

The Ontario Securities Commission

# OSC Bulletin

June 18, 2010

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

**The Ontario Securities Commission**

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# Chapter 1

## Notices / News Releases

### 1.1 Notices

#### 1.1.1 Current Proceedings Before The Ontario Securities Commission

June 18, 2010

#### CURRENT PROCEEDINGS

#### BEFORE

#### ONTARIO SECURITIES COMMISSION

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

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Mary G. Condon	—	MGC
Margot C. Howard	—	MCH
Kevin J. Kelly	—	KJK
Paulette L. Kennedy	—	PLK
Patrick J. LeSage	—	PJL
Carol S. Perry	—	CSP
Charles Wesley Moore (Wes) Scott	—	CWMS

### SCHEDULED OSC HEARINGS

June 21, 2010		<b>Rezwealth Financial Services Inc., Pamela Ramoutar, Chris Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc. and Sylvan Blackett</b>
10:00 a.m.		

s. 127(1) and (5)

A. Heydon in attendance for Staff

Panel: JEAT

June 21, 2010		<b>Sextant Capital Management Inc., Sextant Capital GP Inc., Otto Spork, Robert Levack and Natalie Spork</b>
August 4-6, 2010		

s. 127

T. Center in attendance for Staff

October 4-8, 2010		
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October 13-15, 2010		
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Panel: JDC/CSP

10:00 a.m.

June 23, 2010		<b>Magna International Inc. and The Stronach Trust and 446 Holdings Inc.</b>
9:00 a.m.		

s. 127

C. Price in attendance for Staff

Panel: JEAT/PLK/CWMS

June 28, 2010		<b>Shallow Oil &amp; Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman</b>
10:00 a.m.		

s. 127(7) and 127(8)

M. Boswell in attendance for Staff

Panel: PJL

**Notices / News Releases**

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June 28, 2010 10:00 a.m.	<b>Coventree Inc., Geoffrey Cornish and Dean Tai</b>	July 9, 2010 10:00 a.m.	<b>Hillcorp International Services, Hillcorp Wealth Management, Suncorp Holdings, 1621852 Ontario Limited, Steven John Hill, Daryl Renneberg and Danny De Melo</b>
June 29, 2010 1:00 p.m.	s. 127  J. Waechter in attendance for Staff		s. 127  A. Clark in attendance for Staff
September 15-17, 20-21 and 24, 2010	Panel: JEAT/MGC/PLK		Panel: CSP
October 4, 6-8, 13-15, 18-19, 25 and 27-29, 2010		July 9, 2010 11:30 a.m.	<b>Global Energy Group, Ltd. and New Gold Limited Partnerships</b>  s. 127  H. Craig in attendance for Staff  Panel: CSP
June 29, 2010 10:00 a.m.	<b>Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang</b>  s. 127 and 127.1  M. Britton in attendance for Staff  Panel: MGC	July 19, 2010 11:00 a.m.	<b>Paladin Capital Markets Inc., John David Culp and Claudio Fernando Maya</b>  s. 127  C. Price in attendance for Staff  Panel: JDC
June 30, 2010 9:30 a.m.	<b>Abel Da Silva</b>  s. 127  M. Boswell in attendance for Staff  Panel: MGC	July 21, 2010 2:00 p.m.	<b>York Rio Resources Inc., Brilliante Brasilcan Resources Corp., Victor York, Robert Runic, George Schwartz, Peter Robinson, Adam Sherman, Ryan Demchuk, Matthew Oliver, Gordon Valde and Scott Basingdale</b>  s. 127  H. Craig in attendance for Staff  Panel: MGC
June 30, 2010 2:00 p.m.	<b>Sunil Tulsiani, Tulsiani Investments Inc., Private Investment Club Inc., and Gulfland Holdings LLC</b>  s. 127  J. Feasby in attendance for Staff  Panel: MGC	July 21, 2010 2:00 p.m.	<b>Brilliante Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York</b>  s. 127  H. Craig in attendance for Staff  Panel: MGC
July 8-9, 2010 10:00 a.m.	<b>Shane Suman and Monie Rahman</b>  s. 127 and 127(1)  C. Price in attendance for Staff  Panel: JEAT/PLK		

Notices / News Releases

August 10-13, 2010	<b>Robert Joseph Vanier (a.k.a. Carl Joseph Gagnon)</b>	September 13-24, 2010	<b>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</b>
10:00 a.m.	s. 127  S. Horgan in attendance for Staff  Panel: JEAT/PLK	10:00 a.m.	s. 127  S. Kushneryk in attendance for Staff  Panel: TBA
August 13, 2010	<b>Axcess Automation LLC, Axcess Fund Management, LLC, Axcess Fund, L.P., Gordon Alan Driver and David Rutledge, Steven M. Taylor and International Communication Strategies</b>	September 13-24; October 4-8; October 13-19, 2010	<b>Sulja Bros. Building Supplies, Ltd., Petar Vucicevich, Kore International Management Inc., Andrew Devries, Steven Sulja, Pranab Shah, Tracey Banumas and Sam Sulja</b>
10:00 a.m.	s. 127  Y. Chisholm in attendance for Staff  Panel: CSP	10:00 a.m.	s. 127 and 127.1  J. Feasby in attendance for Staff  Panel: TBA
September 7-10, 2010	<b>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</b>	September 27 – October 1, 2010	<b>Chartcandle Investments Corporation, CCI Financial, LLC, Chartcandle Inc., PSST Global Corporation, Stephen Michael Chesnowitz and Charles Pauly</b>
10:00 a.m.	s. 127  M. Vaillancourt/T. Center in attendance for Staff  Panel: TBA	10:00 a.m.	s. 127 and 127.1  S. Horgan in attendance for Staff  Panel: TBA
September 13, 2010	<b>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</b>	October 13, 2010	<b>Ameron Oil and Gas Ltd. and MX-IV, Ltd.</b>
9:00 a.m.	s. 127 and 127.1  H. Craig in attendance for Staff  Panel: JEAT	10:00 a.m.	s. 127  M. Boswell in attendance for Staff  Panel: TBA
		October 13, 2010	<b>QuantFX Asset Management Inc., Vadim Tsatskin, Lucien Shtromvaser and Rostislav Zemlinsky</b>
		10:30 a.m.	s. 127  H. Craig in attendance for Staff  Panel: MTBA

October 18 – November 5, 2010	<p><b>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</b></p>	December 2, 2010	<p><b>Richvale Resource Corp., Marvin Winick, Howard Blumenfeld, Pasquale Schiavone, and Shafi Khan</b></p>
10:00 a.m.	<p>s. 127 and 127.1</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>	9:00 a.m.	<p>s. 127(7) and 127(8)</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>
October 21, 2010	<p><b>Cicccone Group, Medra Corporation, 990509 Ontario Inc., Tadd Financial Inc., Cachet Wealth Management Inc., Vince Cicccone, Darryl Brubacher, Andrew J. Martin., Steve Haney, Klaudiusz Malinowski and Ben Giangrosso</b></p>	January 17-21, 2011	<p><b>Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin</b></p>
10:00 a.m.	<p>s. 127</p> <p>P. Foy in attendance for Staff</p> <p>Panel: TBA</p>	10:00 a.m.	<p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>
October 25-29, 2010	<p><b>IBK Capital Corp. and William F. White</b></p>	March 1-7; 9-11; 21; and 23-31, 2011	<p><b>Paul Donald</b></p>
10:00 a.m.	<p>s. 127</p> <p>M. Vaillancourt in attendance for Staff</p> <p>Panel: TBA</p>	10:00 a.m.	<p>s. 127</p> <p>C. Price in attendance for Staff</p> <p>Panel: TBA</p>
November 15-18; November 24 – December 2, 2010	<p><b>Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)</b></p>	March 7, 2011	<p><b>Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton</b></p>
10:00 a.m.	<p>s. 127 and 127.1</p> <p>D. Ferris in attendance for Staff</p> <p>Panel: TBA</p>	10:00 a.m.	<p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>
		TBA	<p><b>Yama Abdullah Yaqeen</b></p>
			<p>s. 8(2)</p> <p>J. Superina in attendance for Staff</p> <p>Panel: TBA</p>
		TBA	<p><b>Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell</b></p>
			<p>s. 127</p> <p>J. Waechter in attendance for Staff</p> <p>Panel: TBA</p>



TBA	<p><b>Frank Dunn, Douglas Beatty, Michael Gollogly</b></p> <p>s. 127</p> <p>K. Daniels in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric</b></p> <p>s. 127 and 127(1)</p> <p>D. Ferris in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Gregory Galanis</b></p> <p>s. 127</p> <p>P. Foy in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Imagin Diagnostic Centres Inc., Patrick J. Rooney, Cynthia Jordan, Allan McCaffrey, Michael Shumacher, Christopher Smith, Melvyn Harris and Michael Zelyony</b></p> <p>s. 127 and 127.1</p> <p>J. Feasby in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling</b></p> <p>s. 127(1) and 127.1</p> <p>J. Superina, A. Clark in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Gold-Quest International, Health and Harmony, Iain Buchanan and Lisa Buchanan</b></p> <p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>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</b></p> <p>s. 127</p> <p>M. Boswell in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Goldpoint Resources Corporation, Lino Novielli, Brian Moloney, Evanna Tomeli, Robert Black, Richard Wylie and Jack Anderson</b></p> <p>s. 127(1) and 127(5)</p> <p>M. Boswell in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun</b></p> <p>s. 127</p> <p>C. Price in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Lehman Cohort Global Group Inc., Anton Schnedi, Richard Unzer, Alexander Grundmann and Henry Hehlsinger</b></p> <p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>

TBA	<p><b>Goldbridge Financial Inc., Wesley Wayne Weber and Shawn C. Lesperance</b></p> <p>s. 127</p> <p>C. Johnson in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Uranium308 Resources Inc., Michael Friedman, George Schwartz, Peter Robinson, and Shafi Khan</b></p> <p>s. 127</p> <p>M. Boswell in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>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</b></p> <p>s. 127 and 127.1</p> <p>Y. Chisholm in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Innovative Gifting Inc., Terence Lushington, Z2A Corp., and Christine Hewitt</b></p> <p>s. 127</p> <p>M. Boswell in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk</b></p> <p>s. 37, 127 and 127.1</p> <p>C. Price in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Tulsiani Investments Inc. and Sunil Tulsiani</b></p> <p>s. 127</p> <p>M. Vaillancourt/T. Center in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited</b></p> <p>s. 127</p> <p>M. Britton/J.Feasby in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Agoracom Investor Relations Corp., Agora International Enterprises Corp., George Tsiolis and Apostolis Kondakos (a.k.a. Paul Kondakos)</b></p> <p>s. 127</p> <p>T. Center in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Anthony Ianno and Saverio Manzo</b></p> <p>s. 127 and 127.1</p> <p>A. Clark in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmony, Harmony Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale</b></p> <p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>

TBA	<p><b>Lyndz Pharmaceuticals Inc., James Marketing Ltd., Michael Eatch and Rickey McKenzie</b></p> <p>s. 127(1) and (5)</p> <p>J. Feasby in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Paladin Capital Markets Inc., John David Culp and Claudio Fernando Maya</b></p> <p>s. 127</p> <p>C. Price in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>M P Global Financial Ltd., and Joe Feng Deng</b></p> <p>s. 127(1)</p> <p>M. Britton in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Leverage Pro Inc., Prosporex Investment Club Inc., Prosporex Investments Inc., Prosporex Ltd., Prosporex Inc., Prosporex Forex SPV Trust, Networth Financial Group Inc., and Networth Marketing Solutions</b></p> <p>s. 127 and 127.1</p> <p>H. Daley in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Nelson Financial Group Ltd., Nelson Investment Group Ltd., Marc D. Boutet, Stephanie Lockman Sobol, Paul Manuel Torres, H.W. Peter Knoll</b></p> <p>s. 127</p> <p>P. Foy in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Wilton J. Neale, Multiple Streams of Income (MSI) Inc., and 360 Degree Financial Services Inc.</b></p> <p>s. 127 and 127.1</p> <p>H. Daley in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Vadim Tsatskin, Michael Schaumer, Elliot Feder, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff</b></p> <p>s. 37, 127 and 127.1</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Albert Leslie James, Ezra Douse and Dominion Investments Club Inc.</b></p> <p>s. 127 and 127.1</p> <p>H. Daley in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Peter Robinson and Platinum International Investments Inc.</b></p> <p>s. 127</p> <p>M. Boswell in attendance for Staff</p> <p>Panel: TBA</p>	<p><b><u>ADJOURNED SINE DIE</u></b></p> <p><b>Global Privacy Management Trust and Robert Cranston</b></p> <p><b>S. B. McLaughlin</b></p> <p><b>Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein, Robert Topol</b></p> <p><b>Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg</b></p>	

**ADJOURNED SINE DIE**

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

**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. Boulbee and Peter Y. Atkinson**

1.1.2 CSA Staff Notice 81-319 – Status Report on the Implementation of Point of Sale Disclosure for Mutual Funds

**CANADIAN SECURITIES ADMINISTRATORS  
STAFF NOTICE 81-319**

**STATUS REPORT ON THE IMPLEMENTATION OF  
POINT OF SALE DISCLOSURE FOR MUTUAL FUNDS**

**Purpose**

This Notice provides an update on the implementation of the Canadian Securities Administrators (CSA) point of sale disclosure project for mutual funds.

**Background**

On June 19, 2009, the CSA published proposed amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, its Forms and Companion Policy (collectively, the Instrument), aimed at providing investors with more meaningful and effective disclosure. The Instrument was the first step in implementing the point of sale disclosure framework published in October 2008 by the Joint Forum of Financial Market Regulators (the Joint Forum), which includes the CSA. Under the framework, investors would receive key information about a mutual fund at a time that is relevant to their investment decision.

Central to the new prospectus disclosure regime is the Fund Facts document. It is in plain language, will be no more than two pages and highlights the potential benefits, risks and the costs of investing in a mutual fund. Investors would generally receive a Fund Facts when they buy a fund for the first time (at or before the "point of sale").

The comment period expired on October 17, 2009. We received 54 comment letters on the Instrument. Copies of the comment letters have been posted on the Ontario Securities Commission website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca). Copies are also available from any CSA member.

This is a significant investor protection initiative. Canadian investors have approximately \$620 billion invested in mutual funds held in over 47 million accounts. We think the disclosure required by the Instrument would provide investors with the opportunity to make more informed investment decisions by giving investors key information about a mutual fund, in language they can easily understand, at a time that is relevant to their investment decision. The Instrument also keeps pace with developing global standards on point of sale disclosure and delivery.

**A staged approach to implementation**

The comments show that stakeholders generally agree with the benefits of providing investors with a more meaningful and simplified form of disclosure, and support the Fund Facts as a way of providing concise, plain language information that describes key elements of the mutual fund under consideration.

However, we received significant comments related to operational and compliance concerns with point of sale delivery for mutual funds. A large number of commenters also asked the CSA to implement a point of sale disclosure regime for other types of publicly offered investment funds and other securities at the same time.

While the CSA agrees that further review and consideration of issues related to point of sale delivery for mutual funds are necessary, we also think that it would be beneficial for the Fund Facts document to be made available to investors and market participants as soon as possible. This would provide investors with the opportunity to have access to key information about a mutual fund sooner. It would also allow investors and dealers to become familiar with the document and start using the Fund Facts in the decision-making process. Accordingly, the CSA has concluded to proceed with a staged implementation of the project.

The CSA remains committed to implementing point of sale disclosure for mutual funds. A staged implementation will allow us the opportunity to continue to consult with stakeholders and to consider the applicability of the point of sale regime for mutual funds to other types of publicly offered investment funds, with the possible outcome of implementing a point of sale delivery requirement at the same time for all comparable investment fund products. At this time, we are not considering the applicability of point of sale to securities other than publicly offered investment funds.

We anticipate a staged implementation of the project to proceed as follows:

### 1. File and post Fund Facts

We will finalize the requirements in the Instrument requiring a mutual fund to prepare and file a Fund Facts document and have it posted to the mutual fund's or its manager's website. As part of these requirements, a Fund Facts would be required to be delivered to an investor upon request.

Since the expiry of the comment period, we have focused on the feedback related to the Fund Facts. In response to the comments received, we have made some non-material revisions to the Fund Facts document published in June 2009. Appendix A to this Notice contains an example of a form of Fund Facts the CSA expects will satisfy the requirements of the final Instrument.

We anticipate publishing the Fund Facts requirements by December 2010, with an effective date in early 2011. The requirements will include a transition period.

### 2. Deliver Fund Facts under current requirements

In mid-2011, we expect to publish for comment a proposal to allow delivery of the Fund Facts to satisfy the current prospectus delivery requirements under securities legislation to deliver a prospectus within two days of buying a mutual fund. As part of this proposal, we do not intend to make any changes to a mutual fund's obligation to file its simplified prospectus and annual information form with the CSA, and these documents would continue to be made available to investors on a website and upon request, at no cost.

While this work on delivery within the existing requirements is underway, the CSA will consider applications for exemptive relief to permit the early use by dealers of the Fund Facts to satisfy the current prospectus delivery requirements. We will publish a staff notice in 2011 that sets out the key terms and conditions the CSA anticipate requiring as part of any exemption.

### 3. Point of sale delivery

Once the CSA has completed its review and consideration of the issues related to point of sale delivery, including consultations with all stakeholders, we intend to move forward with requirements for point of sale delivery for mutual funds and possibly for other types of publicly offered investment funds. We will publish for further comment any proposed requirements that would implement these delivery requirements.

### Questions

You may refer any questions or comments to any of,

Noreen Bent  
Manager and Senior Legal Counsel  
Legal Services, Corporate Finance  
British Columbia Securities Commission  
Phone: 604-899-6741  
E-mail: [nbent@bcsc.bc.ca](mailto:nbent@bcsc.bc.ca)

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Ontario Securities Commission  
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**June 18, 2010**

**Appendix A  
Sample Fund Facts Document**

**FUND FACTS**

**XYZ Mutual Funds**

**XYZ Canadian Equity Fund – Series A  
June 30, 20XX**

This document contains key information you should know about XYZ Canadian Equity Fund. You can find more detailed information in the fund's simplified prospectus. Ask your adviser for a copy, contact XYZ Mutual Funds at 1-800-555-5556 or investing@xyzfunds.com, or visit www.xyzfunds.com.

<b>Quick facts</b>																									
Date fund created:	January 1, 1996	Portfolio manager	Capital Asset Management Ltd.																						
Total value on June 1, 20XX:	\$1 billion	Distributions	Annually, on December 15																						
Management expense ratio (MER):	2.25%	Minimum investment	\$500 initial, \$50 additional																						
<b>What does the fund invest in?</b>																									
The fund invests in Canadian companies. They can be of any size and from any industry. The charts below give you a snapshot of the fund's investments on June 1, 20XX. The fund's investments will change.																									
<b>Top 10 investments (June 1, 20XX)</b>		<b>Investment mix (June 1, 20XX)</b>																							
<ol style="list-style-type: none"> <li>Royal Bank of Canada</li> <li>Encana Corp.</li> <li>Petro-Canada</li> <li>Alcan Inc.</li> <li>Canadian National Railway Company</li> <li>Goldcorp. Inc.</li> <li>Extencicare Inc.</li> <li>Husky Energy</li> <li>Open Text</li> <li>Thomson Reuters Corp.</li> </ol>		[pie chart]	<table border="1"> <thead> <tr> <th>Industry</th> <th></th> </tr> </thead> <tbody> <tr> <td>Financial services</td> <td>34.0%</td> </tr> <tr> <td>Energy</td> <td>26.6%</td> </tr> <tr> <td>Industrial goods</td> <td>16.5%</td> </tr> <tr> <td>Business services</td> <td>6.4%</td> </tr> <tr> <td>Telecommunication</td> <td>5.9%</td> </tr> <tr> <td>Hardware</td> <td>3.7%</td> </tr> <tr> <td>Healthcare services</td> <td>2.3%</td> </tr> <tr> <td>Consumer services</td> <td>2.1%</td> </tr> <tr> <td>Media</td> <td>1.9%</td> </tr> <tr> <td>Consumer goods</td> <td>0.6%</td> </tr> </tbody> </table>	Industry		Financial services	34.0%	Energy	26.6%	Industrial goods	16.5%	Business services	6.4%	Telecommunication	5.9%	Hardware	3.7%	Healthcare services	2.3%	Consumer services	2.1%	Media	1.9%	Consumer goods	0.6%
Industry																									
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Healthcare services	2.3%																								
Consumer services	2.1%																								
Media	1.9%																								
Consumer goods	0.6%																								
<b>Total investments</b> 126																									
<b>The top 10 investments make up 32% of the fund.</b>																									
<b>How has the fund performed?</b>		<b>How risky is it?</b>																							
This section tells you how the fund has performed over the past 10 years. Returns are after expenses have been deducted. These expenses reduce the fund's returns.		When you invest in a fund, the value of your investment can go down as well as up. XYZ Mutual Funds has rated this fund's risk as medium. For a description of the specific risks of this fund, see the fund's simplified prospectus.																							
It's important to note that this doesn't tell you how the fund will perform in the future. Also, your actual after-tax return will depend on your personal tax situation.		<table border="1"> <tr> <td>Low</td> <td>Low to medium</td> <td><b>Medium</b></td> <td>Medium to high</td> <td>High</td> </tr> </table>		Low	Low to medium	<b>Medium</b>	Medium to high	High																	
Low	Low to medium	<b>Medium</b>	Medium to high	High																					
<b>Average return</b>		<b>Are there any guarantees?</b>																							
A person who invested \$1,000 in the fund 10 years ago now has \$2,705. This works out to an annual compound return of 10.5%.		Like most mutual funds, this fund doesn't have any guarantees. You may not get back the amount of money you invest.																							
<b>Year-by-year returns</b>		<b>Who is this fund for?</b>																							
This chart shows how the fund has performed in each of the past 10 years. The fund dropped in value in three of the 10 years.		Investors who:																							
[bar chart]		<ul style="list-style-type: none"> <li>are looking for a long-term investment</li> <li>want to invest in a broad range of Canadian companies</li> <li>can handle the ups and downs of the stock market.</li> </ul>																							
		! Don't buy this fund if you need a steady source of income from your investment.																							
		<b>Before you invest in any fund, you should consider how it would work with your other investments and your tolerance for risk.</b>																							



	<p><b>A word about tax</b> In general, you'll have to pay income tax on any money you make on a fund. How much you pay depends on the tax laws where you live and whether or not you hold the fund in a registered plan, such as a Registered Retirement Savings Plan or a Tax-Free Savings Account.</p> <p>Keep in mind that if you hold your fund in a non-registered account, fund distributions are included in your taxable income, whether you get them in cash or have them reinvested.</p>
--	--

SAMPLE

### How much does it cost?

The following tables show the fees and expenses you could pay to buy, own and sell Series A units of the fund. The fees and expenses are different for each series. Ask about other series that may be suitable for you.

#### 1. Sales charges

You have to choose a sales charge option when you buy the fund. Ask about the pros and cons of each option.

Sales charge option	What you pay		How it works
	in per cent (%)	in dollars (\$)	
<b>Initial sales charge</b>	0% to 4% of the amount you buy	\$0 to \$40 on every \$1,000 you buy	<ul style="list-style-type: none"> <li>You and your adviser decide on the rate.</li> <li>The initial sales charge is deducted from the amount you buy. It goes to your investment firm as a commission.</li> </ul>
<b>Deferred sales charge</b>	<b>If you sell within:</b> 1 year of buying 6.0% 2 years of buying 5.0% 3 years of buying 4.0% 4 years of buying 3.0% 5 years of buying 2.0% 6 years of buying 1.0% After 6 years nothing	\$0 to \$60 on every \$1,000 you sell	<ul style="list-style-type: none"> <li>The deferred sales charge is a set rate. It is deducted from the amount you sell.</li> <li>When you buy the fund, XYZ Mutual Funds pays your investment firm a commission of 4.9%. Any deferred sales charge you pay goes to XYZ Mutual Funds.</li> <li>You can sell up to 10% of your units each year without paying a deferred sales charge.</li> <li>You can switch to Series A units of other XYZ Mutual Funds at any time without paying a deferred sales charge. The deferred sales charge schedule will be based on the date you bought the first fund.</li> </ul>

#### 2. Fund expenses

You don't pay these expenses directly. They affect you because they reduce the fund's returns.

As of March 31, 20XX, the fund's expenses were 2.30% of its value. This equals \$23 for every \$1,000 invested.

	Annual rate (as a % of the fund's value)
<b>Management expense ratio (MER)</b> This is the total of the fund's management fee and operating expenses. XYZ Mutual Funds waived some of the fund's expenses. If it had not done so, the MER would have been higher.	2.25%
<b>Trading expense ratio (TER)</b> These are the fund's trading costs.	0.05%
<b>Fund expenses</b>	<b>2.30%</b>

#### Trailing commission

XYZ Mutual Funds pays your investment firm a trailing commission for as long as you own the fund. It is for the services and advice your investment firm provides to you. Investment firms may pay part of the trailing commission to their representatives.

The trailing commission is paid out of the management fee. The rate depends on the sales charge option you choose:

- Initial sales charge – up to 1.0% of the value of your investment each year. This equals \$10 each year for every \$1,000 invested.
- Deferred sales charge – up to 0.50% of the value of your investment each year. This equals \$5 each year for \$1,000 invested.

