the following services: business consulting, tax consulting, private banking, financial literacy, offshore international business consulting and financial planning…etc.

[14] Eggvestments were one of the investment opportunities facilitated by WNBC. WNBC contracted with investors, issuing one unit (or Egg) for every US$ 1,000 contributed to the Eggvestment fund. The Eggvestments are central to Staff's allegations of misconduct.

MMCL

[15] MMCL is a sole proprietorship operated by White, who was also the sole signing officer on MMCL's Ontario based bank accounts. Funds from investors and interest payments for Eggvestments and other WNBC investments were channeled through MMCL. In addition to MMCL, White incorporated Mind Management Consulting Ltd. solely for the purpose of opening offshore bank accounts.

Capital Reserve

[16] Capital Reserve is a sole proprietorship registered on July 29, 2002 by Qureshi's brother and cancelled on September 4, 2003. It was re-registered on September 4, 2003 by Qureshi, who is the sole owner and operator of the company, with a stated business activity of "asset management". In addition to currency trading in his name, Qureshi conducted currency trading through Capital Reserve trading accounts.

[17] Capital Reserve's website states that it offers Capital Reserve members and clients services such as financial consultancy, real estate investments and forex trading. The website describes Capital Reserve as having offices in Toronto, Calgary, London, New York, Switzerland and Dubai.

Capital Investments

[18] Capital Investments is a sole proprietorship owned and operated by Qureshi. It was registered on October 19, 2005 and lists asset management and forex trading as its business activities.

[19] Capital Investments contracted with WNBC to invest money in forex and other markets in May 2002. Qureshi used Capital Investment accounts to pay interest and close off accounts with Eggvestment investors. Qureshi also conducted currency trading through Capital Investments trading accounts.

2. Preliminary Issues

A. The Failure of the Respondents to Appear at the Hearing

[20] As stated above, none of the Respondents were represented or appeared at the hearing. Subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "SPPA") provides that a tribunal may proceed in the absence of a party when that party has been given adequate notice:

> Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing; the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

[21] We are satisfied that Staff gave adequate notice of this proceeding to the Respondents and that we are entitled to proceed in their absence in accordance with subsection 7(1) of the SPPA.

B. The Appropriate Standard of Proof

[22] Staff also made submissions as to the appropriate standard of proof applicable in Commission proceedings.

[23] *F.H. v. McDougall*, [2008] 3 S.C.R. 41, a recent Supreme Court of Canada decision, states at paragraph 49 that:

> …in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[24] At paragraph 46, it is further stated that:

> … evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency … If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

[25] We must decide this matter on the balance of probabilities. In doing so, we must be satisfied that there is sufficient clear, convincing and cogent evidence to support our findings. Before us in evidence we have video recordings of White and Qureshi giving investing presentations; documents submitted by White, Qureshi, investors and Staff's investigator; testimony of investors; and transcripts of voluntary examinations of White and Qureshi. We find that this evidence is clear, convincing and cogent and provides a sufficient basis for our conclusions set out below. We are satisfied on the balance of probabilities that the events described in these reasons have occurred.

3. Issues

[26] Based on the Statement of Allegations, the issues in this matter for us to consider are:

a. Did the Respondents trade in securities in breach of subsection 25(1)(a) of the Act?

b. Did the Respondents advise in connection with trading in securities in breach of subsection 25(1)(c) of the Act?

c. Did the Respondents engage in a distribution of securities without a prospectus in breach of subsection 53(1) of the Act?

d. Were there any exemptions available to the Respondents?

e. Did the Respondents act in a manner that was contrary to the public interest and harmful to the integrity of Ontario capital markets?

4. Evidence

[27] Staff submitted to us 19 exhibits which included documentary evidence and video recordings (14 DVDs) of presentations and discussions of White and Qureshi, and called as witnesses a Staff investigator and three individual investors. To protect the privacy of those witness investors, we will refer to those three witness investors as "Investor 1", "Investor 2", and "Investor 3".

[28] In addition, to protect the personal information of Investor 1, Investor 2 and Investor 3, and to protect the personal information of other individual investors in this matter, we have required that Staff provide a redacted version of the record.

[29] The evidence in this proceeding relates to the following investment scheme.

A. The Investment Scheme

i. The Role of White, Qureshi and WNBC

[30] In 2002, White and Qureshi created Eggvestments, an investment offered to WNBC members, whereby the members as investors bought "Eggs" for US$ 1,000 per "Egg". The funds were collected by White and were to be used by Qureshi to trade in the foreign currency markets (the details of the Eggvestments are discussed further below).

[31] WNBC's website defines the company as a membership based organization. Members paid an annual membership to participate in this club. WNBC's website refers to two different club membership packages: Gold and Platinum. The WNBC Gold Package had a sign up fee of $5,000 and an annual renewal fee of $2,500. The WNBC Platinum Package had a sign up fee of $10,000 and an annual renewal fee of $5,000.

[32] WNBC held weekly meetings in Toronto, where members of the club could attend seminars on investments, tax planning, networking and financial education. Members were also offered access to offshore and onshore investments, private and offshore banking and investment education. White hosted and presented at these weekly meetings. Qureshi also attended, presented or participated in many WNBC meetings. For example, Investor 3 testified that Qureshi attended 70% of the WNBC meetings.

[33] Weekly WNBC meetings were also held at "satellite clubs" in Oakville, Etobicoke, Calgary and other cities, hosted by a local club member who would show a video recording of the WNBC Toronto meeting from that week. White occasionally attended the satellite club meetings.

[34] In a WNBC promotional video, White describes WNBC as having slowly evolved from a networking club to having a greater focus on the finances of its members. He offers WNBC investment services as follows:

> If you're interested in investing onshore and offshore and want to get a better rate of return on your investments and really want to know why you're not doing as well with your investments as you should be doing, then WNBC just may be the answer.
>
> (Exhibit 11, tab 5, September 2004, WNBC Video at 12:16)

[35] In May 2002, WNBC entered into a private placement agreement with Capital Investments. Capital Investments agreed to manage WNBC's assets and participate in forex, futures, commodities and world capital markets through trading accounts set up by Capital Investments. As part of the agreement, WNBC would receive a fixed annual return of 20% for the assets (funds) under management.

[36] White and Qureshi also offered and promoted additional investment opportunities through WNBC. These included Qureshi's Play Game (or PG) currency trading investment, GreenFleet Car Sharing investment opportunity, Island Ink Jet investments and real estate and land investments.

ii. The Eggvestment Program

[37] As mentioned, White and Qureshi created what they referred to as an investment opportunity for WNBC members which they called the Eggvestment program. White said he decided to call the investment opportunity Eggvestments because he was trying to create "nest eggs" for his members.

[38] Eggvestments were promoted at weekly WNBC meetings, satellite club meetings and on the WNBC website. Investors were told that this was a low risk, high return investment; and that their capital would be safe. In the first year of the program, the investors were told they would be given a guaranteed return on their investment of 15%. This was subsequently changed to a return guarantee of a minimum of 18%, 19% and 20% per annum depending on the term of the investment (1, 2, or 3 years).

[39] Eggvestments raised money through investment contracts made between individual investors and WNBC. For every US$ 1,000 invested, Eggvestment subscribers were given one unit (or one Egg) in the Eggvestment program, so that each unit purchased was part of the overall Eggvestment pool of funds. The proceeds from unit sales were to be invested in foreign currency markets. Investors were told that by investing in Eggs through pooling their funds, they would gain exposure to currency markets that they would be unable to access on their own.

[40] The Eggvestment money was collected by White through WNBC and MMCL, and then transferred on to accounts controlled by Qureshi for investment in foreign exchange markets. Qureshi then pooled these funds and traded in foreign currency markets through trading accounts in his name and his companies, Capital Reserve and Capital Investments. Eggvestment investors were solicited with assurances of the security of their investment and pronouncements of Qureshi's expertise in currency trading.

[41] From 2002 until 2004, significantly more than 1 million Canadian dollars was raised from investors. Staff was able to obtain evidence of at least 58 investors (if one includes the investors who invested together – e.g. husband and wife – the number of investors rises to 63).

[42] We note that White and Qureshi's records provided in evidence show that neither kept timely or accurate records of the Eggvestments. However, we find that the evidence provided through Staff's witnesses was clear, cogent and convincing evidence to support the numbers of investors and their investments. Based on the following three sources of information: client files and bank transfer information obtained and confirmed by White, copies of repayment cheques marked "Eggs" obtained from Qureshi, and information from third parties (investors and banks), it was determined that investors invested at least: US$ 560,366 and CDN$ 577,785. These amounts relate to Eggvestments only and exclude funds invested and/or placed by investors in other investment opportunities provided by WNBC, White and Qureshi.

[43] According to the records provided by Qureshi, Staff established that US$ 651,139.50 was accounted for in Qureshi's trading accounts. We were not provided with any evidence from the Respondents regarding what happened to the remaining funds collected under the Eggvestment program, and we find that this highly suggests that the remaining funds were used by the Respondents for some other purpose.

[44] Qureshi admits he lost nearly US$ 500,000 in foreign currency trading activities.

[45] Investors have, on aggregate, been repaid only approximately one third of the money they invested. However, some investors received all their money back, while other investors received nothing back. For example:

- Investor 1 received back two-thirds of his original investment of US$ 30,000 in the Eggvestment program. Investor 1 was repaid US$ 20,000 by White because, according to what White told Investor 1, the money from his original investment never went to Qureshi. White paid back Investor 1 by cheque from MMCL's bank account and also by cash in the amount of CDN$ 13,855. Investor 1 lost US$ 10,000 and accrued interest on his total investment.

- Of all the witnesses, Investor 2 was the most ill-treated; this vulnerable investor lost the entire US$ 44,000 investment she made in the Eggvestment program and all the accrued interest on that investment. In addition to the US$ 44,000 invested in the Eggvestment program, Investor 2 also invested another CDN$ 12,000 in other WNBC investment opportunities such as GreenFleet, Island Ink Jet and real estate/land investments; of which CDN$ 10,000 was returned to Investor 2 without interest. Investor 2 also gave evidence of being vulnerable and how White and Qureshi abused her trust and she lost additional money on some other property and real estate investments. This occurred while Investor 2 was experiencing health problems and problems from a divorce. For example, Investor 2 testified that she was advised by White and Qureshi to buy property and leverage whatever she had, and as a result she mortgaged her own house and bought a property owned by Qureshi that was in horrible condition and infested with insects and rodents and was unrentable. She had to sell this property two years later at a loss. After her dealings with White, Qureshi and WNBC, Investor 2 had lost her home and most of her savings.

- Investor 3 got back his principal investment of US$ 70,000 in the Eggvestment program. Investor 3 initially received interest payments on his investment, but Qureshi later deducted these interest payments received when settling Investor 3's account. In the end, Investor 3 only got back his principal investment of US$ 70,000.

[46] According to the evidence submitted, investors who invested in the Eggvestment program have been repaid US$ 220,202 and CDN$ 146,700. Some investors did not get their money back and the amount outstanding to Eggvestment investors is US$ 340,164 and CDN $431,085. This amount does not include any accrued interest that was guaranteed to the investors for their investment in the Eggvestments, nor does it include other funds invested in other investment opportunities offered by White, Qureshi and WNBC.

5. Analysis

A. The Commission's Public Interest Jurisdiction

[47] As set out in section 1.1 of the Act, it is the Commission's mandate to:

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

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

[48] The primary means for achieving the purposes of the Act are listed as follows in paragraph 2 of section 2.1:

i. requirements for timely, accurate and efficient disclosure of information;

ii. restrictions on fraudulent and unfair market practices and procedures; and

iii. requirements for the maintenance of high standards of fairness and business conduct to ensure honest and responsible conduct by market participants.

[49] Registration and prospectus requirements (found in sections 25 and 53 respectively) serve an important role to protect investors and ensure the efficiency of the capital markets. Registration ensures that the public deals with individuals who have met the necessary proficiency requirements, good character and ethical standards, while the prospectus requirements ensure that prospective investors have full information on which to properly assess the risks of certain investments, and it enables them to make informed investment decisions. As the Canadian securities regulatory system is primarily disclosure-based, the prospectus requirement plays a significant role in the overall scheme of investor protection. Sections 25 and 53 of the Act are discussed in further detail in the sections below.

B. Did the Respondents Trade in Securities in Breach of Subsection 25(1)(a) of the Act?

i. The Applicable Law

[50] Subsection 25(1)(a) of the Act prohibits trading in securities without being registered:

> No person or company shall,
>
> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;
>
> …
>
> and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[51] The elements of a breach of subsection 25(1)(a) of the Act are findings that:

a. the person or company is unregistered;

b. a trade occurred, which includes any act in furtherance of a trade; and

c. the trade was with respect to a security as defined in the Act.

Registration

[52] Registration requirements play a key role in Ontario securities law. They impose requirements of proficiency, good character and ethical standards on those people and companies trading in and advising on securities. As the Commission stated in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 at para. 135:

> Registration serves as an important gate-keeping mechanism ensuring that only properly qualified and suitable individuals are permitted to be registrants and to trade with or on behalf of the public. Through the registration process, the Commission attempts to ensure that those who trade in

> securities meet the applicable proficiency requirements, are of good character, satisfy the appropriate ethical standards and comply with the Act.

Trading

[53] For a breach of subsection 25(1)(a), a trade in securities is required. Under subsection 1(1) of the Act, a "trade" includes:

> (a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,
>
> (b) any participation as a trader in any transaction in a security through the facilities of any stock exchange or quotation and trade reporting system,
>
> …
>
> (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

[54] In addition to an actual trade, any act in furtherance of a trade that occurs in Ontario constitutes trading in securities under the definition in the Act (*Re Lett* (2004), 27 O.S.C.B. 3215 at para. 64). Whether an act is in furtherance of a trade is a question of fact, to be determined in each case, based on whether there is a sufficiently proximate connection to the trade (*Re Costello* (2003), 26 O.S.C.B. 1617 at para. 47). The Commission has held that acts such as depositing investor cheques in a bank account (*Re Limelight Entertainment Inc.*, *supra* at para. 133), providing subscription agreements for signature to investors, conducting information sessions with groups of investors, and accepting money (*Re Momentas Corporation* (2006), 29 O.S.C.B. 7408 at para. 80) constitute acts in furtherance of a trade.

[55] The primary consideration of the Commission in determining whether a trade has occurred is the effect on investors and potential investors. The Commission will consider the totality of the conduct as well as the setting in which the acts occurred in determining whether there has been a trade (*Re Momentas Corporation*, *supra* at para. 77). This is a contextual approach that examines the totality of the conduct and the setting in which the acts of the Respondents have occurred.

Securities

[56] Subsection 1(1) of the Act defines "security". The relevant parts of that subsection provide that a security includes:

> (a) any document, instrument or writing commonly known as a security,
>
> …
>
> (e) any bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization or subscription …,
>
> …
>
> (n) any investment contract,
>
> …
>
> whether any of the foregoing relate to an issuer or proposed issuer.

[57] A unit purchased in a fund with an interest in the profits of that fund fits the definition of a security given in paragraph (e) of subsection 1(1) of the Act.

Investment Contracts

[58] While the Act does not define an investment contract, an investment contract is defined by the Supreme Court of Canada as being an investment of money in a common enterprise with profits to come from the efforts of others (*Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112). According to the Supreme Court, a "common enterprise" describes a situation where investors' fortunes are interwoven with and dependent upon the efforts and success of those seeking the investment of third parties (*Pacific Coast Coin Exchange v. Ontario Securities Commission*, *supra* at 128).

[59] The elements of an investment contract that constitute a security are therefore:

a. an investment of money;

b. with an intention or expectation of profit;

c. in a common enterprise, where the investors' fortunes are interwoven and dependent upon the efforts of those seeking the investment; and

d. where the efforts made by those other than the investor are the significant ones with respect to the affect on the failure or success of the enterprise.

(*Pacific Coast Coin Exchange v. Ontario Securities Commission*, *supra* at 128 to 132).

ii. Analysis

Registration

[60] None of the Respondents in this matter were ever registered with the Commission in any capacity and as discussed later, no registration exemptions were available as none of the investors were accredited investors.

Trading

[61] The Respondents were involved in transactions that constitute trading in securities. White, Qureshi and WNBC acted together to elicit funds from investors that were used to invest in a security called Eggs, which were units in the Eggvestment program. At a weekly WNBC meeting, White described the investment process as follows: "What we do is everybody puts into the pot and then we put the increments to [Qureshi] on a regular basis" (*Exhibit 11, tab 1, WNBC Video, September 15, 2003* at 1:05:51). Individuals would invest in a security, Eggs, and the funds would then be pooled and put in the hands of Qureshi for investing.

[62] In exchange for money, investors were given Eggs, which were essentially a unit that allowed the investor to participate in the foreign currency trading conducted by Qureshi and his companies, Capital Investments and Capital Reserve. Investors signed Eggvestment investment contracts, purchasing each Egg for US$ 1,000.

[63] Investors provided large sums of money and in many cases made repeated investments. For example, Investor 3 first invested US$ 10,000 in May 2002 and he invested another US$ 60,000 in March 2003. Investor 2 first invested US$ 22,000 in June 2002, followed by an additional investment of US$ 2,000 in July 2003 and she invested another US$ 22,000 in August 2003. Investor 1 invested US$ 10,000 three times (February 2003, June 2003 and September 2003).

[64] WNBC members were sold Eggvestments with the understanding that the money invested through White, MMCL and WNBC would be forwarded to Qureshi. Qureshi would then use his currency trading expertise to invest the money from WNBC members by trading in foreign currency, and all investors would receive a guaranteed return on their investment.

Investment Contracts

[65] White and Qureshi created Eggvestments as a fund in which investors purchased units to give them exposure and participation on a pooled basis to foreign currency markets. Each Egg unit in itself constitutes a security, and the sale of these securities constitutes a trade.

[66] The Eggvestment contracts also fulfill the requirements for an investment contract as described in *Pacific Coast Coin Exchange v. Ontario Securities Commission* (referred to above in paragraphs 58 and 59 of our Reasons):

(i) the Eggvestment investors provided money to be invested;

(ii) the investors had expectations of profit from the rates of return of up to 20% per annum guaranteed to them;

(iii) The Eggvestment program was a common enterprise, where the fortunes of the Eggvestment investors were dependent upon White's management of their money and Qureshi's successful trading of their investments in the Eggs on foreign currency markets; and

(iv) the investors themselves had no role in the scheme, beyond providing the investment money. White, Qureshi and WNBC's management control of the Eggvestments and Qureshi's expert trading were the only efforts that mattered.

[67] The Eggvestments contracts therefore constituted securities under the Supreme Court of Canada's definition of "investment contracts". As a result, any acts by the Respondents in furtherance of these contracts would constitute trades governed by Ontario securities law.

[68] The Respondents also participated in trading in securities outside of the Eggvestments. At a WNBC meeting, White and Qureshi promoted GreenFleet Car Sharing as an investment opportunity to members. White described this opportunity by stating: "For every dollar that you put into an investment, you would get – you would end up with one share in the new company, the publicly traded company" (*Exhibit 11, tab 3, WNBC Video, April 19, 2004* at 1:01:37). Investors also testified about their involvement in numerous other investment opportunities facilitated by WNBC, White and Qureshi, including another forex investment, the GreenFleet Car Sharing, Island Ink Jet, and real estate/land investments.

iii. Findings

White

[69] Based on the evidence before us, we have concluded that White made trades and acted in furtherance of trades within the meaning of the Act.

[70] The evidence before us shows that White took the view that he was not dealing with, or selling securities. However, we disagree. White's discussion of the creation of investments can be heard in video recordings from WNBC meetings. When soliciting funds for his GreenFleet Car Sharing investment, White told potential investors:

> What we're going to do is give you shares in the new company, the publicly traded one, but as an interim what we have to use is the limited liability partnership that has been incorporated but not finalized.
>
> (*Exhibit 11, tab 3, WNBC Video, April 19, 2004* at 1:00:57)

[71] Similarly, in a speech he gave in November 2003 entitled "Investing 101 Basics", White discusses how WNBC creates new investments because of the limitations on investing in Canada:

> So we're really limited in here in Canada in what we can do and we have to pay an awful lot for it, and we don't get better returns. So we have to create our own investments in the club to get away from that.
>
> (*Exhibit 11, tab 1, WNBC Video, November 24, 2003* at 1:03:54)

[72] At a September 2003 WNBC meeting, White described how the Eggvestment scheme began:

> [Qureshi] made his living doing foreign currency exchange trading, and one night at the club when he was being particularly pressured to handle investments for us, he said that he would do it if we put together a fund and [Qureshi] dealt with me and I passed the money on to him and he only had to deal with me, that he would manage our investment.
>
> (*Exhibit 11, tab 1, WNBC Video, September 15, 2003* at 13:33)

[73] White was the signing authority on behalf of WNBC in the private placement agreement with Capital Investments that laid the groundwork for White and Qureshi's Eggvestment scheme. In it, the parties agreed that Capital Investments would manage WNBC assets and participate and trade in forex, commodities, futures, and world capital markets with a guaranteed return of 20 percent.

[74] In addition to his direct involvement in the creation of Eggvestments, White participated in acts that were in furtherance of unit (Egg) trades. White signed the Eggvestment contracts on behalf of WNBC. For example, White signed the Eggvestment contracts entered into with Investor 1 and Investor 3, each for US$ 10,000. In addition, Investor 1 testified that he gave White funds to invest in Eggvestments.

[75] The Trading Summary prepared by Staff shows that White forwarded money to accounts controlled by Qureshi to invest in currency trading. There is also an authorization for a wire transfer of US$ 82,000 from MMCL to Qureshi signed by White. White also signed an MMCL cheque for CDN$ 10,800, representing an interest payment on 60 units (Eggs) to Investor 3. White transferred funds from MMCL to a bank account in Cyprus and also directed funds to accounts controlled by Qureshi. These transfers and directions of funds from investors to various accounts controlled by Qureshi are acts in furtherance of trades in Eggs.

[76] In the evidence, White mentions in his voluntary interview that the general public was not invited to WNBC and that the club was a private group of members. According to White, the intent was not to sell/promote investments, the intent was to build wealth through opportunities. We disagree with this. Through WNBC White solicited investment money from investors, guaranteeing minimum rates of return. He opened one WNBC meeting by saying: "I'm happy to meet with you regarding, uh, investing in Cartridge Cure Management, a guaranteed 12 percent on your money" (*Exhibit 11, tab1, WNBC Video, September 15, 2003* at 0:12).

[77] White also made these solicitations through (1) his classes he taught at the Learning Annex, (2) satellite clubs and (3) public speaking engagements.

[78] White facilitated the Eggvestment investment scheme, promoting WNBC as an investment medium in videos and on the company website. He offered WNBC as the solution for people looking for a better rate of return on their investments. These solicitations of investors amount to acts in furtherance of trades.

[79] Investor 2 testified that "he [Dan White] was WNBC, so … whatever WNBC does, that's Dan". White acted on behalf of WNBC, arranging the Eggvestments.

[80] Accordingly, we have concluded that White engaged in trades and in acts in furtherance of trades in violation of subsection 25(1)(a) of the Act.