#### 3. Other fees

You may have to pay other fees when you sell or switch units of the fund.

Fee	What you pay
Short-term trading fee	1% of the value of units you sell or switch within 90 days of buying them. This fee goes to the fund.
Switch fee	Your investment firm may charge you up to 2% of the value of units you switch to another XYZ Mutual Fund.
Change fee	Your investment firm may charge you up to 2% of the value of units you switch to another series of the fund.

#### What if I change my mind?

Under securities law in some provinces and territories, you have the right to:

- withdraw from an agreement to buy mutual fund units within two business days after you receive a simplified prospectus, or

#### For more information

Contact XYZ Mutual Funds or your adviser for a copy of the fund's simplified prospectus and other disclosure documents. These documents and the Fund Facts make up the fund's legal documents.

- cancel your purchase within 48 hours after you receive confirmation of the purchase.

In some provinces and territories, you also have the right to cancel a purchase, or in some jurisdictions, claim damages, if the simplified prospectus, annual information form or financial statements contain a misrepresentation. You must act within the time limit set by the securities law in your province or territory.

For more information, see the securities law of your province or territory or ask a lawyer.

XYZ Mutual Funds  
123 Asset Allocation St.  
Toronto, ON M1A 2B3

Phone: (416) 555-5555  
Toll-free: 1-800-555-5556  
Email: [investing@xyzfunds.com](mailto:investing@xyzfunds.com)  
[www.xyzfunds.com](http://www.xyzfunds.com)

SAMPLE

**1.1.3 Notice of Ministerial Approval of Amendments to Form 81-101F2 Contents of Annual Information Form under NI 81-101 Mutual Fund Prospectus Disclosure and to Form 41-101F2 Information Required in an Investment Fund Prospectus under NI 41-101 General Prospectus Requirements**

**NOTICE OF MINISTERIAL APPROVAL  
OF AMENDMENTS TO**

**FORM 81-101F2  
CONTENTS OF ANNUAL INFORMATION FORM  
UNDER  
NATIONAL INSTRUMENT 81-101  
MUTUAL FUND PROSPECTUS DISCLOSURE**

**AND TO**

**FORM 41-101F2  
INFORMATION REQUIRED IN AN  
INVESTMENT FUND PROSPECTUS  
UNDER  
NATIONAL INSTRUMENT 41-101  
GENERAL PROSPECTUS REQUIREMENTS**

On May 31, 2010, the Minister of Finance approved, pursuant to section 143.3 of the *Securities Act* (Ontario), amendments to the following rules and forms:

- (a) Form 81-101F2 *Contents of Annual Information Form* under National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and
- (b) Form 41-101F2 *Information Required in an Investment Fund Prospectus* under National Instrument 41-101 *General Prospectus Requirements*.

Materials related to these amendments were previously published in the Bulletin on April 9, 2010, and are republished in Chapter 5 of this Bulletin. The amendments to the forms will come into force on June 30, 2010.

#### **1.1.4 Notice of Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Regulated Entities**

On June 10, 2010, the Ontario Securities Commission, the Autorité des marchés financiers du Québec, and the United States Securities and Exchange Commission entered into a Memorandum of Understanding concerning regulatory cooperation related to the supervision of regulated entities (Supervisory MOU). The OSC, AMF and SEC have a long history of cooperation, particularly in securities enforcement matters. The Supervisory MOU would extend this cooperation beyond enforcement by setting a framework for consultation, cooperation and information-sharing related to the day-to-day supervision and oversight of regulated entities. This comprehensive framework will enhance the OSC and SEC's ability to supervise regulated entities that operate across our respective borders.

The Supervisory MOU is subject to the approval of the Minister of Finance. The Supervisory MOU was delivered to the Minister on June 11, 2010. Subject to the Minister's approval, the Supervisory MOU will take effect in Ontario on August 18, 2010.

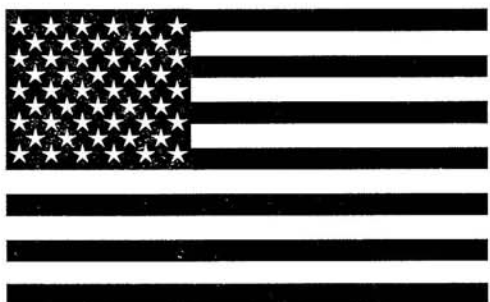
Questions may be referred to:

Jean-Paul Bureaud  
Assistant Manager  
Office of Domestic and International Affairs  
Tel: 416-593-8131  
E-mail: [jbureaud@osc.gov.on.ca](mailto:jbureaud@osc.gov.on.ca)

**June 18, 2010**

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# MEMORANDUM OF UNDERSTANDING



*The United States  
Securities and Exchange Commission*



*Ontario Securities Commission  
Autorité des marchés financiers  
du Québec*

***Concerning Consultation, Cooperation  
and the Exchange of Information Related  
to the Supervision of Cross-Border Regulated Entities***

**MEMORANDUM OF UNDERSTANDING  
CONCERNING CONSULTATION, COOPERATION AND  
THE EXCHANGE OF INFORMATION  
RELATED TO THE SUPERVISION OF  
CROSS-BORDER REGULATED ENTITIES**

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of regulated entities, the US Securities and Exchange Commission (SEC), the Autorité des marchés financiers (AMF) and the Ontario Securities Commission (OSC) have reached this Memorandum of Understanding (MOU) regarding mutual assistance in the supervision and oversight of regulated entities that operate on a cross-border basis in the United States and Canada. The Authorities express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates particularly in the areas of: investor protection; fostering the integrity of and maintaining confidence in capital markets; and reducing systemic risk.

**ARTICLE ONE: DEFINITIONS**

For purposes of this MOU:

1. "Authority" means:
  - a) the US Securities and Exchange Commission (SEC); or
  - b) The Autorité des marchés financiers (AMF), the Ontario Securities Commission (OSC), or any other Canadian securities regulatory authority which may become a party to the Memorandum of Understanding in the manner set out in Article 8 (individually a Canadian Authority, or collectively the Canadian Authorities).
2. "Requested Authority" means:
  - a) Where the Requesting Authority is the SEC, the Canadian Authority to which a request is made under this MOU; or
  - b) Where the Requesting Authority is a Canadian Authority, the SEC.
3. "Requesting Authority" means an Authority making a request under this MOU.
4. "Person" means a natural person, unincorporated association, partnership, trust, investment company or corporation.
5. "Regulated Entity" means a Person that is authorized, designated, recognized, qualified, or registered, and supervised or overseen by one of the Authorities, which may include but is not limited to exchanges and other trading venues; brokers or dealers; investment advisers; investment fund managers or investment companies; clearing agencies or houses, transfer agents; and credit rating agencies.



6. "Cross-Border Regulated Entity" means (a) a Regulated Entity of the SEC and any of the Canadian Authorities, (b) a Regulated Entity in one jurisdiction that has been exempted from authorization, designation, recognition, qualification or registration by an Authority in the other jurisdiction, (c) a Regulated Entity in one jurisdiction that is controlled by a Regulated Entity in the other jurisdiction, or (d) a Regulated Entity in one jurisdiction that is physically located in the other jurisdiction. For purposes of this MOU, references to jurisdiction will be determined as either the jurisdiction of the SEC or the jurisdiction of one of the Canadian Authorities.
7. "On-Site Visit" means any routine, sweep, or for-cause regulatory visit to or inspection of the Books and Records and premises of a Cross-Border Regulated Entity for the purposes of ongoing supervision and oversight.
8. "Books and Records" means documents, books, and records of, and other information about, a Regulated Entity.
9. "Local Authority" means the Authority in whose jurisdiction a Cross-Border Regulated Entity is physically located.
10. "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Cross-Border Regulated Entity.
11. "Governmental Entity" means:
  - a) The US Department of the Treasury or the US Board of Governors of the Federal Reserve System, if the Requesting Authority is the SEC; and
  - b) The Québec ministère des Finances, if the Requesting Authority is the AMF; and
  - c) The Ontario Ministry of Finance, if the Requesting Authority is the OSC.

**ARTICLE TWO: GENERAL PROVISIONS**

12. This MOU is a statement of intent to consult, cooperate and exchange information in connection with the supervision and oversight of Cross-Border Regulated Entities that operate within the jurisdictions of the SEC and one or more of the Canadian Authorities, in a manner consistent with, and permitted by, the laws and requirements that govern the Authorities. This MOU provides for consultation, cooperation and exchange of information related to the supervision and oversight of Cross-Border Regulated Entities between the SEC and each Canadian Authority individually. The Authorities anticipate that cooperation will be primarily achieved through ongoing, informal consultations, supplemented, when necessary, by more in-depth cooperation, including through mutual assistance in obtaining information from Regulated Entities. The provisions of this MOU are intended to support such informal communication as

well as to facilitate the written exchange of non-public information where necessary in accordance with applicable laws.

13. This MOU does not create any legally binding obligations, confer any rights, or supersede domestic laws. This MOU does not confer upon any Person the right or ability directly or indirectly to obtain, suppress, or exclude any information or to challenge the execution of a request for assistance under this MOU.
14. This MOU does not limit an Authority to taking solely those measures described herein in fulfillment of its supervisory functions. In particular, this MOU does not affect any right of any Authority to communicate with, conduct an On-Site Visit of (subject to the procedures described in Article Four), or obtain information or documents from, any Person subject to its jurisdiction that is located in the territory of another Authority.
15. This MOU complements, but does not alter the terms and conditions of the following existing arrangements concerning cooperation in securities matters: (i) the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, to which the Authorities are signatories, which covers information-sharing in the context of enforcement; and (ii) Memorandum of Understanding between the US Securities and Exchange Commission and Ontario Securities Commission, Commission des valeurs mobilières du Québec and British Columbia Securities Commission, dated 7 January 1988.
16. The Authorities will, within the framework of this MOU, provide each other with the fullest cooperation permissible under the law in relation to the supervision of Cross-Border Regulated Entities. Following consultation, cooperation may be denied:
  - a) Where the cooperation would require an Authority to act in a manner that would violate domestic law;
  - b) Where a request for assistance is not made in accordance with the terms of the MOU; or
  - c) On the grounds of the public interest.
17. To facilitate cooperation under this MOU, the Authorities hereby designate contact persons as set forth in Appendix A.

**ARTICLE THREE: SCOPE OF SUPERVISORY CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION**

18. **Consultation.** The Authorities recognize the importance of close communication concerning Cross-Border Regulated Entities, and intend to consult regularly at the staff level regarding: (i) general supervisory issues, including regulatory, oversight or

other related developments; (ii) issues relevant to the operations, activities, and regulation of Cross-Border Regulated Entities; and (iii) any other areas of mutual supervisory interest.

19. Cooperation will be most useful in, but is not limited to, the following circumstances where issues of common regulatory concern may arise:
  - a) The initial application with an Authority for authorization, designation, recognition, qualification, registration or exemption therefrom by a Regulated Entity that is authorized, designated, recognized, qualified or registered by an Authority in the other jurisdiction;
  - b) The ongoing supervision and oversight of a Cross-Border Regulated Entity; and
  - c) Regulatory or supervisory actions or approvals taken in relation to a Cross-Border Regulated Entity by an Authority that may impact the operations of the entity in jurisdiction of the other Authority.
20. **Advance Notification.** Each Authority will, where practicable and reasonable, seek to inform the other Authorities in advance of, or as soon as possible thereafter of:
  - a) Pending regulatory changes that may have a significant impact on the operations, activities, or reputation of a Cross-Border Regulated Entity;
  - b) Any material event of which the Authority is aware that could adversely and directly impact a Cross-Border Regulated Entity. Such events include known changes in the ownership, operating environment, operations, financial resources, management, or systems and control of a Cross-Border Regulated Entity; and
  - c) Enforcement or regulatory actions or sanctions, including the revocation, suspension or modification of relevant authorization, designation, recognition, qualification or registration or exemption therefrom, concerning or related to Cross-Border Regulated Entity.
21. **Exchange of Information.** To supplement informal consultations, upon written request, each Authority intends to provide the other Authorities with assistance in obtaining information, and interpreting such information, relevant to ensuring compliance with the laws and regulations of the Requesting Authority and that is not otherwise available to the Requesting Authority. The information covered by this paragraph includes, without limitation:
  - a) Information relevant to the financial and operational condition of a Cross-Border Regulated Entity, including, for example, reports of capital reserves, liquidity or other prudential measures, and internal control procedures;

- b) Relevant regulatory information and filings that a Cross-Border Regulated Entity is required to submit to an Authority including, for example, interim and annual financial statements and early warning notices; and
- c) Regulatory reports prepared by an Authority, including, for example, examination reports, findings, or information drawn from such reports regarding Cross-Border Regulated Entities.

**ARTICLE FOUR: ON-SITE VISITS**

22. Where necessary in order to fulfill its supervision and oversight responsibilities and to ensure compliance with its laws and regulations, an Authority seeking to examine a Cross-Border Regulated Entity located in the jurisdiction of the Local Authority will consult and work collaboratively with the Local Authority in conducting an On-Site Visit. The Authorities will comply with the following procedures before conducting an On-Site Visit:
- a) The Authority seeking to conduct an On-Site visit will provide advance notice to the Local Authority of its intent to conduct an On-Site Visit, by itself or by a third party commissioned by it, and will consult with the Local Authority on the intended timeframe and scope of the On-Site Visit.
  - b) The Local Authority will endeavor to share any relevant examination reports or compliance reviews it may have undertaken respecting the Cross-Border Regulated Entity with the Requesting Authority.
  - c) The Authorities intend to assist each other regarding On-Site Visits, including cooperation and consultation in reviewing, interpreting and analyzing the contents of public and non-public Books and Records; and obtaining information from directors and senior management of a Cross-Border Regulated Entity.
  - d) The Authorities will consult and, where desired, conduct joint inspections with a view to possibly leveraging resources in the oversight of a Cross-Border Regulated Entity.

**ARTICLE FIVE: EXECUTION OF REQUESTS FOR ASSISTANCE**

23. To the extent possible, a request for information pursuant to Article Three should be made in writing, and addressed to the relevant contact person identified in Appendix A. A request for information generally should specify the following:
- a) The information sought by the Requesting Authority;
  - b) A general description of the matter which is the subject of the request and the purpose for which the information is sought; and

- c) The desired time period for reply and, where appropriate, the urgency thereof.
- 24. In an Emergency Situation, the Authorities will endeavor to notify each other of the Emergency Situation and communicate information to the other as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During an Emergency Situation, requests for information may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

**ARTICLE SIX: PERMISSIBLE USES OF INFORMATION**

- 25. The Requesting Authority may use non-public information obtained under this MOU solely for the purpose of supervising Cross-Border Regulated Entities and seeking to ensure compliance with the laws or regulations of the Requesting Authority.
- 26. This MOU is intended to complement, but does not alter the terms and conditions of the existing arrangements between the Authorities concerning cooperation in securities matters, as set forth in Paragraph 15. The Authorities recognize that while information is not to be gathered under the auspices of this MOU for enforcement purposes, subsequently the Authorities may want to use the information for law enforcement. In cases where a Requesting Authority seeks to use information obtained under this MOU for enforcement purposes, including in conducting investigations or bringing administrative, civil or criminal proceedings, prior consent must be sought from the Requested Authority. Use will be subject to the terms and conditions of the arrangements referred to in Paragraph 15.

**ARTICLE SEVEN: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING**

- 27. Except for disclosures in accordance with the MOU, including permissible uses of information under Article Six, each Authority will keep confidential to the extent permitted by law information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU.
- 28. To the extent possible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MOU. Prior to compliance with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
- 29. In certain circumstances, and as required by law, it may become necessary for the Requesting Authority to share information obtained under this MOU with other Governmental Entities in its jurisdiction. In these circumstances and to the extent permitted by law:

- a) The Requesting Authority will notify the Requested Authority.
  - b) Prior to passing on the information, the Requested Authority will receive adequate assurances concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that the information will not be shared with other parties without getting the prior consent of the Requested Authority.
30. Except as provided in paragraph 29, the Requesting Authority must obtain the prior written consent of the Requested Authority before disclosing non-public information received under this MOU to any non-signatory to this MOU. During an Emergency Situation, consent may be obtained in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification. If consent is not obtained from the Requested Authority, the Requesting and Requested Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.
31. The Authorities intend that the sharing or disclosure of non-public information, including but not limited to deliberative and consultative materials, such as written analysis, opinions or recommendations relating to non-public information that is prepared by or on behalf of an Authority, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such information.

**ARTICLE EIGHT: AMENDMENTS**

32. The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the Authorities with a view, *inter alia*, to expanding or altering the scope or operation of this MOU should that be judged necessary. This MOU may be amended with the written consent of all of the Authorities.
33. Any Canadian Authority may become a party to this MOU by executing a counterpart hereof, together with the SEC and providing notice of such execution to the other Canadian Authorities which are signatories to this MOU.

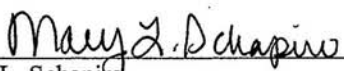
**ARTICLE NINE: EXECUTION OF MOU**

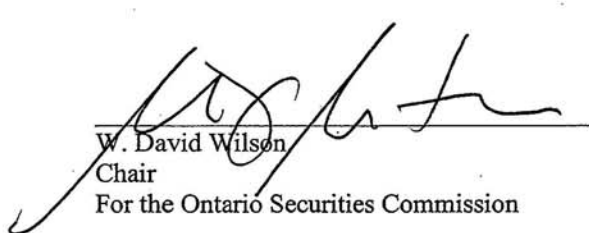
34. Cooperation in accordance with this MOU will become effective on the date this MOU is signed by the Authorities and, in the case of the OSC, on the date determined in accordance with applicable legislation.

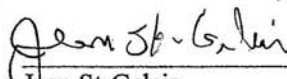
**ARTICLE TEN:       TERMINATION**

35. Cooperation in accordance with this MOU will continue until the expiration of 30 days after any Authority gives written notice to the other Authorities of its intention to terminate the MOU. If an Authority gives such notice, cooperation will continue with respect to all requests for assistance that were made under the MOU before the effective date of notification until the Requesting Authority terminates the matter for which assistance was requested. In the event of termination of this MOU, information obtained under this MOU will continue to be treated in a manner prescribed under Articles Six and Seven.

Signed in Montréal, Québec, this 10th day of June 2010.

  
\_\_\_\_\_  
Mary L. Schapiro  
Chairman  
For the United States Securities and Exchange Commission

  
\_\_\_\_\_  
W. David Wilson  
Chair  
For the Ontario Securities Commission

  
\_\_\_\_\_  
Jean St-Gelais  
President and Chief Executive Officer  
For the Autorité des marchés financiers du Québec



Appendix A

**CONTACT OFFICERS**

**US Securities and Exchange Commission**

100 F Street NE  
Washington, DC 20549  
USA

Attention:

Director, Office of International Affairs

Tel: (202) 551-6690  
Fax: (202) 772-9273

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**Ontario Securities Commission**

20 Queen Street West  
19th Floor, Box 55  
Toronto, ON M5H 3S8

Attention:

Director, Office of Domestic and International Affairs

Tel: (416) 593-8084  
Fax: (416) 595-8942

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**Autorité des marchés financiers**

800, Square Victoria, 22<sup>e</sup> étage  
C.P. 246, Tour de la Bourse  
Montréal (Québec) H4Z 1G3

Attention:

Corporate Secretary

Tel: (514) 395-0337 ext. 2517  
Fax: (514) 864-6381

### 1.1.5 CSA Staff Notice 45-307 – Regulatory Developments Regarding Securitization

#### CSA STAFF NOTICE 45-307 REGULATORY DEVELOPMENTS REGARDING SECURITIZATION

This Notice provides an update from Canadian Securities Administrators' (CSA) staff on the development of regulatory proposals relating to securitized products, including asset-backed commercial paper (ABCP) and asset-backed securities.

In the October 2008 CSA Consultation Paper 11-405 *Securities Regulatory Proposals Stemming from the 2007-08 Credit Market Turmoil and its Effect on the ABCP Market in Canada* (Consultation Paper), the CSA explored, among other things, securities regulatory proposals in connection with the sale of ABCP. Since that time, the CSA's focus has broadened to encompass all securitized products and to consider their distribution both publicly under a prospectus and in the exempt market under exemptions from the prospectus and registration requirements.

In developing our proposals, we are considering international regulatory and industry developments. These include

- the recommendations of the International Organization of Securities Commissions (IOSCO) entitled "Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities",
- IOSCO's Technical Committee's Task Force report entitled "Unregulated Financial Markets and Products – Final Report", and
- the United States Securities and Exchange Commission's (SEC) notice of proposed rule-making relating to asset-backed securities and other structured finance products.

#### Exempt market

CSA staff have been considering changes to the current approach to the issuance of securitized products in the exempt market. In addition to reconsidering the use of the short-term debt exemption for the distribution of ABCP, we have been considering whether to impose other conditions in connection with the exempt distribution of securitized products, including requiring disclosure.

#### Prospectus distributions and continuous disclosure for reporting issuers

Disclosure requirements under Canadian securities legislation for securitized products distributed by prospectus are comprehensive. In light of the IOSCO and SEC proposals, CSA staff are considering enhancements to these requirements. We are also considering proposals for more tailored continuous disclosure for reporting issuers that have distributed securitized products.

#### Proposed consultations

Our proposals will be designed to address investor protection and market stability concerns, taking into consideration international developments, while recognizing the importance of the securitization markets. We appreciate that some of these proposals could be significant policy changes.

To obtain market input on these issues, we plan to publish materials for comment in fall 2010. We also anticipate additional consultations with interested stakeholders on the scope of the proposals, their impact on investor protection and the implications for the securitization market.

In addition to our securitization proposals, the CSA expects to publish proposals relating to regulation of credit rating organizations in summer 2010.

#### Questions:

In the interim, please refer your questions to any of:

Naizam Kanji, Deputy Director, Corporate Finance, Mergers & Acquisitions Ontario Securities Commission (416) 593-8060 <a href="mailto:nkanji@osc.gov.on.ca">nkanji@osc.gov.on.ca</a>	Denise Weeres, Senior Legal Counsel, Corporate Finance Alberta Securities Commission (403) 297-2930 <a href="mailto:denise.weeres@asc.ca">denise.weeres@asc.ca</a>
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<p>Winnie Sanjoto, Senior Legal Counsel, Corporate Finance Branch Ontario Securities Commission (416) 593-8119 <a href="mailto:wsanjoto@osc.gov.on.ca">wsanjoto@osc.gov.on.ca</a></p>	<p>Tom Graham, Director, Corporate Finance Alberta Securities Commission (403) 297-5355 <a href="mailto:tom.graham@asc.ca">tom.graham@asc.ca</a></p>
<p>Paul Hayward, Senior Legal Counsel, Corporate Finance Branch Ontario Securities Commission (416) 593-3657 <a href="mailto:phayward@osc.gov.on.ca">phayward@osc.gov.on.ca</a></p>	<p>Asad Gul, Economic Analyst Alberta Securities Commission (403) 297-2414 <a href="mailto:asad.gul@asc.ca">asad.gul@asc.ca</a></p>
<p>Paul Redman, Principal Economist, Strategy &amp; Operations Ontario Securities Commission (416) 593-2396 <a href="mailto:predman@osc.gov.on.ca">predman@osc.gov.on.ca</a></p>	<p>Agnes Lau, Senior Adviser, Technical &amp; Projects, Corporate Finance Alberta Securities Commission (403) 297-8049 <a href="mailto:agnes.lau@asc.ca">agnes.lau@asc.ca</a></p>
<p>Neeti Varma, Senior Accountant Corporate Finance Branch Ontario Securities Commission (416) 593-8067 <a href="mailto:nvarma@osc.gov.on.ca">nvarma@osc.gov.on.ca</a></p>	<p>Rosetta Gagliardi, Senior Policy Adviser Autorité des marchés financiers (514) 395-0337, poste 4462 <a href="mailto:rosetta.gagliardi@lautorite.qc.ca">rosetta.gagliardi@lautorite.qc.ca</a></p>
<p>Raymond Chan, Senior Accountant Investment Funds Branch Ontario Securities Commission (416) 593-8128 <a href="mailto:rchan@osc.gov.on.ca">rchan@osc.gov.on.ca</a></p>	<p>Alexandra Lee, Senior Policy Adviser Autorité des marchés financiers (514) 395-0337, poste 4465 <a href="mailto:alexandra.lee@lautorite.qc.ca">alexandra.lee@lautorite.qc.ca</a></p>
<p>Darren McCall, Assistant Manager, Investment Funds Branch Ontario Securities Commission (416) 593-8118 <a href="mailto:dmckall@osc.gov.on.ca">dmckall@osc.gov.on.ca</a></p>	<p>Lucie J. Roy, Senior Policy Adviser Autorité des marchés financiers (514) 395-0337, poste 4464 <a href="mailto:lucie.roy@lautorite.qc.ca">lucie.roy@lautorite.qc.ca</a></p>
<p>Christina Wolf, Economist British Columbia Securities Commission (604) 899-6860 <a href="mailto:cwolf@bcsc.bc.ca">cwolf@bcsc.bc.ca</a></p>	<p>Chris Besko, Legal Counsel – Deputy Director Manitoba Securities Commission (204) 945-2561 <a href="mailto:chris.besko@gov.mb.ca">chris.besko@gov.mb.ca</a></p>
<p>Nazma Lee, Senior Legal Counsel Legal Services, Corporate Finance British Columbia Securities Commission (604) 899-6867 <a href="mailto:nlee@bcsc.bc.ca">nlee@bcsc.bc.ca</a></p>	<p>Susan Powell, Senior Legal Counsel New Brunswick Securities Commission (506) 643-7697 <a href="mailto:susan.powell@nbsc-cvmnb.ca">susan.powell@nbsc-cvmnb.ca</a></p>
<p>Gordon Smith, Senior Legal Counsel Legal Services, Corporate Finance British Columbia Securities Commission (604) 899-6656 <a href="mailto:nlee@bcsc.bc.ca">nlee@bcsc.bc.ca</a></p>	<p>Shirley Lee, Director, Policy and Market Regulation Nova Scotia Securities Commission (902) 424-5441 <a href="mailto:leesp@gov.ns.ca">leesp@gov.ns.ca</a></p>
<p>Larissa Streu, Senior Legal Counsel Corporate Finance British Columbia Securities Commission (604) 899-6888 <a href="mailto:lstreu@bcsc.bc.ca">lstreu@bcsc.bc.ca</a></p>	<p>Dean Murison Deputy Director, Legal &amp; Registration Saskatchewan Financial Services Commission (306) 787-5879 <a href="mailto:dean.murison@gov.sk.ca">dean.murison@gov.sk.ca</a></p>

June 18, 2010

**1.1.6 Notice of Ministerial Approval of Amendments to NI 24-101 Institutional Trade Matching and Settlement**

**NOTICE OF MINISTERIAL APPROVAL OF  
AMENDMENTS TO NATIONAL INSTRUMENT 24-101  
*INSTITUTIONAL TRADE MATCHING AND SETTLEMENT***

On June 14, 2010, the Minister of Finance approved amendments to National Instrument 24-101 *Institutional Trade Matching and Settlement* (Rule) and the revocation of OSC Rule 24-502 *Exemption from Transitional Rule: Extension of Transitional Phase-In Period in National Instrument 24-101 – Institutional Trade Matching and Settlement*.

The amendments (together with changes to Companion Policy 24-101CP) and the revocation were previously published in the Bulletin on April 16, 2010, and will come into force on July 1, 2010.

The Rule and Companion Policy are being published in Chapter 5 of this Bulletin.

1.2 Notices of Hearing

1.2.1 Global Energy Group, Ltd. et al. – ss. 37, 127, 127.1

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

**AND**

**IN THE MATTER OF  
GLOBAL ENERGY GROUP, LTD., NEW GOLD  
LIMITED PARTNERSHIPS, CHRISTINA HARPER,  
VADIM TSATSKIN, MICHAEL SCHAUMER,  
ELLIOT FEDER, ODED PASTERNAK, ALAN  
SILVERSTEIN, HERBERT GROBERMAN,  
ALLAN WALKER, PETER ROBINSON,  
VYACHESLAV BRIKMAN, NIKOLA BAJOVSKI,  
BRUCE COHEN AND ANDREW SHIFF**

**NOTICE OF HEARING  
(Sections 37, 127 and 127.1)**

**TAKE NOTICE THAT** the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 37, 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 June 14, 2010 at 9:30 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 sections 127 and 127.1 of the Act to order that:
  - (a) trading in any securities by Global Energy Group, Ltd. ("Global Energy") and New Gold Limited Partnerships ("New Gold"), Christina Harper ("Harper"), Vadim Tsatskin ("Tsatskin"), Michael Schaumer ("Schaumer"), Elliot Feder ("Feder"), Oded Pasternak ("Pasternak"), Alan Silverstein ("Silverstein"), Herbert Groberman ("Groberman"), Allan Walker ("Walker"), Peter Robinson ("Robinson"), Vyacheslav Brikman ("Brikman"), Nikola Bajovski ("Bajovski"), Bruce Cohen ("Cohen") and Andrew Shiff ("Shiff"), collectively 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) each of the Respondents disgorge to the Commission any amounts obtained as a result of non-compliance by that respondent with Ontario securities law;
  - (e) Harper, Tsatskin, Schaumer, Feder, Pasternak, Silverstein, Groberman, Walker, Robinson, Brikman, Bajovski, Cohen and Shiff (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, registrant, and investment fund manager;
  - (g) the Individual Respondents be reprimanded;
  - (h) the Individual Respondents be prohibited from becoming or acting as a registrant, as an investment fund manager and as a promoter;
  - (i) 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; and,

- (j) the Respondents be ordered to pay the costs of the Commission investigation and the hearing.
- (ii) whether, in the opinion of the Commission, an order should be made pursuant to section 37 of the Act that the Individual Respondents cease permanently to telephone from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities; and,
- (iii) 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 June 8, 2010 and such further additional allegations as counsel may advise and the Commission may permit;

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

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

**DATED** at Toronto this 8th day of June, 2010

“John Stevenson”  
Secretary to the Commission

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

**AND**

**IN THE MATTER OF  
GLOBAL ENERGY GROUP, LTD., NEW GOLD  
LIMITED PARTNERSHIPS, CHRISTINA HARPER,  
VADIM TSATSKIN, MICHAEL SCHAUER,  
ELLIOT FEDER, ODED PASTERNAK, ALAN  
SILVERSTEIN, HERBERT GROBERMAN,  
ALLAN WALKER, PETER ROBINSON,  
VYACHESLAV BRIKMAN, NIKOLA BAJOVSKI,  
BRUCE COHEN AND ANDREW SHIFF**

**STATEMENT OF ALLEGATIONS  
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

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

**I. OVERVIEW**

1. This proceeding involves the distribution of securities consisting of units of series of New Gold Limited Partnerships ("New Gold"), to members of the public by Global Energy Group, Ltd ("Global Energy") and persons related to Global Energy.
2. Staff allege that the course of conduct regarding the trading of the securities of New Gold occurred during the period from approximately June of 2007 up to and including June 25, 2008 (the "Material Time").
3. Approximately \$14.75 million (U.S.) was raised from the sale of the securities of New Gold to approximately 200 investors (the "New Gold Investors") as a result of the activities salespersons, representatives or agents of Global Energy.
4. The sale of the New Gold securities has also been the subject of an investigation by the United States Attorney General and securities regulatory authorities in the State of Kentucky.

**II. GLOBAL ENERGY and NEW GOLD**

5. Neither Global Energy nor New Gold has never been registered with the Ontario Securities Commission (the "Commission") in any capacity.
6. Global Energy was purportedly based in and an operated from the Bahamas. The partnerships underlying the securities of New Gold were purportedly registered in Kentucky and/or the Bahamas.
7. The primary business of Global Energy was selling the securities of New Gold through its salespersons operating from offices in the Toronto area (the "Ontario Offices").
8. The other operating office of Global Energy was located in Lexington, Kentucky and operated by a lawyer named Bryan Coffman ("Coffman").

**III. THE INDIVIDUAL RESPONDENTS**

9. Christina Harper ("Harper") is a resident of Ontario. During the Material Time, Harper was one of the directing minds of Global Energy, overseeing the salespersons, representatives or agents of Global Energy selling the securities of New Gold from the Ontario Offices. Using an alias, Harper also held herself out as an officer of Global Energy.
10. Vadim Tsatskin ("Tsatskin") is a resident of Ontario. During the Material Time, Tsatskin was one of the directing minds of Global Energy who also directed the sales of the New Gold securities from the Ontario Office. Tsatskin, Coffman and others created the securities of New Gold for sale to members of the public.
11. Michael Schaumer ("Schaumer"), Elliot Feder ("Feder"), Oded Pasternak ("Pasternak"), Alan Silverstein ("Silverstein"), Herbert Groberman ("Groberman"), Allan Walker ("Walker"), Peter Robinson ("Robinson"), Vyacheslav Brikman

("Brikman"), Nikola Bajovski ("Bajovski"), Bruce Cohen ("Cohen") and Andrew Shiff ("Shiff") were all residents of Ontario during the Material Time.

12. During the Material Time, Schaumer, Feder, Pasternak, Silverstein, Groberman, Walker, Robinson, Brikman, Bajovski, Cohen and Shiff all worked at the Ontario Offices and all sold securities of New Gold to members of the public.
13. During the Material Time, Harper, Tsatskin, Schaumer, Feder, Pasternak, Silverstein, Groberman, Walker, Robinson, Brikman, Bajovski, Cohen and Shiff (the "Individual Respondents") were not registered with the Commission in any capacity to trade securities.

#### IV. BREACHES OF THE ACT BY THE RESPONDENTS

- **Unregistered Trading in Securities of New Gold Contrary to Section 25(1)**

14. As set out above, Staff allege that the Respondents traded in securities of New Gold from the Ontario Offices during the Material Time.
15. Members of public in Canada were contacted by salespersons, agents and representatives of Global Energy from the Ontario Offices and solicited to purchase the securities of New Gold.
16. The actions of the Respondents related to the securities of New Gold constituted trading in securities without registration contrary to section 25(1) of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the "Act").

- **Illegal Distribution of the Securities of New Gold Contrary to Section 53(1)**

17. New Gold has never filed a prospectus or a preliminary prospectus with the Commission or obtained receipts for them from the Director as required by section 53(1) of the Act.
18. The trading in securities of New Gold as set out above constituted distributions of these securities by the Respondents in circumstances where there were no exemptions available to them under the Act contrary to section 53(1) of the Act.

- **Fraudulent Conduct Related to Trading in the Securities of New Gold Contrary to Section 126.1**

19. During the Material Time from the Ontario Offices, Global Energy, Harper, Tsatskin, Schaumer and Feder and other representatives or agents of Global Energy provided information to the New Gold Investors that was false, inaccurate and misleading, including, but not limited to, the following:
  - (a) the use of the New Gold Investor funds;
  - (b) the law governing the trading in the securities of New Gold;
  - (c) the source of the investment income produced by the securities of New Gold;
  - (d) the actual ownership and location of Global Energy and the sales offices of Global Energy;
  - (e) the registration of the partnerships underlying the securities of New Gold;
  - (f) the underlying assets of the securities of New Gold; and
  - (g) the estimated production figures of the alleged assets of the securities of New Gold.

These and other false, inaccurate, misleading representations and omissions were made by the Respondents with the intention of effecting trades in the securities of New Gold.

20. The salespersons, representatives and agents of Global Energy, including, but not limited to, Harper, Schaumer, Feder, Pasternak, Silverstein, Groberman, Walker, Robinson, Brikman, Bajovski, Cohen and Shiff used aliases when selling the securities of New Gold to members of the public.
21. The directing minds of Global Energy knew or ought to have known that aliases were being used when the securities of New Gold were sold to members of the public by the salespersons, representatives or agents of Global Energy.



22. Approximately \$3 million of the total funds raised through the sale of the securities of New Gold were paid out to the salespersons, representatives or agents of Global Energy located in Toronto including the Individual Respondents. The New Gold Investors were not informed of this fact.
23. Global Energy, Harper, Tsatskin, Schaumer and Feder as well as and other salespersons, representatives or agents of Global Energy engaged in a course of conduct relating to securities that they knew or reasonably ought to have known would result in a fraud on persons purchasing the securities of New Gold contrary to section 126.1 of the Act.

**V. Conduct Contrary to Ontario Securities Law and Contrary to the Public Interest**

24. The specific allegations advanced by Staff related to the trades in the securities of New Gold during the Material Time are as follows:
- (a) the Respondents traded in securities of New Gold without being registered to trade in securities, contrary to section 25(1)(a) of the Act and contrary to the public interest;
  - (b) the actions of the Respondents related to the sale of the securities of New Gold constituted distributions of securities where no preliminary prospectus and prospectus were issued nor receipted by the Director, contrary to section 53(1) of the Act and contrary to the public interest;
  - (c) Global Energy, Harper, Tsatskin, Schaumer and Feder engaged or participated in acts, practices or courses of conduct relating to the securities of New Gold that Global Energy, Harper, Tsatskin, Schaumer and Feder 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; and
  - (d) Harper and Tsatskin, being directors and/or officers of Global, did authorize, permit or acquiesce in the commission of the violations of sections 25(1)(a), 53(1) and 126.1(b) of the Act, as set out above, by Global Energy or by the salespersons, representatives or agents of Global Energy, contrary to section 129.2 of the Act and contrary to the public interest.
25. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

**DATED** at Toronto, June 8, 2010.

**1.2.2 Paladin Capital Markets Inc. et al. – ss. 127(1), 127.1**

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

**AND**

**IN THE MATTER OF  
PALADIN CAPITAL MARKETS INC.,  
JOHN DAVID CULP, AND  
CLAUDIO FERNANDO MAYA**

**NOTICE OF HEARING  
Sections 127(1) and 127.1**

**TAKE NOTICE** that the Ontario Securities Commission will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), at the offices of the Commission at 20 Queen Street West, Toronto, 17th Floor, commencing on June 15, 2010, at 9:15 a.m. or as soon thereafter as the hearing can be held;

**AND TAKE NOTICE** that the purpose of the hearing is to consider whether it is in the public interest for the Commission to make an order that:

- (a) trading in any securities by the respondent, Claudio Fernando Maya (“Maya”), cease permanently or for such period as is specified by the Commission, pursuant to clause 2 of section 127(1);
- (b) acquisition of any securities by Maya is prohibited permanently or for such period as is specified by the Commission, pursuant to clause 2.1 of section 127(1);
- (c) any exemptions contained in Ontario securities law do not apply to Maya permanently or for such period as is specified by the Commission, pursuant to clause 3 of section 127(1);
- (d) Maya be reprimanded, pursuant to clause 6 of section 127(1);
- (e) Maya resign all positions that he holds as a director or officer of an issuer, pursuant to clause 7 of section 127(1);
- (f) Maya be prohibited from becoming or acting as a director or officer of any issuer, pursuant to clause 8 of section 127(1);
- (g) Maya be prohibited from becoming or acting as a director or officer of any registrant, pursuant to clause 8.1 of section 127(1);

- (h) Maya pay an administrative penalty for each failure to comply with Ontario securities law, pursuant to clause 9 of section 127(1);
- (i) Maya disgorge to the Commission any amounts obtained as a result of his non-compliance with Ontario securities law, pursuant to clause 10 of section 127(1); and
- (j) Maya pay the costs of the investigation and hearing, pursuant to section 127.1.

**BY REASON OF** the allegations set out in the Statement of Allegations of Staff of the Commission dated June 9, 2010 and such additional allegations as counsel may advise and the Commission may permit;

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

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

**DATED** at Toronto this 10th day of June 2010.

“John Stevenson”  
Secretary to the Commission

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

**AND**

**IN THE MATTER OF  
PALADIN CAPITAL MARKETS INC.,  
JOHN DAVID CULP, AND  
CLAUDIO FERNANDO MAYA**

**STATEMENT OF ALLEGATIONS OF  
STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission ("Staff") allege as follows:

**I. THE RESPONDENTS**

**i. Paladin**

1. Paladin was registered with the Commission as a limited market dealer from February 27, 2007 to June 2, 2009, when a temporary order was made suspending its registration. It was not registered in any other jurisdiction. Its business location was 275 Richmond Street West, Suite 1, Toronto.
2. Paladin's stated primary business activity was to source capital for small-cap companies in the resources, industrial and environmental sectors. From inception it appears that Paladin generated \$64,125 worth of revenue.

**ii. Culp**

3. Culp was the President, CEO, designated compliance officer, and sole director of Paladin. He was the only individual employed at Paladin who was registered in a limited capacity to trade in securities between August 23, 2007 to September 12, 2007 (the "Material Time"). Culp is Paladin's sole shareholder.

**iii. Maya**

4. Paladin hired Claudio Fernando Maya ("Maya") as a consultant and Maya engaged in the conduct detailed below. Maya was not registered in any capacity with the Commission at the Material Time. Maya, however, was registered with the Commission until June 23, 2006.

**II. OVERVIEW**

5. Paladin issued \$400,000 in promissory notes (the "Notes") to five Ontario investors (the "Investors"), between August 23, 2007 to September 12, 2007, as a means of raising working capital for Paladin.
6. Paladin, Culp and Maya were not registered to sell securities in Paladin, namely, the Notes, contrary to s. 25(1)(a). Paladin did not seek from the

Commission a prospectus receipt in order to distribute the Notes in compliance with s. 53 of the Act.

7. When investors sought to redeem their Notes according to their terms, Paladin did not have the funds to make any redemptions. Investors remain unpaid.

**III. DISTRIBUTION OF SECURITIES**

**i. Sale of Securities of Paladin**

8. On instructions from Culp, Maya solicited the sale of the Notes on behalf of Paladin. Maya approached individuals already known to him. Between August 23, 2007 and September 12, 2007, Paladin sold the Notes to the Investors resident in Ontario in the following amounts:

1. Investor 1 – \$25,000
2. Investor 2 – \$25,000
3. Investor 3 – \$50,000
4. Investor 4 – \$50,000
5. Investor 5 – \$250,000

9. The Notes were non-profit-participating, convertible-to-equity promissory notes with a rate of interest of 10% for a 12-month term.

10. Investors also had the right to convert the outstanding amount due into fully-paid, non-assessable Class A Voting Profit Participation Shares of Paladin and a 1/2 share purchase warrant. It appears that none of the Investors converted to equity.

11. Investors exercised their rights to repayment of principal and interest in accordance with the terms of the Notes. Paladin has not made any of the required repayments to the Investors.

**ii. Paladin is Insolvent and Investor Funds Dissipated**

12. Paladin has insufficient funds to meet its obligations to the Investors who have requested repayment under the terms of the Notes. As at December 31, 2008, Paladin had \$2,030 in cash and current liabilities of approximately \$455,000 (including funds owed to Investors). As of March 26, 2009 Paladin had \$37.10 in its bank account.

13. Culp, Maya and other employees were paid by Paladin with funds generated from the sale of the Notes. Culp received over \$90,000 from Paladin, including reimbursement of personal expenses. Paladin paid Maya \$69,200, including a 10% commission on the above sales of the Notes and

advances out of the proceeds of the sales of the Notes.

**iii. Illegal Distribution**

**(a) Notes Were Securities**

14. The Notes fall under the definition of "security" as defined in section 1(1)(e) of the Act.

**(b) Unregistered Trading**

15. The activities of the respondents constituted trading and advising in securities without registration (in respect of which no exemption was available), contrary to sections 25(1)(a) of the Act.

**(c) Unlawful Distributions**

16. The activities of the respondents constituted distributions of securities for which no preliminary prospectus and prospectus were issued nor receipted by the Director, contrary to section 53 of the Act.

**(d) Culp's Non-Compliance**

17. Culp authorized, permitted or acquiesced in the conduct of Paladin described herein and is liable under section 129.2 of the Act.

**iv. Conduct Contrary to the Public Interest**

18. The respondents' conduct was contrary to the public interest and harmful to the integrity of the Ontario capital markets.

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

**DATED** at Toronto, Ontario, this 9th day of June 2010.

**1.2.3 Paladin Capital Markets Inc. 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  
PALADIN CAPITAL MARKETS INC.,  
JOHN DAVID CULP, AND  
CLAUDIO FERNANDO MAYA**

**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 *Securities Act*, at its offices at 20 Queen Street West, 17th Floor, on Monday, the 19th of July, 2010 at 11:00 a.m. or as soon thereafter as the hearing can be held.

**AND TAKE NOTICE** that the purpose of the Hearing is for the Commission to consider whether it is in the public interest to approve a settlement agreement between Staff of the Commission ("Staff") and the respondents, Paladin Capital Markets Inc. and John David Culp;

**BY REASON OF** the allegations set out in the Statement of Allegations dated June 9, 2010 and such additional allegations as counsel may advise and the Commission may permit;

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

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

**DATED** at Toronto this 10th day of June 2010.

"John Stevenson"  
Secretary to the Commission

1.2.4 Magna International Inc. 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  
MAGNA INTERNATIONAL INC.**

**AND**

**IN THE MATTER OF  
THE STRONACH TRUST  
AND 446 HOLDINGS INC.**

**NOTICE OF HEARING  
(Section 127)**

**TAKE NOTICE** that the Ontario Securities Commission (the “Commission”) will hold a hearing (the “Hearing”) at its offices at 20 Queen Street West, 17th Floor, Toronto, Ontario commencing on Wednesday, June 23, 2010, at 9:00 a.m. or as soon thereafter as the Hearing can be held;

**TO CONSIDER** whether it is in the public interest to make:

1. an order under section 127(1)2 of the Act that trading in the Class B shares of Magna International Inc. (“Magna”) held indirectly by the Stronach Trust cease for such period as the Commission may specify;
2. an order under section 127(1)3 of the Act that the exemptions contained in clauses 5.5(a) and 5.7(1)(a) of Multilateral Instrument 61-101 *Protection of Minority Shareholders in Special Transactions* do not apply to Magna in respect of its proposed reorganization, to be completed by way of plan of arrangement, described in Magna’s Management Information Circular/Proxy Statement dated May 31, 2010 (the “Circular”);
3. an order under section 127(1)5 of the Act that Magna amend its Circular; and/or
4. such further and other orders as the Commission considers appropriate.

**AND FURTHER TAKE NOTICE** that any party to the proceeding may be represented by counsel at the Hearing;

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

**DATED** at Toronto this 15th day of June, 2010.

“John Stevenson”  
Secretary to the Commission

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

**AND**

**IN THE MATTER OF**  
**MAGNA INTERNATIONAL INC.**

**AND**

**IN THE MATTER OF**  
**THE STRONACH TRUST**  
**AND 446 HOLDINGS INC.**

**STATEMENT OF ALLEGATIONS OF**  
**STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission ("Staff") allege as follows:

1. Magna International Inc. ("Magna") is a reporting issuer under the Act and is a corporation existing under the *Business Corporations Act* (Ontario).
2. The authorized share capital of Magna consists of an unlimited number of Class A subordinate voting shares (the "Subordinate Voting Shares"), 776,961 Class B shares (the "Class B Shares") and 99,760,000 preference shares, issuable in series, all with no par value. As of May 31, 2010, there are 112,072,348 Subordinate Voting Shares, 726,829 Class B Shares and no preference shares issued and outstanding.
3. The Subordinate Voting Shares are listed on the Toronto Stock Exchange and the New York Stock Exchange ("NYSE").
4. The Subordinate Voting Shares are entitled to one vote per share and the Class B Shares are entitled to 300 votes per share. The Class B Shares and the Subordinate Voting Shares have the same rights to dividends and the same rights to the property and assets of Magna on liquidation, dissolution, or winding up. Holders of the Class B Shares may convert the Class B Shares into Subordinate Voting Shares on a one-for-one basis.
5. The Class B Shares do not contain any "coat-tail" protections for the holders of Subordinate Voting Shares in the event of a change of control transaction involving the purchase of the Class B Shares, and do not contain any "sunset" provision pursuant to which the Class B Shares would terminate or convert into another class of shares as of a specified date.
6. The Stronach Trust is a trust existing under the laws of the Province of Ontario. Mr. Frank Stronach, the founder and Chairman of Magna, and certain members of his immediate family are the trustees of the Stronach Trust and are members of the class of potential beneficiaries of the Stronach Trust.
7. 447 Holdings Inc. ("447"), a corporation existing under the laws of the Province of Ontario, is the sole registered and beneficial holder of all the Class B Shares. 446 Holdings Inc. ("446"), a corporation existing under the laws of the Province of Ontario, is the sole registered and beneficial holder of all the outstanding securities of 447. 446 is a subsidiary of the Stronach Trust.
8. The Stronach Trust has legal and effective control of Magna through its indirect ownership of all the Class B Shares. Although the Stronach Trust owns only 0.6% of the total equity of Magna, the Stronach Trust holds 66% of Magna's voting rights.
9. Mr. Stronach provides services to Magna and its subsidiaries personally and through his associated entities, Stronach Consulting Corp. and Stronach & Co., pursuant to four consulting, business development and business services agreements (the "Consulting Agreements"). The fees payable under the Consulting Agreements are \$2,300,000 plus 3% of Magna's Pre-Tax Profits Before Profit Sharing (as defined in Magna's corporate constitution contained in Magna's Restated Articles of Incorporation dated August 28, 2008 (the "Corporate Constitution")), provided that the aggregate of such fees will not be greater than 3% of Magna's Pre-Tax Profits Before Profit Sharing. In the event the Consulting Agreements, which have one-year terms and are subject to extension, are terminated early, Magna is required to pay the fees payable under the Consulting Agreements for the balance of the one-year term. The aggregate

fees paid to Mr. Stronach pursuant to the Consulting Agreements were \$37,783,000 in 2007, \$8,152,000 in 2008 and nothing in 2009 (Magna's Pre-Tax Profits Before Profit Sharing in 2009 were NIL).