Qureshi

[81] Based on the evidence before us, we have concluded that Qureshi made trades and acted in furtherance of trades within the meaning of the Act.

[82] Qureshi made powerpoint presentations with White at numerous WNBC meetings, soliciting investments. Investor 2 testified that Qureshi presented on the Eggvestment investment program at a weekly WNBC meeting she attended, and he can be seen in WNBC videos contributing to White's presentations on investments. Investor 3 testified that Qureshi attended about 70 percent of the weekly WNBC meetings alongside White. Qureshi's involvement in the solicitation of Eggvestment investors constitutes acts in furtherance of trades in Eggs.

[83] Qureshi was held out to WNBC members as working with White in the management of investment opportunities. Investor 1 testified that it was his understanding that Qureshi assisted White with the GreenFleet investment and that the money he invested through WNBC would be given to Qureshi for currency trading.

[84] More specifically, Qureshi played a management role in Eggvestments. At an April 2004 WNBC meeting he introduced himself saying: "I'm Naveed Qureshi. I'm doing currency trading and managing your Eggs and we're making money" (*Exhibit 11, tab 3, WNBC Video, April 19, 2004* at 26:31). Although Eggvestments were run by both White and Qureshi, it was Qureshi who played the predominant role in the actual investment of the fund, while White had a larger role in investor solicitation. White stated that "I'm the professional presenter, he's the investor" (*Exhibit 11, tab 1, WNBC Video, September 15, 2003* at 38:22).

[85] Evidence shows that Qureshi was closely linked with White in the management of Eggvestment funds and other WNBC investments. At a 2003 WNBC meeting, at which Qureshi was a co-presenter, White described the management of the GreenFleet Car Sharing investment as follows: "Naveed and I continue to contribute in terms of financial control and helping with direction" (*Exhibit 11, tab 1, WNBC Video, September 15, 2003* at 1:01). Qureshi and White were acting together in control of WNBC investments.

[86] Qureshi was the signing authority on behalf of Capital Investments in the private placement agreement with WNBC that laid the groundwork for White and Qureshi's Eggvestment scheme. In it, the parties agreed that Capital Investments would manage WNBC assets and participate and trade in forex, commodities, futures, and world capital markets with a guaranteed return of 20 percent.

[87] To facilitate his management of these investments, Qureshi arranged for virtual office documentation for himself, GreenFleet Car Sharing, Capital Investments and Capital Reserve. He set up a bank account for Capital Investments with National Bank, signing on behalf of the company.

[88] Qureshi was directly involved in the Eggvestment program's finances. Between June 2002 and October 2003, he received payments from MMCL, White and WNBC. He signed cheques from Capital Investments for return of principal and interest on investments from Investor 3 and cheques closing accounts of 23 Eggvestment investors. Qureshi provides further evidence of his involvement in Eggvestment transactions in his email to White confirming ten Eggs for Investor 1.

[89] Qureshi signed as the WNBC representative for Investor 2's August 2005 Eggvestment contract for US$ 44,000. In this contract, he wrote in additional terms, consolidating all her previous investments into one three year investment contract

with a 20 percent annual rate of return. In addition to this contract, there is a document in Qureshi's handwriting, pushing forward the maturity date of a US$ 44,000 investment for an additional three years at 20 percent.

[90] Accordingly, we have concluded that Qureshi made trades and engaged in acts in furtherance of trades in violation of subsection 25(1)(a) of the Act.

WNBC

[91] Based on the evidence before us, we have concluded that WNBC made trades and acted in furtherance of trades within the meaning of the Act.

[92] The evidence shows that WNBC issued investment contracts for Eggvestments to Investor 1, Investor 2 and Investor 3. The Eggvestment contracts are written agreements between WNBC and the individual investors. They state the number of Eggs issued in exchange for a stated amount of money, in US dollars. The contracts give a guaranteed rate of return, as per WNBC's agreement with Qureshi, of 18 to 20 percent for three years, but also state that the investment is speculative and has inherent risks. As discussed above, the Eggvestment contract fulfills the requirements for being an investment contract and is therefore a security in itself. This is in keeping with the Commission's finding in *Re Momentas Corporation*, *supra* at para. 80 that providing subscription agreements for signature to investors is an act in furtherance of a trade.

[93] WNBC not only provided these agreements to investors, but also issued units in the fund through them. The substance of the investment contracts, Eggs, are securities. The Eggs are issued in exchange for investment money, and each Egg constitutes ownership of a unit in the Eggvestment program managed by the Respondents.

[94] WNBC solicited investments at its weekly meetings, on its website and through WNBC videos. The WNBC website offered onshore and offshore investment opportunities, including Eggvestements, with guaranteed rates of return to potential investors. In the video statements noted above, White and Qureshi were presenting investment opportunities on behalf of WNBC. It is not necessary for an investment to have taken place for an act in furtherance of a trade to have occurred. Holding information sessions with a group of investors is an act in furtherance of a trade (*Re Momentas Corporation*, *supra* at para. 80). WNBC went beyond the mere provision of information and actively solicited investors for its projects, thereby acting in furtherance of trades.

[95] The solicitations in this case resulted in attracting investors for WNBC. Investors 1, 2 and 3, as well as 55 other investors were involved in Eggvestments. WNBC's solicitations were directly in furtherance of actual trades in units (Eggs).

[96] There was also evidence of another investor ("Investor 4") (who was not a witness at the hearing) that invested $300,000 in the Eggvestment program. However, White acknowledged that these funds were never used for the Eggvestment program, instead they were used in the GreenFleet program. Regardless, Investor 4's funds were sent to MMCL's bank account as part of the Eggvestment program. In our view, this transfer of funds is an act in furtherance of a trade.

[97] To manage the Eggvestment program and facilitate trades, WNBC entered into a private placement agreement with Capital Investments, whereby Capital Investments, through Qureshi, would set up a currency trading account and manage WNBC assets.

[98] Accordingly, we have concluded that WNBC made trades and engaged in acts in furtherance of trades and therefore violated subsection 25(1)(a) of the Act.

MMCL

[99] Based on the evidence before us, we have concluded that MMCL acted in furtherance of trades. MMCL accepted funds from investors for investments made through WNBC. Investor 1 provided MMCL with a bank draft for $45,000 and Investor 2 was given receipts for $20,000 and US$ 2,000 that she invested in an MMCL currency exchange investment. MMCL also made an interest payment of $10,800 to Investor 3 for 60 Eggs.

[100] Although MMCL was not named in the contract, the evidence shows that MMCL accepted money to be used in furtherance of trades in Eggs. Handwritten instructions on one of Investor 1's Eggvestment contracts directs that the money for the investment should be taken from his MMCL funds.

[101] MMCL also transferred money to accounts controlled by Qureshi for investment, including a US$ 82,000 wire transfer on April 10, 2003. The money forwarded by MMCL to Qureshi, together with MMCL's acceptance of money from investors, constitute acts in furtherance of trades.

[102] Accordingly, we have concluded that MMCL engaged in acts in furtherance of trades within the meaning of the Act. MMCL therefore violated subsection 25(1)(a) of the Act.

Capital Reserve

[103] Based on the evidence before us, we have concluded that Capital Reserve acted in furtherance of trades.

[104] Capital Reserve traded in foreign currency using funds from Eggvestments. Records indicate trading by Capital Reserve from 2003 to 2007 in various currencies through its trading accounts with Man Direct in London, England and M Global in London, England.

[105] Qureshi, through Capital Reserve, sent an email to White confirming ten Eggs for Investor 1. Records provided by White to Staff show that Qureshi received funds from MMCL and WNBC through Capital Reserve accounts with the Bank of Cyprus.

[106] We have concluded that Capital Reserve, through its acceptance of Eggvestment funds and its confirmation of its involvement in Eggvestments, engaged in acts in furtherance of trades within the meaning of the Act. It therefore violated subsection 25(1)(a) of the Act.

Capital Investments

[107] Based on the evidence before us, we have concluded that Capital Investments acted in furtherance of trades. Capital Investments entered into a private placement agreement with WNBC to set up a trading account to manage its assets, and also held an account for currency trading. Signing the contract and opening the trading account were acts in furtherance of the Eggvestment scheme.

[108] Capital Investments traded in foreign currency using funds from Eggvestments. Records indicate trading by Capital Investments from 2003 to 2007 in various currencies through its trading accounts with Money Garden (MCFG) in New York and Rosenthal Collins Group LLC in Chicago.

[109] Cheques from Capital Investments were given to 23 investors, closing their Eggvestment accounts. Investor 3 received cheques from Capital Investments in amounts of US$ 28,000 and US$ 30,000 returning the balance of the principal on 70 Eggs that he held.

[110] Capital Investments was also involved in another WNBC forex investment scheme, Play Game (or PG). Capital Investments wrote cheques to six PG investors closing their accounts, and wrote a $18,000 interest cheque to Investor 3 on his PG investment.

[111] We have concluded that Capital Investments, through its acceptance of Eggvestment funds and its confirmation of its involvement in Eggvestments, engaged in acts in furtherance of trades within the meaning of the Act. It therefore violated subsection 25(1)(a) of the Act.

C. Did the Respondents Advise in Connection with Trading in Securities in Breach of Subsection 25(1)(c) of the Act?

i. The Applicable Law

[112] Subsection 25(1)(c) of the Act prohibits acting as an advisor without being registered:

> No person or company shall,
>
> …
>
> (c) act as an adviser unless the person or company is registered as an adviser, or is registered as a representative or as a partner or as an officer of a registered adviser and is acting on behalf of the adviser,
>
> and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[113] An “advisor” is defined in subsection 1(1) of the Act as “a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities.”

[114] In *Costello v. Ontario (Securities Commission)*, [2004] 242 D.L.R. (4th) 301 (Div. Ct.) at para. 62, the court applies a business purpose requirement for advising, but noted that it need not be the only business the person or company in question is engaged in.

[115] The British Columbia Securities Commission set a low threshold for the business purpose requirement in *Re Donas* 1995 LNBCSC 18. The requirement can be met even if the business purpose behind the advising is not the primary business of the person or company (*Jack Maguire and J.K. Maguire & Associates* (1995), 18 O.S.C.B. 4623), or in situations where there is no evidence that investors acted on the advice given (*Re Hrappstead (c.o.b. North American Group)* [1999] 15 B.C.S.C. Weekly Summary 13).

[116] As for the nature of the communication, providing factual information is not sufficient to constitute advising under the Act:

> A person who does nothing more than provide factual information about an issuer and its business activities is not advising in securities. A person who recommends an investment in an issuer or the purchase or sale of an issuer's securities, or who distributes or offers an opinion on the investment merits of an issuer or an issuer's securities, is advising in securities.
>
> (*Re Donas* 1995 LNBCSC 18 at 5 (QL))

[117] Advising requires subjective commentary on the value of the investment.

ii. Analysis

[118] Staff alleges that the activities of the Respondents constituted advising in securities without registration in breach of subsection 25(1)(c) of the Act.

[119] Creating and promoting investments may not have been the primary business purpose of the Respondents, but in our view, the actions of some of the Respondents met the business purpose requirement of advising. The question of whether each of the Respondents acted as an advisor must be determined based on the nature of the investment information communicated by them.

[120] WNBC, White and Qureshi acted as more than a source of investment information. The evidence demonstrates that WNBC, White and Qureshi provided advice to investors. Investors and potential investors were presented with investment opportunities at weekly meetings of WNBC, meetings of satellite clubs and public speaking engagements. These investors and potential investors were solicited, encouraged and advised to invest in projects in which White, Qureshi and WNBC were involved. For example, both White and Qureshi can be seen promoting and explaining the Eggvestment opportunity and answering audience questions and providing investment advice in numerous videotapes of WNBC meetings.

[121] WNBC also charged membership fees to investors. Investor 1 testified that the level of membership fees charged was dependent on the level of service provided by WNBC. As discussed above, the WNBC website lists membership packages with fees, which included investment seminars, access to onshore and offshore investments and consultation via email. In our view, consulting on investments constitutes advising and this was an important part of the services offered to WNBC members. It was a requirement that investors first become members to take advantage of "investment opportunities".

[122] The specific advising activities of White, Qureshi and WNBC are described in more detail below.

iii. Findings

White

[123] Based on the evidence before us, we have concluded that White acted as an unregistered advisor.

[124] White managed and was the face of WNBC. He conducted weekly meetings of the business club every Monday in Toronto and offered members seminars and consultations on investment and other business topics. White also taped his presentations at the weekly meetings and copies were then provided to the satellite clubs. White held out WNBC as an investor club that provided investing and advising services to its members.

[125] For example, White advised WNBC members to trust Qureshi to make investments on their behalf. He told them:

> The one thing that you need to know is unless you know what [Qureshi] knows and the other two percent of the investors in that market know, then make less money, but make it reliably, and let's let [Qureshi] do that for you.
>
> (*Exhibit 11, tab 1, WNBC Video, September 15, 2003* at 1:13:12)

[126] White presented at each WNBC meeting, promoting investment opportunities. Along with Qureshi, he recommended GreenFleet Car Sharing as a good investment for members:

> So you'll actually be getting those shares for less than half what they're traded. So it becomes a very good deal. You're really getting it for free because you're going to get your tax deduction, and you're going to get your shares, and you will get the agreed upon return that you signed up for. So it's a total win-win situation.
>
> (*Exhibit 11, tab 3, WNBC Video, April 19, 2004* at 1:02:00)

[127] White also encouraged members to invest in Eggvestments, communicating to them his high level of comfort in the security of the investment based on Qureshi's skill in currency trading:

> Because [Qureshi] has a successful track record and knows what he's doing and uses proven risk management principles, I feel extremely comfortable with this. And one of the key things he does is risk management. He's always asking, "What can go wrong?" And one of the things that he doesn't do is he never invests the whole amount.
>
> (*Exhibit 11, tab 1, WNBC Video, September 15, 2003* at 14:49)

[128] In addition, at a public presentation to a group of engineers, White advised that he knew a successful foreign currency trader who "I have never known to lose money". Specifically White explained that Qureshi "manages a fund for us" and:

> …tracing his transactions for a year, I've never seen him lose money on any trade. I've seen him not make money on lots of them but I've never seen him lose. He either doesn't lose or he makes money. So we get 13, 14 or 15% on our money with him per year and it's doing quite well.

[129] He also described Eggvestments as low risk investments and advised WNBC members to become involved in them.

[130] White discussed different investment opportunities with Investor 1. White refers to this private discussion at a weekly WNBC meeting, and restates his advice to all WNBC members: "I'm not saying it's a bad investment, but I'm asking probing questions that you would need to have answers to" (*Exhibit 11, tab 1, WNBC Video, September 15, 2003* at 19:22). White suggests to Investor 1 and to the entire club that the investment opportunity he thought was great may not be such a good idea.

[131] White was the contact person for any questions about WNBC investments. The WNBC website Q&A section on Eggvestments states that questions should be directed to White. The Eggvestment contracts also list White as a contact person for any questions on Eggvestments. In our view, responding to questions explaining investments demonstrates an active role in advising.

[132] Accordingly, we have concluded that White acted as an advisor within the meaning of the Act. White was not registered in any capacity with the Commission and no registration exemption was available. White therefore violated subsection 25(1)(c) of the Act.

Qureshi

[133] Based on the evidence before us, we have concluded that Qureshi acted as an unregistered advisor.

[134] The evidence reveals that Qureshi was of the opinion that he never promoted himself directly and that he was just giving educational presentations regarding Eggvestments. Qureshi also takes the view that WNBC was White's club, and as a result he did not deal with investors directly. However, we find that Qureshi was involved with White in advising potential investors to invest in the Eggvestment program. Specifically, Qureshi was a co-presenter with White at many WNBC meetings that provided investment advice to club members. He interacted with WNBC members at these meetings, also answering their questions on Eggvestments and other investment schemes. In response to one question from the audience on whether returns on investments are paid annually, Qureshi responded "Yeah, in US dollars" (*Exhibit 11, tab 1, WNBC Video, September 15, 2003* at 1:06:00).

[135] Qureshi met with Investor 2 at his Toronto condo building and convinced her to renew her investment in Eggvestments, taking an active role in advising her on her investments, including advising her on the appropriate term and rate.

[136] Qureshi was the signing WNBC representative on one of Investor 2's original Eggvestment contracts. This Eggvestment contract states that questions can be addressed to Qureshi directly. Offering to field questions on specific investments meets the requirements for advising and engaging in active recommendations for investment products.

[137] Accordingly, we have concluded that Qureshi acted as an advisor within the meaning of the Act. Qureshi was not registered in any capacity with the Commission and no registration exemption was available. Qureshi therefore violated subsection 25(1)(c) of the Act.

WNBC

[138] Based on the evidence before us, we have concluded that WNBC acted as an unregistered advisor.

[139] WNBC was described by White as having evolved from a networking club to having more of a focus on the finances of its members, where members can have access to a team of seasoned consultants. White describes WNBC's advising role as follows:

> WNBC will be your coach on how you can win the games. And, you know, you look at what are the games? Well there's the investment game, there's the banking game, there's the tax game, there's the corporation game and there's even the RRSP game.
>
> (*Exhibit 11, tab 5, WNBC Video, An Introduction to WNBC* at 8:36)

[140] Although WNBC may have business purposes beyond investments, it is clear that one of the roles of the club is to act as a coach and advise its members' investment decisions.

[141] The WNBC website offers consulting services and investment opportunities. Unlimited consulting by email, business club meetings, investment seminars, access to onshore and offshore investments and asset management services are included in membership packages. In a WNBC promotional video, White informs potential investors of the availability of investment consultation by email and in person: "People who join us, they get unlimited consulting by email, they get one-on-one meetings where necessary" (*Exhibit 11, tab 5, WNBC Video, An Introduction to WNBC* at 6:15). This personalized investment consultation constitutes advising in securities.

[142] The Eggvestment contracts provide examples of the advising services made available by WNBC. WNBC advises investors on the percentage of their portfolio that should be allocated to Eggvestments, it directs questions to Qureshi and White and it agrees to provide investors with monthly reports, demonstrating WNBC's ongoing advisory relationship with investors.

[143] WNBC meetings were also used for promoting other investment opportunities such as the GreenFleet Car Sharing investment opportunity and Island Ink Jet investments.

[144] The nature of the information provided by WNBC went beyond information on investments. WNBC offered investment consultation services focused on providing investment advice. Accordingly, we have concluded that WNBC acted as an advisor within the meaning of the Act. WNBC was not registered in any capacity with the Commission and no registration exemption was available. WNBC therefore violated subsection 25(1)(c) of the Act.

MMCL

[145] Based on the evidence before us, we are not satisfied that MMCL breached subsection 25(1)(c) of the Act.

Capital Reserve

[146] Based on the evidence before us, we are not satisfied that Capital Reserve breached subsection 25(1)(c) of the Act.

Capital Investments

[147] Based on the evidence before us, we are not satisfied that Capital Investments breached subsection 25(1)(c) of the Act.

D. Did the Respondents Engage in a Distribution of Securities Without a Prospectus in Breach of Subsection 53(1) of the Act?

i. The Applicable Law

[148] Subsection 53(1) of the Act sets out the prospectus requirement for trades that would be a distribution:

> No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary

> prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

[149] The prospectus requirement plays an essential role for the protection of investors. As stated by the Court in *Jones v. F.H. Deacon Hodgson Inc.* (1986), 9 O.S.C.B. 5579 (H.C.) at 5590: "There can be no question but that the filing of a prospectus and its acceptance by the Commission is fundamental to the protection of the investing public who are contemplating purchase of the shares". The prospectus requirement ensures that prospective investors have sufficient information to ascertain the risk level of their investment and to make informed investment decisions (*Re First Global Ventures, S.A.* (2007), 20 O.S.C.B. 10473 at para. 145).

[150] The definition of a "distribution" under subsection 1(1) of the Act states that :

> "distribution", where used in relation to trading in securities, means,
>
> (a) a trade in securities of an issuer that have not been previously issued;
>
> …

[151] For a trade in securities of an issuer that have not been previously issued, it is therefore important that a prospectus be issued to protect the public.

ii. Analysis

[152] As established above in our discussion of section 25(1)(a) of the Act, the Respondents all engaged in trades, as defined in the Act. They engaged in activities that were trades or acts in furtherance of trades in securities through their involvement in the issuance of Eggs to investors and in the execution of Eggvestment contracts. The Respondents have therefore met the trading requirement under part (a) of subsection 1(1) of the definition of "distribution" under the Act.

[153] The second requirement of this definition is that the securities in question have not been previously issued. As White told WNBC members at a September 15, 2003 meeting, he and Qureshi created the Eggvestment fund in response to investor requests for Qureshi's assistance in managing currency exchange investments on their behalf. This was therefore the first issuance of the Eggs (units in the Eggvestment program) or investment contracts for Eggvestments.

iii. Findings

[154] The evidence shows that all the Respondents engaged in trades. As well, there is no record that any of the Respondents ever filed as a reporting issuer or filed a prospectus in Ontario. Additionally, there is no evidence that any investors who bought units (Eggs) or potential Eggvestment investors were provided with a prospectus.

[155] As established above, we have concluded that the Respondents engaged in trades or acts in furtherance of trades. At the time of these acts, Eggvestment units had not previously been issued, and we therefore conclude that the trades would have been a distribution. Since no prospectus was filed, we conclude that all the Respondents have contravened subsection 53(1) of the Act.

E. Were There any Exemptions Available to the Respondents?

i. The Law

[156] National Instrument 45-106 ("NI 45-106") provides exemptions to the registration and prospectus requirements in the Act if certain conditions are met.

[157] Once Staff has shown that the Respondents have traded, advised without registration and distributed securities without a prospectus, the onus shifts to the Respondents to establish that one or more exemptions from the registration and prospectus requirements are available to them (*Re Limelight Entertainment Inc.*, *supra* at para. 142).

[158] Since the Respondents did not appear at the hearing, we requested that Staff address any evidence that might relate to the reliance on an exemption.

ii. Analysis

The Accredited Investor Exemption

[159] The definition of an accredited investor is set out in section 1.1 of NI 45-106 and provides as follows:

> …
>
> (j) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds $1,000,000,
>
> (k) an individual whose net income before taxes exceeded $200,000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,
>
> (l) an individual who, either alone or with a spouse, has net assets of at least $5,000,000, …

[160] Investor 1 and Investor 2 confirmed that no one asked them about their financial position/resources prior to their investing. They also testified that WNBC or White were aware of their financial position/resources as WNBC prepared their annual taxes.

[161] In the evidence, Qureshi mentions in his voluntary interview that "I assumed that they [investors] are all educated or smart enough to get involved into this". In addition, in the agreement between WNBC (signed by White) and Capital Investments (signed by Qureshi) WNBC represents that the investors were "qualified, sophisticated and knowledgeable investors". The responsibility for ensuring that the requirements of an exemption are met is the responsibility of the person seeking to rely on the exemption. Therefore, Qureshi cannot rely on his assumption about investors nor the agreement between Capital Investments and WNBC that he thought the investors were accredited investors.