10. Magna's management information circular dated May 31, 2010 (the "Circular") states that:
- (i) In March and April 2010, Mr. Stronach had discussions with executive management of Magna as to whether Mr. Stronach would consider a transaction to eliminate Magna's dual class share structure as part of an overall reorganization of Magna. Mr. Stronach indicated that he would be willing to consider such a transaction provided the transaction was supported by the holders of the Subordinate Voting Shares and did not jeopardize Magna's entrepreneurial culture or the key operating principles embodied in its Corporate Constitution. Mr. Stronach also communicated:
    - (A) his desire for the Stronach Trust to have a continuing equity interest in Magna; and
    - (B) his desire to have a direct and controlling interest in Magna's vehicle electrification business.
  - (ii) On April 8, 2010, executive management of Magna informed the board of directors of Magna (the "Board") of a proposed transaction which included the following elements (the "Proposal"):
    - (A) Magna purchasing for cancellation all of the outstanding Class B Shares for consideration comprising 9,000,000 newly issued Subordinate Voting Shares and US\$300,000,000 in cash;
    - (B) amendments to the Consulting Agreements to extend the agreements for a five-year, non-renewable term and fixed, aggregate annual fees; and
    - (C) the reorganization of Magna's vehicle electrification business by transferring Magna's e-car operating group and related assets and liabilities into a limited partnership in exchange for an ownership interest in the limited partnership with the partnership to be effectively controlled by an entity associated with the Stronach Trust.
  - (iii) On April, 8, 2010, the Board established a special committee of independent directors of Magna (the "Special Committee") comprising Michael Harris (Chair), Louis Lataif and Donald Resnick. The mandate of the Special Committee was to review and consider the Proposal, as it was developed, for submission initially to the Stronach Trust and, if acceptable to the Stronach Trust, to report to the Board as to whether the Proposal should be submitted to the holders of Subordinate Voting Shares for their consideration.
  - (iv) The Special Committee engaged CIBC World Markets Inc. ("CIBC") as its independent financial advisor. Pursuant to the terms of its engagement, CIBC did not provide a fairness opinion, adequacy opinion or formal valuation of the Class B Shares. The Special Committee engaged Fasken Martineau DuMoulin LLP as its independent legal advisor and PricewaterhouseCoopers LLP ("PwC") as an independent financial advisor to prepare a valuation of Magna's vehicle electrification business.
  - (v) CIBC advised the Special Committee that, if Magna's potential purchase for cancellation of all of the outstanding Class B Shares in consideration for a combination of 9,000,000 newly-issued Subordinate Voting Shares and US\$300,000,000 in cash were implemented, the dilution to the holders of Subordinate Voting Shares (disregarding the impact of any potential change in the trading multiple for the Subordinate Voting Shares as a result of the change in the capital structure) would be significantly greater than was the case for other historical transactions in which dual class share structures were collapsed.
  - (vi) The Special Committee and its advisors determined that if the Proposal were to be submitted to Shareholders for their consideration, the Proposal should be:
    - (A) approved by a majority of the votes cast at a special meeting by disinterested holders of Subordinate Voting Shares; and
    - (B) carried out as a plan of arrangement which would be subject to review by a court that would consider the fairness and reasonableness of the Proposal.
  - (vii) On May 5, 2010, the Special Committee delivered its report to the Board in which it concluded that the Board should:

- (A) submit a special resolution approving a plan of arrangement to a vote of the shareholders at a special meeting of shareholders of Magna (the "Arrangement Resolution") and, in furtherance thereof, authorize Magna to enter into a transaction agreement with the Stronach Trust and 446; and
  - (B) make no recommendation to shareholders of Magna as to how they should vote in respect of the Arrangement Resolution.
- (viii) The Board determined it is in the best interests of Magna to submit the Arrangement Resolution to a vote of Magna shareholders. The Board has made no recommendation to shareholders as to how they should vote in respect of the Arrangement Resolution.
11. At the special meeting of shareholders of Magna to be held on June 28, 2010, shareholders will be asked to approve the Arrangement Resolution giving effect to the following (the "Arrangement"):
- (i) Magna purchasing for cancellation all 726,829 Class B Shares and the Stronach Trust indirectly receiving consideration comprising 9,000,000 newly issued Subordinate Voting Shares and US\$300,000,000 million in cash;
  - (ii) Amendments to the Consulting Agreements to extend the agreements for a five-year, non-renewable term and fixed, aggregate annual fees based on Magna's Pre-Tax Profits Before Profit Sharing of
    - 2.75% in 2011
    - 2.5% in 2012
    - 2.25% in 2013
    - 2.0% in 2014; and
  - (iii) Formation of a limited partnership between Magna and the Stronach Trust (the "Partnership") with Magna contributing US\$220,000,000 (to be satisfied by the transfer of the net assets of Magna's recently established e-car operating group and certain other vehicle electrification assets and the balance in cash) for a 73.33% interest in the Partnership. The Stronach Trust would indirectly invest US\$80,000,000 in cash for a 26.67% interest and would have effective control of the Partnership through the right to appoint three of the five members of the management committee of general partners, with Magna having the right to appoint the remaining two members. Magna would also have effective veto rights in respect of certain fundamental changes and specified business decisions.
12. The Circular states that, in the event the Partnership is reorganized into a corporation, such reorganization would be effected on the following basis:
- (i) the corporation would have a share capital structure which comprises two classes of shares with the same economic rights and entitlements on a per share basis, and with one class of shares carrying 20 votes per share and the other class carrying a single vote per share;
  - (ii) the Stronach Trust would indirectly hold 100% of the multiple voting shares;
  - (iii) Magna would hold all the subordinate voting shares;
  - (iv) there would be coat-tail protection for the benefit of the holders of the subordinate voting shares in the event of a take-over bid;
  - (v) any such reorganization would, to the extent possible, be structured on a tax-deferred basis; and
  - (vi) the governance arrangements and share transfer restrictions applicable to the Partnership would terminate upon the completion of an initial public offering, but the corporation which succeeds the Partnership would be required to adopt a corporate constitution similar to Magna's Corporate Constitution.
13. The Circular further states that the aggregate value of 11(i) and (iii) above, based on the closing price of the Subordinate Voting Shares on the NYSE on May 5, 2010, is US\$943,000,000.
14. Approval of the Arrangement Resolution will require the affirmative vote of:



- (i) at least a simple majority of the votes cast by the minority holders of the Subordinate Voting Shares voting separately as a class;
  - (ii) at least two-thirds of the votes cast by the holders of Subordinate Voting Shares and Class B Shares, voting together as a class; and
  - (iii) at least two-thirds of the votes cast by the holder of Class B Shares, voting separately as a class.
15. The Circular does not contain the financial information obtained by the Special Committee in either the reports prepared for it by CIBC as its financial adviser or the valuation report prepared by PwC in respect of Magna's vehicle electrification business.
16. Holders of the Subordinate Voting Shares, as opposed to a third-party purchaser, are being asked to pay to Magna's controlling shareholder a premium, unprecedented in amount, to collapse Magna's dual class structure. The Circular fails to provide sufficient information concerning the desirability or fairness of the Arrangement and the Board has not made useful recommendations regarding the Arrangement in the Circular. The Circular should contain more information to assist holders of the Subordinate Voting Shares, including
- (i) a valuation of the subject matter of the Arrangement;
  - (ii) a detailed discussion of the fairness of the Arrangement;
  - (iii) an opinion as to the fairness of the Arrangement, from a financial point of view, to holders of the Subordinate Voting Shares; and
  - (iv) adequate disclosure concerning the background to, and negotiations surrounding, the Arrangement.
17. The issuance of the Subordinate Voting Shares by Magna as part of the purchase of the Class B Shares pursuant to the Arrangement is, in these novel and unprecedented circumstances, contrary to the public interest and should be cease traded because:
- (i) the holders of the Subordinate Voting Shares are being asked by the Board to approve the Arrangement Resolution without a recommendation by the Board and without sufficient information to form a reasoned judgment concerning the Arrangement; and
  - (ii) the approval and review process followed by the Board in negotiating the Arrangement and proposing it to the holders of the Subordinate Voting Shares was inadequate.

**Conduct Contrary to the Public Interest**

18. The respondents' conduct, as described above, was contrary to the public interest and harmful to the integrity of the Ontario capital markets.
19. Staff reserve the right to make such other allegations as Staff may advise and the Ontario Securities Commission may permit.

**DATED** at Toronto, Ontario, this 15th day of June, 2010.

1.3 News Releases

1.3.1 Securities Regulators Urge Canadians to Help Prevent Financial Abuse of Seniors

FOR IMMEDIATE RELEASE  
June 15, 2010

**SECURITIES REGULATORS URGE CANADIANS  
TO HELP PREVENT FINANCIAL ABUSE OF SENIORS**

**Calgary** – Securities regulators across the country are urging Canadians to be aware of and report financial abuse involving seniors as part of World Elder Abuse Awareness Day on June 15.

The Canadian Securities Administrators (CSA) is one of many organizations recognizing and supporting the international effort against elder abuse in all of its forms, including the under-recognized and under-reported form of elder abuse - financial fraud.

Elder abuse involving investments or securities can occur in a number of ways:

- an investment offered to a senior that is fraudulent or simply unsuitable for the senior's risk tolerance;
- theft of funds by those in a position of trust; or
- aggressive sales tactics used by sales representatives.

"While anyone can be a victim of investment fraud or an unsuitable investment, seniors have less time to recover from a financial loss," said Jean St-Gelais, CSA Chair and President and Chief Executive Officer of the Autorité des marchés financiers (Québec). "That's why the CSA provides Canadians with resources to help seniors learn how to make informed investment decisions and avoid investment fraud."

Whether you are a senior, a family member or a caregiver you can take action and prevent financial abuse of elders:

- Have a conversation about financial matters with your family or someone you trust. Talk with each other about prevention and protection from investment fraud including ways to be prepared in advance for the possibility of being approached with a scam;
- Take time to investigate every investment opportunity or sales pitch as well as the person promoting the investment before handing over money. If unsure about an investment, consider seeking out independent, third party advice; and
- Learn to recognize and avoid investment scams. Visit the CSA's website ([www.securities-administrators.ca](http://www.securities-administrators.ca)) to find important information and helpful resources about fraud prevention.

Specific CSA fraud prevention resources for seniors include:

- [Protect Your Money: Avoiding frauds and scams](#)
- [Scam Artists Pursue Adults Over 50](#)
- [Sandwich Generation: Are you caught in the middle?](#)
- [Boiler Room Scams: Could you be vulnerable?](#)

The CSA also reminds anyone who suspects or knows of an investment fraud to report it to their [provincial or territorial securities regulator](#). Reporting potential scams may help prevent other seniors from becoming victims of investment fraud.

World Elder Abuse Awareness Day was spearheaded by the International Network for the Prevention of Elder Abuse in 2006 and is recognized by thousands of international organizations and communities around the world. For more information, visit <http://www.inpea.net/weaad.html>

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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867-920-8984

### 1.3.2 SEC, Quebec Autorité des Marchés Financiers and Ontario Securities Commission Sign Regulatory Cooperation Arrangement

FOR IMMEDIATE RELEASE



ONTARIO  
SECURITIES  
COMMISSION

#### SEC, QUEBEC AUTORITÉ DES MARCHÉS FINANCIERS AND ONTARIO SECURITIES COMMISSION SIGN REGULATORY COOPERATION ARRANGEMENT

**Washington, D.C., Montreal and Toronto, June 14, 2010** – The U.S. Securities and Exchange Commission (SEC), Quebec Autorité des marchés financiers (AMF) and Ontario Securities Commission (OSC) today announced a comprehensive arrangement to facilitate their supervision of regulated entities that operate across the U.S.-Canadian border.

SEC Chairman Mary L. Schapiro, AMF President and CEO Jean St-Gelais and OSC Chair David Wilson executed a memorandum of understanding (MOU) that provides a clear mechanism for consultation, cooperation, and exchange of information among the SEC, AMF and OSC in the context of supervision. The MOU sets forth the terms and conditions for the sharing of information about regulated entities, such as broker-dealers and investment advisers, which operate in the U.S., Quebec and Ontario.

The SEC, AMF and OSC have a long history of cooperation particularly in securities enforcement matters. This MOU would extend this cooperation beyond enforcement by setting forth a framework for consultation, cooperation and information-sharing related to the day-to-day supervision and oversight of regulated entities. The supervision of regulated entities is critical to encouraging compliance with the securities laws, which in turn helps to protect investors and the securities markets generally.

The MOU was signed in Montreal on June 10, 2010, after the close of the 35th Annual Conference of the International Organization of Securities Commissions (IOSCO). It follows on the heels of the IOSCO Task Force on Supervisory Cooperation Report, which was published on 25 May 2010 and is available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD322.pdf>

In response to the recent financial crisis, the Task Force and many other groups, including the G20, have recommended that regulators enhance the supervision of internationally-active regulated entities by working with their foreign counterparts.

This MOU is the first comprehensive supervisory MOU to be signed by the SEC since the start of the financial crisis. The SEC currently has comprehensive supervisory MOUs with the securities regulators in the United Kingdom, Germany and Australia. These MOUs are available at: [http://www.sec.gov/about/offices/oia/oia\\_cooparrangements.shtml](http://www.sec.gov/about/offices/oia/oia_cooparrangements.shtml).

SEC Chairman Schapiro said, "Our organizations share a strong commitment to overseeing the markets and protecting investors. This agreement will help us to fulfill our roles by giving us access to needed information. I look forward to working closely with the AMF and OSC."

AMF President and CEO St-Gelais said, "Since our markets have become so interrelated and given the impact of the recent financial crisis, this MOU is an important step in ensuring that our markets are safe and that our investors are protected by optimum cooperation between the SEC and the AMF and OSC. It is essential that entities operating across borders be effectively regulated, and this cannot be achieved without the cooperation envisioned by this MOU."

OSC Chair Wilson said, "This MOU reflects the close working relationship between the OSC, AMF and the SEC, as well as the extent to which our market participants operate across our respective borders. It will further enhance the effectiveness of our cooperative activities which are essential for regulators to prevent financial harm and protect investors."

Ethiopia Tafara, Director of the SEC's Office of International Affairs, said, "This MOU builds upon the strong relationship that the SEC has with the AMF and OSC regarding securities enforcement. It expands and formalizes our information-sharing relationship for supervising those regulated entities that operate across our borders and will allow us to oversee these firms in a coordinated fashion. The SEC, AMF and OSC have a long-standing cooperative relationship, and we are pleased to enhance that relationship with this MOU."

For additional information on the MOU, contact:

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SEC Office of Public Affairs  
(202) 551-4120

Sylvain Th  berge  
Autorit   des march  s financiers  
(514) 940-2176

Wendy Dey, Director  
OSC Communications & Public Affairs  
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**1.3.3 Canadian Securities Regulators to Proceed with Staged Implementation of Point of Sale Disclosure Regime for Mutual Funds**

**FOR IMMEDIATE RELEASE  
June 16, 2010**

**CANADIAN SECURITIES REGULATORS TO PROCEED  
WITH STAGED IMPLEMENTATION OF  
POINT OF SALE DISCLOSURE REGIME FOR MUTUAL FUNDS**

**Toronto** – The Canadian Securities Administrators (CSA) today published CSA Staff Notice 81-319 *Status Report on the Implementation of Point of Sale Disclosure for Mutual Funds*, which outlines its plan to proceed with a staged implementation of point of sale delivery for mutual fund disclosure.

This notice follows on proposed amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, its Forms and Companion Policy, published by the CSA on June 19, 2009. The proposals aim to provide investors with more meaningful and effective disclosure.

Central to the new disclosure regime is the Fund Facts document. It is in plain language, will be no more than two pages and highlights the potential benefits, risks and the costs of investing in a mutual fund. Under the proposals, investors would generally receive a Fund Facts when they buy a fund for the first time (at or before the “point of sale”).

While the CSA received numerous comments supporting the Fund Facts document, many commenters raised operational and compliance concerns with point of sale delivery. There was also broad support to implement a point of sale disclosure regime for mutual funds and other types of publicly offered investment funds at the same time.

“We think that investors would benefit from the improved disclosure in Fund Facts as soon as possible. However, based on the comments received, we believe that further review and consultation with stakeholders on issues related to point of sale delivery are necessary,” said Jean St-Gelais, Chair of the CSA and President and Chief Executive Officer of the Autorité des marchés financiers (Québec). “We remain committed to point of sale delivery for mutual funds, and a staged implementation will allow us to introduce Fund Facts while we fully explore point of sale disclosure and delivery options for comparable investment fund products.”

The CSA anticipates a three-stage implementation. First, it plans to publish, by December 2010, requirements for mutual fund companies to make Fund Facts available on their websites and upon request by investors. These requirements are expected to come into force in early 2011.

Next, the CSA expects to publish for comment a proposal to allow delivery of the Fund Facts instead of the simplified prospectus to satisfy existing delivery requirements under securities legislation. Currently, investors must receive a simplified prospectus within two days of buying a fund.

In the final stage, the CSA intends to publish for further comment requirements for point of sale delivery for mutual funds and possibly for other types of publicly offered investment funds.

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

**For more information:**

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Brenda Lea Brown  
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Ainsley Cunningham  
Manitoba Securities Commission  
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Wendy Connors-Beckett  
New Brunswick Securities Commission  
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**Notices / News Releases**

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Natalie MacLellan  
Nova Scotia Securities Commission  
902-424-8586

Barbara Shourounis  
Saskatchewan Financial Services Commission  
306-787-5842

Janice Callbeck  
PEI Securities Office  
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Financial Services Regulation Div.  
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709-729-2594

Fred Pretorius  
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867-667-5225

Louis Arki  
Nunavut Securities Office  
867-975-6587

Donn MacDougall  
Northwest Territories  
Securities Office  
867-920-8984

1.3.4 OSC Lays Charges Against Howard Rash in Ontario Court of Justice

FOR IMMEDIATE RELEASE  
June 15, 2010

**OSC LAYS CHARGES AGAINST HOWARD RASH  
IN ONTARIO COURT OF JUSTICE**

**TORONTO** – The Ontario Securities Commission (OSC) said that on June 8, 2010, three charges were laid in the Ontario Court of Justice under Section 122 of the *Securities Act* against Howard Rash. Mr. Rash has been served with a summons to appear on June 22, 2010, at 10:30 a.m. at the Ontario Court of Justice at 50 Eagle Street in Newmarket, Ontario, in courtroom 205.

Mr. Rash is charged with one count of securities fraud and two counts of breaching cease trade orders made by the Commission. These orders were made on July 27, 2006, and July 23, 2007.

The allegations relate to the trading of securities by Mr. Rash in 2007 and 2008 through a company called Global Energy Group, Ltd.

Pursuant to Section 122 of the *Securities Act*, anyone found guilty of an offence and on conviction is liable to a fine of not more than \$5 million or to imprisonment for a term of not more than five years less a day, or to both.

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**1.4 Notices from the Office of the Secretary**

**1.4.1 Global Energy Group, Ltd. et al.**

**FOR IMMEDIATE RELEASE  
June 10, 2010**

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

**AND**

**IN THE MATTER OF  
GLOBAL ENERGY GROUP, LTD., NEW GOLD  
LIMITED PARTNERSHIPS, CHRISTINA HARPER,  
VADIM TSATSKIN, MICHAEL SCHAUMER,  
ELLIOT FEDER, ODED PASTERNAK, ALAN  
SILVERSTEIN, HERBERT GROBERMAN,  
ALLAN WALKER, PETER ROBINSON,  
VYACHESLAV BRIKMAN, NIKOLA BAJOVSKI,  
BRUCE COHEN AND ANDREW SHIFF**

**TORONTO** – The Office of the Secretary issued a Notice of Hearing on June 8, 2010 setting the matter down to be heard on June 14, 2010, at 9:30 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 June 8, 2010 and Statement of Allegations of Staff of the Ontario Securities Commission dated June 8, 2010 are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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**1.4.2 Paladin Capital Markets Inc. et al.**

**FOR IMMEDIATE RELEASE  
June 10, 2010**

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

**AND**

**IN THE MATTER OF  
PALADIN CAPITAL MARKETS INC.,  
JOHN DAVID CULP, AND  
CLAUDIO FERNANDO MAYA**

**TORONTO** – The Office of the Secretary issued a Notice of Hearing on June 10, 2010 setting the matter down to be heard on June 15, 2010 at 9:15 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 June 10, 2010 and Statement of Allegations of Staff of the Ontario Securities Commission dated June 9, 2010 are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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1.4.3 Paladin Capital Markets Inc. et al.

FOR IMMEDIATE RELEASE  
June 10, 2010

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

AND

IN THE MATTER OF  
PALADIN CAPITAL MARKETS INC.,  
JOHN DAVID CULP, AND  
CLAUDIO FERNANDO MAYA

**TORONTO** – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and the respondents, Paladin Capital Markets Inc. and John David Culp. The hearing will be held on July 19, 2010 at 11:00 a.m. in Hearing Room B on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated June 10, 2010 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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1.4.4 Al-tar Energy Corp. et al.

FOR IMMEDIATE RELEASE  
June 14, 2010

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

AND

IN THE MATTER OF  
AL-TAR ENERGY CORP.,  
ALBERTA ENERGY CORP., DRAGO GOLD CORP.,  
DAVID C. CAMPBELL, ABEL DA SILVA,  
ERIC F. O'BRIEN AND JULIAN M. SYLVESTER

**TORONTO** – The Commission issued its Reasons and Decision in the above matter.

A copy of the Reasons and Decision dated June 11, 2010 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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1.4.5 York Rio Resources Inc. et al.

FOR IMMEDIATE RELEASE  
June 15, 2010

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

AND

IN THE MATTER OF  
YORK RIO RESOURCES INC.,  
BRILLIANTE BRASILCAN RESOURCES CORP.,  
VICTOR YORK, ROBERT RUSIC,  
GEORGE SCHWARTZ, PETER ROBINSON,  
ADAM SHERMAN, RYAN DEMCHUK,  
MATTHEW OLIVER, GORDON VALDE AND  
SCOTT BASSINGDALE

**TORONTO** – The Commission issued an Order in the above named matter which provides that the hearing is adjourned to July 21, 2010 at 2:00 p.m. or such other date as is agreed to by the parties and determined by the Office of the Secretary.

A copy of the Order dated June 10, 2010 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
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1.4.6 Brilliante Brasilcan Resources Corp. et al.

FOR IMMEDIATE RELEASE  
June 15, 2010

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

AND

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

**TORONTO** – The Commission issued an Order in the above named matter which provides that (1) pursuant to subsection 127(8) of the Act that the hearing is adjourned to July 21, 2010 at 2:00 p.m.; and (2) pursuant to subsection 127(8) of the Act that the Amended Temporary Order is extended until close of business on July 22, 2010, subject to further extension by order of the Commission;

A copy of the Order dated June 10, 2010 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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**1.4.7 Peter Robinson and Platinum International  
Investments Inc.**

**FOR IMMEDIATE RELEASE  
June 15, 2010**

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

**AND**

**IN THE MATTER OF  
PETER ROBINSON AND  
PLATINUM INTERNATIONAL INVESTMENTS INC.**

**TORONTO** – The Commission issued an Order in the above named matter which provides that (1) pursuant to subsection 127(8) of the Act, the Temporary Cease Trade Order is extended until the completion of the hearing on the merits; and (2) the hearing with respect to this matter is adjourned to June 30, 2010, at 11:00 a.m. at which time the pre-hearing conference will be continued.

A copy of the Order dated June 14, 2010 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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**1.4.8 Sextant Capital Management Inc. et al.**

**FOR IMMEDIATE RELEASE**  
**June 15, 2010**

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

**AND**

**IN THE MATTER OF  
SEXTANT CAPITAL MANAGEMENT INC.,  
SEXTANT CAPITAL GP INC., OTTO SPORK,  
KONSTANTINOS EKONOMIDIS,  
ROBERT LEVACK AND NATALIE SPORK**

**TORONTO** – Staff of the Ontario Securities Commission filed an Amended Amended Statement of Allegations dated June 11, 2010 with the Office of the Secretary in the above noted matter.

A copy of the Amended Amended Statement of Allegations dated June 11, 2010 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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

**AND**

**IN THE MATTER OF  
SEXTANT CAPITAL MANAGEMENT INC.,  
SEXTANT CAPITAL GP INC., OTTO SPORK,  
KONSTANTINOS EKONOMIDIS,  
ROBERT LEVACK AND NATALIE SPORK**

**AMENDED AMENDED 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. Otto Spork ("Spork"), Sextant Capital Management Inc. ("SCMI") and Sextant Capital GP Inc. ("Sextant GP") perpetrated a complex investment fund fraud over the period from July 2007 to December 2008 in three ways: (a) they sold investment fund units at falsely inflated values; (b) they took millions of dollars in fees based on falsely inflated values; and (c) they directly misappropriated money from investment funds.

2. The fraud was perpetrated through three investment funds managed from Toronto – the Sextant Strategic Opportunities Hedge Fund L.P. ("Sextant Canadian Fund") in Ontario, the Sextant Strategic Hybrid2Hedge Resource Fund Offshore Ltd. ("Sextant Hybrid Fund") incorporated in the Cayman Islands and the Sextant Strategic Global Water Fund Offshore Ltd. ("Sextant Water Fund") incorporated in the Cayman Islands (the three funds together, the "Sextant Funds"). Together, the Sextant Funds raised in excess of \$80 million from Canadian and offshore investors.

3. Spork invested significant amounts of money from the Sextant Funds in a company he controlled, Iceland Glacier Products S.A. ("IGP"). Spork set the share price for IGP shares and substantially inflated that price even though there was no material development of IGP's operations and no material sales or revenue.

4. The other respondents, Konstantinos (Dino) Ekonomidis ("Ekonomidis"), Robert Levack ("Levack") and Natalie Spork ("N. Spork"), each had a role in managing the Sextant Canadian Fund. All of the respondents breached their management duties to that fund, to the detriment of investors.

5. There is a Temporary Cease Trade Order in place against certain of the respondents, which also suspended SCMI's registration, made on December 8, 2008, and continued until the conclusion of the hearing on the merits. Various directions freezing a custodial trading account and bank accounts related to the Sextant Canadian Fund were also issued by the Commission and continued by the Ontario Superior Court of Justice.

6. On application of the Commission dated March 5, 2009, the Sextant Canadian Fund, SCMI and Sextant GP were placed into receivership by Order of the Ontario Superior Court of Justice dated July 17, 2009.

7. On May 15, 2009, the Cayman Islands Monetary Authority appointed controllers over the Sextant Hybrid Fund and the Sextant Water Fund. The powers of the controllers were confirmed by Order of the Grand Court of the Cayman Islands dated June 16, 2009.

**II. BACKGROUND**

**Sextant Funds**

8. Spork created the Sextant Canadian Fund in early 2006. The Sextant Canadian Fund is a limited partnership formed in accordance with the *Limited Partnerships Act*, R.S.O. 1990, c. L.16.

9. Units in the Sextant Canadian Fund were sold by way of successive offering memoranda by SCMI and by Investment Industry Regulatory Organization of Canada member firms pursuant to prospectus exemptions in the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act") and National Instrument 45-106 – *Prospectus and Registration Exemptions*. Nearly 250 investors in Ontario and elsewhere in Canada invested \$29.8 million in the Sextant Canadian Fund.

10. After establishing the Sextant Canadian Fund, Spork created the Sextant Water Fund and the Sextant Hybrid Fund, incorporated as limited liability corporations in the Cayman Islands.

11. Shares of the Sextant Water Fund and the Sextant Hybrid Fund were offered at least as early as January 2007 to investors who were not resident in Canada or the United States by way of successive confidential private placement memoranda. The Sextant Water Fund and the Sextant Hybrid Fund together raised approximately US\$56 million from investors. The management and sales activities in respect of these funds were predominantly conducted in Toronto.

### **Management of the Sextant Funds**

12. Spork used a complex structure to manage the Sextant Funds, including corporate entities in a number of jurisdictions. Notwithstanding that structure, Spork ultimately controlled all of the entities and was at all times in control of the Sextant Funds. He largely managed and conducted his activities and those of the various entities through SCMI in Toronto.

13. Organizational charts outlining the relationships between the Sextant Funds and their management companies are at Appendices "A" to "C" to this Amended Statement of Allegations.

#### **(a) The Individual Respondents**

14. Spork was registered under the Act as Officer and Director (Trading and Non-Advising), Designated Compliance Officer and Ultimate Responsible Person in the categories of limited market dealer, investment counsel and portfolio manager with SCMI from February 1, 2006, to June 5, 2008.

15. Ekonomidis is Spork's brother-in-law. He was Vice-President, Corporate Development, for SCMI and registered under the Act as a salesperson with SCMI. Ekonomidis was responsible for marketing the Sextant Canadian Fund and had significant and direct involvement in investor relationships for all of the Sextant Funds.

16. Levack held the Chartered Financial Analyst designation at all material times and was SCMI's Chief Compliance Officer. Levack was registered under the Act as an Officer (Advising, Non-Trading) and Chief Compliance Officer in the categories of limited market dealer, investment counsel and portfolio manager with SCMI from February 1, 2006, until June 5, 2008. On June 5, 2008, Levack's registration was modified to Officer (Advising and Trading), Chief Compliance Officer and Designated Compliance Officer.

17. N. Spork was approved under the Act as Officer and Director (Non-Advising, Non-Trading) and Ultimate Responsible Person in the categories of limited market dealer, investment counsel and portfolio manager with SCMI on July 7, 2008.

#### **(b) The Corporate Respondents**

18. Spork incorporated SCMI in Ontario in 2005. Until its registration was suspended by the Commission, SCMI was registered under the Act as an investment counsel, portfolio manager and limited market dealer. Spork was SCMI's sole director until May 28, 2008, when N. Spork replaced him in that role.

19. SCMI was the investment adviser for the Sextant Canadian Fund. SCMI was also the investment adviser for the Sextant Hybrid Fund and the Sextant Water Fund until June 2008, when another one of Spork's companies assumed that role. SCMI was at all material times the primary investor contact for the Sextant Funds.

20. Spork also incorporated Sextant GP in Ontario in 2005. Sextant GP was the general partner and manager for the Sextant Canadian Fund. Spork was the sole director of Sextant GP until May 28, 2008, when N. Spork replaced him in that role.

21. Sextant GP and SCMI both had the authority and responsibility to direct the business, operations and affairs of the Sextant Canadian Fund. In addition, both were contractually entitled to fees paid directly from the fund. In these circumstances, both Sextant GP and SCMI were investment fund managers of the Sextant Canadian Fund as defined in section 1(1) of the Act.

### **Value of IGP Inflated**

22. A significant proportion of the assets of the Sextant Funds was invested in IGP, starting with their initial purchase of IGP shares in July 2007.

23. IGP was incorporated in Luxembourg in June 2007, shortly before the Sextant Funds' investment, and was controlled by Spork. IGP had indirect rights to a glacier in Iceland for the purpose of extracting water for sale. To date, there has been no material development of IGP's operations and no material sales or revenue.

24. Notwithstanding the absence of operations, sales or revenue, Spork instructed Investment Administration Solution Inc. ("IAS"), the bookkeeper for the Sextant Canadian Fund and net asset value calculation agent for the Sextant Hybrid Fund and the Sextant Water Fund, as to the price of the IGP shares. IAS used those values for the purpose of calculating the net asset value of the Sextant Funds.

25. The value set for the IGP shares was not justified. Despite the fact that there was no material development of IGP's operations and no material sales or revenue, Spork (either directly or indirectly) increased the value of the IGP shares rather than valuing the shares at cost. Spork inflated the value of those shares by about 1,340% from a share price of €0.170 on July 25, 2007, shortly after the funds' initial investment, to €2.450 on December 24, 2008, as reported by IAS.

26. The IGP shares made up an increasingly significant proportion of the Sextant Funds' portfolios, so the net asset value of the Sextant Funds increased over time as a result of the inflated value of the IGP shares.

27. In total, the Sextant Canadian Fund paid approximately \$6 million for IGP shares between July 2007 and December 2008 which were valued at \$52 million in December 2008. Over the same period, the Sextant Hybrid Fund and the Sextant Water Fund paid approximately US\$17 million for IGP shares which were valued at US\$106 million in December 2008.

### III. FRAUD (SECTION 126.1 OF THE ACT)

28. Spork, SCMI and Sextant GP perpetrated a fraud against the Sextant Funds' investors in three ways: (a) they sold units in the Sextant Funds at falsely inflated values; (b) they took millions of dollars in fees from the Sextant Funds based on falsely inflated values; and (c) they directly misappropriated money from the Sextant Funds.

#### (a) Sextant Funds' Units Sold at Inflated Values

29. As a direct result of the inflated net asset values of the Sextant Funds, based on the inflated value of IGP shares, everyone who invested in the Sextant Funds after July 2007 overpaid for their investments and was wrongfully deprived of their money in the amount of the overpayment.

#### (b) Millions of Dollars in Fees from Sextant Funds Based on Inflated Values

30. Management and performance fees were paid by the Sextant Funds to SCMI, Sextant GP and other Spork-controlled entities. Those fees were calculated in accordance with the value of the Sextant Funds and were also affected by the inflated net asset values. The Sextant Funds paid: (i) management fees equal to 2% of the net asset value of each fund, paid 1/12th monthly in arrears; and (ii) performance fees, paid monthly, equal to 20% of the fund's increase in net asset value over the previous month subject to a 'high water mark' provision.

31. Of the \$29.8 million invested in the Sextant Canadian Fund, the fund paid approximately \$6.9 million in management and performance fees between July 2007 and December 2008. Of the US\$56 million invested in the Sextant Hybrid Fund and the Sextant Water Fund together, those funds together paid over US\$14 million in management and performance fees from March 2006 to April 30, 2009.

32. As a direct result of the inflated net asset values, management and performance fees were inflated and excessive. Investors in the Sextant Funds paid millions of dollars in inflated and excessive fees and were wrongfully deprived of their money in those amounts.

#### (c) Money Misappropriated from the Sextant Funds

33. Money was misappropriated from the Sextant Funds for Spork's benefit in two ways: (i) Spork caused the Sextant Funds to transfer money to Riambel Holding S.A. ("Riambel"), Spork's holding company; and (ii) Spork took money from the Sextant Canadian Fund from time to time.

##### (i) Payment to Riambel

34. In October 2007, Spork instructed the custodian for the Sextant Funds to transfer US\$1,257,500 from the Sextant Water Fund custodial trading account to Riambel, Spork's holding company. Spork also instructed the custodian to transfer US\$414,975 from the Sextant Canadian Fund account and US\$421,263 from the Sextant Hybrid Fund account into the Sextant Water Fund account to cover their respective portions of the transfer to Riambel.

35. The payment to Riambel was not approved by anyone other than Spork; the Sextant Funds did not receive any additional IGP shares in connection with the payment (although the stated book value of the IGP shares already held by each of the Sextant Funds was increased); there are no documented terms of any loan by the Sextant Funds to IGP; and there was no repayment to the Sextant Funds.



36. Investors in the Sextant Funds were wrongfully deprived in the amount of the payment to Riambel.

**(ii) Payments Without Basis**

37. Spork frequently caused the Sextant Canadian Fund to transfer money to SCMI and Sextant GP amounts in excess of the management and performance fees and the operating expenses. There is no legal basis for those payments and investors were wrongfully deprived in those amounts.

**IV. BREACHES OF DUTY TO INVESTORS AND FAILURE TO KEEP PROPER BOOKS AND RECORDS (SECTIONS 116 AND 19 OF THE ACT)**

**Fund Manager Duties**

38. As described above, both Sextant GP and SCMI were investment fund managers for the Sextant Canadian Fund. Spork, Ekonomidis, Levack and N. Spork, in turn, were all persons who directed the business, operations and affairs of the Sextant Canadian Fund. As such, they were also investment fund managers for the Sextant Canadian Fund.

39. As investment fund managers, each of the respondents had duties pursuant to section 116 of the Act to: (a) exercise the powers and discharge the duties of their offices honestly, in good faith and in the best interests of the Sextant Canadian Fund, and (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

40. In addition, as a registered adviser and dealer, SCMI had a duty to deal fairly, honestly and in good faith with its clients pursuant to section 2.1(1) of OSC Rule 31-505 – *Conditions of Registration* (“Rule 31-505”). As representatives of SCMI, each of Spork, Ekonomidis and Levack also had a duty to deal fairly, honestly and in good faith pursuant to section 2.1(2) of Rule 31-505 and Levack and N. Spork had duties pursuant to section 1.3 of Rule 31-505 as it was in force at all relevant times.

**Breach of Fund Manager Duties**

41. Spork, SCMI and Sextant GP breached their duties pursuant to section 116 of the Act by their conduct as described above, as well as by investing the assets of the Sextant Canadian Fund outside of its stated investment objectives and contrary to its contractual investment restrictions.

42. Ekonomidis breached his duties pursuant to section 116 of the Act by misrepresenting the nature and value of the fund and its assets to investors and other parties.

43. Levack breached his duties pursuant to section 116 of the Act by failing to ensure that identified instances of regulatory non-compliance, including capital deficiencies, self-dealing by the fund and over-concentration in the fund’s investment portfolio, were remedied and by failing to supervise the trading in the Sextant Canadian Fund.

44. N. Spork breached her duties pursuant to section 116 of the Act by failing to take any steps to inform herself in respect of her roles managing the Sextant Canadian Fund, failing to meet the obligations attendant in those roles and by continuing to report and defer to Spork in respect of the operations and investments of the Sextant Canadian Fund.

**Failure to Keep Proper Books and Records**

45. Sextant GP was obligated to keep or cause to be kept appropriate books and records with respect to the Sextant Canadian Fund and to distribute audited financial statements for the fund no later than March 31 of the following year. SCMI was contractually obligated to maintain the accounting records for the fund and arrange for the preparation of the annual audited financial statements, among other things.

46. Both Sextant GP and SCMI were also obligated pursuant to section 19 of the Act to keep such books, records and other documents as are necessary for the proper recording of their business transactions and financial affairs and the transactions executed on behalf of the Sextant Canadian Fund.

47. Sextant GP and SCMI failed to meet their book and record keeping obligations both in respect of their own books and records and in light of the deficient, inconsistent and unreliable records relating to the assets of the fund.

48. The book and record keeping deficiencies have caused the net asset value of the Sextant Canadian Fund, and therefore the value of individual investors’ investments, to be uncertain. They may also have caused the net asset value of the Sextant Canadian Fund to have been further inflated and management and performance fees to have therefore been correspondingly excessive.

**V. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST**

49. The foregoing conduct engaged in by the respondents constituted breaches of Ontario securities law and/or was contrary to the public interest:

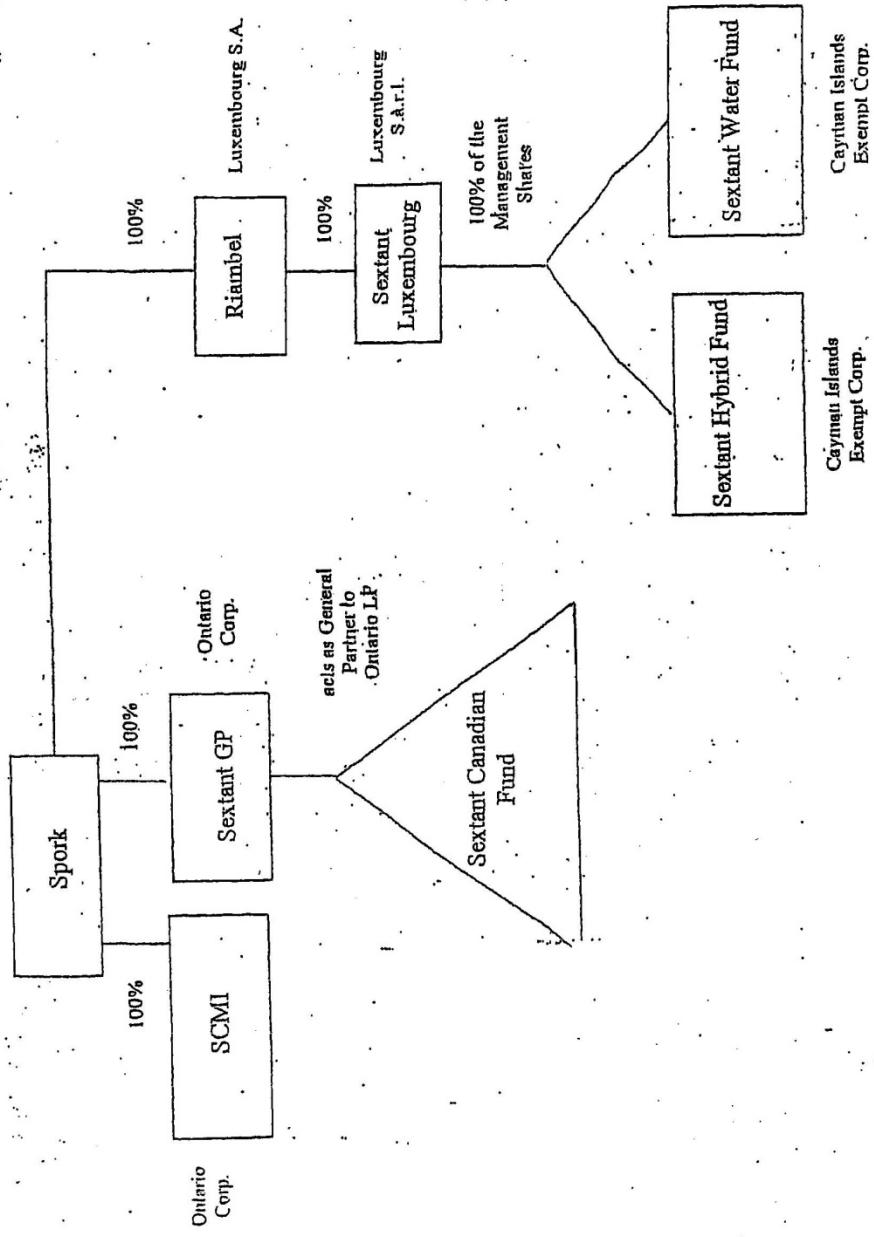
- (a) by engaging in the conduct described above, Spork, SCMI and Sextant GP perpetrated a fraud on investors contrary to section 126.1 of the Act;
- (b) by engaging in the conduct described above, all of the respondents breached their duties as investment fund managers contrary to section 116 of the Act;
- (c) by engaging in the conduct described above, SCMI and Sextant GP failed to maintain proper books and records contrary to section 19 of the Act
- (d) by engaging in the conduct described above, SCMI, Spork, Ekonomidis, Levack and N. Spork, breached their duties pursuant to Rule 31-505; and
- (e) by engaging in the conduct described above, all of the respondents acted contrary to the public interest.

50. Staff of the Commission will make such further and other allegations as staff may advise and the Commission may permit.

**DATED AT TORONTO** this 11th day of June, 2010.

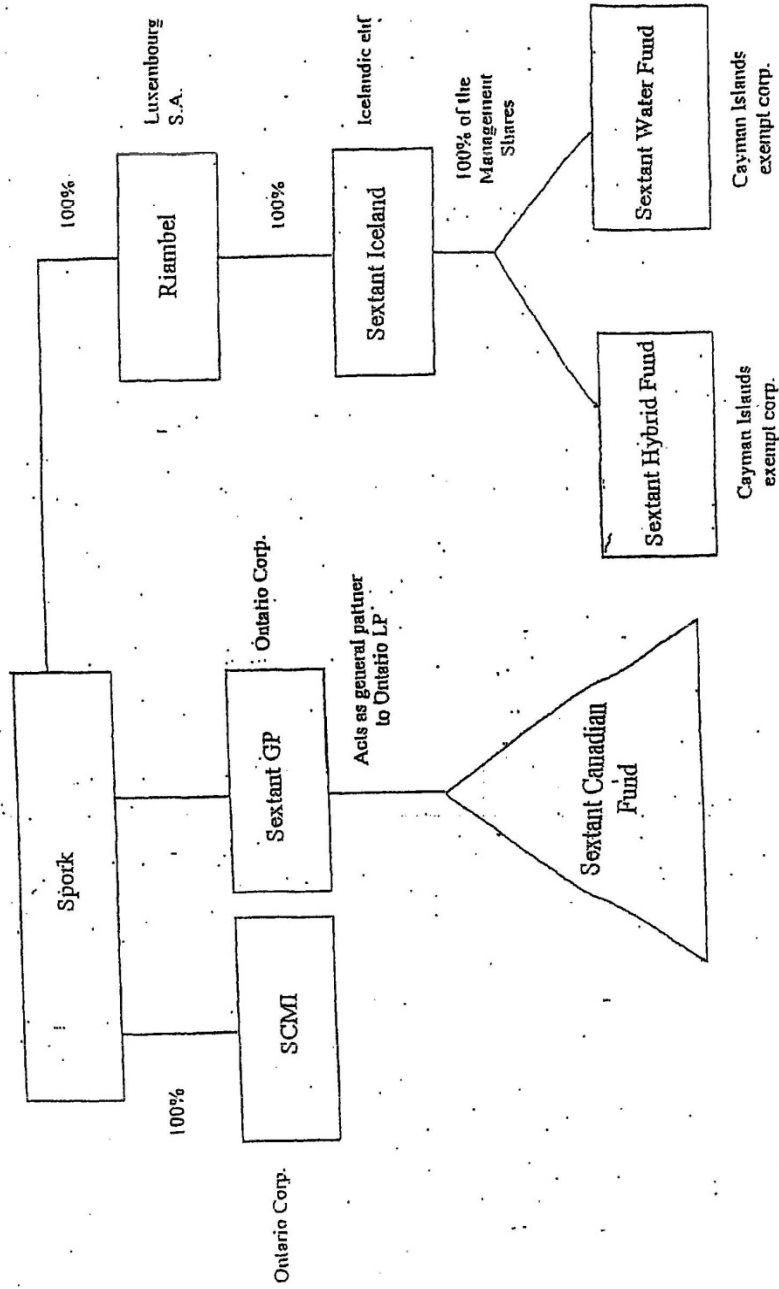
APPENDIX "A"

January 01-December 07

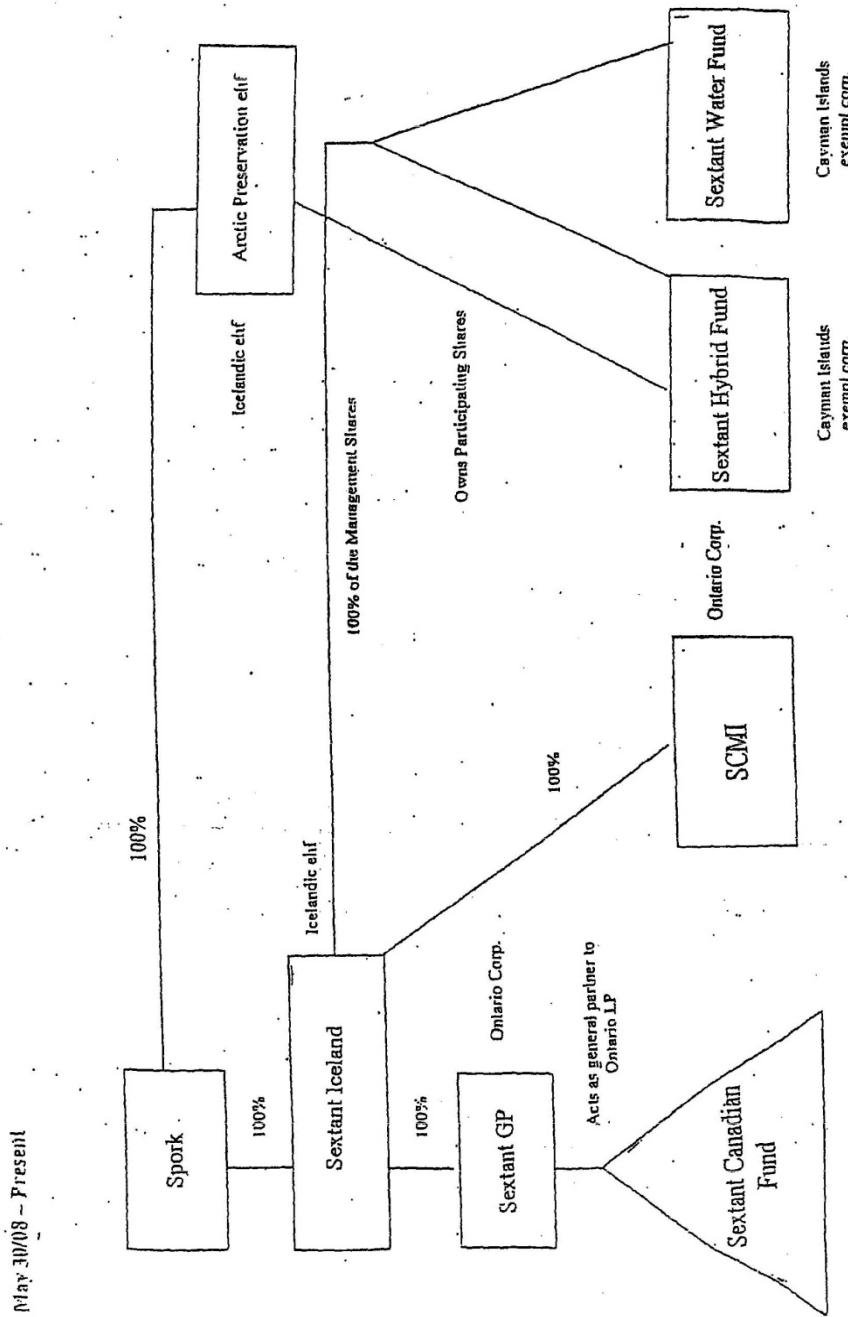


APPENDIX "B"

January 08 – May 08



APPENDIX "C"



May 31/08 - Present

1.4.9 Magna International Inc. et al.

FOR IMMEDIATE RELEASE  
June 15, 2010

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

AND

IN THE MATTER OF  
MAGNA INTERNATIONAL INC.

AND

IN THE MATTER OF  
THE STRONACH TRUST  
AND 446 HOLDINGS INC.

**TORONTO** – The Office of the Secretary issued a Notice of Hearing today setting the matter down to be heard on June 23, 2010, at 9:00 a.m. or as soon thereafter as the hearing can be held in the above named matter. There will also be a preliminary appearance on Friday, June 18, 2010 commencing at 10:00 a.m.

A copy of the Notice of Hearing dated June 15, 2010 and Statement of Allegations of Staff of the Ontario Securities Commission dated June 15, 2010 are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

For media inquiries:

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Director, Communications & Public Affairs  
416-593-8120

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Senior Communications Specialist  
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416-593-2315

For investor inquiries:

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

## Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 BMO Nesbitt Burns Inc.

#### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from the insider reporting requirement in respect of Securities held in Accounts granted to Filer – Filer is a management company within the meaning of National Instrument 55-104 Insider Reporting Requirements and Exemptions because it provides significant management and administrative services to the Funds, and as such is required to file insider reports in respect of the Securities over which it has control or direction, regardless of whether it has such control or direction in its capacity as administrator of the Funds or in its capacity as adviser to a client of its Private Client Division – decisions regarding the voting, acquisition, disposition and holding of the Securities in the Accounts are made in all circumstances by different individuals from those involved in the administration of the Funds, the Filer maintains appropriate policies to prevent the dissemination of material non-public information about the Funds to, among others, the Advisers, there is physical separation between the Administrator and the Advisers, and the Advisers that make, advise on, participate in the formulation of, or exercise influence over, decisions regarding the voting, acquisition or disposition of the Securities in the Accounts do not have access to material undisclosed information about a Fund or significant power or influence over a Fund – relief from the insider reporting requirements granted, subject to conditions.

#### Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 107.  
National Instrument 55-104 Insider Reporting Requirements and Exemptions, Parts 3 and 4.

May 10, 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  
BMO NESBITT BURNS INC.  
(the Filer)

#### DECISION

#### Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for the Primary Insider Reporting Requirement Relief and the Supplementary Insider Reporting Requirement Relief (each as defined below) in respect of Securities of a Fund held in an Account (each as defined below) with respect to which the Filer is an insider solely as a result of acting as a management company that provides significant management or administrative services to the Fund.

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, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

#### Interpretation

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

**NI 55-104** means National Instrument 55-104 *Insider Reporting Requirements and Exemptions*.

**Primary Insider Reporting Requirement Relief** means relief from the requirement to file

- (a) insider reports under section 107 of the *Securities Act* (Ontario) and sections 3.2 and 3.3 of NI 55-104, and
- (b) insider reports under any provisions of Canadian securities legislation substantially similar to section 107 of the *Securities Act* (Ontario) and sections 3.2 and 3.3 of NI 55-104.

**Supplementary Insider Reporting Requirement Relief** means relief from the requirement to file

- (a) insider reports under sections 3.1, 3.4 and 3.5 and Part 4 of NI 55-104,
- (b) insider reports under any provisions of Canadian securities legislation substantially similar to sections 3.1, 3.4 and 3.5 and Part 4 of NI 55-104, and
- (c) an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*.

### Representations

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

1. The Filer is a corporation incorporated under the laws of Canada. Its head office is located in Toronto, Ontario.
2. The Filer is a full-service investment firm that is registered as an investment dealer and as a futures commission merchant with the Ontario Securities Commission. It is also a member of the Investment Industry Regulatory Organization of Canada (**IIROC**).
3. BMO Capital Markets (**BMO CM**) is a business unit of the Filer which provides various products and services to corporate, institutional and governmental clients. BMO CM acts as administrator (the **Administrator**) to three publicly-offered non-redeemable investment funds—Coxe Commodity Strategy Fund, Star Hedge Managers Corp. and T. Boone Pickens Energy Fund (collectively, the **Existing Funds**)—each of which is a reporting issuer in each province and territory of Canada. The head office of the Existing Funds is located in Toronto, Ontario.
4. In the future, the Administrator may act as administrator to other publicly-offered non-redeemable investment funds (each, a **Fund** and, together with the Existing Funds, the **Funds**) that will also be reporting issuers in Canada.
5. Private Client Division (**PCD**) is a business unit of the Filer which provides, among other things, full-service brokerage services to a range of clients.
6. The Filer may hold securities (**Securities**) issued by the Funds in discretionary or managed accounts (**Accounts**) on behalf of its clients. These accounts may be managed by investment advisers within PCD (**Advisers**).
7. Advisers may exercise discretionary authority over the Securities in the Accounts, which authority may include the power to direct the voting of the Securities and the power to direct the acquisition or disposition of the Securities.
8. Because the activities of the Administrator and PCD are carried out by separate business units, decisions regarding the voting, acquisition, disposition and holding of the Securities in the Accounts are made in all circumstances by different individuals (i.e. the Advisers) from those involved in the administration of the Funds (i.e. the individuals performing the function of the Administrator).
9. The Filer maintains appropriate policies (the **Policies**) to prevent the dissemination of material non-public information about the Funds to, among others, the Advisers, including appropriate practices and procedures, as contemplated by OSC Policy 33-601 – *Guidelines for Policies and Procedures Concerning Inside Information* relating to the Administrator and the Advisers. There is also physical separation between the Administrator and the Advisers.
10. The Advisers that make, advise on, participate in the formulation of, or exercise influence over, decisions regarding the voting, acquisition or disposition of the Securities in the Accounts do not have access to material undisclosed information about a Fund or significant power or influence over a Fund.
11. Section 107 of the *Securities Act* (Ontario) and Parts 3 and 4 of NI 55-104 impose certain reporting requirements on insiders, including management companies that provide significant management or administrative services to an issuer.
12. Because the Filer is a “management company” within the meaning of NI 55-104 and provides significant management and administrative services to the Funds, the insider reporting requirement requires the Filer to file insider reports in respect of the Securities over which it has control or direction, regardless of whether it has such control or direction in its capacity as administrator of the Funds or in its capacity as adviser to a client of PCD.
13. The Filer acknowledges the Primary Insider Reporting Requirement Relief and the Supplementary Insider Reporting Requirement Relief relates only to Securities of a Fund held in an Account, and that it remains subject to the insider reporting requirement in all other respects.
14. The Filer is not in default of any of its obligations under securities legislation in any of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories or Nunavut.



**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 Primary Insider Reporting Requirement Relief is granted in respect of Securities of a Fund held in an Account with respect to which the Filer is an insider solely as a result of acting as a management company that provides significant management or administrative services to the Fund so long as
  - (a) decisions regarding the voting, acquisition, disposition or holding of the Securities in the Accounts are made in all circumstances by different individuals (i.e., the Advisers) from those involved in the administration of the Funds (i.e., the individuals performing the function of the Administrator);
  - (b) the Filer maintains the Policies;
  - (c) there is physical separation between the Administrator and the Advisers; and
  - (d) the Advisers that make, advise on, participate in the formulation of, or have influence over, decisions regarding the voting, acquisition or disposition of the Securities in the Accounts do not have access to material undisclosed information about a Fund or significant power or influence over a Fund; and
2. unless the Primary Insider Reporting Requirement Relief has previously terminated in accordance with paragraph 1 above, the Primary Insider Reporting Requirement Relief will terminate on May 7, 2011.

“James Turner”  
Vice Chair

“James D. Carnwath”  
Commissioner

It is the further decision of the principal regulator under the Legislation that

1. the Supplementary Insider Reporting Requirement Relief is granted in respect of Securities of a Fund held in an Account with respect to which the Filer is an insider solely as a result of acting as a management company that provides significant management or administrative services to the Fund so long as the conditions set out in paragraphs 1(a), (b), (c) and (d) under the

decision granting the Primary Insider Reporting Requirement Relief are satisfied; and

2. unless the Supplementary Insider Reporting Requirement Relief has previously terminated in accordance with paragraph 1 above, the Supplementary Insider Reporting Requirement Relief will terminate on May 7, 2011.

“Michael Brown”  
Assistant Manager, Corporate Finance Branch

2.1.2 Sentry Select Capital Inc. et al.

**Headnote**

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from the self-dealing provisions in section 4.2 of National Instrument 81-102 – Mutual Funds to permit inter-fund trades in debt securities between mutual funds, pooled funds and closed-end funds managed by the same manager or an affiliate of the same manager – inter-fund trades will comply with conditions in s. 6.1(2) of National Instrument 81-107 – Independent Review Committee for Investment Funds, including the requirement for independent review committee approval.

**Applicable Legislative Provisions**

National Instrument 81-102 Mutual Funds, ss. 4.2(1), 4.3(1), 4.3(2), 19.1.  
National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.1(2).

June 10, 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  
SENTRY SELECT CAPITAL INC.**

**AND**

**SENTRY SELECT INVESTMENTS INC.  
(collectively, the Filers and individually, a Filer)**

**AND**

**THE NI 81-102 FUNDS  
(as defined below)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filers on behalf of existing mutual funds and future mutual funds of which a Filer, or an affiliate of a Filer, is the manager and to which National Instrument 81-102 *Mutual Funds* (NI 81-102) applies (each, an NI 81-102 Fund and, collectively, the NI 81-102 Funds) for a decision (the **Exemption Sought**) under the securities legislation of the Jurisdiction of the principal regulator (the

**Legislation**) exempting the NI 81-102 Funds from the prohibition in Section 4.2(1) of NI 81-102 to permit an NI 81-102 Fund to purchase debt securities from or sell debt securities to (each purchase or sale of securities, an **Inter-Fund Trade**) existing and future investment funds managed by a Filer, or an affiliate of a Filer, to which NI 81-102 does not apply (each, an **Investment Fund** and, collectively, the **Investment Funds**).

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,
- (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 Quebec, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon Territory (with Ontario, the **Jurisdictions**).

**Interpretation**

Terms defined in the Legislation, National Instrument 14-101 *Definitions*, NI 81-102 or National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) have the same meanings if used in this decision. Certain other defined terms have the meanings given to them above or below.

**Representations**

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

- 1. Sentry Select Capital Inc. (**SSCI**) is a corporation incorporated under the laws of the Province of Ontario. It is registered with the Principal Regulator as an adviser in the category of portfolio manager and as a dealer in the category of mutual fund dealer. SSCI is also registered with the Alberta Securities Commission (**ASC**) as an adviser in the category of portfolio manager.
- 2. Sentry Select Investments Inc. (**SSII**) is a corporation incorporated under the laws of the Province of Ontario and is registered with the Principal Regulator as an adviser in the category of portfolio manager and as a dealer in the category of exempt market dealer. SSII is also registered with each of the ASC and the British Columbia Securities Commission as a dealer in the category of exempt market dealer.
- 3. The head office of each of the Filers is located in Toronto, Ontario.
- 4. The Filers are each wholly-owned subsidiaries of Sentry Select Capital Corp., an Ontario private corporation.

5. Each of the NI 81-102 Funds and the Investment Funds (each, a **Fund** and collectively, the **Funds**) is or will be an investment fund established as a trust or corporation under the laws of Canada or a jurisdiction of Canada. A Filer, or an affiliate of a Filer, will be the manager and/or portfolio adviser of each Fund.
6. A Filer, or an affiliate of a Filer is, or may be, the trustee of the Funds that are created as trusts.
7. Each of the NI 81-102 Funds is, or will be, a reporting issuer whose securities are qualified for distribution in one or more of the provinces and territories of Canada pursuant to a simplified prospectus and annual information form prepared and filed in accordance with the Legislation.
8. Each of the Investment Funds is either:
  - (a) a non-redeemable investment fund managed by SSCI, the securities of which have been qualified for distribution pursuant to a prospectus (individually, an **Existing Closed-End Fund** and collectively, **Existing Closed-End Funds**) or a prospectus-qualified non-redeemable investment fund that may be managed by a Filer, or an affiliate of a Filer, in the future (individually, a **Future Closed-End Fund** and collectively, **Future Closed-End Funds** and together with the Existing Closed-End Funds, the **Closed-End Funds**), or
  - (b) an open-end investment fund that is organized as a limited partnership or a mutual fund trust managed by SSII, the securities of which are sold solely to investors in Canada pursuant to exemptions from the prospectus requirements in accordance with National Instrument 45-106 *Prospectus and Registration Exemptions (NI 45-106)* (individually, an **Existing Pooled Fund** and collectively, the **Existing Pooled Funds**) or an open-end investment fund that is organized as a limited partnership or a mutual fund trust, the securities of which are sold solely to investors in Canada pursuant to exemptions from the prospectus requirements in accordance with NI 45-106 and that may be managed by a Filer, or an affiliate of a Filer in the future (individually, a **Future Pooled Fund** and collectively, the **Future Pooled Funds** and together with the Existing Pooled Funds, the **Pooled Funds**).
9. Each of the Pooled Funds is not, and will not be, a reporting issuer.
10. The Filers and each of the existing Funds are not in default of securities legislation in any of the Jurisdictions.
11. A Fund may be an associate of a Filer, or of an affiliate of a Filer, that is the manager, portfolio adviser or trustee of an NI 81-102 Fund.
12. The Filers wish to be able to enter into Inter-Fund Trades of securities between an NI 81-102 Fund and a Closed-End Fund or a Pooled Fund.
13. The manager of each NI 81-102 Fund and each Closed-End Fund has established, or will establish, an independent review committee (**IRC**) in respect of each NI 81-102 Fund and each Closed-End Fund in accordance with the requirements of NI 81-107.
14. The manager of each Pooled Fund will establish an IRC in respect of each Pooled Fund. The mandate of the IRC of a Pooled Fund will be to approve Inter-Fund Trades between a Pooled Fund and another Fund.
15. The IRC of the Pooled Funds will be composed by the manager of the Pooled Funds in accordance with section 3.7 of NI 81-107 and will be expected to comply with the standard of care set out in section 3.9 of NI 81-107. The IRC of the Pooled Funds will not approve an Inter-Fund Trade involving a Pooled Fund unless it has made the determination set out in section 5.2(2) of NI 81-107.
16. Inter-Fund Trades involving an NI 81-102 Fund or a Closed-End Fund will be referred to the relevant IRC of the NI 81-102 Fund or the Closed-End Fund, as applicable, under section 5.2(1) of NI 81-107 and the manager and the IRC of the NI 81-102 Fund and the Closed-End Fund, as applicable, will comply with section 5.4 of NI 81-107 in respect of any standing instructions the IRC provides in connection with the Inter-Fund Trade.
17. At the time of an Inter-Fund Trade, each Filer will have in place policies and procedures to enable the NI 81-102 Funds to engage in Inter-Fund Trades with Closed-End Funds or Pooled Funds.
18. Each Inter-Fund Trade will be consistent with the investment objective of the NI 81-102 Fund.
19. When a Filer, or an affiliate of a Filer, engages in an Inter-Fund Trade which involves the purchase and sale of securities between an NI 81-102 Fund and an Investment Fund it will follow the following procedures:
  - (a) the portfolio manager of the Filer or affiliate of the Filer will deliver the trade instructions in respect of a purchase or a sale of a security by a Fund (**Portfolio A**)

to a trader on a trading desk of the Filer or affiliate of the Filer;

- (b) the portfolio manager of the Filer or affiliate of the Filer will deliver the trade instructions in respect of a sale or a purchase of a security by another Fund (**Portfolio B**) to a trader on a trading desk of the Filer or an affiliate of the Filer;
- (c) each portfolio manager of the Filer or affiliate of the Filer will request the approval of the chief compliance officer of the Filer or affiliate of the Filer (or his or her designated alternate during periods when it is not practicable for the chief compliance officer to address the matter) (**CO**) to execute the trade as an Inter-Fund Trade;
- (d) once the trader has confirmed the approval of the CO, the trader on the trading desk will have the discretion to execute the trade as an Inter-Fund Trade between Portfolio A and Portfolio B in accordance with the requirements of paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107;
- (e) the policies applicable to the trading desk of the Filer or affiliate of the Filer will require that all Inter-Fund Trade orders are to be executed on a timely basis and will remain open only for 30 days unless the portfolio manager cancels the order sooner; and
- (f) the trader on a trading desk will advise the Filer or an affiliate of the Filer of the price at which the Inter-Fund Trade occurred.

20. Each of the Filers has determined that it would be in the interests of the NI 81-102 Funds to receive the Exemption Sought for the following reasons:

- (a) It will result in cost and timing efficiencies in respect of the execution of transactions for the NI 81-102 Funds; and
- (b) It will result in less complicated and more reliable compliance procedures, as well as simplified and more efficient monitoring thereof, for a Filer, or an affiliate of a Filer, in connection with the execution of transactions on behalf of NI 81-102 Funds.

21. The Filers are unable to rely upon the exemption from Section 4.2(1) of NI 81-102 for inter-fund trades in debt securities codified in subsection 4.3(2) of NI 81-102 because (i) the Pooled Funds are not

subject to NI 81-107 and (ii) the Closed End Funds, although subject to NI 81-107, are not mutual funds.

**Decision**

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

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

- (a) the IRC of each Fund has approved the Inter-Fund Trade in respect of the Fund in accordance with the terms of section 5.2(2) of NI 81-107; and
- (b) the Inter-Fund Trade complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107.

“Vera Nunes”  
Assistant Manager, Investment Funds Branch  
Ontario Securities Commission

2.1.3 Sentry Select Capital Inc. and Sentry Select Investments Inc.

**Headnote**

NP 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from s. 13.5(2)(b) of NI 31-103 to permit inter-fund trades between public mutual funds, non-redeemable investment funds, pooled funds and managed accounts – inter-fund trades will comply with conditions in s. 6.1(2) of NI 81-107 including IRC approval or client consent – trades involving exchange-traded securities are permitted to occur at last sale price as defined in the Universal Market Integrity Rules - relief also subject to pricing and transparency conditions.

**Applicable Legislative Provisions**

National Instrument 31-103 Registration Requirements and Exemptions, ss. 13.5, 15.1.

National Instrument 81-107 Independent Review Committee for Investment Funds, ss. 6.1(2), 6.1(4).

June 10, 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  
SENTRY SELECT CAPITAL INC.

AND

SENTRY SELECT INVESTMENTS INC.  
(collectively, the Filers and individually, a Filer)

DECISION

**Background**

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) providing an exemption from section 13.5(2)(b) of National Instrument 31-103 – *Registration Requirements and Exemptions (NI 31-103)* (the **Trading Prohibition**) that prohibits an adviser from knowingly causing an investment portfolio managed by it (including an investment fund for which it acts as an adviser) to purchase or sell the securities of any issuer from or to the investment portfolio of an associate of a responsible person or any investment fund for which a responsible person acts as an adviser, such that the following purchases and sales (each purchase or sale, an **Inter-Fund Trade**) are permitted:

- (i) an existing mutual fund or future mutual fund of which a Filer or one of its affiliates is the manager and to which National Instrument 81-102 – *Mutual Funds (NI 81-102)* applies (each, a **NI 81-102 Fund** and, collectively, the **NI 81-102 Funds**) is permitted to enter into Inter-Fund Trades of securities with any NI 81-102 Fund, an existing Canadian non-redeemable investment fund or future Canadian non-redeemable investment fund managed by a Filer or one of its affiliates (each, a **Closed-End Fund** and, collectively, the **Closed-End Funds**), an existing Canadian mutual fund or future Canadian mutual fund managed by the Filer to which NI 81-102 does not apply (each, a **Pooled Fund** and, collectively, the **Pooled Funds**) or a fully managed account managed by a Filer or one of its affiliates for a client that is not a responsible person (each, a **Managed Account** and, collectively, the **Managed Accounts**);
- (ii) a Closed-End Fund is permitted to enter into Inter-Fund Trades of securities with a NI 81-102 Fund, a Closed-End Fund, a Pooled Fund or a Managed Account;

- (iii) a Pooled Fund is permitted to enter into Inter-Fund Trades of securities with another Pooled Fund, a NI 81-102 Fund, a Closed-End Fund or a Managed Account; and
- (iv) a Managed Account is permitted to enter into Inter-Fund Trades of securities with a NI 81-102 Fund a Closed-End Fund or a Pooled Fund; and
- (v) the transactions listed in (i) to (iv) are permitted to be executed at the last sale price, as defined in the Market Integrity Rules of the Investment Industry Regulatory Organization of Canada, prior to the execution of the trade (the **Last Sale Price**) in lieu of the closing sale price (the **Closing Sale Price**) contemplated by the definition of "current market price of the security" in section 6.1(1)(a)(i) of National Instrument 81-107 – *Independent Review Committee for Investment Funds (NI 81-107)* on that trading day where the securities involved in the Inter-Fund Trade are exchange-traded securities (which term shall include Canadian and foreign exchange-traded securities),

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

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

- (a) the Ontario Securities Commission is the principal regulator for this application,
- (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 all of the provinces and territories of Canada other than Ontario (the **Passport Jurisdictions**).

### **Interpretation**

Terms defined in MI 11-102, National Instrument 14-101 *Definitions*, NI 81-102, NI 81-107 and NI 31-103 have the same meanings if used in this decision unless otherwise defined.

### **Representations**

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

1. The head office of each of the Filers is located in Toronto, Ontario.
2. Sentry Select Capital Inc. (**SSCI**) is a corporation incorporated under the laws of the Province of Ontario. It is registered with the Principal Regulator as an adviser in the category of portfolio manager and as a dealer in the category of mutual fund dealer. SSCI is also registered with the Alberta Securities Commission (**ASC**) as an adviser in the category of portfolio manager.
3. Sentry Select Investments Inc. (**SSII**) is a corporation incorporated under the laws of the Province of Ontario and is registered with the Principal Regulator as an adviser in the category of portfolio manager and as a dealer in the category of exempt market dealer. SSII is also registered with each of the ASC and the British Columbia Securities Commission as a dealer in the category of exempt market dealer.
4. The Filers are each wholly-owned subsidiaries of Sentry Select Capital Corp., an Ontario private corporation.
5. Each of the NI 81-102 Funds, Closed-End Funds and Pooled Funds (each, a **Fund** and collectively, the **Funds**) is or will be an investment fund established as a trust, corporation or limited partnership under the laws of Canada or a jurisdiction of Canada.
6. The securities of the NI 81-102 Funds are, or will be, qualified for distribution pursuant to simplified prospectuses and annual information forms that have been, or will be, prepared and filed in accordance with securities legislation of Ontario and one or more of the Passport Jurisdictions.
7. Each of the NI 81 102 Funds is, or will be, a reporting issuer in Ontario and one or more of the Passport Jurisdictions.
8. The securities of each of the Closed-End Funds are, or will be, qualified for distribution pursuant to prospectuses that have been, or will be, prepared and filed in accordance with the securities legislation of Ontario and one or more of the Passport Jurisdictions.
9. Each of the Closed-End Funds is, or will be, a reporting issuer in Ontario and one or more of the Passport Jurisdictions.

10. The securities of each of the Pooled Funds (which may be organized as a limited partnership or a mutual fund trust managed by SSII) are, or will be, distributed on a private placement basis pursuant to the Legislation and the Pooled Funds will not be reporting issuers.
11. The Filer, or an affiliate of the Filer, is, or will be the manager and/or adviser (**Manager**) of each of the Funds.
12. The Filer, or an affiliate of the Filer, is or will be, the adviser of a Managed Account.
13. A Filer, or an affiliate of a Filer is, or may be, the trustee of the Funds that are created as trusts.
14. A Fund may be an associate of a Filer, or of an affiliate of a Filer, that is a responsible person in respect of another Fund or a Managed Account.
15. The Filers, or an affiliate of a Filer that relies upon this decision, and each of the existing Funds are not in default of securities legislation in any of the Jurisdictions.
16. The Manager of each NI 81-102 Fund and each Closed-End Fund has established, or will establish, an independent review committee (**IRC**) in respect of each NI 81-102 Fund and each Closed-End Fund in accordance with the requirements of NI 81-107.
17. Each of the Filers have established, or will establish an IRC (which may also be the IRC in respect of the NI 81-102 Funds) in respect of each Pooled Fund. The mandate of the IRC of a Pooled Fund will include the approval of Inter-Fund Trades.
18. The IRC of the Pooled Funds was, or will be, composed by the Manager of the Pooled Funds in accordance with section 3.7 of NI 81-107 and the IRC complies, or will comply, with the standard of care set out in section 3.9 of NI 81-107. The IRC of the Pooled Funds will not approve an Inter-Fund Trade involving a Pooled Fund unless it has made the determination set out in section 5.2(2) of NI 81-107. Inter-Fund Trades involving a NI 81-102 Fund will be referred to the relevant IRC of such NI 81-102 Fund under section 5.2(1) of NI 81-107.
19. The investment management agreement or other documentation in respect of a Managed Account will contain the authorization of the client for the Filer on behalf of the Managed Account to engage in Inter-Fund Trades with the Funds.
20. At the time of an Inter-Fund Trade, each Filer, or an affiliate of a Filer, will have in place policies and procedures to enable the Funds and/or Managed Accounts to engage in Inter-Fund Trades with the Funds.
21. The Filer, or an affiliate of a Filer, will comply with the following procedures when entering into Inter-Fund Trades between Funds and/or between Funds and Managed Accounts:
  - (a) The portfolio manager of the Filer or affiliate of the Filer will deliver the trade instructions in respect of a purchase or a sale of a security by a Fund or Managed Account (**Portfolio A**) to a trader on a trading desk of the Filer or affiliate of the Filer;
  - (b) The portfolio manager of the Filer or affiliate of the Filer will deliver the trade instructions in respect of a sale or a purchase of a security by a Fund or Managed Account (**Portfolio B**) to a trader on a trading desk of the Filer or an affiliate of the Filer;
  - (c) The trader on the trading desk will have the discretion to execute the trade as an Inter-Fund Trade between Portfolio A and Portfolio B in accordance with the requirements of paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107 provided that for exchange-traded securities the Inter-Fund Trade may be executed at the Last Sale Price of the security prior to the execution of the trade;
  - (d) The policies applicable to the trading desk of the Filer or affiliate of the Filer will require that all Inter-Fund Trade orders are to be executed on a timely basis; and
  - (e) The trader on a trading desk will advise the portfolio manager(s) of Portfolio A and Portfolio B of the price at which the Inter-Fund Trade occurs.
22. The Filers cannot rely on the exemption from the Trading Prohibition in subsection 6.1(4) of NI 81-107 unless the parties to the Inter-Fund Trade are both reporting issuers and the Inter-Fund Trade occurs at the current market price which, in the case of exchange-traded securities, includes the Closing Sale Price but not the Last Sale Price.

23. Each of the Filers has determined that it would be in the best interests of the Funds and the Managed Accounts to receive the Exemption Sought.