[162] Although it is possible that some WNBC members were accredited investors there was no evidence before us that this was the case. In addition, the evidence of the investor witnesses who testified clearly establishes that they did not fit the criteria of accredited investors defined in section 1.1 of NI 45-106. Accordingly, no exemption to registration was available to the Respondents.

The Private Issuer Exemption

[163] Section 2.4 of NI 45-106 provides a private issuer exemption to the dealer registration and prospectus requirement (on certain conditions).

[164] For example, there is a private issuer exemption available for an issuer that is limited to not more than 50 beneficial shareholders. In our view, this exemption is not available to WNBC. Investors were not shareholders of WNBC, instead they were members of a club who paid membership fees for certain services. In any event, the evidence shows that more than 50 investors participated in WNBC's club.

[165] While White held WNBC out to be a private club, we find that WNBC was dealing with the public. WNBC recruited new members and prospective members were encouraged to attend meetings. In particular, Investor 1 and Investor 2 testified that approximately 30 to 50 members would attend WNBC meetings and sometimes these members would bring non-members along. These individuals required the protections of adequate disclosure from a prospectus.

iii. Findings

[166] Based on the foregoing, we find that there were no registration or prospectus exemptions available to the Respondents.

[167] In our view, WNBC members were precisely the type of investors who are meant to be protected by the registration and disclosure requirements. We find it troubling that WNBC members were not provided with adequate disclosure of Qureshi's qualifications, historical performance record in trading, and ongoing performance. Basically, members of WNBC had little clue about what White and Qureshi were doing with their money.

[168] In addition, under section 6.1 of NI 45-106, issuers are required to file reports of exempt distributions with the Commission within 10 days of the distribution. There is no evidence of any such filings in this matter.

F. Did the Respondents Act in a Manner that was Contrary to the Public Interest and Harmful to the Integrity of Ontario Capital Markets?

i. Analysis

[169] In addition to the breaches of the Act in this matter, Staff alleges that the conduct of the Respondents is also contrary to the public interest.

[170] All of the Respondents breached a number of key provisions, trading without registration (subsection 25(1)(a)) and engaging in a distribution without satisfying the distribution requirements under the Act (subsection 53(1)), which are intended to protect investors. In addition, White, Qureshi and WNBC also breached subsection 25(1)(c) of the Act, advising without registration.

ii. Findings

[171] These breaches of the Act caused harm to investors and to the integrity of Ontario's capital markets, and were clearly contrary to the public interest. It is contrary to the public interest because registration and distribution requirements are essential to protect investors and to ensure the integrity of the capital markets. Through this conduct, the Respondents failed to maintain high standards of fairness and business conduct to ensure honest and responsible conduct.

[172] WNBC, White and Qureshi made false promises and misleading statements about the returns of the Eggvestment program. In particular, they made dishonest representations as to the future guaranteed returns of the Eggvestment program. In addition, White and Qureshi were not honest with investors in the Eggvestment program. Specifically:

- Qureshi stated that he had several good trades and only two or three bad trades. However, Qureshi knew as early as the summer of 2003 that he was not making the promised 18-20% returns. Nevertheless, he stated on video tape in 2004 that the Eggs were making money.
- White knew that Qureshi was not able to make the promised rate of return as early as 2003 because White acknowledges that Qureshi was having trouble paying investors.
- White knew within months that Qureshi was not providing monthly reports to Eggvestment investors. White attempted to mask that failure by stating on the website that investors already knew how their Eggs were performing because of the promised rate of return.

[173] For example, Investor 1 testified that at his first WNBC meeting, he was given information on investments in Europe with more or less guaranteed returns.

[174] In its description of Eggvestments, the WNBC website states the following about Qureshi's confidence in his ability to make money on currency trading and to guarantee returns:

> Although his approach yields much higher than average profits on such markets, his methods are systematic and risk averse as not to risk the capital of the individuals for which he is conducting the service. … Dr. Qureshi is confident that his methods are capable of providing an annualized rate of return of at least 18% (investment period of one year), 19% (investment period of two years) or 20% (investment period of three years).

[175] Further, during a WNBC meeting, Qureshi told investors that "In reality, my return is more than 40, 50 percent" (*Exhibit 11, tab 1, WNBC Video, September 15, 2003* at 44:26).

[176] Qureshi and his companies were in a position to benefit directly from contributions from investors. The Eggvestment contracts guaranteed rates of return of up to 20 percent, but Qureshi has stated that his actual rates of return on currency trading are in the range of 40 to 50 percent. Any excess profits from currency trading done by Qureshi, Capital Reserve or Capital Investments would have been available to those Respondents.

[177] White gave his opinion on the safety of investments managed by Qureshi:

- "He doesn't want to lose any money. He hates that. He gets really cranky. Fortunately that doesn't happen very often" (*Exhibit 11, tab 1, WNBC Video, September 15, 2003* at 36:30).
- "He never loses money" (*Exhibit 11, tab 5, WNBC Video, September 15, 2004* at 52:45).
- "He either doesn't lose or he makes money" (*Exhibit 11, tab 5, WNBC Video, September 15, 2004* at 1:29:25).

[178] We find that making such promises about future returns on investments is contrary to the public interest. Both White and Qureshi stated that investors were making money on the Eggs (units in the Eggvestment program). However, this was not true and in the summer of 2003 Qureshi was not making the promised returns of 18-20%.

[179] Also, as mentioned above, investors were not provided with monthly reports about their Eggvestments, and when they inquired about this, White just told them that the website states the promised rate of return for their investments.

[180] WNBC required that investors become members in order to take advantage of investment opportunities. With sign up fees and annual membership fees, WNBC and White stood to gain financially from the recruitment of additional investor members.

[181] Overall, we find that the whole scheme in this case was contrary to the public interest. It was determined that investors invested at least: US$ 560,366 and CDN$ 577,785 in the Eggvestment program. While some investors were returned some of their investment, not all investors got their money back. Therefore, the amount outstanding to Eggvestment investors is US$ 340,164 and CDN$ 431,085 (for a combined total of approximately more than CDN$ 800,000). This amount does not include any accrued interest that was guaranteed on the Eggvestments, nor does it include other funds invested by investors in other investment opportunities offered by White, Qureshi and WNBC.

6. Conclusion

[182] For the reasons stated above we find that:

(a) all of the Respondents breached subsection 25(1)(a) of the Act;

(b) White, Qureshi and WNBC breached subsection 25(1)(c) of the Act;

(c) all of the Respondents breached subsection 53(1) of the Act;

(d) there were no exemptions available to the Respondents; and

(e) all of the Respondents acted contrary to the public interest.

[183] The parties are directed to contact the Office of the Secretary within the next 10 days to set a date for a sanctions hearing, failing which a date will be set by the Office of the Secretary.

Dated at Toronto this 10th day of February, 2010.

"Patrick J. LeSage"
Patrick J. LeSage

"Suresh Thakrar"
Suresh Thakrar

3.1.2 Irwin Boock et al. – s. 127

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

AND

IN THE MATTER OF
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

REASONS AND DECISION
ON DISCLOSURE

(Section 127 of the Securities Act, Ontario Securities Commission
Rules of Practice (1997), 20 O.S.C.B. 1947)

Hearing:	October 21, 2009 November 2, 2009 November 20, 2009 January 8, 2010	
Decision:	February 9, 2010	
Panel:	James E. A. Turner Mary G. Condon	Vice-Chair and Chair of the Panel Commissioner
Counsel:	Jay Naster	For Irwin Boock
	Kathryn J. Daniels Sean P. Horgan Usman M. Sheikh Amanda Heydon	For Staff of the Ontario Securities Commission

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REASONS AND DECISION

I. INTRODUCTION

[1] The issue in this matter is whether compelled testimony and evidence obtained from a person who is a respondent in an Ontario Securities Commission (the "**Commission**") administrative proceeding, which evidence was obtained for purposes of an investigation by the U.S. Securities and Exchange Commission (the "**SEC**"), should be disclosed to Co-Respondents (as defined below) in the Commission proceeding notwithstanding an undertaking given by Staff of the Commission ("**Staff**") to the respondent.

[2] We have concluded that the compelled testimony and evidence must be disclosed to the Co-Respondents. These are our reasons.

II. BACKGROUND

[3] In response to a request for assistance from the SEC, on June 30, 2006, the Commission issued an order pursuant to subsection 11(1)(b) of the *Securities Act*,[1] R.S.O. 1990, c. S.5, as amended (the "**Act**") authorizing certain Commission Staff and Staff of the SEC ("**SEC Staff**") to investigate possible market manipulation schemes by or involving KSW Industries Inc., a Nevada Corporation ("**KSW**"), and Lease Smart, Inc. ("**LSI**"), the activities of a Toronto-based transfer agent, Select American Transfer Co. ("**SAT**"), and associated entities and persons. Subsequent amendments to the order added and removed Staff and SEC Staff, most recently, on January 27, 2009 (the order as amended is referred to in these reasons as the "**Section 11 SEC Order**"). The Section 11 SEC Order includes the following paragraph:

> IT IS HEREBY FURTHER ORDERED pursuant to section 16(2) of the Act that the information obtained pursuant to this order is for the exclusive use of SEC, forward sharing or disclosure of the information to any third party is expressly prohibited, absent a further Order of the Commission.

[4] The Section 11 SEC Order relates to the investigation of what we will refer to as the "**KSW matter**".

[5] On May 23, 2007, the Commission issued an order pursuant to subsection 11(1)(a) of the Act authorizing Staff to investigate possible breaches of Ontario securities law by SAT, LSI and others. A subsequent amendment on May 30, 2007 added and removed Staff. That order relates to the investigation of what we will refer to as the "**SAT matter**".

[6] The KSW matter and the SAT matter involve the investigation of some of the same persons and some of the same issues.

[7] On October 16, 2008, the Commission issued a Notice of Hearing in this matter (referred to in these reasons as this "**Proceeding**"), and Staff issued a Statement of Allegations, against Irwin Boock ("**Boock**"), SAT, LSI and the other persons referred to in the style of cause above, alleging "a complex scheme of securities fraud". This Proceeding resulted from the investigation of the SAT matter.

[8] On November 14, 2008, Staff issued a summons requiring Boock to attend for an examination on December 17, 2008. The summons was issued under the authority of the Section 11 SEC Order.

[9] In a letter dated January 9, 2009, counsel for Boock confirmed that it had been agreed that Boock would appear on January 29, 2009 for examination. The letter includes the following statement:

> Based on our discussions, I have been informed that the OSC has undertaken to erect an ethical wall precluding any access to, or use of, information obtained by the SEC further to the summons, by Staff of the OSC engaged in the prosecution of Mr. Boock pursuant to the Notice of Hearing issued on October 16, 2008. I understand that this will apply to both the testimony and any documents that may be produced by Mr. Boock pursuant to the summons.
>
> During our telephone discussion, I asked for clarification as to why the OSC has erected the ethical wall noted above given what I understand to be the considerable overlap between the OSC allegations and the SEC inquiry. You kindly agreed to get back to me on this issue.
>
> It should also be noted that it is my understanding that the request made by the SEC which resulted in the issuance of the summons, was further to a request made in accordance with the IOSCO MOU to which both the OSC and SEC are signatories. In the circumstances, absent the consent of Mr. Boock, the SEC is precluded from sharing the testimony obtained with any criminal law enforcement agency. Furthermore, disclosure of any documents obtained pursuant to the summons to criminal law enforcement would require that an order be obtained from the OSC pursuant to s. 17 of

[1] See Schedule A for relevant provisions of the Act.

> the Securities Act and that Mr. Boock would be entitled to reasonable notice before any such order were made. In the event that my understanding in this regard is incorrect, please advise.

[10] In a responding letter dated January 16, 2009, Staff confirmed that an ethical wall (the "**Ethical Wall**") had been established:

> With regards to your inquiry relating to the ethical wall, I confirm that Staff has undertaken to erect an ethical wall to screen off access to any documents or material obtained by Staff named in the s. 11(1)(b) order in the matter of KSW Industries Inc. ("KWS") [sic] for the purposes of assisting the U.S. Securities and Exchange Commission Staff. Without responding specifically to your comments on this issue, you are aware that there are times when it is not appropriate for information sharing directly or indirectly to take place amongst teams of investigators. Staff have determined in this case that it is appropriate to establish two separate teams in the Select American and KSW matters. A protocol with screening measure has been established to ensure the efficacy of the screen. If you wish to discuss these measures, I am happy to do so.
>
> With respect to your comments relating to the forward sharing of evidence compelled from your client to criminal law authorities, I confirm that Staff share your understanding. Evidence obtained pursuant to s. 11(1)(b) is provided to the SEC on the basis that it cannot be forward shared without first returning to our Commission and obtaining the requisite Order under s. 17 on notice to the individual from whom evidence was compelled.

[11] On January 20, 2009, the Commission re-issued a summons to Boock to attend at the Commission for examination by Staff and SEC Staff. The examination pursuant to that summons is referred to in paragraph 14 of these reasons.

[12] On the same day, Staff signed a "Protocol for the Treatment of Evidence and Testimony Obtained in relation to Select American Transfer Company and KSW Industries Inc." (the "**Protocol**"). The purpose of the Protocol is stated in its preamble to be as follows:

> Staff have obtained a s. 11(1)(a) order and commenced regulatory proceedings in the matter of Select American. Staff have also recommended that criminal proceedings be commenced against certain respondents in the Select American matter. The Securities and Exchange Commission ("SEC") has requested assistance with respect to an investigation they are conducting in the matter of KSW Industries Inc. ("KSW"). Staff have obtained a s. 11(1)(b) order for the purposes of assisting the SEC. The Select American and KSW matters have, in part, similar respondents and issues at hand. In light of the recommendation relating to criminal charges in the Select American matter it is of critical importance that no information compelled on behalf of the SEC for the KSW matter be shared either directly or indirectly with those individuals involved in the Select American matter.

[13] The Protocol identifies two teams composed of different members of Staff: the team involved in this Proceeding ("**SAT Staff**") and the team involved in the KSW matter ("**KSW Staff**"). The Protocol provides, amongst other things, that SAT Staff "will not access" KSW Staff files whether filed electronically or in hard copy; that SAT Staff will not discuss this Proceeding with KSW Staff, but for the purposes of responding to SEC requests for assistance; that compelled testimony or documents obtained in the KSW matter will be locked or otherwise secured against access by persons other than KSW Staff; and that no unauthorized person is to attempt to gain access. The acknowledgement signed by members of Staff confirms that "a breach of the Protocol could be in violation of the Securities Act".

[14] On January 29 and 30, 2009, Boock attended for examination in accordance with the Commission's summons. Present were KSW Staff and SEC Staff, but not SAT Staff. Before the examination began, counsel for Boock stated on the record:

> I am advised, and have been given an undertaking by the Ontario Securities Commission and staff of the Commission, that the information that is obtained today is for the exclusive use of the Securities and Exchange Commission and will not be used by the Ontario Securities Commission in the context of the ongoing proceeding currently pending before the Ontario Securities Commission. And I understand that that is confirmed as well in the Order that was October, the Investigation Order that has been entered as Exhibit 2. (Transcript of Compelled Examination of Boock, January 29, 2009, 10:11-18).

[15] No comment was made by KSW Staff on the record in response to that statement.

[16] On August 31, 2009, SAT Staff sent an e-mail to counsel for the Respondents in this Proceeding refusing a request to provide a copy of the Protocol to the Respondents and stating that it "was put in place to keep all enforcement options open for Staff of the Commission with respect [to] any and all of the Respondents".

[17] Staff represents that it has complied with the Protocol. In accordance with the Protocol, only SAT Staff are involved in this Proceeding and SAT Staff have not had access to the testimony, documents and information compelled from Boock under the Section 11 SEC Order (the "**Compelled Evidence**").

[18] On October 2, 2009, Stanton DeFreitas, a Respondent in this Proceeding, brought a motion under section 17 of the Act seeking disclosure of "all documentation and information" subject to the Ethical Wall (the "**DeFreitas Motion**").

[19] On October 8, 2009, Boock refused to consent to a request by KSW Staff to permit disclosure to the other Respondents in this matter of the scope and terms of the undertaking given by Staff to Boock (the Respondents in this matter, other than Boock, are collectively referred to as the "**Co-Respondents**").

[20] On October 9, 2009, KSW Staff made disclosure to all the Respondents in this Proceeding of all testimony and evidence obtained in connection with the KSW matter, other than the Compelled Evidence.

[21] On October 14, 2009, KSW Staff brought a motion (the "**Staff Motion**"), on notice to all of the Respondents in this matter, seeking an order authorizing disclosure to the Co-Respondents of the particulars of the undertaking given by Staff to Boock (but not particulars of the Compelled Evidence) in order to permit the Co-Respondents to effectively advance the DeFreitas Motion.

[22] On October 21, 2009, we held a hearing to address the Staff Motion. Given the nature of the issues, the hearing was held *in camera* and involved only KSW Staff and Boock, and not the Co-Respondents.

[23] At the hearing on October 21, 2009, KSW Staff and Boock disagreed as to the terms and scope of the undertaking given by Staff to Boock. Following that hearing, on October 22, 2009, we requested through the Office of the Secretary to the Commission that KSW Staff and Boock make submissions to us on the following six questions:

1. What are the terms of the undertaking given by Staff in favour of Mr. Boock? Does that undertaking restrict the use in an administrative proceeding before the Commission of the information subject to it? Does that restriction apply to any party to the proceeding or specific parties (other than Staff)?

2. What was the reasonable expectation of Mr. Boock with respect to the scope of the undertaking and Staff's compliance with that undertaking?

3. Does the fact that the ethical wall established by Staff has been terminated in respect of all information, other than that subject to the Staff undertaking, affect the undertaking or Staff's obligation to comply with it?

4. To what extent does the section 11 order of the Commission dated January 27, 2009 In the Matter of KSW Industries restrict the "use" in this proceeding of the information obtained by the SEC pursuant to that order?

5. If the Commission concludes that the Staff undertaking remains in effect, should the Commission nonetheless exercise its discretion to require disclosure of the information subject to the undertaking to the other Respondents named In the Matter of Irwin Boock *et al*?

6. Would the disclosure of that information to the other Respondents be unfair to Mr. Boock and, if so, how?

[24] On November 2, 2009, we held an *in camera* hearing at which KSW Staff and Boock made submissions on the scope of the questions referred to in paragraph 23 of these reasons. It was agreed at that time that the issues arising from the questions would be heard and addressed in two stages. Because questions 1 to 4 involve the terms and application of the undertaking, submissions on those questions were to be heard as a first step at an *in camera* hearing involving only KSW Staff and Boock. A second separate hearing would be held, if necessary, on notice to all the Respondents in this matter, to hear submissions on questions 5 and 6, which would be dealt with as part of the DeFreitas Motion.

[25] KSW Staff and Boock filed written submissions with respect to questions 1 to 4 and made oral submissions at an *in camera* hearing held on November 20, 2009. At that time, KSW Staff took the position that the undertaking does not prevent disclosure of the Compelled Evidence to the Co-Respondents. If we agree with that position, it would be unnecessary for us to address the Staff Motion. However, Boock took the position that the undertaking does prevent that disclosure. At the conclusion of that hearing, we reserved our decision and requested KSW Staff and Boock to return and make submissions on questions 5 and 6. In doing so, we acknowledged that the Co-Respondents may have an interest in the answers to those questions and that the Co-Respondents would be given the opportunity to make submissions on them in the future, if that was necessary in the circumstances.

[26] On December 10, 2009, SAT Staff and counsel for Boock, DeFreitas and Wong attended a brief appearance at which the hearing on the merits in this Proceeding was scheduled to commence on February 1, 2010, subject to the outcome of the matters currently before us. (That hearing was subsequently adjourned *sine die* by Commission order.) The resumption of the hearing to address the matters currently before us, involving only KSW Staff and Boock, was set for January 8, 2010.

[27] KSW Staff and counsel for Boock filed written submissions and, on January 8, 2010, we held an *in camera* hearing to complete submissions by KSW Staff and Boock on the matters currently before us.

[28] KSW Staff and counsel for Boock made submissions on each of the questions referred to in paragraph 23 of these reasons, other than question 5. These reasons focus on questions 1, 2 and 6, although to the extent necessary, we address each of the other questions in the course of our reasons. In our view, KSW Staff and Boock have been given ample opportunity to address the issues currently before us.

[29] For reference, we have set forth in Schedule A to these reasons the relevant provisions of the Act, and we have set forth in Schedule B to these reasons sections 7, 11 and 13 of the *Charter of Rights and Freedoms*, Part I of the C*onstitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1992, c. 11 (the "***Charter***").

III. ANALYSIS

A. Positions of the Parties as to the Scope of the Undertaking

(i) Submissions by KSW Staff

[30] KSW Staff acknowledges that an undertaking was given by Staff to Boock and accepts that the undertaking prevents SAT Staff from using the Compelled Evidence in this Proceeding or as a basis for informing its position at the hearing on the merits of this Proceeding. However, KSW Staff submits that the undertaking does not prevent disclosure of the Compelled Evidence to the Co-Respondents and does not prevent the Co-Respondents from using the Compelled Evidence in this Proceeding.

[31] KSW Staff submits that the terms of the undertaking are as stated by counsel for Boock at the commencement of the examination of Boock on January 29, 2009 (set out in paragraph 14 of these reasons). KSW Staff submits that the letters and e-mails exchanged by Staff and counsel for Boock prior to that date reflect statements of position, but not an agreement or undertaking. KSW Staff submits that the scope of the undertaking is defined by its plain words, which apply only to the use of the Compelled Evidence, not disclosure of it. Further, KSW Staff submits that Boock's reasonable expectations as to the extent of the undertaking would have been informed by his knowledge that Staff is obligated to disclose to all respondents in a Commission proceeding all relevant information. KSW Staff has represented to us that the Compelled Evidence is relevant to this Proceeding.

[32] KSW Staff submits that the undertaking does not restrict disclosure of the Compelled Evidence to the Co-Respondents, or the Co-Respondents' use of that evidence in this Proceeding. KSW Staff submits that respondents in Commission proceedings are entitled to disclosure of all relevant materials and information in the possession of Staff in order to permit the respondents to make full answer and defence. The Commission has held that Staff's disclosure obligation is a broad duty akin to the "*Stinchcombe standard*" established in criminal law (see paragraph 70 of these reasons).

[33] KSW Staff submits that it has and will continue to comply with the undertaking not to use the Compelled Evidence in this Proceeding. KSW Staff also submits that the undertaking by its terms restricts the use of the Compelled Evidence by Staff, not by the Co-Respondents.

[34] Further, KSW Staff submits that, as a legal matter, the discretion of the Commission is not fettered by an undertaking given by Staff. Accordingly, the Commission is entitled to make any decision it considers to be in the public interest in these circumstances regardless of the terms of the undertaking.

[35] Finally, KSW Staff submits that the public interest requires that the Co-Respondents in this Proceeding be given access to the Compelled Evidence in order to be able to make full answer and defence.

(ii) Submissions by Boock

[36] Boock submits that the Compelled Evidence should not be disclosed to the Co-Respondents because of the undertaking given by Staff to Boock.

[37] Boock submits that the terms of the undertaking are set out, not only in the uncontradicted statement by Boock's counsel on January 29, 2009 at the outset of Boock's testimony, but also in the January 9, 2009 letter from Boock's counsel to Staff, which refers to previous discussions, and Staff's responding letter of January 16, 2009. Accordingly, Boock submits that the terms of the undertaking are that (i) SAT Staff would be prohibited from having access to the Compelled Evidence and that evidence would not be used at, or to inform SAT Staff's strategy in connection with, this Proceeding; (ii) the undertaking prevents disclosure to or use by the Co-Respondents of the Compelled Evidence in this Proceeding; and (iii) Staff undertook to create an ethical wall prohibiting access by SAT Staff to any information on the KSW side of the ethical wall.

[38] Boock submits that where the Commission is considering making a disclosure order under section 17 of the Act, the Commission must, in discerning the public interest, balance the integrity and efficacy of the investigation process and the rights of those investigated to their privacy (*Re X and A Co.* (2007), 30 O.S.C.B. 327 ("***Re X and A Co.***")).

[39] Boock submits that the exercise of the Commission's public interest jurisdiction in the circumstances should be informed by the Commission's decision in *Re Black* (2007), 31 O.S.C.B. 10397 ("***Re Black***") and the decision of the Ontario Court of Appeal in *Deloitte & Touche v. Ontario Securities Commission* (2002), 159 O.A.C. 257 ("***Deloitte (C.A.)***"). In *Re Black*, the Commission concluded that the decision in *Deloitte (C.A.)* "is the leading authority on the test for disclosure under subsection 17(1) of the Act." In *Deloitte (C.A.)*, the Ontario Court of Appeal, in allowing the appeal, stated:

> The Commission recognized that it could order disclosure under s. 17(1) only if Staff established that disclosure to the . . . respondents was "in the public interest". Citing *Coughlan, Re* (2000), 143 O.A.C. 244 (Ont. Div. Ct.) at para. 38, the Commission observed at p. 5 that in determining whether disclosure was warranted:
>
> > [I]t must consider the purpose for which the evidence is sought and the specific circumstances of the case. … [I]n determining whether to order disclosure it must balance the continued requirement for confidentiality with its assessment of the public interest at stake, including harm to the person whose testimony is sought.
>
> (*Deloitte (C.A.)*, *supra*, at para. 15, cited in *Re Black*, *supra*, at para. 82.)

[40] Boock also refers to the Commission's comments in *Re Black* about the exercise of its public interest jurisdiction in the circumstances before it:

> The Commission recognizes that it must exercise its discretion under subsection 17(1) within the parameters of the Act and the Charter. With respect to the discretionary decisions of administrative agencies, the Supreme Court stated:
>
> > … that discretion must be exercised in accordance with the boundaries imposed in the statute, the principles of the rule of law, the principles of administrative law, the fundamental values of Canadian society, and the principles of the Charter.
>
> …
>
> Staff agrees that the Respondents' reasonable expectations of privacy and the integrity of the Commission's investigative powers are also factors for the Panel to consider.
>
> …
>
> … we conclude that a witness's reasonable expectations of privacy and confidentiality are a significant factor in our public interest jurisdiction.
>
> (*Re Black*, *supra*, at paras 87, 110 and 123.)

[41] Boock submits that the Commission usually does not authorize, and Staff usually does not conduct, compelled examinations of a respondent after Staff has commenced a Commission administrative proceeding because that would be fundamentally unfair to the respondent and contrary to the principles reflected in the *Charter*. Boock submits that his compelled testimony at the request of the SEC was conducted for the predominant purpose of "incriminating" him, and therefore, the principles set out by the Supreme Court of Canada in *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3 ("***Branch***") apply. That is to say that it would be fundamentally unfair and inappropriate for the Compelled Evidence to be used against him in this Proceeding.

[42] Boock submits that by giving the undertaking and obtaining the Section 11 SEC Order, the Commission gave effect to its obligation to assist the SEC while at the same time ensuring that the Compelled Evidence would not prejudice Boock's right to a fair hearing in this Proceeding.

[43] Further, Boock submits that in determining the scope of Staff's undertaking, the Commission is not limited to the bare words of the undertaking but is also entitled to consider the context in which the undertaking was given, Staff's intention in giving it, and Boock's legitimate expectations as a result (*R. v. Mandate Erectors & Welding Ltd* (1999), 221 N.B.R. (2d) 79 (N.B.C.A.) at para. 5). Boock submits that we should determine "the spirit of the undertaking, regardless of what words were used" (*R. v. Wolf*, [1978] O.J. No. 2686 (Ont. Co. Ct.) at paras. 5 to 8).

[44] Boock submits that the position taken by KSW Staff as to the scope of the undertaking effectively renders the undertaking useless and of no effect. He submits that no undertaking was necessary to give Boock use and derivative use immunity in respect of criminal proceedings because those protections are set out in the *Evidence Act*, R.S.O. 1990, c. E. 23, as

amended, the *Canada Evidence Act*, R.S.C. 1985, c. C-5, and the *Charter*. Boock submits that Staff's interpretation of the undertaking would allow the Compelled Evidence to be used against him in this Proceeding by the Co-Respondents. From his perspective, it makes no difference whether it is SAT Staff or a Co-Respondent who uses the Compelled Evidence against him. Boock submits that "this is the prejudice that the undertaking was intended to guard against."

[45] Boock submits that pursuant to the undertaking, SAT Staff are to have no knowledge of the Compelled Evidence, and if SAT Staff "cannot access the information, they clearly cannot use or disclose that information." Further, Boock submits that if KSW Staff cannot disclose the Compelled Evidence, the Co-Respondents cannot obtain it, let alone use it.

B. The Terms and Scope of the Undertaking

(i) The Terms of the Undertaking

[46] We must first determine the terms and scope of the undertaking given by Staff to Boock.

[47] In our view, the undertaking agreed to by Staff is principally reflected in the statement made by Boock's counsel at the commencement of Boock's compelled examination on January 29, 2009 (set out in paragraph 14 of these reasons). That statement is supplemented by the letter from Boock's counsel to Staff dated January 9, 2009 (relevant excerpts of which are set forth in paragraph 9 of these reasons) and the responding letter from Staff to counsel for Boock dated January 16, 2009 (relevant excerpts of which are set out in paragraph 10 of these reasons). The key terms of the undertaking are that the Compelled Evidence would not be used by the Commission or Staff in this Proceeding. We are not certain whether Staff intended by its January 16, 2009 letter to undertake *to Boock* that an ethical wall would be established. In all the circumstances, however, we have concluded that it was reasonable for Boock to believe that Staff had undertaken to him in that letter that Staff would establish an ethical wall between the KSW matter and the SAT matter.

[48] From Staff's perspective, the primary purpose of the Ethical Wall was to protect the integrity of Staff's investigation related to the SAT matter, because Staff had recommended criminal proceedings against certain respondents in connection with that matter. It would have been improper for Staff to have compelled testimony from Boock for the predominant purpose of obtaining evidence for use against him in a criminal proceeding.[2]

[49] Accordingly, the Ethical Wall was established for the protection of Staff and the integrity of the SAT investigation in order to keep "all enforcement options open" to Staff. We note that Boock was not aware of the specific arrangements put in place to establish the Ethical Wall and he was not a party to or aware of the specific terms of the Protocol. That suggests that the purpose of the Ethical Wall was not for Boock's benefit. It is also clear, based on the letter from Boock's counsel to KSW Staff dated January 9, 2009, that at least one of Boock's concerns at the time was to ensure that the Compelled Evidence was not used in connection with a U.S. criminal proceeding.

[50] We would add that it is not completely clear to us why Staff gave the undertaking to Boock. The Ethical Wall was to protect the integrity of Staff's investigation in the SAT matter at a time when possible criminal proceedings were contemplated. It appears to us that KSW Staff was legally entitled to compel Boock's testimony in connection with the KSW matter, subject to the concerns addressed by establishing the Ethical Wall. However, we recognize Boock's submission that the undertaking was given to induce him to provide his testimony without objection (see paragraph 65 of these reasons).

(ii) Is the Undertaking Binding on the Commission?

[51] An undertaking given by Staff is not legally binding on the Commission, but we recognise the importance to the integrity of our investigatory and adjudicative processes that the Commission honour reasonable undertakings given by Staff. We agree that "public confidence in the integrity of the [Commission] and its Staff would not be enhanced if assurances given by counsel are simply dismissed out of hand as "not binding"" (*Coughlan v. WMC International Inc.* (2000), 143 O.A.C. 244 (Ont. Div. Ct.) ("***Coughlan***"), at para. 58).

[52] We also note that Rule 4.01(7) of the Law Society of Upper Canada's *Rules of Professional Conduct* states that "[a] lawyer shall strictly and scrupulously carry out an undertaking given to the tribunal or to another legal practitioner in the course of litigation". The Commentary to Rule 4.01(7) states that "[u]nless clearly qualified, the lawyer's undertaking is a personal promise and responsibility".

[53] Accordingly, we believe that the Commission should honour an undertaking given by Staff to a respondent unless there is a good reason not to do so.

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[2] See the discussion commencing at paragraph 83 of these reasons with respect of the application of sections 7, 11 and 13 of the *Charter* to Boock's Compelled Evidence.

(iii) Interpretation of the Undertaking

[54] We believe that we should give a fair and reasonable interpretation to the terms of the undertaking given by Staff to Boock. That interpretation must be made, however, within the regulatory context in which the undertaking was given. Our difficulty here is in determining exactly what the terms of the undertaking are and what is meant by them. There is certainly some ambiguity in the words used.

[55] We would encourage Staff to be more precise in the future in articulating and establishing the terms of an undertaking given to a respondent. We note that KSW Staff did not respond on the record to the statement made by Boock's counsel in articulating the terms of the undertaking and that there is no other statement by Staff of the terms of the undertaking (although KSW Staff says that the undertaking is as set forth in the statement by Boock's counsel set out in paragraph 14 of these reasons). It would be preferable if matters such as those referred to in paragraph 71 of these reasons were expressly addressed in writing by Staff and a respondent in agreeing to an undertaking.

(iv) Conclusion

[56] Counsel for Boock has submitted that the undertaking means that the Compelled Evidence cannot be used in any way, manner or form whatsoever in this Proceeding by Staff, the Co-Respondents or anyone else.

[57] We do not agree with that interpretation.

[58] In our view, the undertaking applies by its express terms to the *use* of the Compelled Evidence by the Commission and Staff. It does not by its terms apply to the disclosure of the Compelled Evidence to the Co-Respondents or the use by the Co-Respondents of the Compelled Evidence in this Proceeding. As noted above, we believe that the terms of the undertaking must be interpreted and understood within the regulatory context in which the undertaking was given. We will address that context below in considering Boock's reasonable expectations in the circumstances.

C. Boock's Reasonable Expectations

[59] Boock submits that his reasonable expectations were that the undertaking applied to any use of the Compelled Evidence in this Proceeding, whether by Staff or the Co-Respondents.

(i) Submissions of KSW Staff on Reasonable Expectations

[60] KSW Staff submits that in determining whether it is in the public interest to order disclosure to the Co-Respondents, the Commission must consider the reasonable expectations of a person who is compelled to give evidence, but the Commission has discretion to order disclosure if it is satisfied that it is in the public interest to do so (*Re Black*, *supra*, at para. 20; *Re Berry*, *supra*, at paras. 124 and 125).

[61] KSW Staff submits that determining the public interest requires balancing the privacy interests and expectations of a person who is compelled to give evidence and the Commission's obligation to provide relevant disclosure in order to allow respondents in Commission proceedings to make full answer and defence (*Re Black*, *supra*, at paras. 77 and 83; *Deloitte & Touche LLP v. Ontario (Securities Commission*), [2003] 2 S.C.R. 713 ("***Deloitte (SCC)***"), at para. 29; and *Re Suman and Rahman* (2009), 32 O.S.C.B. 592 ("***Re Suman and Rahman***") at para. 38).

[62] KSW Staff submits that Boock's reasonable expectations with respect to the undertaking would have been informed, not only by the specific terms of the undertaking, but by his awareness of Staff's obligation to provide all relevant disclosure in Staff's possession to respondents in a Commission administrative proceeding.

[63] Further, KSW Staff submits that Boock's reasonable expectations would have been informed by his knowledge that the Commission has discretion to order disclosure of compelled evidence pursuant to section 17 of the Act, if the Commission "considers that it would be in the public interest" to do so (see *Coughlan*, *supra*, at para. 58; *Mason v. British Columbia (Securities Commission)*, 2003 BCCA 359, at para. 6; and *Deloitte & Touche LLP v. Ontario (Securities Commission)* (2005), 198 O.A.C. 333 (Ont. Div. Ct.)), at paras. 25 and 59).

[64] Finally, KSW Staff submits that Boock's reasonable expectations would have been informed by the terms of the Section 11 SEC Order itself, which expressly provided that it was subject to "further Order of the Commission" (see paragraph 3 of these reasons).

(ii) Boock's Submissions on Reasonable Expectations

[65] Boock submits that he had a reasonable expectation that the undertaking would ensure that his interests as a Respondent in this Proceeding would not be prejudiced in any way as a result of giving testimony under oath for the exclusive

use of the SEC pursuant to the Section 11 SEC Order. Boock submits that although KSW Staff was expressly advised by counsel for Boock of his reasonable expectations and were invited to clarify any misunderstanding, KSW Staff did not do so at any time prior to or during Boock's compelled testimony. Boock says that he relied on the undertaking in agreeing to provide his testimony and in not challenging the right of KSW Staff to compel that testimony.

[66] Boock notes that the Section 11 SEC Order was issued pursuant to subsection 11(1)(b) of the Act, not subsection 11(1)(a) or subsection 11(1)(a) and subsection 11(1)(b), and that a recital to the order states that Staff "intend to use the information obtained in respect of an investigation for the regulation of the capital markets in another jurisdiction, being the United States". By giving the undertaking, Boock says that Staff was agreeing not to rely on subsection 17(6) of the Act in order to use the Compelled Evidence in this Proceeding.

[67] Further, Boock submits that at the time Staff obtained the Section 11 SEC Order, Staff was aware of its pre-hearing disclosure obligations to Boock and the Co-Respondents in this Proceeding. Nonetheless, the order states that the information obtained is "for the exclusive use of the SEC". Moreover, Boock contrasts the terms of the Section 11 SEC Order with the terms of a preceding order that stated simply that the information obtained was "for the use of SEC Staff", not the "exclusive use", and without the restriction on forward sharing the information. Boock submits the words "exclusive use" in the Section 11 SEC Order were deliberately chosen and reflect the Commission's intent that the Compelled Evidence not be used in any manner in this Proceeding.

[68] Boock also submits that the "further order" clause in the Section 11 SEC Order was not intended to allow Staff to disclose the evidence obtained pursuant to the Section 11 SEC Order for purposes of a Commission proceeding. Boock submits that no order is required to allow Staff to disclose information obtained pursuant to a section 11 order for the purpose of a "proceeding commenced or proposed to be commenced by the Commission" (subsection 17(6) of the Act). Boock submits that the "further order" clause of the Section 11 SEC Order, rather than contemplating the disclosure sought by Staff, is intended to allow the SEC to seek the consent of the Commission to use the evidence obtained pursuant to the Section 11 SEC Order for another purpose (in accordance with the IOSCO Multilateral Memorandum of Understanding to which both the SEC and the Commission are signatories).

(iii) Discussion

[69] As noted above, we believe that the scope and terms of the undertaking must be interpreted and understood within the regulatory context in which the undertaking was given. In our view, it was not reasonable for Boock to have expected in these circumstances that the undertaking given by Staff was as broad as submitted to us by his counsel.

[70] The Commission has held that "Staff has a broad duty of disclosure akin to the *Stinchcombe* standard" established in criminal law (*R. v. Stinchcombe*, [1991] 3 S.C.R. 326 ("***Stinchcombe***")). That standard "requires the Crown to disclose all relevant information, whether inculpatory or exculpatory, subject to the discretion of the Crown, which discretion is reviewable by the Court" (*Re Biovail Corp.* (2008), 31 O.S.C.B. 7161 at para. 15, cited in *Re Suman and Rahman* at para. 38; see also *Stinchcombe*, *supra*, at para. 29, *Re Market Regulation Services Inc.* (2008), 31 O.S.C.B. 5441 ("***Re Berry***"), and *Deloitte (SCC)*. That disclosure obligation is a matter of fundamental fairness to respondents in Commission proceedings in order to permit them to make full answer and defence. Further, "[a]ny order for disclosure under s. 17 implies use by the person to whom it is disclosed. . . ." (*Re X and A Co.*, *supra*, at para. 40).

[71] In our view, Boock must be taken to have known in receiving the undertaking that (i) as noted above, the Commission has an obligation to ensure that Staff meets a very high standard of disclosure to all respondents in any Commission proceeding; (ii) testimony and evidence compelled under section 13 of the Act can be used in a Commission proceeding in accordance with subsection 17(6) of the Act without the need for a Commission order; (iii) the undertaking was not legally binding on the Commission; and (iv) the Commission has the discretion to amend or modify any Commission order if doing so is in the public interest. In this latter respect, we note that the express terms of the Section 11 SEC Order at least contemplate the possibility of such a subsequent amendment or modification.

[72] *Re Black and Deloitte (SCC)* are the leading decisions that consider the principles applicable to the exercise by the Commission of its discretion to issue a disclosure order under subsection 17(1) of the Act. It is important to note, however, that in *Re Black* the Commission was addressing whether to permit the use of testimony compelled under the Act in a U.S. *criminal proceeding*, not in a Commission administrative proceeding. That is a fundamentally different question than the one we are addressing here. That distinction was made by the Alberta Court of Appeal in *Alberta (Executive Director of Securities Commission) v. Brost*, [2008] A.J. No. 1071 (C.A.) ("***Brost (C.A.)***"), where the Court stated that:

> The use of the appellants' hearsay statements was not a situation like that in *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3, 123 D.L.R. (4th) 462 [*Branch*], where the question was whether the information and evidence acquired by investigators could be used on a *derivative* basis for a criminal, or quasi-criminal, law purpose. The use made of the content of the investigative interviews conducted in this case was not outside the scope of the very regulatory proceedings for which the authority to investigate was enacted. As noted in *Branch*, at para. 64, "[a]ll

> those who enter into [the securities] market know or are deemed to know the rules of the game." *Accordingly, they do not have a reasonable expectation that the content of their investigative interviews will not be used for the purposes of the Act.* [emphasis added]
>
> (*Brost (C.A.)* at para. 38.)

[73] In addition, in *Re Black*, of the 10 witnesses that gave compelled testimony, only one of those witnesses was a respondent in the Commission proceeding.

[74] In our view, a respondent in an administrative proceeding before the Commission should have a very low expectation of privacy with respect to the use in a *Commission administrative proceeding* of that respondent's own compelled testimony and evidence. Subsection 17(6) of the Act expressly contemplates that compelled evidence can be disclosed or produced in connection with a proceeding commenced or proposed to be commenced by the Commission under the Act, without the necessity for a Commission order under subsection 17(1). It is a much more difficult question if compelled testimony and evidence is proposed to be (i) provided to a foreign securities regulator, which is not subject to the provisions of the *Charter*, or (ii) used in any criminal proceeding.

[75] Both *Re Black* and *Deloitte (SCC)* were addressing whether it was in the public interest for the Commission to issue an order in the public interest under subsection 17(1) of the Act permitting disclosure of the compelled testimony and evidence. It is important to note that we are not required in this matter to issue an order under subsection 17(1) of the Act to authorize disclosure of the Compelled Evidence. The Commission is entitled to rely on subsection 17(6) of the Act to permit the use of the Compelled Evidence in this Proceeding. In this respect, subsection 17(6) of the Act does not distinguish between an investigation order issued under subsection 11(1)(a) or (b) of the Act. That means that we are not required to determine in this matter whether or not disclosure of the Compelled Evidence may be in the public interest under subsection 17(1) of the Act. In our view, that question does not arise because of subsection 17(6) of the Act.

[76] We note in this respect that subsection 17(6) was added to the Act subsequent to the compelled testimony that was the subject matter of the decision in *Deloitte (SCC)*.

[77] We would also note that in *Deloitte (SCC)* the Court was addressing whether compelled testimony of a third party, *who was not a respondent*, should be disclosed in connection with a Commission administrative proceeding. As noted above, we believe that a respondent to a Commission administrative proceeding has a much lower expectation of privacy than a third party who is not a respondent.

[78] We acknowledge that the terms of the Section 11 SEC Order contemplate the Compelled Evidence being "for the exclusive use of the SEC". The terms of that order must, however, be understood in context. The Commission would want to make absolutely clear to the SEC in issuing the Section 11 SEC Order that the testimony and evidence compelled was only for the SEC's own use. The SEC has administrative and not criminal authority. Accordingly, the terms of the Section 11 SEC Order are primarily intended to convey to the SEC that the testimony and evidence compelled cannot be passed on by the SEC to third parties including U.S. criminal authorities. As a result, we do not believe that the specific wording of the Section 11 SEC Order, as it relates to the use of the Compelled Evidence, assists in resolving this matter. We also note that KSW Staff was appointed under the Section 11 SEC Order, together with SEC Staff, to carry out the examinations under that order. KSW Staff is in possession of the Compelled Evidence as a result.

[79] Finally, we would note that, because KSW Staff has access to the Compelled Evidence, it is able to make disclosure of that evidence to the Co-Respondents without disclosing the evidence to SAT Staff.

(iv) Conclusion

[80] In conclusion, we believe that Boock's reasonable expectations in this matter should be based on the specific terms of the undertaking interpreted within the regulatory context in which the undertaking was given. His interpretation of the undertaking should have been informed, in particular, by his knowledge that Staff has an obligation to make a high level of disclosure to other respondents in connection with a Commission proceeding and that, as a matter of principle, any compelled testimony and evidence can be used in a Commission administrative proceeding without the need for an authorizing Commission order. We have concluded above that we do not believe that the express words of the undertaking are as broad as submitted by counsel for Boock.

[81] We note, in any event, that Boock's reasonable expectations would not determine the outcome of this matter. Those reasonable expectations are simply one factor the Commission should weigh in deciding whether disclosure of the Compelled Evidence should be made to the Co-Respondents.

D. Fairness to Boock

[82] The other question we should address is whether disclosure of the Compelled Evidence to the Co-Respondents in these circumstances would be fundamentally unfair to Boock.

(i) Boock's Charter Arguments

[83] Counsel for Boock has argued that, in considering the question of fundamental fairness to his client, we should be informed by and should consider the protections available to Boock under sections 7, 11 and 13 of the *Charter*.[3] In essence, Boock argues that by compelling his testimony and evidence, and permitting the use of that testimony and evidence in this Proceeding, Staff is forcing him to incriminate himself contrary to the principles enshrined in the *Charter*. Boock submits that is fundamentally unfair.