**Decision**

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

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

- (a) the Inter-Fund Trade is consistent with the investment objective of the Fund or the Managed Account;
- (b) the Filer or affiliate of the Filer refers the Inter-Fund Trade to the IRC in the manner contemplated by section 5.1 of NI 81-107 and the Filer or affiliate of the Filer and the IRC of the Fund comply with section 5.4 of NI 81-107 in respect of any standing instructions an IRC provides in connection with the Inter-Fund Trade;
- (c) in the case of an Inter-Fund Trade between Funds:
  - (i) the IRC of each Fund has approved the Inter-Fund Trade in respect of the Fund in accordance with the terms of section 5.2(2) of NI 81-107; and
  - (ii) the Inter-Fund Trade complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107 except that for purposes of paragraph (e) of subsection 6.1(2) in respect of exchange-traded securities, the current market price of the security may be the Last Sale Price.
- (d) in the case of an Inter-Fund Trade between a Managed Account and a Fund:
  - (i) the IRC of the Fund has approved the Inter-Fund Trade in respect of such Fund in accordance with the terms of section 5.2(2) of NI 81-107;
  - (ii) the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction; and
  - (iii) the Inter-Fund Trade complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107 except that for purposes of paragraph (e) of subsection 6.1(2) in respect of exchange-traded securities, the current market price of the security may be the Last Sale Price.

“Vera Nunes”  
Assistant Manager, Investment Funds Branch  
Ontario Securities Commission



## 2.1.4 AGF Funds Inc.

### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from sections 2.5(2)(a) and (c) of National Instrument 81-102 Mutual Funds to permit mutual funds to invest up to 10% of net assets in leveraged ETFs, inverse ETFs, gold ETFs and leveraged gold ETFs traded on Canadian or US stock exchanges, subject to certain conditions.

### Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.5(2)(a), 2.5(2)(c), 19.1.

June 11, 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  
AGF FUNDS INC.  
(THE FILER)**

**DECISION**

### BACKGROUND

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

- (a) an exemption (the **ETF Exemption**) relieving the existing and future mutual funds managed by the Filer or an affiliate of the Filer that are subject to National Instrument 81-102 *Mutual Funds* (**NI 81-102**), other than AGF Precious Metals Fund and money market funds as defined in NI 81-102 (the **Existing Funds** and the **Future Funds**, respectively, together, the **Funds** and individually, a **Fund**), from the prohibitions contained in paragraphs 2.5(2)(a) and (c) of NI 81-102, to permit each Fund to purchase and hold securities of
- (i) exchange-traded funds (**ETFs**) that seek to provide daily results that replicate the daily performance of a specified widely-quoted market index (the **ETF's Underlying Index**) by a multiple of 200%

(**Leveraged Bull ETFs**) or an inverse multiple of 200% (**Leveraged Bear ETFs**), which together with Leveraged Bull ETFs are referred to collectively in this decision as **Leveraged ETFs**);

- (ii) ETFs that seek to provide daily results that replicate the daily performance of their Underlying Index by an inverse multiple of 100% (**Inverse ETFs**);
- (iii) ETFs that seek to replicate the performance of gold or the value of a specified derivative the underlying interest of which is gold on an unlevered basis (**Gold ETFs**); and
- (iv) ETFs that seek to provide daily results that replicate the daily performance of gold or the value of a specified derivative the underlying interest of which is gold on an unlevered basis (the **ETF's Underlying Gold Interest**), by a multiple of 200% (**Leveraged Gold ETFs**).

(Leveraged ETFs, Inverse ETFs, Gold ETFs, and Leveraged Gold ETFs are referred to collectively in this decision as the **Underlying ETFs**), and

- (b) revocation of the Decision Document granted by the principal regulator on February 24, 2009 (the **Previous Decision**), insofar as the Previous Decision applied to the Filer and the Funds (other than AGF Precious Metals Fund) (the **Revocation Relief**).

The ETF Exemption and the Revocation Relief are collectively, the Exemption Sought.

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

1. the Ontario Securities Commission is the Principal Regulator for this application; and
2. the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territories and Nunavut (collectively with the Jurisdiction, the **Jurisdictions**).

### INTERPRETATION

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

## REPRESENTATIONS

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

### The Filer and the Funds

1. The Filer is a corporation organized under the laws of the province of Ontario and is registered as an adviser in the appropriate categories to provide discretionary advisory services in all provinces and territories of Canada. The Filer is also registered as a mutual fund dealer, limited market dealer and commodity trading manager in Ontario and as a mutual fund dealer in British Columbia.
2. The head office of the Filer is located in Ontario.
3. The Filer or an affiliate of the Filer is the manager of each of the Existing Funds, and will be the manager of each of the Future Funds. The Filer or an affiliate of the Filer is the portfolio manager of, or has appointed a portfolio manager for, each of the Existing Funds, and will be the portfolio manager of, or will appoint a portfolio manager for, each of the Future Funds.
4. Each Existing Fund is, and each Future Fund will be: (a) an open-ended mutual fund established under the laws of the province of Ontario, (b) a reporting issuer under the laws of some or all of the provinces and territories of Canada, and (c) governed by the provisions of NI 81-102.
5. Securities of each Existing Fund are, and securities of each Future Fund will be, qualified for distribution in some or all of the provinces and territories of Canada under a simplified prospectus and annual information form prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure (NI 81-101)* and filed with and receipted by the securities regulators in the applicable jurisdiction(s).
6. Neither the Filer nor any of the Existing Funds is in default of securities legislation in the Jurisdictions.
7. Upon obtaining the Exemption Sought, the Funds will not rely on the Previous Decision.

### The Underlying ETFs

8. Each Leveraged ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Index will not exceed +/-200% of the corresponding daily performance of its Underlying Index.
9. Each Inverse ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Index will not exceed -100% of the

corresponding daily performance of its Underlying Index.

10. Each Leveraged Gold ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Gold Interest will not exceed +200% of the corresponding daily performance of its Underlying Gold Interest.

### Investment in IPUs and the Underlying ETFs

11. Each Existing Fund is, and each Future Fund will be, permitted, in accordance with its investment objectives and investment strategies, to invest in ETFs.
12. In addition to investing in securities of ETFs that are "index participation units" as defined in NI 81-102 (**IPUs**), the Funds propose to have the ability to invest in the Underlying ETFs, whose securities are not IPUs.
13. The amount of the loss that can result from an investment by a Fund in an Underlying ETF will be limited to the amount invested by the Fund in securities of the Underlying ETF.
14. The Underlying ETFs are attractive investments for the Funds, as they provide an efficient and cost effective means of achieving diversification and exposure.
15. But for the ETF Exemption, paragraph 2.5(2)(a) would prohibit a Fund from purchasing or holding a security of an Underlying ETF, because the Underlying ETFs are not subject to both NI 81-102 and NI 81-101.
16. But for the ETF Exemption, paragraph 2.5(2)(c) would prohibit a Fund from purchasing or holding securities of some Underlying ETFs, because some Underlying ETFs will not be qualified for distribution in the local jurisdiction.
17. An investment by a Fund in securities of an Underlying ETF will represent the business judgment of responsible persons uninfluenced by considerations other than the best interest of the Fund.

## DECISION

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

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

- (a) the investment by a Fund in securities of an Underlying ETF is in accordance with the fundamental investment objectives of the Fund;

- (b) a Fund does not short sell securities of an Underlying ETF;
- (c) the securities of the Underlying ETFs are traded on a stock exchange in Canada or the United States;
- (d) the securities of the Underlying ETFs are treated as specified derivatives for the purposes of Part 2 of NI 81-102;
- (e) a Fund does not purchase securities of an Underlying ETF if, immediately after the purchase, more than 10% of the net assets of the Fund in aggregate, taken at market value at the time of the purchase, would consist of securities of Underlying ETFs;
- (f) a Fund does not enter into any transaction if, immediately after the transaction, more than 20% of the net assets of the Fund, taken at market value at the time of the transaction, would consist of, in aggregate, securities of Underlying ETFs and all securities sold short by the Fund; and
- (g) the prospectus of each Fund discloses, or will disclose the next time it is renewed after the date hereof, (i) in the Investment Strategy section of the prospectus, the fact that the Fund has obtained relief to invest in the Underlying ETFs together with an explanation of what each Underlying ETF is, and (ii) the risks associated with investments in the Underlying ETFs.

“Vera Nunes”  
Assistant Manager, Investment Funds  
Ontario Securities Commission

**2.1.5 9222-9129 Québec Inc. (formerly, MethylGene 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 has no publicly held securities – 100% of the common shares of the Applicant represented at the special meeting of shareholders voted to authorize the voluntary dissolution of the issuer – Issuer currently in the process of voluntary dissolution – Outstanding securities are beneficially owned, directly or indirectly by more than 15 security holders in Ontario and more than 51 security holders in Canada – Issuer did not provide the British Columbia Securities Commission with a notice of surrender of its reporting issuer status – Requested relief granted.

**Applicable Legislative Provisions**

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

**June 14, 2010**

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
QUÉBEC, BRITISH COLUMBIA, ALBERTA,  
SASKATCHEWAN, MANITOBA, ONTARIO,  
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  
9222-9129 QUÉBEC INC.  
(FORMERLY, METHYLGENE INC.)  
(the “Issuer”)**

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the “**Decision Makers**”) has received an application from 1819400 Ontario Inc. and 1815303 Ontario Limited (the “**Investors**”) and the Issuer for a decision under the securities legislation of the Jurisdictions (the “**Legislation**”) that the Issuer is not a reporting issuer (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 Issuer:

1. The Issuer was incorporated under Part IA of the *Companies Act* (Québec) on December 13, 1995. Its head office is located in Montréal, Québec.
2. The Issuer is a reporting issuer in all Jurisdictions.
3. On May 19, 2010, the Investors became the sole shareholders of the Issuer on the closing of an arrangement under the provisions of sections 49 and 123.107 to 123.110 of the *Companies Act* (Québec) between the Issuer, the Investors, 7503466 Canada Inc. ("**Newco**") and 7503547 Canada Inc. ("**Subco**") (the "**Arrangement**").
4. The Arrangement was approved by the shareholders of the Issuer, present in person or represented by proxy at an annual and special meeting of shareholders of the Issuer held on May 14, 2010 (the "**Meeting**"), holding approximately 99.97% of the votes cast at the Meeting.
5. The Arrangement was sanctioned by a judge of the Superior Court of Québec pursuant to a Final Order issued on May 17, 2010.
6. Pursuant to the Arrangement:
  - (a) The Issuer transferred substantially all of its assets and liabilities to Subco.
  - (b) Shareholders of the Issuer transferred all their common shares to Newco in exchange for Newco common shares on a one-for-one basis.
  - (c) The Investors and/or their affiliates subscribed to a new class of shares of the Issuer, designated as the voting shares (not listed on any marketplace) and consequently became the sole shareholders of the Issuer.
  - (d) The common shares of the Issuer that were listed on the Toronto Stock

Exchange prior to the Arrangement have been delisted effective on May 21, 2010.

- (e) The Issuer relinquished its corporate name and reverted to a numerical corporate name.
  - (f) Newco and Subco amalgamated to form "**NewMethylGene**" which now carries on the same business as the Issuer prior to the Arrangement, under the name "MethylGene Inc."
  - (g) As a result, the common shares of NewMethylGene are listed since May 21, 2010 on the Toronto Stock Exchange under the symbol "MYG" in substitution to the common shares of the Issuer, and NewMethylGene is a reporting issuer in each of the provinces of Canada.
7. The Issuer is not in default of any of its obligations under the Legislation as a reporting issuer.
  8. As indicated above, the outstanding securities of the Issuer, including debt securities, are now 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.
  9. No securities of the Issuer are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.
  10. The Issuer has no current intention to proceed with an offering of its securities in a jurisdiction of Canada by way of private placement or public offering.
  11. The Issuer did not surrender its status as a reporting issuer in British Columbia pursuant to BC Instrument 11-502 – *Voluntary Surrender of Reporting Issuer Status* (the "**BC Instrument**") in order to avoid the 10-day waiting period under the BC Instrument.
  12. As the Issuer is a reporting issuer in British Columbia, the Issuer is not eligible to use the simplified procedure under CSA Staff Notice 12-307 *Application for a Decision that an Issuer is not a Reporting Issuer* in order to apply for the decision sought.
  13. The Issuer, upon the grant of the Exemptive Relief Sought, will no longer be a reporting issuer in any jurisdiction in Canada.

**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 marchés financiers

## 2.1.6 Franklin Templeton Investments Corp.

### Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – mutual fund manager granted exemption to pay a participating dealer, direct costs incurred relating to a sales communication, investor conference or investor seminar prepared or presented by the participating dealer which has a primary purpose of providing educational information concerning tax or estate planning matters – exemption will also permit a participating dealer to solicit and accept payments of direct costs relating to such sales communications, investor conferences or investor seminars in accordance with subsection 2.2(2) of NI 81-105.

### Applicable Legislative Provisions

National Instrument 81-105 Mutual Fund Sales Practices, ss. 5.1(a), 9.1.

June 15, 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  
FRANKLIN TEMPLETON INVESTMENTS CORP.  
(THE “FILER”)

DECISION

### Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the “**Legislation**”) for relief from subsection 5.1(a) of National Instrument 81-105 *Mutual Fund Sales Practices* (“**NI 81-105**”) to permit the Filer to pay a participating dealer direct costs incurred by the participating dealer relating to a sales communication, investor conference or investor seminar prepared or presented by the participating dealer (each individually referred to as a “Cooperative Marketing Initiative” and collectively as “**Cooperative Marketing Initiatives**”) if the primary purpose of the Cooperative Marketing Initiative is to provide educational information concerning tax or estate planning matters (the “**Exemption Sought**”).

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

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

**Interpretation**

Defined terms contained in National Instrument 14-101 *Definitions*, MI 11-102 and NI 81-105 have the same meaning in this decision unless they are defined in this decision.

**Representations**

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

- 1. The Filer is a corporation organized under the laws of the Province of Ontario with its head office based in Toronto, Ontario.
- 2. The Filer manages a number of retail mutual funds (the “**Funds**”) that are qualified for distribution to investors in each of the provinces and territories of Canada (the “**Jurisdictions**”). Securities of the Funds are distributed by participating dealers in the Jurisdictions.
- 3. The Filer is a “member of the organization” (as that term is defined in NI 81-105) of the Funds as it is the manager of the Funds.
- 4. The Filer complies with NI 81-105, in particular Part 5 of NI 81-105, in respect of its marketing and educational practices.
- 5. Under subsection 5.1(a) of NI 81-105, the Filer is currently permitted to pay a participating dealer direct costs incurred by the participating dealer relating to a Cooperative Marketing Initiative if the primary purpose of the Cooperative Marketing Initiative is to promote, or provide educational information concerning, a mutual fund, the mutual fund family of which the mutual fund is a member, or mutual funds generally.
- 6. Under subsection 5.2(a) of NI 81-105, the Filer is permitted to sponsor events attended by representatives of participating dealers which have the provision of educational information about, among other things, financial planning, investing in securities or mutual fund industry matters as their primary purpose.
- 7. Subsection 5.1(a) prohibits the Filer from paying to a participating dealer direct costs incurred by the

participating dealer relating to a Cooperative Marketing Initiative where the primary purpose is to provide educational information about tax or estate planning matters.

- 8. The Filer has expertise in tax and estate planning matters or may retain others with such expertise. In addition to the topics currently permitted under subsection 5.1(a) of NI 81-105, the Filer wishes to sponsor Cooperative Marketing Initiatives where the primary purpose of the Cooperative Marketing Initiatives is to provide educational information concerning tax or estate planning matters. The Filer will comply with subsections 5.1(b) -- (e) of NI 81-105 in respect of such Cooperative Marketing Initiatives it sponsors.
- 9. The Filer is of the view that sponsoring Cooperative Marketing Initiatives where the primary purpose is to provide educational information about tax or estate planning matters will benefit investors.

**Decision**

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, provided that in respect of a Cooperative Marketing Initiative the primary purpose of which is to provide educational information concerning tax or estate planning matters:

- (i) the Filer does not require any participating dealer to sell any of the Funds or other financial products to investors;
- (ii) other than as permitted by NI 81-105, the Filer does not provide participating dealers and their representatives with any financial or other incentives for recommending any of the Funds to investors;
- (iii) the materials presented in a Cooperative Marketing Initiative concerning tax or estate planning matters contain only general educational information about tax or estate planning matters;
- (iv) the Filer prepares or approves the content of the general educational information about tax or estate planning matters presented in a Cooperative Marketing Initiative it sponsors and selects or approves an appropriately qualified speaker for each presentation about tax or estate planning matters delivered in a Cooperative Marketing Initiative;
- (v) any general educational information about tax or estate planning matters presented in a Cooperative Marketing Initiative contains an express statement that the content presented is

for information purposes only, and is not providing advice to the attendees of the investor conference or investor seminar or the recipients of the sales communication, as applicable;

- (vi) any general educational information about tax or estate planning matters presented in a Cooperative Marketing Initiative contains an indication of the types of professionals who may generally be qualified to provide advice on the subject matter of the information presented; and
- (vii) this Decision shall cease to be operative two years from the date of this Decision.

“Paulette L. Kennedy”  
Commissioner  
Ontario Securities Commission

“Charles Wesley Moore Scott”  
Commissioner  
Ontario Securities Commission

## 2.2 Orders

### 2.2.1 CD ROM Network Corp. – s. 144

#### Headnote

Section 144 – application for variation of cease trade order – issuer cease traded due to failure to file with the Commission annual financial statements – issuer has applied for a variation of the cease trade order to permit the issuer to proceed with a private placement – potential investors to be accredited investors and to receive copy of cease trade order and partial revocation order prior to making investment decision – partial revocation granted subject to conditions.

#### Applicable Legislative Provisions

Securities Act, R.S.O., c. S.5, as am., ss. 127, 144.  
National Instrument 45-106 Prospectus and Registration Exemptions.

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

**AND**

**IN THE MATTER OF  
CD ROM NETWORK CORP.**

**ORDER  
(Section 144)**

**WHEREAS** the securities of CD ROM Network Corp. (the “**Issuer**”) are currently subject to a temporary order made by the Ontario Securities Commission (the “**Commission**”) dated September 22, 2003 pursuant to subsection 127(1) and 127(5) of the Act, which order was extended by a further order of the Commission dated October 3, 2003 (collectively, the “**Cease Trade Order**”), directing that all trading in the securities of the Issuer cease;

**AND WHEREAS** the Issuer has made an application to the Commission pursuant to section 144 of the Act for an order partially revoking the Cease Trade Order;

**AND WHEREAS** the Issuer has represented to the Commission that:

1. The Issuer is a corporation formed on August 25, 1994 pursuant to the laws of the Province of Ontario by the amalgamation of Brightwest Resource Explorations Inc. and 1078598 Ontario Limited.
2. The Issuer’s registered and head office is located at 56 Temperance Street, 10th Floor, Toronto, Ontario, M5H 3V5.
3. The Issuer is a reporting issuer in Ontario and is not a reporting issuer or the equivalent under the securities legislation of any other jurisdiction in Canada.
4. The authorized capital of the Issuer consists of an unlimited number of common shares (the “**Common Shares**”) and an unlimited number of preference shares, issuable in series. As at April 22, 2010, 4,707,485 Common Shares were issued and outstanding.
5. Other than the Common Shares, the Issuer has no securities (including debt securities) issued and outstanding.
6. The Common Shares are not listed or quoted on any exchange or market.
7. The Issuer has been inactive for many years. It owns no material assets.
8. The Cease Trade Order was issued as a result of the Issuer’s failure to file its audited annual financial statements for the year ended April 30, 2003, and the interim financial statements for all interim periods since January 31, 2003 (the “**Financial Statements**”). The Financial Statements were not filed in a timely manner with the Commission or sent to the shareholders of the Issuer because the Issuer was inactive and did not have the funds necessary to prepare and mail such documents.



9. Since that time, the Issuer has filed the following documents on SEDAR:
- (a) audited annual financial statements for the years ended April 30, 2007, 2008 and 2009 (the “**Annual Financial Statements**”);
  - (b) interim financial statements for the interim periods ended July 31, 2009, October 31, 2009 and January 31, 2010 (the “**Interim Financial Statements**”);
  - (c) management’s discussion and analysis relating to the Annual Financial Statements and the Interim Financial Statements; and
  - (d) certificates required to be filed in respect of the Annual Financial Statements and Interim Financial Statements under National Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings* (“**NI 52-109**”).
10. Except for the Cease Trade Order, the Issuer is not, in default of any of the requirements of the Act or the rules and regulations made thereunder, other than the Issuer’s failure to file the following documents:
- (a) audited annual financial statements for the years ended April 30, 2003, 2004, 2005 and 2006;
  - (b) interim financial statements for the interim periods beginning on July 31, 2003 and ending on January 31, 2008;
  - (c) management’s discussion and analysis relating to the financial statements referred to in paragraphs (a) and (b) above; and
  - (d) certificates required to be filed in respect of the financial statements referred to in paragraphs (a) and (b) above under NI 52-109.
11. The Issuer is seeking to effect a financing transaction to enable the Issuer to bring itself into compliance with its continuous disclosure obligations and to fund expenses as more properly outlined in paragraph 14 below. The actions associated therewith, may constitute a contravention of the Cease Trade Order. More specifically, the Issuer seeks a partial revocation of the Cease Trade Order to allow the Issuer to complete a brokered or non-brokered private placement of its securities (the “Private Placement”) with accredited investors (as such term is defined in National Instrument 45-106 Prospectus and Registration Exemptions) resident in the Province of Ontario (each a “Potential Investor”) to raise gross proceeds of up to \$100,000. The Issuer is proposing to sell units (the “Units”) comprised of one (1) Common Share and one (1) Common share purchase warrant (the “Warrants”), for a subscription price equal to \$0.05 per Unit. Each Warrant shall entitle the investor to purchase one Common Share within 24 months from the closing date of the Private Placement, at an exercise price of \$0.10 per Common Share.
12. All trades associated with the Private Placement will take place in Ontario and the Private Placement will be completed in accordance with applicable securities legislation.
13. The proceeds from the Private Placement shall be used to prepare and file all outstanding continuous disclosure documents with a view to obtaining a full revocation of the Cease Trade Order, to pay filing fees with respect thereto to the Commission, to pay outstanding fees to the Issuer’s transfer agent, to fund the preparation of the application for the revocation of the Cease Trade Order. These expenses are more fully described in paragraph 14 below.
14. The Issuer propose to use the proceeds of the Private Placement as follows:
- |     |   |                  |
|-----|---|------------------|
| (a) | Legal, accounting and audit fees                        | \$40,000         |
| (b) | Fees and penalties for late filing of materials         | \$25,000         |
| (c) | Funds required to prepare and mail information circular | \$15,000         |
| (d) | Project investigation cost                              | \$20,000         |
|     | <b>Total</b>  | <b>\$100,000</b> |

## Decisions, Orders and Rulings

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15. The Issuer reasonably believes that it will have sufficient resources upon completion of the Private Placement to complete its required continuous disclosure documents, pay all outstanding fees owed to the Commission, prepare and mail an information circular for an annual and special meeting of shareholders, and fund project investigation costs.
16. As the Private Placement will involve trades in securities of the Issuer (including, for greater certainty, acts in furtherance of trades in securities of the Issuer), it cannot be completed without a variation of the Cease Trade Order.
17. Prior to the completion of the Private Placement, each Potential Investor in the Private Placement will receive:
  - (a) a copy of the Cease Trade Order;
  - (b) a copy of the partial revocation order; and
  - (c) written notice from the Issuer, and acknowledge that all of the Issuer's securities, including the securities issued in connection with the Private Placement will remain subject to the Cease Trade Order until it is revoked, and that the granting of the partial revocation does not guarantee the issuance of a full revocation order in the future.
18. Upon the issuance of the partial revocation from the Commission, the Issuer will:
  - (a) issue a press release and file a material change report announcing, among other things, the Private Placement and the partial revocation order;
  - (b) market the Private Placement and provide information relating to the Issuer to the Potential Investors in accordance with the provisions of the partial revocation order and in accordance with the Act and the rules and regulations made pursuant thereto; and
  - (c) issue securities in connection with the Private Placement.
19. Upon completion of the Private Placement, preparation of continuous disclosure documents, and identification or acquisition of a suitable project, the Issuer intends to apply to the Commission for full revocation of the cease trade orders, while concurrently applying for a listing on the Toronto Stock Exchange or the TSX Venture Exchange, as the case may be.
20. The Issuer undertakes to hold its annual meeting of shareholders within three months of the date that the Cease Trade Order is revoked in full.
21. The Issuer is not considering, nor is it involved in any discussion relating to a reverse take-over, merger, amalgamation or other form of combination or transaction similar to any of the foregoing.
22. The Issuer has undertaken to the Commission that, in the event the Issuer convenes a meeting of shareholders within twelve months of the date of this partial revocation order to consider and approve any transaction described in the previous paragraph, the Issuer will deliver to the Commission a copy of the information circular relating to such meeting not less than twenty days prior to the date such information circular is delivered to the shareholders.