[84] Boock also submits that Staff compelled his testimony after the issue of the Notice of Hearing and Statement of Allegations in this Proceeding. He submits that, at that point, the investigation was over and Staff and Boock were engaged in an adversarial adjudicative proceeding. Boock submits that it would be unfair and inappropriate for Staff to compel testimony from a respondent once an adjudicative proceeding such as this has been commenced against that respondent.

(ii) Staff Submissions

[85] Staff submits that the Supreme Court of Canada in *Branch* expressly approved the admissibility and use of compelled testimony and evidence in an administrative proceeding before a securities commission (in that case, the administrative proceeding was brought by the British Columbia Securities Commission ("**BCSC**")). The Court confirmed that compelling testimony for use in an administrative proceeding serves an important public purpose and does not infringe section 7 of the *Charter*. Accordingly, Staff submits that compelling testimony under the Act is not fundamentally unfair to a compelled witness even if that witness is a respondent.

[86] Staff also submits that there is currently only one proceeding outstanding in the SAT matter and that is this Proceeding. As a result, there is currently no other proceeding to which section 13 of the *Charter* can apply. Further, Staff submits that its ability to continue to investigate under a section 11 order is not affected by the issue of a notice of hearing or statement of allegations. In Staff's view, the commencement of an administrative proceeding does not affect Staff's ability to continue to investigate the matter and to compel testimony under a section 11 order.

(iii) Analysis and Conclusions

The Charter Arguments

[87] In our view, the case law is relatively clear as to the principles that we should apply in the circumstances.

[88] First, we note that subsection 12(1) of the *Statutory Powers Procedures Act*, R.S.O. 1990, c. S. 22, as amended, provides that a tribunal such as the Commission can require a person, including a party to a proceeding, to give evidence at an oral or electronic hearing. While that section does not fully answer the question whether compelling testimony and evidence in any particular circumstances may be fundamentally unfair, it does recognise as a matter of principle that administrative tribunals have the power to compel testimony and evidence from a party to a proceeding and that doing so is not inherently unfair.

[89] The Supreme Court of Canada stated in *Pezim* that "it is important to note from the outset that the [Securities Act] is regulatory in nature. In fact, it is part of a much larger framework which regulates the securities industry throughout Canada. Its primary goal is the protection of the investor, but other goals include capital market efficiency and ensuring public confidence in the system …" (*Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557).

[90] This Proceeding is an administrative proceeding under section 127 of the Act, not a criminal proceeding, or a quasi-criminal proceeding under section 122 of the Act, in which penal sanctions may be imposed.

[91] In *Branch*, the Supreme Court of Canada considered whether two officers of a company could be compelled by the BCSC to give testimony. The officers argued that doing so violated their privilege against self-incrimination under section 7 of the *Charter*. In rejecting that argument, the Court emphasized the distinction between the regulatory role of the BCSC and the objective of criminal prosecution. L'Heureux-Dubé J., in her concurring reasons, stated:

> To recapitulate, although the distinction may often be difficult to draw, courts must try to differentiate between unlicensed fishing expeditions that are intended to unearth and prosecute criminal conduct, and actions undertaken by a regulatory agency, legitimately within its powers and jurisdiction and in furtherance of important public purposes that

[3] See Schedule B for the relevant provisions of the *Charter*.

> cannot realistically be achieved in a less intrusive manner. Whereas the former may run afoul of s. 7 of the Charter, the latter do not.
>
> (*Branch*, *supra*, at para. 81.)

The Commission recognised this distinction in *Glendale Securities Inc. (Re)* (1996), 19 O.S.C.B. 6273 ("***Glendale***") where it stated that:

> It is clear, however, that an administrative proceeding, such as this one, under the Act is not a criminal, or even quasi-criminal proceeding. Its purpose is not to punish anyone. Rather, it is to take such administrative action, if any, under section 127 of the Act as, on the basis of the evidence presented and the findings made, is required for the protection of investors and of the capital markets.
>
> (*Glendale* at 6274.)

[92] The Commission recently adopted a similar analysis in *Re Roger D. Rowan et al* (2010), 33 O.S.C.B. 91 ("***Rowan***") in concluding that section 11 of the *Charter* does not apply to an administrative proceeding before the Commission. In that case, the Attorney General of Ontario intervened and submitted that:

> [t]he criminal and quasi-criminal rights of section 11 of the Charter only apply to persons "charged with an offence." The Respondents are not persons "charged with an offence" within the meaning of section 11 of the Charter and cannot therefore rely on that section. Section 11 of the Charter does not apply to administrative proceedings such as these.
>
> (*Rowan* at para. 31.)

[93] The Commission in *Rowan* held that a hearing under section 127 of the *Act*, including a hearing in which an administrative penalty is sought, is fundamentally regulatory. The Commission cited *R. v. Wigglesworth*, [1987] S.C.J. No. 71 as distinguishing between state action to promote public order and state action to regulate conduct within a private sphere of activity. The Commission concluded that its mandate relates to the latter and that section 11 of the *Charter* does not apply to an administrative proceeding under section 127 of the Act.

[94] In determining whether testimony and evidence can be compelled from a person "the crucial question is whether the predominant purpose for seeking the evidence is to obtain incriminating evidence against the person compelled to testify or rather some legitimate public purpose" (*Branch*, *supra*, at para. 7). In *Branch*, the Court concluded that the BCSC compelled the relevant testimony for a legitimate public purpose in regulating capital markets. Similarly in *Brost (C.A.) and Johnson v. British Columbia (Securities Commission)* [1999] B.C.J. No. 1885 ("***Johnson (C.A.)***"), the Alberta and British Columbia Courts of Appeal affirmed, respectively, the admissibility of compelled evidence in administrative hearings. The Commission has the same public purpose to protect investors and regulate capital markets in this Province. Staff is bringing this Proceeding in furtherance of those objectives.

[95] The onus is on Boock to show that the purpose of the Compelled Evidence was to "incriminate" him. The British Columbia Court of Appeal addressed this issue in *Johnson (C.A.)*:

> Merely because a person is compelled to give information that may be used against him at an administrative hearing does not mean that he is "incriminating" himself, as Branch makes clear ... The onus is on the applicant to show that the purpose of the hearing is to incriminate him or gather evidence that will be used to incriminate him, in a criminal or quasi-criminal proceeding.
>
> (*Johnson (C.A.)*, *supra*, at para. 9.)

[96] While SAT Staff contemplated at one time the possibility of bringing criminal proceedings against certain respondents in the SAT matter, SAT Staff have represented to us that they no longer anticipate such a proceeding. As a result, the Ethical Wall has been terminated except as it relates to the Compelled Evidence.

[97] While we recognise that the sanctions that may be imposed by the Commission in an administrative proceeding can have significant regulatory and economic consequences to a respondent, those sanctions are not penal in nature and no respondent can be incarcerated by the Commission in the exercise of its jurisdiction under section 127 of the Act. The Commission has concluded that "a hearing under section 127 of the Act, including a hearing in which an administrative penalty is sought, is fundamentally regulatory. It does not meet the 'criminal by nature' characterization of the offence" (*Rowan*, *supra*, at para. 40; see also *R. v. White*, [1999] 2 S.C.R. 417).

[98] In our view, the fact that a financial penalty may be imposed on a respondent does not make a Commission administrative proceeding under section 127 of the Act criminal or penal in nature.

[99] Accordingly, in our view, sections 7 and 11 of the *Charter* do not apply to restrict the testimony and evidence that may be compelled in connection with this Proceeding. We recognise that Boock should not have been compelled to give evidence under the Section 11 SEC Order if the predominant purpose of compelling that evidence was to incriminate him for purposes of a criminal prosecution or where other significant prejudice to a fair trial may arise from the testimony (see *Branch* at para. 9). The Ethical Wall was put in place by Staff to ensure that the Compelled Evidence was not used in the SAT matter at a time when a criminal proceeding was a possibility. The objective was to ensure that the Compelled Evidence would not be used or available to SAT Staff in connection with any possible criminal proceeding against any respondent in the SAT matter. That objective is consistent with the principles reflected in sections 11 and 13 of the *Charter*.

[100] It is clear that the predominant purpose for obtaining the Compelled Evidence was to assist the SEC in an administrative and not a criminal investigation. That purpose is apparent from the terms of the Section 11 SEC Order. Similarly, the question we are addressing is whether the Compelled Evidence should be disclosed to the Co-Respondents for potential use in this Proceeding. We should add that, in our view, disclosure of the Compelled Evidence to the Co-Respondents carries with it the ability of the Co-Respondents to use that evidence in this Proceeding, subject to the overriding discretion of the Panel hearing this matter on the merits to determine on what basis such evidence may be used. That use, however, would clearly be in connection with a regulatory proceeding and not a criminal or quasi-criminal proceeding.

[101] Section 13 of the *Charter* provides that a witness in any proceeding has the right not to have any incriminating evidence so given used to incriminate the witness in any other proceedings, except a prosecution for perjury or for giving contradictory evidence. If the Compelled Evidence is used in this Proceeding, Boock will have the benefit of use and derivative use immunity in respect of any use of the Compelled Evidence in any subsequent criminal prosecution, if one were to occur. The Commission recognised this protection in *Glendale* where it stated:

> No criminal or quasi-criminal proceedings are currently pending against Parr, and we were advised by Ms. Blake, counsel for Staff, that none are contemplated. Even if such proceedings are hereafter commenced, section 13 of the Charter will prevent evidence given by Parr in these proceedings from being used to incriminate him in the subsequent proceedings, and he will be entitled, under section 7 of the Charter, to claim derivative use immunity.
>
> (*Glendale*, *supra*, at 6287.)

[102] Accordingly, our analysis of the appropriate application of sections 7, 11 and 13 of the *Charter* does not lead us to conclude that it would be fundamentally unfair to Boock or inappropriate for us to order disclosure of the Compelled Evidence to the Co-Respondents.

Compulsion After the Notice of Hearing

[103] Boock also argued that the Compelled Evidence should not be used in this Proceeding because it was compelled after the issue of the Notice of Hearing and Staff's Statement of Allegations. The essence of this argument is that, once a notice of hearing is issued, the matter becomes an adversarial adjudicative proceeding and Staff's power to compel testimony and evidence from a respondent for purposes of investigation comes to an end. Accordingly, it is submitted that it would be unfair thereafter to permit Staff to continue to compel testimony from a respondent, particularly as the date of the hearing on the merits approaches.

[104] There is no question that the Commission's authority under section 11 of the Act is a power of investigation. It is an extraordinary power and one that should be exercised by Staff with some restraint. We agree with the Commission's statement in *Re X and A Co.* that:

> 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 cooperation in the process.
>
> …
>
> *The power of compulsion in s. 13 of the Act is extraordinary*. It gives the Commission meaningful and powerful tools to use in its investigation of matters. Part VI, however, has limitations and protections with respect to confidentiality, and the possible use of compelled testimony. From this, we discern that *the public interest referred to in s. 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.
>
> …

> With respect to the interplay between s. 17 as to disclosure and s. 16(2) as to use, in our view, they work hand in hand. Any order for disclosure under s. 17 implies use by the person to whom it is disclosed and would likely deal expressly with the question of use and the implied undertaking to the Commission (cf. the order of the Commission …) [emphasis added].
>
> (*Re X and A Co.*, *supra*, at paras. 28, 31 and 40.)

As discussed above, the Commission's power to compel testimony and evidence should not be exercised where the predominant purpose is to incriminate a person. This principle was reflected in *Branch* and reiterated by the Supreme Court of Canada in *R. v. Jarvis*, [2002] 3 S.C.R. 757.

[105] In our view, the authority of Staff to investigate under a section 11 order does not end when an adjudicative proceeding is commenced. There are many legitimate reasons why an active investigation may continue after the issue of a notice of hearing or a statement of allegations. The Commission stated in *Re X and A Co.* that "there is no indication in the Act that a notice of hearing in any way changes Staff's ability to exercise its power under an order made pursuant to section 11 of the Act". Similarly, the Court stated in *Johnson v. British Columbia (Securities Commission)*, [1999] B.C.J. No. 552 ("***Johnson S.C.***") that "the probable purpose of the further interviews is to obtain further information which may be used against Johnson at the Hearing itself. However, this would appear to be a permissible purpose under the reasoning in *Branch*" (*Johnson S.C.*, *supra*, at para. 122). The Court in *Alberta (Executive Director of Securities Commission) v. Brost*, [2008] A.J. No. 250 ("***Brost Q.B.***") made a similar point:

> I am not persuaded that Brost should not attend the interview because a hearing has been scheduled. *Branch* demonstrates that securities regulators are subject to much less stringent procedural safeguards than criminal laws and that compelling personal attendance for investigation purposes is not constitutionally objectionable.
>
> (*Brost Q.B.* at para. 30.)

[106] In our view, Staff may continue to compel testimony and evidence from a respondent after the issue of a notice of hearing or statement of allegations so long as that testimony and evidence is compelled *bona fide* for the purpose of further investigation and not for an improper purpose. It appears to us that the Compelled Evidence was obtained as part of a *bona fide* investigation being conducted by KSW Staff and SEC Staff and was not compelled for any improper purpose.

[107] We would add that a number of the decisions referred to us by counsel for Boock address the question of *procedural fairness* to a respondent. In the matter before us, we believe that it is clear that, as a procedural matter, Boock has been treated fairly and has had ample opportunity to make his case to us on the issues we must decide.

[108] In our view, but for the undertaking, there is no legal reason why the Compelled Evidence cannot be disclosed to the Co-Respondents and used by them in this Proceeding (subject to the overriding discretion of the Panel hearing the matter on the merits to determine on what basis they will permit the use of the Compelled Evidence as evidence at that hearing). Further, in our view, requiring disclosure of the Compelled Evidence to the Co-Respondents would not be fundamentally unfair to Boock even though the Compelled Evidence was obtained after the issue of the Notice of Hearing and Statement of Allegations in this Proceeding.

[109] Staff submitted to us that the only purpose for compelling testimony and evidence from a respondent under a section 11 order is to be able to obtain testimony and documents to be introduced as evidence at the hearing on the merits. A principal purpose of compelled testimony is to permit Staff to obtain relevant documents and evidence for use at a hearing. On the other hand, in our view, compelled testimony is a form of hearsay and the Panel hearing a matter on the merits has discretion to determine on what basis such evidence may be used at that hearing.

E. Compliance with the Undertaking

[110] In our view, our conclusion that the undertaking does not prevent disclosure of the Compelled Evidence to the Co-Respondents does not eliminate the benefit to Boock of receiving the undertaking. We intend to order Staff to continue to comply with the undertaking and the Protocol as it relates to the Compelled Evidence. Accordingly, SAT Staff will continue to be excluded from obtaining or reviewing the Compelled Evidence or using it in this Proceeding. The Compelled Evidence will therefore not inform SAT Staff's approach to or strategy at the hearing on the merits in this Proceeding. The Co-Respondents will determine what use, if any, they propose to make of the Compelled Evidence at the hearing on the merits. If necessary, the Panel hearing this matter on the merits will determine on what basis they will permit use of the Compelled Evidence as evidence at that hearing.

[111] We would note that, in considering the matters before us, we have not seen or reviewed any of the Compelled Evidence. We have simply relied on the representation made by KSW Staff that the Compelled Evidence is relevant to this

Proceeding. In addition, in reaching our decision, we have recognised that Boock and the Co-Respondents may be adverse in interest and adversaries at the hearing on the merits.

[112] As noted above, we have concluded that the undertaking given by Staff to Boock does not prevent disclosure of the Compelled Evidence to the Co-Respondents or the use by the Co-Respondents of that evidence in this Proceeding. Had we come to the conclusion that the undertaking prevented disclosure of the Compelled Evidence to the Co-Respondents, we would have had to determine whether it was nonetheless in the public interest for Staff to disclose the Compelled Evidence to the Co-Respondents. We have considered that question in the circumstances before us. We have considered the interest Boock would have in enforcing the undertaking, and the competing right of the Co-Respondents to obtain all relevant disclosure in connection with this Proceeding. The Commission has accepted in the past that Staff has a high duty of disclosure to respondents akin to the standard articulated in *Stinchcombe*. That is an overarching principle that ensures fundamental fairness to respondents by permitting them to make full answer and defence to proceedings brought by the Commission against them.

[113] Based on those considerations, we have concluded that the obligation of Staff to make full disclosure of all relevant information to the Co-Respondents would have to take precedence over the interests of Boock in enforcing the undertaking. The Co-Respondents must be in a position to make full answer and defence in this Proceeding based on all relevant information. Accordingly, we would have ordered disclosure to the Co-Respondents of the Compelled Evidence notwithstanding the undertaking, had we concluded that the undertaking prevented that disclosure.

IV. CONCLUSIONS AND DECISION

[114] Accordingly, we have concluded that:

1. The undertaking given by Staff to Boock does not prevent disclosure by KSW Staff of the Compelled Evidence to the Co-Respondents.

2. Accordingly, KSW Staff shall disclose the Compelled Evidence to the Co-Respondents.

3. Staff shall maintain the Ethical Wall in place with respect to the Compelled Evidence. Staff shall continue to comply with the Protocol as it relates to the Compelled Evidence and SAT Staff may not have access to or review the Compelled Evidence and may not use that evidence in connection with the hearing on the merits in this Proceeding.

4. The Co-Respondents are entitled to make such use of the Compelled Evidence in the hearing on the merits as they may propose, subject to the overriding discretion of the Panel hearing the matter on the merits to decide on what basis they will permit the use of the Compelled Evidence as evidence at that hearing.

[115] If any of the Compelled Evidence is admitted as evidence at the hearing on the merits, the Panel hearing that matter will also determine on what basis SAT Staff may be permitted to respond to that evidence. Our conclusions shall not restrict the Panel hearing this matter on the merits from conducting that hearing on such terms as it considers appropriate.

[116] In our view, these decisions dispose of the DeFreitas Motion without the need for us to hear from the Co-Respondents.

[117] We are prepared to address any questions counsel may have with respect to the effect of our decision in this matter. While these reasons are being issued initially on a confidential basis, in our view, there is no reason for that confidentiality to continue. Accordingly, subject to any submissions counsel may wish to make in writing on that question, we propose to publicly release these reasons on February 16, 2010.

[118] Counsel for Boock has requested that our decision in this matter not take immediate effect. Accordingly, we direct Staff not to comply with paragraph 2 of our decision (set forth in paragraph 114 above) until February 16, 2010, unless Boock otherwise consents.

DATED at Toronto this 9th day of February, 2010.

“James E. A. Turner”

“Mary G. Condon”

Schedule A

Relevant Provisions of the *Securities Act* (Ontario)

Subsection 11(1) of the Act provides as follows:

> **11. (1) Investigation order** – The Commission may, by order, appoint one or more persons to make such investigation with respect to a matter as it considers expedient,
>
> (a) for the due administration of Ontario securities law or the regulation of the capital markets in Ontario; or
>
> (b) to assist in the due administration of the securities laws or the regulation of the capital markets in another jurisdiction.

Subsection 13(1) of the Act provides as follows:

> **13. (1) Power of investigator or examiner** – A person making an investigation or examination under section 11 or 12 has the same power to summon and enforce the attendance of any person and to compel him or her to testify on oath or otherwise, and to summon and compel any person or company to produce documents and other things, as is vested in the Superior Court of Justice for the trial of civil actions, and the refusal of a person to attend or to answer questions or of a person or company to produce such documents or other things as are in his, her or its custody or possession makes the person or company liable to be committed for contempt by the Superior Court of Justice as if in breach of an order of that court.

Subsection 16(2) of the Act provides as follows:

> **16. (2) Confidentiality** – If the Commission issues an order under section 11 or 12, all reports provided under section 15, all testimony given under section 13 and all documents and other things obtained under section 13 relating to the investigation or examination that is the subject of the order are for the exclusive use of the Commission or of such other regulator as the Commission may specify in the order, and shall not be disclosed or produced to any other person or company or in any other proceeding except as permitted under section 17.

Subsections 17(1) and (6) of the Act provide as follows:

> **17. (1) Disclosure by Commission** – 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,
>
> (a) the nature or content of an order under section 11 or 12;
>
> (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; or
>
> (c) all or part of a report provided under section 15.
>
> …
>
> **(6) Disclosure in investigation or proceeding** – A person appointed to make an investigation or examination under this Act may disclose or produce anything mentioned in subsection (1), but may do so only in connection with,
>
> (a) a proceeding commenced or proposed to be commenced by the Commission under this Act; or
>
> (b) an examination of a witness, including an examination of a witness under section 13.

Schedule B

Sections 7, 11 and 13 of the *Charter of Rights and Freedoms*

Section 7 of the *Charter* provides as follows:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Section 11 of the *Charter* provides as follows:

> Any person charged with an offence has the right
>
> …
>
> (c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
>
> …

Section 13 of the *Charter* provides as follows:

> A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

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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

THERE ARE NO ITEMS FOR THIS WEEK.

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Axiotron Corp.	12 Feb 10	24 Feb 10			

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.	07 Oct 09	19 Oct 09	19 Oct 09		
Toxin Alert Inc.	06 Nov 09	18 Nov 09	18 Nov 09		
Seprotech Systems Incorporated	30 Dec 09	11 Jan 10	11 Jan 10		
Axiotron Corp.	12 Feb 10	24 Feb 10			

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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
11/04/2009	1	80/20 Solutions Inc. - Preferred Shares	450,000.00	2,614,758.00
02/02/2010	1	80/20 Solutions Inc. - Preferred Shares	150,000.00	871,586.00
01/29/2010	4	96 Spadina Avenue Inc. - Units	15,000,000.00	15,000,000.00
01/22/2010	2	Abitibi Mining Corp. - Common Shares	8,000.00	200,000.00
01/29/2010	1	Accellent Inc. - Notes	1,062,883.43	1.00
01/31/2010	11	Advandtel Minerals (Canada) Ltd. - Flow-Through Units	121,000.00	242,000.00
11/24/2009	25	Alder Resources Ltd. - Units	999,999.75	N/A
01/25/2010	16	Aldridge Minerals Inc. - Units	1,230,000.00	1,230,000.00
01/22/2010	4	AMADOR GOLD CORP. - Common Shares	90,000.00	1,000,000.00
01/14/2010	1	Apollo Gold Corporation - Common Shares	147,000.00	300,000.00
01/22/2010	32	Arian Silver Corporation - Units	3,499,857.00	70,597,139.00
01/22/2010	33	Australia and New Zealand Banking Group Limited - Notes	250,000,000.00	6.00
01/22/2010 to 01/28/2010	11	Barkerville Gold Mines Ltd - Units	277,000.00	N/A
01/22/2010 to 01/28/2010	104	Barkerville Gold Mines Ltd. - Receipts	9,929,200.00	-10.00
01/29/2010	22	bcIMC Realty Corporation - Notes	200,000,000.00	N/A
01/01/2009 to 12/31/2009	5	BlackRock Active Canadian ex-Income Trusts Fund - Units	84,800,000.00	3,666,545.55
01/01/2009 to 12/31/2009	6	BlackRock Active Canadian Equity DC Fund - Units	159,173,763.61	1,916,173.04
01/01/2009 to 12/31/2009	1	BlackRock Active Canadian Equity large Cap Fund - Units	32,500,000.00	2,528,674.98
01/01/2009 to 12/31/2009	2	BlackRock Balanced Active Fund - Units	6,325,866.65	321,532.61
01/01/2009 to 12/31/2009	4	BlackRock Balanced Aggressive Index DC Fund - Units	99,589,816.21	6,132,778.96
01/01/2009 to 12/31/2009	12	BlackRock Balanced Moderate Index DC Fund - Units	229,059,667.20	14,416,826.17
01/01/2009 to 12/31/2009	5	BlackRock Canada CoreActive Universe Bond Fund - Units	7,388,105.01	440,919.94

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/01/2009 to 12/31/2009	3	BlackRock Canada Credit-Screened Bond Index Fund - Units	160,601,274.84	16,024,151.16
01/01/2009 to 12/31/2009	3	BlackRock Canada Government Bond Index Fund - Units	145,142,607.28	14,417,837.85
01/01/2009 to 12/31/2009	81	BlackRock Canada Universe Bond Index Fund - Units	2,518,982,011.26	117,885,011.80
01/01/2009 to 12/31/2009	7	BlackRock Canadian Equity ex-Trusts Index Fund - Units	25,111,746.04	579,477.32
01/01/2009 to 12/31/2009	1	BlackRock CDN Canada Market Neutral Long Fund - Units	55,500,000.00	3,740,776.53
01/01/2009 to 12/31/2009	1	BlackRock CDN EAFE Currency Overlay Fund - Units	2,700,000.00	5,708,631.45
01/01/2009 to 12/31/2009	1	BlackRock CDN LDI Money Market Fund - Units	750,000.00	76,673.88
01/01/2009 to 12/31/2009	4	BlackRock CDN LifePath 2010 Index Fund - Units	34,112,886.18	3,760,689.17
01/01/2009 to 12/31/2009	5	BlackRock CDN MSCI ACWI ex-Canada Index Fund - Units	53,157,877.57	7,900,793.46
01/01/2009 to 12/31/2009	2	BlackRock CDN MSCI Canada IMI Index Fund - Units	932,653,630.00	94,487,414.81
01/01/2009 to 12/31/2009	64	BlackRock CDN MSCI EAFE Index Equity Fund - Units	931,746,780.75	105,092,102.70
01/01/2009 to 12/31/2009	36	BlackRock CDN US Equity Index Fund - Units	206,351,387.72	33,634,682.65
01/01/2009 to 12/31/2009	56	BlackRock CDN US Equity Index Non-Taxable Fund - Units	1,068,906,776.22	145,861,226.00
01/29/2010	11	Blue-Zone Technologies Ltd. - Common Shares	572,500.00	N/A
01/01/2009 to 12/31/2009	2377	BluMont Augen Resource Strategy Fund - Units	14,106,853.85	4,103,543.09
01/01/2009 to 12/31/2009	873	BluMont Core Hedge Fund - Units	13,115,613.83	134,959.13
01/01/2009 to 12/31/2009	2	BluMont Hirsch Long/Short Fund - Units	1,004,787.43	8,705.76
01/01/2009 to 12/31/2009	52	BluMont Hirsch Performance Fund - Units	2,945,297.06	153,840.16
02/01/2010	1	Brevan Howard Fund Ltd. - Common Shares	372,855,000.00	N/A
01/25/2010	1	Brownstone Ventures Inc. - Common Shares	0.00	2,500,000.00
01/07/2010	5	Burnstone Ventures Inc. - Units	43,200.00	N/A
12/23/2009 to 01/12/2010	20	Call Genie Inc. - Debentures	1,460,000.00	N/A
01/26/2010	1	Canadian Continental Exploration Corp. - Common Shares	100,000.00	200,000.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
12/31/2009	40	Canadian International Minerals Inc. - Common Shares	548,700.00	5,487,000.00
01/20/2010	6	Canadian Quantum Energy Corporation - Common Shares	600,200.00	666,889.00
11/12/2009	1	Cantronic Systems Inc. - Common Shares	66,000.00	200,000.00
01/15/2010	18	Carlisle Goldfields Limited - Units	411,500.00	8,230,000.00
02/05/2010	1	Cathay General Bancorp. - Common Shares	943,800.00	13,068,182.00
11/30/2009 to 12/10/2009	103	Cayenne Gold Mines Ltd. - Units	435,975.00	N/A
01/27/2010	1	Champion Holdco, LLC - Units	21,539.20	N/A
01/11/2010	50	Champion Minerals Inc. - Units	1,900,000.00	3,800,000.00
12/31/2009	87	Chrysos Capital Corporation - Flow-Through Shares	2,596,656.87	N/A
01/02/2010	2	Concho Resources Inc. - Common Shares	1,593,955.13	4,650,000.00
01/29/2010	66	Continental Gold Limited - Receipts	27,164,799.00	18,109,866.00
09/09/2009	6	Cornerstone Global Government Bond Real Return Fund L.P. - Limited Partnership Units	8,070,000.00	7,000.00
02/03/2010	38	Cumberland Oil & Gas Ltd. - Receipts	1,200,000.00	3,636,364.00
02/05/2010	3	DB Mortgage Investment Corporation #1 - Common Shares	1,581,020.00	1,610.00
01/26/2010	112	Dorato Resources Inc. - Units	15,469,493.00	N/A
01/14/2010	1	Duluth Metals Limited - Common Shares	12,000,000.00	6,000,000.00
01/01/2009 to 12/31/2009	5	Duncan Ross Equity Fund - Units	1,049,021.78	N/A
01/01/2009 to 12/31/2009	1	Duncan Ross Pooled Fund - Units	425,000.00	N/A
01/27/2010	1	First Leaside Expansion Limited Partnership - Units	450,000.00	450,000.00
01/27/2010 to 02/01/2010	23	First Leaside Fund - Units	431,276.00	431,276.00
01/17/2010 to 02/02/2010	67	First Leaside Fund - Units	661,847.00	150,000.00
01/27/2010	3	Fleet Leasing Receivables Trust - Notes	202,852,000.00	N/A
12/18/2009	3	Foundation Resources Inc. - Flow-Through Shares	400,000.00	2,000,000.00
01/01/2009 to 12/31/2009	3	Garrison Hill Multi-Strategy LP I - Units	697,380.00	69,738.00
11/06/2009	2	General Maritime Corporation - Notes	32,160,000.00	N/A
01/28/2010	57	Geodex Minerals Ltd. - Units	1,100,770.00	10,007,000.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/15/2010	1	Greenock Resources Inc. - Common Shares	24,500.00	50,000.00
04/01/2009 to 11/01/2009	11	Greenrock Global Cleantech L.P. - Limited Partnership Units	860,000.00	860.00
01/29/2010	11	IGW Real Estate Investment Trust - Trust Units	239,888.20	240,851.61
01/20/2010 to 01/27/2010	14	IGW Real Investment Trust - Trust Units	447,543.10	N/A
01/06/2010	11	Indigo Exploration Inc. - Units	145,000.00	N/A
01/01/2009 to 12/31/2009	5	Integrated Managed Futures Fund - Units	4,204,980.96	43,756.42
01/12/2010	12	Intertainment Media Inc. - Units	353,360.00	2,208,500.00
02/01/2010	1	Investeco Private Equity Fund III L.P. - Limited Partnership Units	150,512.88	150.00
02/04/2009	6	InvestPlus Belvedere Finance Corp. - Bonds	191,500.00	1,915.00
02/04/2009	6	InvestPlus Belvedere Investments Corp. - Common Shares	191.50	1,915.00
01/21/2010	75	Journey Resources Corp. - Units	903,000.00	18,060,000.00
02/24/2009 to 03/26/2009	3	KBSH American Equity USS Fund - Units	2,175,875.14	16,074.46
01/07/2009 to 12/31/2009	7	KBSH Balanced Fund - Units	3,390,123.92	77,185.00
01/02/2009 to 12/31/2009	2	KBSH Canadian Bond Fund - Units	1,666,088.56	48,297.38
01/12/2009 to 12/29/2009	2	KBSH Canadian Growth Equity Fund - Units	874,735.45	22,614.89
02/24/2009 to 03/26/2009	3	KBSH EAFE Equity Fund - Units	1,040,000.00	68,006.62
01/19/2009 to 12/30/2009	78	KBSH Enhanced Income Fund - Units	5,093,423.81	630,843.40
02/02/2009 to 02/24/2009	2	KBSH Global Equity Fund - Units	90,000.00	6,369.49
01/13/2009 to 12/21/2009	13	KBSH Money Market Fund - Units	59,163,641.38	5,916,364.14
05/29/2009	1	KBSH Private Balanced Fund - Units	22,488.44	2,240.55
01/15/2009 to 12/30/2009	67	KBSH Private Canadian Equity Fund - Units	1,224,708.87	85,234.63
01/13/2009 to 12/30/2009	77	KBSH Private Fixed Income Fund - Units	9,706,343.71	965,149.45
02/06/2009 to 12/30/2009	81	KBSH Private Global Value Fund - Units	2,451,838.62	314,932.59
02/06/2009	1	KBSH Private International Equity Fund - Units	14,000.00	1,933.70

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/07/2009 to 12/30/2009	78	KBSH Private Money Market Fund - Units	12,786,247.04	1,278,624.70
01/02/2009 to 06/16/2009	2	KBSH Special Equity Fund - Units	1,520,961.48	16,202.28
02/25/2009	1	KBSH US Growth Equity US$ Fund - Units	2,008,960.00	162,156.68
01/22/2010	2	Klondike Gold Corp. - Common Shares	24,000.00	600,000.00
01/22/2010	1	Klondike Silver Corp. - Common Shares	26,000.00	400,000.00
01/21/2010	1	Maestro Ventures Ltd. - Common Shares	9,375.00	75,000.00
01/22/2010 to 01/29/2010	2	Magenta II Mortgage Investment Corporation - Common Shares	450,000.00	N/A
01/29/2010 to 02/01/2010	6	Magenta Mortgage Investment Corporation - Common Shares	114,000.00	N/A
01/29/2010	48	McConachie Development Investment Corporation - Units	918,540.00	91,854.00
01/29/2010	24	McConachie Development Limited Partnership - Units	2,281,140.00	228,114.00
01/14/2010	1	Micromem Technologies Inc. - Units	342,000.00	N/A
12/16/2009	2	Micromem Technologies Inc. - Units	383,050.00	N/A
11/03/2009	1	Mobile Complete Inc. - Notes	4,281,000.00	N/A
01/29/2010	1	MU Finance plc - Notes	12,200,000.00	1.00
01/25/2010 to 02/02/2010	8	Nelson Financial Group Ltd. - Notes	424,762.24	N/A
01/08/2010 to 01/14/2010	7	Newport Canadian Equity Fund - Units	323,761.43	2,603.00
01/08/2010 to 01/15/2010	24	Newport Fixed Income Fund - Units	309,568.72	2,932.19
01/13/2010 to 01/14/2010	2	Newport Global Equity Fund - Units	19,259.44	330.50
12/31/2009	6	Newport Strategic Yield Fund - Units	579,001.08	51,025.00
01/08/2010 to 01/15/2010	21	Newport Yield Fund - Units	825,015.73	9,672.14
01/20/2010	16	Newstike Capital Inc. - Units	2,000,000.00	5,000,000.00
01/01/2009 to 12/31/2009	1	NexGen American Growth Tax Managed Fund - Debt	3,500.00	N/A
01/01/2009 to 12/31/2009	1	NexGen Canadian Balanced Growth Tax Managed Fund - Debt	7,134,800.00	N/A
01/01/2009 to 12/31/2009	1	NexGen Canadian Dividend and Income Tax Managed Fund - Debt	775,300.00	N/A
01/01/2009 to 12/31/2009	1	NexGen Canadian Growth Tax Managed Fund - Debt	5,400.00	N/A

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/01/2009 to 12/31/2009	1	NexGen Canadian Growth & Income Tax Managed Fund - Debt	293,400.00	N/A
01/01/2009 to 12/31/2009	1	NexGen Canadian Large Cap Tax Managed Fund - Debt	91,700.00	N/A
06/01/2009 to 12/31/2009	1	NexGen Global Dividend Tax Managed Fund - Debt	27,479.22	N/A
06/01/2009 to 12/31/2009	1	NexGen Global Resource Tax Managed Fund - Debt	138,760.00	N/A
01/01/2009 to 12/31/2009	1	NexGen Global Value Tax Managed Fund - Debt	170,979.97	N/A
01/01/2009 to 12/31/2009	1	NexGen North American Dividend & Income Tax Managed Fund - Debt	81,900.00	N/A
01/01/2009 to 12/31/2009	1	NexGen North American Growth Tax Managed Fund - Debt	377,500.00	N/A
01/01/2009 to 12/31/2009	1	NexGen North American Large Cap Tax Managed Fund - Debt	152,200.00	N/A
01/01/2009 to 12/31/2009	1	NexGen North American Small/Mid Cap Tax Managed Fund - Debt	982,114.79	N/A
01/01/2009 to 12/31/2009	1	NexGen North American Value Tax Managed Fund - Debt	119,900.00	N/A
12/30/2009	2	Next Gen Metals Inc. - Common Shares	141,000.00	470,000.00
01/28/2010	21	Nordegg Resources Inc. - Common Shares	4,218,000.00	1,687,200.00
01/15/2009 to 01/20/2010	59	Nortec Minerals Corp. - Units	1,155,550.00	10,505,000.00
01/30/2009 to 12/31/2009	33	Northern Rivers Conservative Growth Fund - Units	349,227.00	N/A
01/01/2009 to 11/01/2009	2	Northern Rivers Conservative Growth Fund LP - Limited Partnership Units	80,000.00	N/A
01/01/2009 to 11/01/2009	2	Northern Rivers Conservative Growth Fund LP - Units	80,000.00	N/A
01/30/2009	2	Northern Rivers Evolution Fund - Units	1,600.00	N/A
05/01/2009 to 10/01/2009	4	Northern Rivers Global Energy Fund LP - Units	220,000.00	N/A
01/01/2009 to 12/31/2009	18	Northern Rivers Innovation Fund LP - Limited Partnership Units	1,469,419.00	N/A
11/01/2009 to 12/01/2009	2	Northern Rivers Innovation RSP Fund - Units	75,000.00	N/A
02/12/2009	1	Northern Trust Emerging Market Equity Index Fund - Units	75,000,000.00	7,443,750.00
02/13/2009 to 12/31/2009	718	NWM Global Equity Fund - Units	46,015,721.46	N/A
01/30/2010	2	Obsidian Strategic Inc. - Common Shares	275,000.25	366,667.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/28/2010	136	Ocean Park Ventures Corp. - Receipts	7,000,000.00	14,000,000.00
01/08/2010	23	Outlook Resources Inc. - Common Shares	242,625.00	4,852,500.00
12/30/2009	8	Pacific North West Capital Corp. - Units	1,072,000.00	N/A
01/22/2010	38	Panthera Exploration Inc. - Units	611,000.00	4,700,000.00
11/01/2009 to 01/01/2010	12	Periscope Capital Inc. - Limited Partnership Units	3,785,000.00	3,785.00
01/29/2010	1	PerspecSys Inc. - Debentures	500,000.00	N/A
01/28/2010	17	PFC2019 Pacific Financial Corp. - Bonds	898,000.00	N/A
01/28/2010	11	Pinestar Gold Inc. - Common Shares	907,500.00	3,630,000.00
01/29/2010	64	PT Healthcare Solutions Corp. - Preferred Shares	3,409,012.50	N/A
01/15/2010	1	Queenston Mining Inc. - Common Shares	50,000.00	8,913.00
01/28/2010	9	Reg Technologies Inc. - Units	151,889.50	1,012,586.00
01/31/2009 to 12/31/2009	36	Rival North American Growth Fund L.P. - Limited Partnership Units	3,523,397.63	348,966.15
01/31/2009 to 12/31/2009	64	Rival North American RRSP Growth Fund - Trust Units	2,101,033.58	153,397.38
02/02/2010	1	ROI Private Capital Trust Series R - Units	2,600,000.00	25,622.15
12/31/2009 to 01/06/2010	13	RT Minerals Corp. - Units	1,500,000.00	7,500,000.00
01/07/2010	13	Rye Patch Gold Corp. - Units	862,500.00	3,450,000.00
01/01/2009 to 12/31/2009	1	Sceptre Pooled Investment Fund- 130/30 Canadian Equity Section - Units	10,450.00	1,585.45
01/01/2009 to 12/31/2009	37	Sceptre Pooled Investment Fund- Balanced Fund - Units	183,253,781.14	N/A
01/01/2009 to 12/31/2009	6	Sceptre Pooled Investment Fund- Bond Section - Units	28,988,408.16	N/A
01/01/2009 to 12/31/2009	13	Sceptre Pooled Investment Fund- Canadian Equity Section - Units	26,603,831.64	N/A
01/01/2009 to 12/31/2009	2	Sceptre Pooled Investment Fund- EFT Section - Units	8,384,511.66	27,414.09
01/01/2009 to 12/31/2009	2	Sceptre Pooled Investment Fund- Equity Section - Units	829,566.79	1,516.56
01/01/2009 to 12/31/2009	16	Sceptre Pooled Investment Fund- Foreign Equity Section - Units	50,057,668.49	944,062.29
01/01/2009 to 12/31/2009	2	Sceptre Pooled Investment Fund- International Section - Units	110,000.00	443.77
01/01/2009 to 12/31/2009	7	Sceptre Pooled Investment Fund- Money Market Section - Units	32,362,570.14	22,202.08

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/01/2009 to 12/31/2009	3	Sceptre Pooled Investment Fund- Small Cap Section - Units	14,276,674.00	184,326.12
02/01/2009 to 12/31/2009	7	Sevenoaks Opportunities Fund L.P. and Sevenoaks Capital Inc. - Limited Partnership Units	1,842,000.00	1,842.00
01/28/2010	1	Silvore Fox Minerals Corp. - Units	1,350,000.00	33,750,000.00
01/28/2010	1	Skyharbour Resources Ltd. - Common Shares	19,500.00	150,000.00
04/17/2009 to 09/18/2009	130	Skylon Gold Star LP Fund - Units	8,730,709.70	885,220.07
01/13/2010	19	Starfield Resources Inc. - Common Shares	1,301,500.00	13,700,000.00
01/27/2010	88	Sterecycle Limited - Units	16,027,000.00	16,027,000.00
01/19/2010 to 01/20/2010	54	Strathmore Minerals Corp. - Units	8,384,050.00	15,243,727.00
01/28/2010	7	Sumitomo Mitsui Financial Group Inc. - Common Shares	57,815,756.03	1,740,000.00
01/27/2010	2	Symetra Financial Corporation - Common Shares	2,237,970.00	30,400,000.00
01/28/2010	25	Tanzanian Minerals Corp. - Common Shares	199,800.00	3,330,000.00
01/31/2009 to 12/31/2009	81	TD Harbour Capital Balanced Fund - Units	9,471,799.63	N/A
01/31/2009 to 12/31/2009	191	TD Harbour Capital Canadian Balanced Fund - Units	3,288,071.42	N/A
01/31/2009 to 04/30/2009	7	TD Harbour Capital Commodity Fund - Units	477,000.00	6,699.07
03/31/2009	2	TD Harbour Capital Foreign Balanced Fund - Trust Units	43,932.39	361.46
01/25/2010	24	Tinka Resources Limited - Units	900,000.00	9,000,000.00
01/22/2010	4	Total Fitness Holdings (UK) Limited - Common Shares	46,165,947.00	87,500.00
01/21/2010	4	Total Fitness Holdings (UK) Limited - Loans	3,237,301.00	1,904,295.00
08/01/2009 to 11/01/2009	3	Tower K2 Fund - Units	112,596.67	51,455.90
08/01/2009	1	Tower K2 US$ Fund L.P. - Units	21,641.71	27,919.59
03/01/2009 to 11/01/2009	3	Tower Matterhorn Fund - Units	535,755.00	622,751.00
01/29/2010	7	Trans Sahara Energy Limited - Units	205,000.00	175,000.00
01/28/2010	2	Tres-Or Resources Ltd. - Common Shares	60,080.00	500,667.00
01/30/2009 to 12/31/2009	563	Trident Global Opportunities Fund - Units	32,198,606.83	125,165.49

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/26/2010	1	Trimel BioPharma Holdings Inc. - Common Shares	63,636.00	60,000.00
01/27/2010	76	UBS AG, London Branch - Certificate	7,231,147.50	7,821.00
01/27/2010	4	Vantage Drilling Company - Common Shares	1,574,036.00	1,000,000.00
01/29/2010	28	Walton AZ Mystic Vista Limited Partnership - Units	694,465.20	65,208.00
01/29/2010	33	Walton TX Austin Land Investment Corporation - Common Shares	762,560.00	76,256.00
01/29/2010	5	Walton TX Austin Land Limited Partnership - Limited Partnership Units	937,788.48	88,304.00
01/25/2010	48	Wellstar Energy Corp. - Common Shares	2,000,000.00	20,000,000.00
02/01/2010 to 02/05/2010	38	Westman Exploration Ltd. - Common Shares	2,499,000.00	2,499,000.00
02/01/2010	1	York Credit Opportunities Unit Trust - Trust Units	218,386.00	N/A
02/01/2010	1	York Global Value Unit Trust - Trust Units	125,705.00	N/A
12/01/2009	1	Yukon-Nevada Gold Corp. - Units	1,000,000.00	10,000,000.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Arsenal Energy Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated February 10, 2010
NP 11-202 Receipt dated February 11, 2010
Offering Price and Description:
$8,007,000 - 9,420,000 Common Shares and $3,000,000 - 3,000,000 Flow-Through Shares
Price: $0.85 per Common Share and $1.00 per Flow-Through Share
Underwriter(s) or Distributor(s):
Wellington West Capital Markets Inc.
Promoter(s):
-
Project #1532904

Issuer Name:
Homeland Energy Group Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated February 9, 2010
NP 11-202 Receipt dated February 11, 2010
Offering Price and Description:
$8,750,000 - OFFERING OF 302,115,756 RIGHTS TO SUBSCRIBE FOR * COMMON
SHARES AT A SUBSCRIPTION PRICE OF $ * PER COMMON SHARE
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1533068

Issuer Name:
Leisureworld Senior Care Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated February 11, 2010
NP 11-202 Receipt dated February 12, 2010
Offering Price and Description:
$* - * Common Shares - Price: $10.00 per Common Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
Macquarie Capital Markets Canada Inc.
RBC Dominion Securities Inc.
Promoter(s):
Macquarie Long Term Care L.P.
Project #1533618

Issuer Name:
MagIndustries Corp.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated February 9, 2010
NP 11-202 Receipt dated February 10, 2010
Offering Price and Description:
$ * - * Common Shares - Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
BMO Nesbitt Burns Inc.
Canaccord Financial Ltd.
Jennings Capital Inc.
Promoter(s):
-
Project #1531915

Issuer Name:
Mavrix Québec 2010 Flow Through LP
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated February 8, 2010
NP 11-202 Receipt dated February 10, 2010
Offering Price and Description:
Maximum offering: $20,000,000 (2,000,000 Units); Minimum offering: $2,000,000 (200,000 Units) -Minimum Subscription: 500 Units - Subscription Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
Desjardins Securities Inc.
Dundee Securities Corporation
Industrial Alliance Securities Inc.
GMP Securities L.P.
Laurentian Bank Securities Inc.
Canaccord Financial Ltd.
Wellington West Capital Markets Inc.
Promoter(s):
Mavrix Quebec 2010 Ltd.
Mavrix Fund Management Inc.
Project #1532322

Issuer Name:
NorthWest Healthcare Properties Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated February 10, 2010
NP 11-202 Receipt dated February 10, 2010
Offering Price and Description:
$ * - * Units - Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Financial Ltd.
Macquarie Capital Markets Canada Ltd.
Versant Partners Inc.
Promoter(s):
NorthWest Operating Trust
Project #1532615

Issuer Name:
PEAK ENERGY SERVICES TRUST
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated February 16, 2010
NP 11-202 Receipt dated February 16, 2010
Offering Price and Description:
Up to $25.0 million -Rights to subscribe for Trust Units at $0.20 per Trust Unit
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1534548

Issuer Name:
Progress Energy Resources Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated February 12, 2010
NP 11-202 Receipt dated February 12, 2010
Offering Price and Description:
$250,110,000 - 19,850,000 Subscription Receipts each representing the right to receive one Common Share
Price: $12.60 per Subscription Receipt
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Peters & Co. Limited
RBC Dominion Securities Inc.
Scotia Capital Inc.
Cormark Securities Inc.
FirstEnergy Capital Corp.
National Bank Financial Inc.
Canaccord Financial Ltd.
Macquarie Capital Markets Canada Ltd.
Promoter(s):
-
Project #1533780

Issuer Name:
Secure Energy Services Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Long Form Prospectus dated February 10, 2010
NP 11-202 Receipt dated February 12, 2010
Offering Price and Description:
Maximum: $57,500,000 (* Common Shares); Minimum: $40,000,000 (* Common Shares) - Price: $* per Common Share
Underwriter(s) or Distributor(s):
First Energy Capital Corp.
Raymond James Ltd.
Peters & Co. Limited
Promoter(s):
-
Project #1533517

Issuer Name:
Sentry Select Conservative Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated February 12, 2010
NP 11-202 Receipt dated February 12, 2010
Offering Price and Description:
Series A Units, Series F Units and Series I Units
Underwriter(s) or Distributor(s):
Sentry Select Capital Inc.
Promoter(s):
Sentry Select Capital Inc.
Project #1533769

Issuer Name:
TSO3 inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated February 16, 2010
NP 11-202 Receipt dated February 16, 2010
Offering Price and Description:
$16,240,000 -10,150,000 Common Shares - Price: $1.60 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Financial Ltd.
Versant Partners Inc.
Promoter(s):
-
Project #1534456

Issuer Name:
Amica Mature Lifestyles Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated February 12, 2010
NP 11-202 Receipt dated February 12, 2010
Offering Price and Description:
$15,000,750.00 - 2,655,000 Common Shares - Price: $5.65 per Common Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Canaccord Financial Ltd.
Promoter(s):
-
Project #1531109

Issuer Name:
Avanti Mining Inc.
Principal Regulator - British Columbia
Type and Date:
Short Form Prospectus dated February 16, 2010
Receipt dated February 16, 2010
Offering Price and Description:
$17,000,000 - 85,000,000 Units - Price $0.20 per Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Macquarie Capital Markets Canada Ltd.
Promoter(s):
-
Project #1526160

Issuer Name:
B2Gold Corp.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated February 11, 2010
NP 11-202 Receipt dated February 12, 2010
Offering Price and Description:
$27,852,293.75 - 22,281,835 Common Shares - $1.25 per Common Share
Underwriter(s) or Distributor(s):
Genuity Capital Markets
Macquarie Capital Markets Canada Ltd.
Haywood Securities Inc.
Canaccord Financial Ltd.
Raymond James Ltd.
Promoter(s):
-
Project #1530820

Issuer Name:
Templeton Growth Fund, Ltd.
Templeton International Stock Fund (also Series T Units)
Templeton Global Smaller Companies Fund
Templeton Global Income Fund (Series A, F, O, T and T-USD Units)
Type and Date:
Ontario Securities Commission for Amendment No. 1 dated February 11, 2010 to the Simplified Prospectuses dated June 18, 2009 (SP amendment no. 1) and Amendment No. 2 dated February 11, 2010 (together with SP amendment no. 1, "Amendment no. 2") to the Annual Information Form dated June 18, 2009NP 11-202
Receipt dated February 16, 2010
Offering Price and Description:
Series A, F, I, O, T and T-USD Units/Shares atNet Asset Value
Underwriter(s) or Distributor(s):
Franklin Templeton Investments Corp.
Franklin Templeton Investments Corp.
Bissett Investment Management, a division of Franklin Templeton Investments Corp.
Franklin Templeton Investmetns Corp.
Promoter(s):
-
Project #1422323

Issuer Name:
First Asset Pipes & Power Income Fund
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 10, 2010
NP 11-202 Receipt dated February 11, 2010
Offering Price and Description:
Warrants to Subscribe for up to 3,402,979 Units at a Subscription - Price of $7.09
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1530931

Issuer Name:
Gleichen Resources Ltd.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 16, 2010
NP 11-202 Receipt dated February 16, 2010
Offering Price and Description:
$50,000,000.00 - 50,000,000 Common Shares - Price: $1.00 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Capital Markets Canada Ltd.
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Dundee Securities Corporation
Jones, Gable & Company Limited
Promoter(s):
-
Project #1531842

Issuer Name:
ISE Limited
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated February 11, 2010
NP 11-202 Receipt dated February 12, 2010
Offering Price and Description:
$20,700,000.00 - 3,450,000 Common Shares - Price: $6.00 per Common Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
RBC Dominion Securities Inc.
Cormark Securities Inc.
Jacob Securities Inc.
Promoter(s):
-
Project #1517499

Issuer Name:
Ivanhoe Energy Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated February 10, 2010
NP 11-202 Receipt dated February 10, 2010
Offering Price and Description:
41,666,667 Common Shares and 10,416,667 Purchase Warrants Issuable upon Conversion of 41,666,667 Outstanding Special Warrants
Underwriter(s) or Distributor(s):
Macquarie Capital Markets Canada Ltd
Promoter(s):
-
Project #1529520

Issuer Name:
Monterey Exploration Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated February 12, 2010
NP 11-202 Receipt dated February 12, 2010
Offering Price and Description:
$20,000,400.00 - 4,762,000 Common Shares - Price: $4.20 per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Wellington West Capital Markets Inc.
Acumen Capital Finance Partners Limited
GMP Securities L.P.
Promoter(s):
-
Project #1531464

Issuer Name:
MOSAID Technologies Incorporated
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 16, 2010
NP 11-202 Receipt dated February 16, 2010
Offering Price and Description:
$27,062,500.00 - 1,250,000 COMMON SHARES - PRICE: $21.65 PER COMMON SHARE
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Cormark Securities Inc.
Northern Securities Inc.
Promoter(s):
-
Project #1531869

Issuer Name:
Noront Resources Ltd.
Type and Date:
Final Short Form Prospectus dated February 12, 2010
Receipted on February 12, 2010
Offering Price and Description:
$6,700,001.00 - 2,436,364 Common Shares - Price: $2.75 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1530068

Issuer Name:
North American Palladium Ltd.
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated February 9, 2010
NP 11-202 Receipt dated February 10, 2010
Offering Price and Description:
US$300,000,000.00:
Common Shares
Special Shares
Debt Securities
Warrants
Share Purchase Contracts
Share Purchase or Equity Units
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1526992

Issuer Name:
Nuukfjord Gold Ltd.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated February 16, 2010
NP 11-202 Receipt dated February 16, 2010
Offering Price and Description:
$12,000,000.00 - 24,000,000 Shares at $0.50 per Share and Distribution of 100,000 Shares issuable upon the exchange of 100,000 previously issued Special Warrants
Underwriter(s) or Distributor(s):
Wolverton Securities Ltd.
Promoter(s):
Bryan Slusarchuk
Project #1507842

Issuer Name:
Pathway Quebec Mining 2010 Flow-Through Limited Partnership
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated February 11, 2010
NP 11-202 Receipt dated February 16, 2010
Offering Price and Description:
$20,000,000 (Maximum Offering); $2,500,000 (Minimum Offering)
A Maximum of 2,000,000 and a Minimum of 250,000 Limited Partnership Units
Minimum Subscription: 250 Limited Partnership Units
Subscription Price: $10.00 per Limited Partnership Unit
Underwriter(s) or Distributor(s):
Wellington West Capital Inc.
HSBC Securities (Canada) Inc.
Desjardins Securities Inc.
Industrial Alliance Securities Inc.
Canaccord Financial Ltd.
Laurentian Bank Securities Inc.
Dundee Securities Corporation
Promoter(s):
Pathway Quebec Mining 2010 Inc.
Project #1525301

Issuer Name:
Pure Technologies Ltd.
Principal Regulator - Alberta
Type and Date:
Short Form Prospectus dated February 10, 2010
Receipt dated February 12, 2010
Offering Price and Description:
Up To $30,100,000 - 7,000,000 Common Shares - Price: $4.30 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Financial Ltd.
Boenning & Scattergood Inc.
Promoter(s):

Project #1525697

Issuer Name:
RESULT ENERGY INC.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated February 8, 2010
NP 11-202 Receipt dated February 9, 2010
Offering Price and Description:
529,803,912 Common Shares issuable on exercise of outstanding Special Warrants - Price: $0.28 per Special Warrant
Underwriter(s) or Distributor(s):
Macquarie Capital Markets Canada Ltd.
National Bank Financial Inc.
FirstEnergy Capital Corp.
GMP Securities L.P.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Cormark Securities Inc.
Genuity Capital Markets Inc.
TD Securities Inc.
Research Capital Inc.
Thomas Weisel Partners Canada Inc.
Promoter(s):
-
Project #1529357

Issuer Name:
Seabridge Gold Inc.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated February 12, 2010
NP 11-202 Receipt dated February 12, 2010
Offering Price and Description:
CDN$100,000,000 - * COMMON SHARES - Price: $* per COMMON SHARE
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1527272

Issuer Name:
Sentry Select Diversified Income Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated February 5, 2010 to Final Simplified Prospectus and Annual Information Form dated September 10, 2009
NP 11-202 Receipt dated February 10, 2010
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Sentry Select Capital Inc.
Promoter(s):
Sentry Select Capital Inc.
Project #1459313

Issuer Name:
Triton Energy Corp.
Principal Regulator - Alberta
Type and Date:
Short Form Prospectus dated February 12, 2010
Receipt dated February 12, 2010
Offering Price and Description:
$25,000,800 - 104,170,000 Common Shares - Price $0.24 per Common Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
FirstEnergy Capital Corp.
Macquarie Capital Markets Canada Ltd.
Desjardins Securities Inc.
Raymond James Ltd.
Promoter(s):

Project #1530809

Issuer Name:
Westridge Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated February 8, 2010
NP 11-202 Receipt dated February 10, 2010
Offering Price and Description:
$1,400,000.00 - 5,600,000 Common Shares - Price: $0.25 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Christopher Cooper
Project #1496988

Issuer Name:
WPC Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated February 12, 2010
NP 11-202 Receipt dated February 12, 2010
Offering Price and Description:
$1,400,000.00 - 7,000,000 Units - Price: $0.20 per Unit
Underwriter(s) or Distributor(s):
Jordan Capital Markets Inc.
Promoter(s):
W.K. Crichton Clarke
Project #1514981

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Big Rock Capital Management Inc.	Portfolio Manager and Investment Fund Manager	February 10, 2010
Voluntarily surrender of registration	D. E. Shaw & Co., L.P.	Portfolio Managers.	February 10, 2010.
Voluntarily surrender of registration	Citigroup Alternative Investments LLC	Portfolio Managers.	February 8, 2010,
Name change	From: Crosbie Capital Management Inc. To: Arrowhead Road Capital Corp.	Portfolio Manager	February 9, 2010.
Voluntarily surrender of registration	Williams Trading Canada ULC	Exempt Market Dealer	February 16, 2010.
Voluntarily surrender of registration	Clarendon Capital Inc.	Limited Market Dealer	February 16, 2010.
Voluntarily surrender of registration	Imperial Capital Corporation	Exempt Market Dealer	February 16, 2010.

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Chapter 13

SROs, Marketplaces and Clearing Agencies

13.1 SROs

13.1.1 Investment Industry Regulatory Organization of Canada Amendments to Correct Registration Reform Related Amendments

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AMENDMENTS TO CORRECT REGISTRATION REFORM RELATED AMENDMENTS

1. Dealer Member Rule 2900 is amended by:

(a) Repealing A.1(b) and replacing with the following:

"(b) The proficiency requirements for Supervisors of Approved Persons dealing with Institutional Customer accounts only are:

(i) If supervising Registered Representatives or Investment Representatives dealing with institutional customers, successful completion of:

A. 1. The Branch Managers Course, or

2. The Partners, Directors and Senior Officers Course;

and

B. The proficiency requirements necessary to conduct or supervise any trading activity carried on by Approved Persons he or she supervises.

(ii) If supervising options trading, successful completion of The Options Supervisor Course.

(iii) If supervising futures contract and futures contract options, successful completion of:

A. 1. The Derivatives Fundamentals Course and Futures Licensing Course, or

2. The Futures Licensing Course and the National Commodity Futures Examination administered by the Financial Industry Regulatory Authority;

and

B. the Canadian Commodity Supervisors Examination.

13.1.2 Amendments to Section 35 of MFDA By-law No. 1 – MFDA IPC

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

NO ACTIONS AGAINST THE CORPORATION
(SECTION 35 OF MFDA BY-LAW NO. 1)
(Amendments to Version Published for Comment on June 26, 2009)

35. NO ACTIONS AGAINST THE CORPORATION

No Member (including in all cases a Member whose rights and privileges have been suspended or terminated and a Member who has been expelled from the Corporation or whose Membership has been forfeited), Approved Person or any other person who is subject to the jurisdiction of the Corporation, shall be entitled, subject to the provisions of Section 26, to commence or carry on any action or other proceedings against the Corporation or against the Board of Directors, the Executive Committee, any Regional Council, any Committee thereof, or against any officer, employee or agent of the Corporation or member or officer of any such Board of Directors, Committee or Council or against any Member's auditor, or against MFDA Investor Protection Corporation, its Board of Directors, any of its committees or its officers, employees and agents, in respect of any penalty imposed or any act or omission done or omitted under the provisions of and in compliance with or intended compliance with the provisions of any By-law, Rule or Policy and, in addition, in the case of MFDA Investor Protection Corporation, its letters patent, by-laws and policies, and in any case, under ~~all~~ regulatory directives or agreements thereunder.

35.A MFDA INVESTOR PROTECTION FUND

35A.1. The Corporation is authorized to enter into and perform its obligations under such agreements or other arrangements with MFDA Investor Protection Fund ("IPC") as may be, in the discretion of the Board of Directors, consistent with the objects of the Corporation including, without limitation, the Administration Agreement dated as of July 1, 2005, made between the Corporation and IPC, as the same may be amended from time to time (the "Administration Agreement"). The President, his or her staff or any other person designated by the Board of Directors shall be authorized to execute and deliver any such agreements, or make any such arrangements, and to do all acts and things as may be necessary to permit the Corporation to exercise its rights or perform its obligations thereunder.

35A.2. In respect of the Administration Agreement or other agreements and arrangements entered into by the Corporation in accordance with Section 35A.1 from time to time, each Member:

(a) shall promptly pay to the Corporation all regular and special assessments levied or prescribed by IPC in respect of any Member or Members;

(b) shall provide to IPC such information as is contemplated to be provided by Members in connection with the assessment of the financial condition of Members or risk of loss to IPC;

(c) acknowledges and consents to the exchange between the Corporation and IPC of information relating to Members, their partners, directors, officers, shareholders, employees and agents, customers or any other persons permitted by law in accordance with any information sharing agreements or arrangements made by them;

(d) shall permit IPC to conduct reviews of such Member or designated groups of Members as contemplated by the Administration Agreement or other arrangements and to fully cooperate with IPC, and its ~~their respective~~ staff and advisers, in connection with such reviews including, without limitation, the exercise by IPC of such powers as are available to the Corporation and its officers, staff or other designates pursuant to Sections 21 ~~and 22~~, 22.1 and 22.2;

(e) shall comply with such actions as IPC may direct the Corporation to take with respect to a Member, or with such actions as IPC may take on behalf of the Corporation as authorized.

13.1.3 Summary of Public Comments Respecting Proposed Amendments to Section 35 (No Actions Against the Corporation) of MFDA By-law No. 1 and Responses of the MFDA

On June 26, 2009, the British Columbia Securities Commission and Ontario Securities Commission published proposed amendments to section 35 (No Actions Against the Corporation) (the "**Proposed Amendments**") for a 90-day public comment period.

The public comment period expired on September 24, 2009.

4 submissions were received during the public comment period:

1. Independent Financial Brokers of Canada ("IFB")
2. Investment Funds Institute of Canada ("IFIC")
3. Portfolio Strategies Corporation ("PSC")
4. Royal Mutual Funds Inc. ("RMFI") and Phillips, Hager & North Investment Funds Ltd. ("PH&N")

Copies of comment submissions may be viewed at the offices of the MFDA, 121 King Street West, Suite 1000, Toronto, Ontario by contacting Ken Woodard, Director, Communications and Membership Services, (416) 943-4602.

The following is a summary of the comments received, together with the MFDA's responses.

Objectives of Proposed Amendments

RMFI and PH&N and IFIC agreed with the principle that the MFDA Investor Protection Corporation ("MFDA IPC") and its directors, officers and personnel should be provided protection against legal actions and proceedings in the discharge of their investor protection and risk management mandates.

Citing the MFDA statement that the Proposed Amendments are intended to "ensure that the MFDA IPC and its directors, officers and personnel are adequately protected in the discharge of their investor protection mandate from legal actions by MFDA Members, Approved Persons or other persons under the jurisdiction of the MFDA", the IFB questioned whether the MFDA or MFDA IPC should have such broad protection from a potential legal action by a Member or Approved Person. The IFB expressed the view that the ability exercise the right to legal recourse, where no other satisfactory resolution can be arrived at, is a fundamental principle of our legal system. The IFB expressed the opinion that, while such instances may arise infrequently, the ability to pursue legal action would not reduce the consumer protection mandate of the MFDA IPC Board or the MFDA Board. The IFB noted that MFDA and MFDA IPC officers, employees and directors have errors and omissions insurance coverage to protect them from personal liability where such instances arise and are found to have merit and expressed the view that removing the right of those regulated by the MFDA to commence a legal challenge seems unnecessarily protective, irrespective of whether a similar provision exists for Investment Industry Regulatory Organization of Canada ("IIROC") and Canadian Investor Protection Fund ("CIPF") directors.

The IFB expressed the view that those regulated by the MFDA should have the ability to challenge a decision of the MFDA or MFDA IPC and noted that, while such situations will be infrequent, similarly to shareholders who may institute a "derivative action" against directors who do wrong against the corporation, so should MFDA stakeholders, such as Approved Persons.

MFDA Response

The Proposed Amendments are intended to extend the protections of section 35 of MFDA By-law No. 1, currently available to MFDA Board of Directors, committee members, officers, employees and agents, to the corresponding persons and bodies of the MFDA IPC, so that actions of the MFDA IPC, similarly to those of the MFDA, are not constrained by a threat of legal action in exercising its regulatory mandate in the public interest.

We disagree with the proposition that the ability to pursue legal action would not reduce the consumer protection mandate of the MFDA IPC Board or the MFDA Board. In order to properly discharge their investor protection mandate, both MFDA and MFDA IPC directors, officers and employees must be adequately protected from legal actions by MFDA Members, Approved Persons or other persons under the jurisdiction of the MFDA. Since the MFDA is a regulator and a non-for-profit corporation and its mandate differs from that of a corporation intended for profit, it would be inappropriate for MFDA Members to be entitled to any equivalent to shareholders' derivative action.

MFDA IPC Fee Assessment Methodology

PSC expressed disappointment that the MFDA and the MFDA IPC did not address the MFDA IPC fee assessment methodology, under which fees are assessed against all MFDA Members regardless whether they operate in client name or nominee name, in spite of the fact that the MFDA IPC only covers nominee name accounts. PSC expressed the view that this

results in Members operating in nominee name receiving a subsidy from Members operating client name accounts and expressed the view that, since it is estimated that more than 80% of assets at Members are in client name, the subsidy for the riskier nominee name accounts is substantial. PSC recommended that the MFDA IPC commit to a transparent consultation process, open to all Members, regarding eliminating the unjustified subsidy of riskier nominee name business.

RMFI and PH&N expressed the view that the current MFDA IPC assessment methodology is inequitable and recommended that the MFDA IPC contributions take into account the inherent risks of each Member and that the MFDA and MFDA IPC ensure that the overall investor protection fund and insurance costs are kept under control and are based on a reasonable measure of perceived risk to clients' assets.

MFDA Response

The scope of the Proposed Amendments is limited to extending the protection available to MFDA directors, officers and personnel to the individuals performing the same functions at the MFDA IPC and providing for the terms of the relationship between the MFDA and MFDA IPC and existing MFDA and Member obligations to the MFDA IPC.

The MFDA IPC is aware of concerns with respect to the MFDA IPC fee assessment methodology, as discussed at length during the MFDA IPC working group meetings. When this issue is revisited in the future, it will be subject to the MFDA public consultation process.

Consolidate MFDA IPC Requirements

RMFI and PH&N recommended defining and formalizing, in one place, Member obligations to the MFDA IPC, as IIROC recently did in relation to the CIPF in its IIROC Dealer Member Rule 41.

MFDA Response

The MFDA will consider this suggestion for future Rule amendments.

Comparison with IIROC Provisions

The IFB noted that the equivalent section in the IIROC By-Law, Article 14, section 14.1, *No Actions Against the Corporation* seems to have more broadly worded exemptions than the MFDA version and recommended that, if the sections are intended to be comparable between the MFDA and IIROC, then this broader wording be included in the Proposed Amendments.

MFDA Response

The structure of the IIROC and MFDA By-laws and Rules is somewhat different and, accordingly, the wording of proposed MFDA section 35 of By-law No. 1 and IIROC section 14 of its By-law No. 1 are slightly different. However, the scope of the protection under both By-laws is substantially the same and achieves the same regulatory result.

Ability of Approved Persons to Undertake Legal Action

The IFB specifically questioned the inclusion of Approved Persons in those not permitted to take legal action under the Proposed Amendments and expressed the view that Approved Persons do not share the same standing with the MFDA or MFDA IPC as Members, as they do not participate in the governance of either corporation, have no direct representation on the Boards, nor the right to vote on matters related to their mutual fund business or to choose directors. The IFB expressed the view that, for this reason, Approved Persons should be able to undertake a legal action, in the unlikely event that such a situation arises.

MFDA Response

The Proposed Amendments will provide protection to the MFDA IPC, its directors, officers and personnel in a manner similar to that already available to the MFDA and the specified persons and bodies under section 35 of By-law No. 1. As noted above, such protection is necessary so that the specified individuals are able to adequately discharge their regulatory mandate. In order to provide adequate protection to the MFDA IPC and its directors, officers, employees and agents, Approved Persons should not be excluded from the list of individuals not permitted to undertake a legal action. It is noted that the protection of CIPF afforded by section 14 of the IIROC By-law refers to Regulated Persons which would include the corresponding class of Approved Persons under the MFDA By-law.

Requirement to Pay Assessments Levied by MFDA IPC

Referring to the proposed requirement under section 35A that Members "promptly pay to the MFDA all regular and special assessments levied or prescribed by the IPC...", IFIC requested clarification as to what would ensure equitable allocation and a fair and reasonable process of levying such assessments. IFIC expressed concern with respect to lack of any checks on the MFDA IPC Board, including costs, and requested clarification as to what extent the MFDA and MFDA IPC Boards consult their membership on these matters.

IFIC expressed the view that the Proposed Amendments do not provide its Members with sufficient information about the MFDA IPC fee levying process to permit them to analyze the effects that the Proposed Amendments may have on their businesses. IFIC recommended that the MFDA IPC establish a funding formula that explicitly states how special assessments will be made and allocated and that the MFDA ensure that the process in which special assessments are levied is transparent and follows the same funding formula.

RMFI and PH&N requested confirmation that regular and special assessments prescribed by the MFDA IPC in respect of Members will be fair and equitable.

MFDA Response

The Recognition Orders of the Recognizing Jurisdictions require that the MFDA cooperate with the MFDA IPC as a compensation fund approved by the Recognizing Jurisdictions. Pursuant to the Recognition Orders, MFDA By-law No. 1 provides for the authority of MFDA to assess its Members and require payment of such assessments in respect of the MFDA IPC as a compensation fund. Any changes to regular and special assessments prescribed or levied by the MFDA IPC have to be approved by the MFDA Board of Directors.

MFDA IPC Review of Members

With respect to section 35A.2(d) of the Proposed Amendments, which requires Members to permit MFDA IPC reviews of Members RMFI and PH&N recommended that, in order to maintain efficiency of regulatory oversight, information required by the MFDA IPC be added to the scope of examinations conducted by MFDA staff.

MFDA Response

The MFDA IPC generally relies on the regulatory efforts of the MFDA. Current MFDA examinations provide all information required by the MFDA IPC in a normal course of action. The MFDA IPC would conduct additional activities only in special circumstances, if it deems it necessary as part of its regulatory mandate.

13.3 Clearing Agencies

13.3.1 CDS Clearing and Depository Services Inc. (CDS®) – Notice of Effective Date – Technical/Housekeeping Amendments to CDS Rules

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

NOTICE OF EFFECTIVE DATE

TECHNICAL/HOUSEKEEPING AMENDMENTS TO CDS RULES

A. DESCRIPTION OF THE CDS RULE AMENDMENTS

The CDS Rules marked for the amendments are attached as Appendix A and may be accessed at the CDS website at:

http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-Participantrules.

Rule 1.3.9 is updated to reflect current legislation. The reference to section 10.2 of the Quebec *Securities Act* (repealed in 2008) is replaced by a reference to the *Act Respecting the Transfer of Securities and the Establishment of Security Entitlements of Quebec* (in force since January 1, 2009). The reference to the recognition of CDS as a clearing agency under the Ontario *Business Corporations Act* is deleted, as the recognition is now only under the Ontario *Securities Act*. References are now made to both Quebec and Ontario current legislation with respect to Rules terminology, jurisdiction and effect of the Rules.

The definitions in Rule 1.2 are re-ordered alphabetically. Definitions in Rule 1.2, and Rules 7.2.6 and 7.3.2 are amended to use the correct defined terms. Rule 1.3.5 refers to facsimile rather than telecopier, consistent with Rules 1.3.6 and 5.10. In Rule 7.6.4, reversed references to “pledgor” and “pledgee” are corrected.

These amendments were reviewed and approved by the Board of Directors[1] of The Canadian Depository for Securities Limited on January 20, 2010.

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed pursuant to this Notice are considered technical amendments as:

(i) the amendments to Rule 1.3.9(f) are required to ensure consistency or compliance with an existing rule, securities legislation or other regulatory requirement;

(ii) the other amendments are required for the correction of spelling, punctuation, typographical or grammatical mistakes or inaccurate cross-referencing.

C. EFFECTIVE DATE OF THE CDS RULE AMENDMENTS

Pursuant to Appendix A (“Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC”) of the Recognition and Designation Order, as amended on November 1, 2006, and Annexe A (“Protocole d’examen et d’approbation des Règles de Services de Dépôt et de Compensation CDS Inc. par l’Autorité des marchés financiers”) of AMF Decision 2006-PDG-0180, made effective on November 1, 2006, CDS has determined that the proposed amendments will become effective on a date subsequently determined by CDS, and as stipulated in the related CDS Bulletin.

D. QUESTIONS

Questions regarding this notice may be directed to:

Legal Department
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9
Fax: 416-365-1984
e-mail: attention@cds.ca

[1] Pursuant to a unanimous shareholder agreement between The Canadian Depository for Securities Limited (“CDS Ltd.”) and CDS, effective as of November 01, 2006, CDS Ltd., which acts under the supervision of its Board of Directors, assumed all rights, powers, and duties of the CDS Board of Directors.

APPENDIX A

CDS TECHNICAL/HOUSEKEEPING RULE AMENDMENTS

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
1.2.1 Definitions For the purposes of the Legal Documents, unless otherwise specified: *Move the definitions of the terms "Euroclear UK Direct Charges", "Euroclear UK Direct Participant" and "Euroclear UK Direct Service" so that these terms are placed between the terms "Euroclear UK & Ireland" and "Exchange" instead of between the terms "CREST" and "CREST Software".* "FINet Obligation" means a Central Counterparty Obligation between CDS and a Participant that is calculated as the result of the processing of Trades, prior to Settlement, in the FINet ~~FiNet~~ Function. "TA Participant" means a Participant ~~participant~~ who is classified as such by CDS pursuant to Rule 2.3.2.	**1.2.1 Definitions** For the purposes of the Legal Documents, unless otherwise specified: *Move the definitions of the terms "Euroclear UK Direct Charges", "Euroclear UK Direct Participant" and "Euroclear UK Direct Service" so that these terms are placed between the terms "Euroclear UK & Ireland" and "Exchange" instead of between the terms "CREST" and "CREST Software".* "FINet Obligation" means a Central Counterparty Obligation between CDS and a Participant that is calculated as the result of the processing of Trades, prior to Settlement, in the FINet Function. "TA Participant" means a Participant who is classified as such by CDS pursuant to Rule 2.3.2.
1.3.5 Notice from CDS to Participants (a) Method Of Giving Notice To Participants Generally When CDS gives a notice under the Rules or Participant Agreement that is directed to Participants generally or to a group of Participants, the notice shall be: (iii) sent by confirmed recorded telecommunication to the ~~telecopier~~ facsimile number provided by each Participant to whom the notice is directed; or (b) Method For Giving Notice To A Particular Participant When CDS gives a notice under the Rules or Participant Agreement that is directed to a particular Participant, the notice shall be: (iii) sent by confirmed recorded telecommunication to the ~~telecopier~~ facsimile number provided by the Participant; or (d) Address For Notice Each Participant shall provide CDS with an appropriate e-mail address, street address, lock box number and ~~telecopier~~ facsimile number for purposes of this Rule, and CDS may rely upon the most recent notification provided by a Participant.	**1.3.5 Notice from CDS to Participants** (a) Method Of Giving Notice To Participants Generally When CDS gives a notice under the Rules or Participant Agreement that is directed to Participants generally or to a group of Participants, the notice shall be: (iii) sent by confirmed recorded telecommunication to the facsimile number provided by each Participant to whom the notice is directed; or (b) Method For Giving Notice To A Particular Participant When CDS gives a notice under the Rules or Participant Agreement that is directed to a particular Participant, the notice shall be: (iii) sent by confirmed recorded telecommunication to the facsimile number provided by the Participant; or (d) Address For Notice Each Participant shall provide CDS with an appropriate e-mail address, street address, lock box number and facsimile number for purposes of this Rule, and CDS may rely upon the most recent notification provided by a Participant.
1.3.9 CDS as Clearing Agency The Autorité des marchés financiers has authorized CDS to carry on clearing activities in Québec pursuant to the *Securities Act* of Quebec. The Ontario Securities Commission has designated CDS as a recognized clearing agency pursuant to ~~the Business Corporations Act and~~ the *Securities Act* of Ontario. The Securities Transfer Act, 2006 of Ontario ("Ontario STA") and the Act Respecting the Transfer of Securities and the Establishment of Security Entitlements of Quebec ("Quebec STA") refer to clearing agency transactions. CDSX has been designated as a clearing and settlement system under Part I of the *Payment Clearing and Settlement Act* of Canada. Accordingly, CDS and each Participant acknowledge that: (a) CDS is a "clearing agency" and a "securities intermediary" as those terms are defined in the Ontario STA and in the	**1.3.9 CDS as Clearing Agency** The Autorité des marchés financiers has authorized CDS to carry on clearing activities in Québec pursuant to the *Securities Act* of Quebec. The Ontario Securities Commission has designated CDS as a recognized clearing agency pursuant to the *Securities Act* of Ontario. The *Securities Transfer Act, 2006* of Ontario ("Ontario STA") and the *Act Respecting the Transfer of Securities and the Establishment of Security Entitlements* of Quebec ("Quebec STA") refer to clearing agency transactions. CDSX has been designated as a clearing and settlement system under Part I of the *Payment Clearing and Settlement Act* of Canada. Accordingly, CDS and each Participant acknowledge that: (a) CDS is a "clearing agency" and a "securities intermediary" as those terms are defined in the Ontario STA and in the Quebec STA;

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
Quebec STA ~~Securities Transfer Act, 2006 of Ontario ("STA")~~; (b) each Participant is an "entitlement holder" of CDS, as that term is defined in the ~~STA~~ Ontario STA and in the Quebec STA; (c) instructions given by Participants with respect to Securities held by CDS are "entitlement orders", as that term is defined in the ~~STA~~ Ontario STA and in the Quebec STA; (d) financial assets referred to in the Rules are "financial assets", as that term is defined in the ~~STA~~ Ontario STA and in the Quebec STA; (e) the Legal Documents constitute the agreement **or juridical act** between CDS as the securities intermediary and the Participants as entitlement holders governing the securities accounts maintained by CDS for each Participant and for itself, as that agreement or juridical act is referred to in the ~~STA~~ Ontario STA and in the Quebec Civil Code respectively; ~~and~~ (f) the Ledgers maintained by CDS for Participants and for itself are ~~(i)~~ securities accounts referred to in the ~~STA~~ Ontario STA and in the Quebec STA; and ~~and (ii) the accounts of the clearing house referred to in section 10.2 of the Securities Act of Quebec.~~ (g) the Legal Documents constitute the rules of the clearing agency and are entitled to the protection of section 7 of the Ontario STA and of section 4 of the Quebec STA.	(b) each Participant is an "entitlement holder" of CDS, as that term is defined in the Ontario STA and in the Quebec STA; (c) instructions given by Participants with respect to Securities held by CDS are "entitlement orders", as that term is defined in the Ontario STA and in the Quebec STA; (d) financial assets referred to in the Rules are "financial assets", as that term is defined in the Ontario STA and in the Quebec STA; (e) the Legal Documents constitute the agreement or juridical act between CDS as the securities intermediary and the Participants as entitlement holders governing the securities accounts maintained by CDS for each Participant and for itself, as that agreement or juridical act is referred to in the Ontario STA and in the Quebec *Civil Code* respectively; (f) the Ledgers maintained by CDS for Participants and for itself are securities accounts referred to in the Ontario STA and in the Quebec STA; and (g) the Legal Documents constitute the rules of the clearing agency and are entitled to the protection of section 7 of the Ontario STA and of section 4 of the Quebec STA.
7.2.6 Mode of Settlement Each Trade must include a mode of settlement indicator that is one of Trade-for-Trade or CNS. The mode of settlement indicator is either included in the instructions when the Trade is reported or confirmed, or is added automatically by the system in accordance with the criteria in the Procedures and ~~user~~ User Guides.	**7.2.6 Mode of Settlement** Each Trade must include a mode of settlement indicator that is one of Trade-for-Trade or CNS. The mode of settlement indicator is either included in the instructions when the Trade is reported or confirmed, or is added automatically by the system in accordance with the criteria in the Procedures and User Guides.
7.3.2 Eligibility ... A current or past or future value-dated Trade may be processed prior to Settlement through ~~FINet~~ **FINet**, if FINet applies automatically to that class of Trades and if the Trade meets the eligibility criteria set out in the Procedures and the criteria set out in each Participant's service options.	**7.3.2 Eligibility** ... A current or past or future value-dated Trade may be processed prior to Settlement through **FINet**, if FINet applies automatically to that class of Trades and if the Trade meets the eligibility criteria set out in the Procedures and the criteria set out in each Participant's service options.
7.6.4 Pledge ... So long as the Pledged Securities or funds remain in the Collateral Account of the ~~pledgor~~ pledgee Participant to whom they are Pledged, CDS also reflects the delivery of such Securities or funds in the Pledge Account for the ~~pledgee~~ pledgor Participant who made the Pledge. ...	**7.6.4 Pledge** ... So long as the Pledged Securities or funds remain in the Collateral Account of the pledgee Participant to whom they are Pledged, CDS also reflects the delivery of such Securities or funds in the Pledge Account for the pledgor Participant who made the Pledge. ...

13.3.2 CDS Clearing and Depository Services Inc. (CDS®) – Material Amendments to CDS Procedures – New York Link (NYL) Service – Request for Comments

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO CDS PROCEDURES

NEW YORK LINK (NYL) SERVICE

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED CDS PROCEDURE AMENDMENTS

The proposed CDS procedure amendments relate to the establishment of earlier collateral requirement deadlines for the NSCC Participant Fund for New York Link.

A revised Notice regarding material amendments to CDS Participant Procedures concerning DTC Direct Link and New York Link Services was provided by CDS for regulatory consideration on September 17, 2009.

The Notice contained the following text:

Adjustment of the collateral requirement deadlines for the NSCC Participant Fund (RBM collateral held directly by NSCC) for New York Link participants.

NSCC's final deadline for its participants to pledge daily RBM collateral is 10:00 a.m. ET. For a six-month minimum period beginning November 2, 2009, NSCC will temporarily permit CDS to pledge the daily RBM collateral to NSCC by 12:00 p.m. ET as opposed to the 10:00 a.m. ET deadline.

In order to comply with NSCC's transitional collateral requirement deadline of 12:00 p.m. ET, CDS will move the initial collateral requirement deadline for the NSCC Participant Fund for New York Link from the current 12:00 p.m. ET deadline to 11:00 a.m. ET and the final collateral requirement deadline for the NSCC Participant Fund for New York Link will move from the current 1:00 p.m. ET deadline to 11:30 a.m. ET for all New York Link participants. Since NSCC will require CDS to comply with its 10:00 a.m. ET final deadline after the transition period, the participant deadlines will eventually change to two hours earlier in the business day. The transition period is meant to allow participants enough time to plan their processes in preparation for the earlier deadline that would be imposed after the transition period has expired.

In order to comply with NSCC's final collateral requirement deadline of 10:00 a.m. ET, beginning on Monday, May 3, 2010, CDS will move the initial risk based margin (RBM) collateral requirement deadline for the NSCC Participant Fund for New York Link from the current 11:00 a.m. ET deadline to 9:00 a.m. ET and the final collateral requirement deadline for the NSCC Participant Fund for New York Link will move from the current 11:30 a.m. ET deadline to 9:30 a.m. ET for all New York Link participants. The implementation of the new deadline is due to the expiry of the six month temporary extension of the deadline that was provided by NSCC to CDS as of November 2, 2009.

B. NATURE AND PURPOSE OF THE PROPOSED CDS PROCEDURE AMENDMENTS

The proposed amendments to the participant procedures are intended to provide CDS with sufficient time to ensure that all the required collateral is received from participants and to transfer the collateral once validated to NSCC in order to meet NSCC's collateral requirement deadline of 10:00 a.m. ET which CDS must observe beginning on May 3, 2010.

C. IMPACT OF THE PROPOSED CDS PROCEDURE AMENDMENTS

The adjustment of the collateral requirement deadlines for NYL participants to wire transfer RBM collateral for the NSCC Participant Fund for New York Link will require participants to modify their internal deadlines and collateral management procedures in order to meet the earlier deadlines. Participants will also need to ensure that the necessary arrangements are made with their funding banks in order to ensure that funds required to fulfill their collateral requirements are transferred prior to the deadline. Additionally, participants in western Canada may need to make special arrangements to meet the new collateral deadlines due to different time zones which may result in additional resource costs to comply with the requirements

The NYL participants have been aware of the impending earlier deadlines for several months.

C.1 Competition

It is expected that the proposed amendments to CDS's participant procedures will have no impact on the competitive environment.

While CDS sponsored participants have the option of becoming a direct member of NSCC/DTC and in so doing be subject to NSCC's 10 a.m. ET collateral requirement deadline (rather than CDS's 9:00 a.m. and 9:30 a.m. deadlines), it is not expected that any of CDS's sponsored participants will choose to become direct members of NSCC/DTC because of this change to CDS's collateral requirement deadlines.

All CDS sponsored participants using the NYL service will be required to comply with the earlier collateral requirement deadlines.

C.2 Risks and Compliance Costs

While there is a possibility that participants who do not meet the new collateral requirement deadlines for the NSCC Participant Fund for New York Link may be fined or suspended from CDS's services, the new amendments to the participant procedures outlined in this Notice are not expected to introduce any new risks to the participants. However, participants in western Canada may need to make special arrangements to meet the new collateral deadlines due to different time zones which may result in additional resource costs to comply with the requirements.

C.3 Comparison to International Standards – (a) Committee on Payment and Settlement Systems of the Bank for International Settlements, (b) Technical Committee of the International Organization of Securities Commissions, and (c) the Group of Thirty

CDS's proposed amendments are intended to be consistent with IOSCO's recommendation 11 for central counterparties, whereby "CCPs that establish links either cross border or domestically to clear trades should evaluate the potential sources of risk that can arise, and ensure that the risk is managed prudently on an ongoing basis. There should be a framework for cooperation and coordination between the relevant regulators and overseers".

D. DESCRIPTION OF THE PROCEDURE DRAFTING PROCESS

D.1 Development Context

CDS's participant procedures related to the NYL service were reviewed by CDS staff in order to identify the impacts to them of the earlier collateral requirement deadline imposed on CDS by NSCC.

The proposed amendments to CDS's participant procedures related to the NYL service that were identified by CDS staff were then incorporated within the existing CDS's participant procedures related to the NYL service and reviewed by CDS staff.

The proposed amendments to CDS's participant procedures related to the NYL service were then reviewed and approved by CDS management.

CDS internal procedures related to the NYL service were also reviewed by CDS staff and they will also be amended where necessary to reflect the changes that have been proposed to CDS's participant procedures that are detailed within this notice.

D.2 Procedure Drafting Process

CDS procedure amendments are reviewed and approved by CDS's Strategic Development Review Committee ("SDRC"). The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by participants and CDS. The SDRC's membership includes representatives from the CDS participant community and it meets on a monthly basis.

These amendments were reviewed and approved by the SDRC on February 11, 2010.

D.3 Issues Considered

Participants may need to make special arrangements with their funding banks in order to meet the new deadline. Through the consultation process, all participants have indicated that they will be able to make the necessary arrangements to meet the new deadline.

A NYL participant, through the SDRC, has asked CDS to consider providing a daily automated notification of NYL participants' NSCC Participant Fund for NYL collateral requirements. As such, a related work request has been created and it will follow CDS work request protocol.

D.4 Consultation

NYL participants were advised of the impending change to the collateral requirement deadlines during meetings and conference calls of the NYL/DDL initiative working group that took place prior to November 2, 2009.

CDS bulletins describing the impending change to the collateral requirement deadlines were also released on September 21, 2009 and October 30, 2009.

A CDS bulletin reminding NYL participants of the upcoming change to the collateral requirement deadlines will be released prior to its implementation on May 3, 2010.

D.5 Alternatives Considered

No alternatives were considered.

D.6 Implementation Plan

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the Ontario *Securities Act*. The Autorité des marchés financiers has authorized CDS to carry on clearing activities in Québec pursuant to sections 169 and 170 of the Québec *Securities Act*. In addition CDS is deemed to be the clearing house for CDSX®, a clearing and settlement system designated by the Bank of Canada pursuant to section 4 of the *Payment Clearing and Settlement Act*. The Ontario Securities Commission, the Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the "Recognizing Regulators".

The amendments to participant procedures may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment. Implementation of these changes is planned for May 3, 2010.

E. TECHNOLOGICAL SYSTEMS CHANGES

E.1 CDS

The amendments to the participant procedures do not require any technological systems changes by CDS.

E.2 CDS Participants

It is not expected that participants will be required to make any technological systems changes as a result of these amendments to the participant procedures.

E.3 Other Market Participants

There is no anticipated impact to other market participants.

F. COMPARISON TO OTHER CLEARING AGENCIES

Direct members of NSCC/DTC are required to provide RBM collateral to NSCC by 10:00 a.m. ET on a daily basis. CDS's initial deadline of 9:00 a.m. ET is due to the coordination efforts required by CDS prior to submitting the collateral to NSCC.

G. PUBLIC INTEREST ASSESSMENT

CDS has determined that the proposed amendments are not contrary to the public interest.

H. COMMENTS

Comments on the proposed amendments should be in writing and submitted within 30 calendar days following the date of publication of this Notice in the Ontario Securities Commission Bulletin to:

Rob Argue
Senior Product Manager, Product Development
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

Phone: 416-365-3887
Fax: 416-365-0842
Email: rargue@cds.ca

Copies should also be provided to the Autorité des marchés financiers and the Ontario Securities Commission by forwarding a copy to each of the following individuals:

M^{e} Anne-Marie Beaudoin
Secrétaire del'Autorité
Autorité des marchés financiers
800, square Victoria, 22^{e} étage
C.P. 246, tour de la Bourse
Montréal, Québec, H4Z 1G3

Télécopieur: (514) 864-6381
Courrier électronique:
consultation-en-cours@lautorite.qc.ca

Manager, Market Regulation
Capital Markets Branch
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario, M5H 3S8

Fax: 416-595-8940
e-mail: marketregulation@osc.gov.on.ca

CDS will make available to the public, upon request, all comments received during the comment period.

I. PROPOSED CDS PROCEDURE AMENDMENTS

Due to formatting issues the text of current CDS Participant Procedures marked to reflect proposed amendments as well as text of these procedures reflecting the adoption of the proposed amendments can be accessed by clicking the following link.

Refer to http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-blacklined?Open to review the affected procedure amendments.

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