**AND UPON** considering the application and the recommendations of staff of the Commission;

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

**IT IS ORDERED** pursuant to section 144 of the Act that the Cease Trade Order be and is hereby partially revoked solely to permit trades in securities of the Issuer (including, for greater certainty, acts in furtherance of trades in securities of the Issuer) that are necessary for and are in connection with Private Placement provided that:

- (a) prior to completion of the Private Placement each Potential Investor will:
  - (i) receive a copy of the Cease Trade Order;
  - (ii) receive a copy of this partial revocation order; and
  - (iii) receive written notice from the Issuer, and acknowledge that all of the Issuer's securities, including the securities issued in connection with the Private Placement will remain subject to the Cease Trade Order until it is revoked, and that the granting of this partial revocation order does not guarantee the issuance of a full revocation order in the future; and

- (b) this partial revocation order will terminate on the earlier of:
  - (i) completion of the Private Placement; and
  - (ii) 120 days from the date hereof.

**DATED** this 10th day of June , 2010.

“Michael Brown”  
Assistant Manager, Corporate Finance  
Ontario Securities Commission

**2.2.2 Red Mile Minerals Corp. (formerly Red Mile Capital Corp.) – s. 1(11)(b)**

**Headnote**

Subsection 1(11)(b) – Order that the issuer is a reporting issuer for the purposes of Ontario securities law – Issuer already a reporting issuer in Alberta and British Columbia – Issuer's securities listed for trading on the TSX Venture Exchange – Continuous disclosure requirements in Alberta and British Columbia substantially the same as those in Ontario – Issuer has a significant connection to Ontario.

**Statutes Cited**

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(11)(b).

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

**AND**

**IN THE MATTER OF  
RED MILE MINERALS CORP.  
(formerly Red Mile Capital Corp.)**

**ORDER  
(clause 1(11)(b))**

**UPON** the application of Red Mile Minerals Corp. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to clause 1(11)(b) of the Act that, for the purposes of Ontario securities law, the Applicant is a reporting issuer in Ontario;

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

**AND UPON** the Applicant having represented to the Commission as follows:

1. The Applicant was incorporated under the laws of the Province of Alberta on May 31, 2007. The Applicant changed its name from Red Mile Capital Corp. to Red Mile Minerals Corp. on February 17, 2010.
2. The head office of the Applicant is located at Suite 2300 – 1066 West Hastings Street, Vancouver, British Columbia V6E 3X2 and the registered office of the Applicant is located at 1000 – 250 2nd Street SW, Calgary, Alberta, T2P 0C1.
3. The authorized share capital of the Applicant consists of an unlimited number of common shares (the **Common Shares**) and an unlimited number of preferred shares (the **Preferred Shares**).

4. As at April 27, 2010, 9,755,000 Common Shares and no Preferred Shares were issued and outstanding.
5. The Applicant is currently a reporting issuer in British Columbia and Alberta and has been a reporting issuer under the *Securities Act* (British Columbia) (the **BC Act**) and the *Securities Act* (Alberta) (the **Alberta Act**), since August 23, 2007. The Applicant is not currently a reporting issuer or the equivalent in any jurisdiction in Canada other than British Columbia and Alberta.
6. The Applicant is not on the list of defaulting reporting issuers maintained pursuant to the BC Act or the Alberta Act and is not in default of any of its obligations under the BC Act or the Alberta Act or the rules and regulations made thereunder.
7. The continuous disclosure materials filed by the Applicant under the requirements of the BC Act and the Alberta Act are substantially the same as the continuous disclosure requirements under the Act.
8. The continuous disclosure materials filed by the Applicant under the BC Act and the Alberta Act are available on the System for Electronic Document Analysis and Retrieval.
9. The Common Shares of the Applicant are listed and posted for trading on the TSX Venture Exchange (the **TSX-V**) under the symbol "RDM".
10. The Applicant is not in default of the rules, regulations or policies of the TSX-V.
11. On February 3, 2010, the Applicant completed a qualifying transaction (the **Qualifying Transaction**) as defined in Policy 2.4 of the TSX-V Corporate Finance Manual (the **TSX-V Policies**). In connection with the Qualifying Transaction, the Applicant issued to Russet Lake Resources Inc. (**Russet**) an aggregate 3,505,000 Common Shares as partial consideration for the assignment by Russet to the Applicant of all of Russet's interest in an option to acquire a 100% interest, subject to net smelter return royalties, in the Blue Quartz Mining Property, Ontario.
12. Russet is a corporation incorporated under the laws of the Province of Ontario whose head and registered office is located in the Province of Ontario.
13. The Applicant has a "significant connection to Ontario" (as such term is defined in Policy 1.1 of the TSX-V Policies), in that, as of the date of completion of the Qualifying Transaction, more than 20% of the Applicant's issued and outstanding Common Shares were owned by a registered and beneficial shareholder resident in Ontario, being Russet.

14. Pursuant to section 12.6 of Policy 2.4 of the TSX-V Policies, where the Applicant, upon completion of a Qualifying Transaction, is aware that it has a significant connection to Ontario, the Applicant is required to make application to the Commission to be deemed a reporting issuer in Ontario pursuant to section 18.2 of Policy 3.1 of the TSX-V Policies.
- (a) any cease trade or similar orders, or orders that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or
- (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver manager or trustee, within the preceding 10 years other than John Pallot, a director of the Applicant, who was a director of Westward Explorations Ltd. (**Westward**), when Westward made a proposal in October 2006 to its creditors, pursuant to the provisions of the *Bankruptcy and Insolvency Act* (Canada), to resolve an outstanding re-assessment made by Revenue Canada in 2000 which arose in respect of a transaction that occurred in 1996 and in respect of which, in March, 2007, Westward obtained court approval to the proposal and the claims of creditors were settled.
15. Neither the Applicant, nor any officer or director of the Applicant, nor, to the knowledge of the Applicant and the officers and directors of the Applicant, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, has:
- (a) been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority;
- (b) entered into a settlement agreement with a Canadian securities regulatory authority; or
- (c) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely or be considered important to a reasonable investor making an investment decision.
- AND UPON** the Commission being satisfied that granting this Order would not be prejudicial to the public interest;
- IT IS HEREBY ORDERED** pursuant to clause 1(11)(b) of the Act that the Applicant is a reporting issuer for the purposes of Ontario securities law.
- DATED** this 9th day of June, 2010.
- “Jo-Anne Matear”  
Assistant Manager, Corporate Finance  
Ontario Securities Commission
16. Neither the Applicant, nor any officer or director of the Applicant, nor, to the knowledge of the Applicant and the officers and directors of the Applicant, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been the subject to:
- (a) any known ongoing or concluded investigation by a Canadian securities regulatory authority, or a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or
- (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangement or compromises with creditors, or the appointment of a receiver, receiver manager or trustee, within the preceding 10 years.
17. Other than as disclosed below, no officer or director of the Applicant, nor, to the knowledge of the Applicant and the officers and directors of the Applicant, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been at the time of such event an officer or director of any other issuer which is or has been subject to:

2.2.3 Thomas Weisel Partners Group, 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., s. 1(10).

June 10, 2010

Kenneth G. Ottenbreit  
Stikeman Elliott LLP  
445 Park Avenue, 7th floor  
New York, NY 10022  
United States

Dear Mr. Ottenbreit:

**Re: Thomas Weisel Partners Group, Inc. (the Applicant) – Application for an order under clause 1(10)(b) of the Securities Act (Ontario) that the Applicant is not a reporting issuer**

The Applicant has applied to the Ontario Securities Commission for an order under clause 1(10)(b) of the Act that the Applicant is not a reporting issuer.

As the Applicant has represented to the Commission that:

- the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in Ontario and less than 51 security holders in Canada;
- no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
- the Applicant is not in default of any of its obligations under the Act as a reporting issuer; and
- the Applicant will not be a reporting issuer or the equivalent in any jurisdiction in Canada immediately following the Director granting the relief requested.

The Director is satisfied that it would not be prejudicial to the public interest to grant the requested relief and orders that the Applicant is not a reporting issuer.

“Lisa Enright”  
Manager, Corporate Finance

2.2.4 York Rio Resources Inc. et al. – s. 127

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

**AND**

**IN THE MATTER  
YORK RIO RESOURCES INC.,  
BRILLIANTE BRASILCAN RESOURCES CORP.,  
VICTOR YORK, ROBERT RUNIC,  
GEORGE SCHWARTZ, PETER ROBINSON,  
ADAM SHERMAN, RYAN DEMCHUK,  
MATTHEW OLIVER, GORDON VALDE AND  
SCOTT BASSINGDALE**

**ORDER**

**(Section 127 of the Securities Act)**

**WHEREAS** on March 2, 2010, the Commission issued a Notice of Hearing pursuant to sections 37, 127 and 127.1 of the Act accompanied by a Statement of Allegations dated March 2, 2009, issued by Staff of the Commission (“Staff”) with respect to York Rio Resources Inc. (“York Rio”), Brilliante Brasilcan Resources Corp. (“Brilliante”), Victor York (“York”), Robert Runic (“Runic”), George Schwartz (“Schwartz”), Peter Robinson (“Robinson”), Adam Sherman (“Sherman”), Ryan Demchuk (“Demchuk”), Matthew Oliver (“Oliver”), Gordon Valde (“Valde”) and Scott Bassingdale (“Bassingdale”), (collectively, the “Respondents”);

**AND WHEREAS** on March 3, 2010, the Commission ordered that the hearing be adjourned until April 12, 2010;

**AND WHEREAS** on April 12, 2010, Staff informed the Commission that all parties had either been served with notice of the hearing or that service had been attempted on all parties;

**AND WHEREAS** on April 12, 2010, counsel for Staff, Demchuk and counsel for York appeared;

**AND WHEREAS** on April 12, 2010, Staff informed the Commission that counsel for Sherman, counsel for Robinson and counsel for Oliver had contacted Staff and indicated that they could not attend the hearing on April 12, 2010 but could attend at a later date;

**AND WHEREAS** on April 12, 2010, upon hearing submissions from counsel for Staff, Demchuk and counsel for York, the hearing was adjourned to June 10, 2010;

**AND WHEREAS** on June 10, 2010, Staff appeared before the Commission and informed the Commission that all parties had either been served with notice of the hearing or that service had been previously attempted on all parties;

**AND WHEREAS** on June 10, 2010, no counsel appeared for any of the Respondents; however, Schwartz

and counsel for Robinson, Sherman and Oliver had communicated with Staff, and Staff communicated this information to the Commission;

**AND WHEREAS** on June 10, 2010, Staff made submissions to the Commission that the hearing be adjourned to July 21, 2010 at 2:00 p.m.;

**IT IS ORDERED THAT** the hearing is adjourned to July 21, 2010 at 2:00 p.m. or such other date as is agreed to by the parties and determined by the Office of the Secretary.

**DATED** at Toronto this 10th day of June, 2010.

"Mary G. Condon"

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

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

**AND**

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

**ORDER**

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

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

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

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

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

**AND WHEREAS** on November 14, 2008, the Commission amended the Temporary Order (the "Amended Temporary Order") to permit each of York, Aidelman, Georgiadis and Taylor to trade securities for the account of his registered retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have sole legal and beneficial ownership, provided that:

- I. the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;
- II. he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding

securities of the class or series of the class in question;

- III. he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only; and
- IV. he shall provide Staff with the particulars of the accounts (before any trading in the accounts under this order occurs) including the name of the registered dealer through which the trading will occur and the account numbers, and he shall instruct the registered dealer to provide copies of all trade confirmation notices with respect to the accounts directly to Staff at the same time that such notices are provided to him;

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

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

**AND WHEREAS** on September 3, 2009, the Commission adjourned the hearing to March 3, 2010 at 10:00 a.m. and further extended the Amended Temporary Order, until March 4, 2010;

**AND WHEREAS** on March 3, 2010, the Commission adjourned the hearing to April 12, 2010 at 9:00 a.m. and further extended the Amended Temporary Order, until April 13, 2010;

**AND WHEREAS** on April 12, 2010, the Commission adjourned the hearing to June 10, 2010 at 9:00 a.m. and further extended the Amended Temporary Order, until June 11, 2010;

**AND WHEREAS** on June 10, 2010, the Commission was been informed that Aidelman and York were not opposed to the extension of the Amended Temporary Order;

**AND WHEREAS** on June 10, 2010, the Commission was informed by Staff that they have not heard from Brilliante, York Rio, Georgiadis and Taylor with respect to the hearing of June 10, 2010;

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

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

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

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

**IT IS ORDERED** pursuant to subsection 127(8) of the Act that the hearing is adjourned to July 21, 2010 at 2:00 p.m.;

**IT IS FURTHER ORDERED** pursuant to subsection 127(8) of the Act that the Amended Temporary Order is extended until close of business on July 22, 2010, subject to further extension by order of the Commission;

**DATED** at Toronto this 10th day of June, 2010.

“Mary G. Condon”



**2.2.6 Peter Robinson and Platinum International Investments Inc.**

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

**AND**

**IN THE MATTER OF  
PETER ROBINSON AND  
PLATINUM INTERNATIONAL INVESTMENTS INC.**

**ORDER**

**WHEREAS** on December 18, 2009, the Secretary of the Commission issued a Notice of Hearing, pursuant to sections 37, 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), for a hearing to commence at the offices of the Commission at 20 Queen Street West, on Monday, January 11th, 2010 at 11 a.m., or as soon thereafter as the hearing can be held;

**WHEREAS** the Notice of Hearing provides for the Commission to consider, among other things, whether, in the opinion of the Commission, it is in the public interest, pursuant to s. 127(5) of the Act to issue a temporary order that:

The respondents, Platinum International Investments Inc. ("Platinum") and Peter Robinson ("Robinson") (collectively the "Respondents") shall cease trading in any securities;

**AND WHEREAS** Staff served the Respondents with copies of the Notice of Hearing and Staff's Statement of Allegations dated December 17, 2009, as evidenced by the Affidavit of Kathleen McMillan sworn on January 11, 2009, and filed with the Commission;

**AND WHEREAS** Staff served the Respondents with a copy of the Affidavit of Lori Toledano, affirmed on January 8, 2010, as evidenced by the Affidavit of Service of Kathleen McMillan sworn on January 8, 2010;

**AND WHEREAS** on January 11, 2010 Staff of the Commission and Robinson appeared before the Commission and made submissions. Robinson appeared in his personal capacity and as the sole registered director of Platinum. During the hearing on January 11, 2010, Robinson advised the Commission that he consented to the issuance of a temporary cease trade order against himself and against Platinum;

**AND WHEREAS** on January 11, 2010, Robinson requested an adjournment of the hearing in order to retain counsel;

**AND WHEREAS** on January 11, 2010, the panel of the Commission considered the Affidavit of Lori Toledano and the submissions made by Staff and Robinson;

**AND WHEREAS** on January 11, 2010, the panel of the Commission ordered, pursuant to section 127 (5) of the Act, that Robinson and Platinum cease trading in any securities (the "Temporary Cease Trade Order") and that the Temporary Cease Trade Order is extended, pursuant to section 127(8) of the Act, until February 4, 2010;

**AND WHEREAS** on January 11, 2010, the panel of the Commission ordered that the hearing with respect to this matter was adjourned to February 3, 2010, at 9:00 a.m.;

**AND WHEREAS** on February 3, March 5, 2010 and April 12, 2010, hearings were held before the Commission, and on April 12, 2010 the Commission ordered that the Temporary Cease Trade Order be extended and that the hearing be adjourned for the purpose of having a pre-hearing conference on June 10, 2010;

**AND WHEREAS** on June 10, 2010, the pre-hearing conference was commenced and Staff and counsel for Robinson attended before the Commission and made submissions;

**AND WHEREAS** on June 10, 2010, Staff and counsel for Robinson attended before the Commission and made submissions with respect to the extension of the Temporary Cease Trade Order;

**AND WHEREAS** on June 10, 2010, Staff and counsel for Robinson requested that the pre-hearing conference be continued on June 30, 2010 at 11:00 a.m.;

**AND WHEREAS** Staff requested that the Temporary Cease Trade Order be extended until the completion of the hearing on the merits and the Respondents did not oppose this request;

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

**IT IS ORDERED** that, pursuant to subsection 127(8) of the Act, the Temporary Cease Trade Order is extended until the completion of the hearing on the merits; and

**IT IS FURTHER ORDERED** that the hearing with respect to this matter is adjourned to June 30, 2010, at 11:00 a.m. at which time the pre-hearing conference will be continued.

**DATED** at Toronto this 14th day of June, 2010.

"Mary G. Condon"

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## Chapter 3

# Reasons: Decisions, Orders and Rulings

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### 3.1 OSC Decisions, Orders and Rulings

#### 3.1.1 Al-tar Energy Corp. et al.

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

AND

IN THE MATTER OF  
AL-TAR ENERGY CORP., ALBERTA ENERGY CORP.,  
DRAGO GOLD CORP., DAVID C. CAMPBELL, ABEL DA SILVA,  
ERIC F. O'BRIEN AND JULIAN M. SYLVESTER

#### REASONS AND DECISION

**Hearing:** April 20, 21, 22, 23 and 27, 2

**Decision:** June 11, 2

**Panel:** Suresh Thakrar – Commissioner and Chair of the Panel  
Carol S. Perry – Commissioner

**Counsel:** Sean Horgan – For the Ontario Securities Commission  
Melanie Adams

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 Al-tar Energy Corp. ("Al-tar"), Alberta Energy Corp. ("Alberta Energy"), Drago Gold Corp. ("Drago"), David C. Campbell ("Campbell"), Abel Da Silva ("Da Silva"), Eric F. O'Brien ("O'Brien") and Julian M. Sylvester ("Sylvester") (collectively, the "Respondents") breached the Act and acted contrary to the public interest.

[2] A Statement of Allegations was filed by Staff of the Commission ("Staff") on February 14, 2008 and a Notice of Hearing was issued by the Commission on the same day. The Statement of Allegations relates to conduct which took place in 2006 and 2007. Specifically, with respect to Al-tar, Alberta Energy and Drago (the "Corporate Respondents"), the alleged conduct can be broken down into the following timeframes:

- (a) from April 2006, to early 2007, Al-tar sold shares to the public that were not previously issued;
- (b) from November 2006 until April 2007, Alberta Energy sold shares to the public that were not previously issued; and
- (c) from May 2007 until September 2007, Drago sold shares to members of the public that were not previously issued.

[3] The Statement of Allegations also addresses the conduct of Campbell, Da Silva, O'Brien and Sylvester (the "Individual Respondents") and their actions in relation to certain of the Corporate Respondents.

#### B. History of the Proceeding

[4] The first temporary cease trade order in this matter was issued on July 3, 2007, and was further extended on July 17, 2007, September 11, 2007, December 18, 2007, March 19, 2008 and September 30, 2008. This first temporary order was originally issued against Al-tar, Alberta Energy, O'Brien and Sylvester and eight other individuals who did not end up being named as respondents in this matter. A second temporary cease trade order was also issued on March 19, 2008 and extended on September 30, 2008 to include Drago, Campbell, and Da Silva. On September 30, 2008, both temporary cease trade orders were extended until the conclusion of this proceeding.

[5] The Commission also issued four directions, dated November 29, 2007, to HSBC Bank Canada ("HSBC") and Canadian Imperial Bank of Commerce ("CIBC") freezing accounts of two companies controlled by Campbell, Zap Group Inc. ("Zap") and 2108709 Ontario Inc. ("2108709") (which are not named as respondents in this matter) and two accounts controlled by Da Silva. The four directions were continued by further order of the Ontario Superior Court of Justice.

[6] With respect to the accounts controlled by Da Silva, a total of approximately \$155,000 is frozen and remains subject to the directions until further notice by the Ontario Superior Court.

[7] With respect to the two accounts controlled by Campbell, a total of approximately \$35,000 is frozen and remains subject to the directions until further notice by the Ontario Superior Court.

[8] Campbell attended before the Ontario Superior Court of Justice to seek the release of the funds in the frozen accounts, and on December 6, 2007, the Court refused to allow Campbell to speak to the matter until he attended the Commission to be examined. Four days later, Campbell attended before the Commission to be examined by Staff as required by the Ontario Superior Court.

[9] On April 20, 21, 22, 23 and 27, 2009 we heard evidence on the merits in this matter and on April 27, 2009 we also heard closing submissions from Staff. None of the Respondents was present or represented by legal counsel at the hearing.

[10] We also received written submissions from Staff on May 22, 2009. None of the Respondents provided any written submissions.

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

**C. The Respondents**

**i. The Individual Respondents**

**O'Brien**

[12] O'Brien is the sole director, President and CEO of Al-tar. O'Brien is not registered in any capacity with the Commission.

**Campbell**

[13] Campbell was employed by and/or acted as an agent for Al-tar, Alberta Energy and Drago, and acted as a salesperson for the shares of Al-tar and Alberta Energy. Campbell is not registered in any capacity with the Commission.

[14] Staff alleges that when acting as a salesperson, Campbell used the name Mark Brown ("Brown").

[15] During the period of time when Campbell was participating in the Al-tar, Alberta Energy and Drago operations, Campbell was also subject to a temporary cease trade order issued on April 13, 2006 (*Re Limelight* (2006), 29 O.S.C.B. 3362 (the "*Limelight Temporary Order*")). The *Limelight Temporary Order* was extended and in force against Campbell until the conclusion of that matter in 2008. This order was in force at the material time when the conduct in the present matter took place.

[16] Currently, Campbell is subject to a Commission order restricting his conduct in the Ontario capital markets. Specifically, on December 10, 2008, the Commission issued its Reasons and Decision on sanctions in the matter of *Re Limelight* (2008), 31 O.S.C.B. 12030 ("*Limelight Sanctions*"). Campbell was ordered, *inter alia*, to cease trading permanently, with the exception that he may trade for the account of his registered retirement savings plans (as defined in the *Tax Act*) in which he and/or his spouse have sole legal and beneficial ownership, subject to certain conditions.

**Da Silva**

[17] Da Silva was employed by and/or acted as an agent for Al-tar and acted as a salesperson for Al-tar shares. Da Silva is not registered in any capacity with the Commission.

[18] Staff alleges that when acting as a salesperson, Da Silva used the name Bill Daniels ("Daniels").

[19] Da Silva is also subject to a Commission order restricting his conduct in the Ontario capital markets. Specifically, on May 10, 2006, the Commission issued its Reasons and Decision on sanctions in the matter of *Re Allen* (2006), 29 O.S.C.B. 3944 ("*Allen Sanctions*"). Da Silva was ordered, *inter alia*, to cease trading for a period of seven years from the date of the order. This order was in force at the material time when the conduct in the present matter took place.

**Sylvester**

[20] Sylvester is the sole director of Alberta Energy and the sole director of Drago. Sylvester is not registered in any capacity with the Commission.

**ii. The Corporate Respondents**

**Al-tar**

[21] Al-tar is an Ontario corporation incorporated on April 21, 2006. Al-tar is not registered in any capacity with the Commission.

**Alberta Energy**

[22] Alberta Energy is an Ontario corporation incorporated on November 7, 2006. Alberta Energy is not registered in any capacity with the Commission.

**Drago**

[23] Drago is an Ontario corporation incorporated on May 17, 2007. Drago is not registered in any capacity with the Commission.

## D. The Allegations

[24] Staff alleges that:

- (a) the Respondents traded in securities of Al-tar, Alberta Energy and/or Drago without being registered to trade in securities and in circumstances where no exemptions were available to them contrary to subsection 25(1)(a) of the Act and contrary to the public interest;
- (b) Da Silva's trading in shares of Al-tar was a breach of the cease trade order issued by the Commission against him on May 10, 2006;
- (c) Campbell's trading in shares of Al-tar, Alberta Energy and Drago was a breach of the cease trade order issued by the Commission against him on April 13, 2006, which was extended by the Commission and remained in force until December 2008 at which time a permanent cease trade order was issued against Campbell;
- (d) the Respondents made:
  - (i) undertakings to potential investors regarding the future value or price of Al-tar, Alberta Energy and Drago shares; and
  - (ii) representations to potential investors regarding Al-tar, Alberta Energy and Drago shares being listed on a stock exchange,with the intention of effecting trades in those securities contrary to subsections 38(2) and (3) of the Act and contrary to the public interest;
- (e) the Respondents distributed securities of Al-tar, Alberta Energy, and Drago when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued by the director to qualify the sale of any Al-tar, Alberta Energy, or Drago securities contrary to subsection 53(1) of the Act and contrary to the public interest;
- (f) the Respondents have, directly or indirectly, engaged or participated in acts, practices or a course of conduct relating to the securities of Al-tar, Alberta Energy and/or Drago that they knew or reasonably ought to have known would perpetrate a fraud on potential investors in Ontario and in other jurisdictions contrary to section 126.1 of the Act and contrary to the public interest. Staff further alleges that the Respondents' conduct of actively misleading, obfuscating and deceiving Staff is an attack on the Commission itself, its process and ability to regulate the capital markets. According to Staff, this confirms the fraudulent conduct that the Respondents engaged in and quashes any legitimacy in the conduct of the Respondents' operations;
- (g) O'Brien, as the sole director of Al-tar, authorized permitted or acquiesced in conduct that constitutes violations of sections 25, 38, 53 and 126.1 of the Act, as set out above, by Al-tar and its representatives and accordingly, failed to comply with Ontario securities law pursuant to section 129.2 of the Act; and
- (h) Sylvester, as the sole director of Alberta Energy and Drago, authorized, permitted or acquiesced in conduct that constitutes violations of sections 25, 38, 53 and 126.1 of the Act, as set out above, by Alberta Energy, Drago and their representatives, and accordingly failed to comply with Ontario securities law pursuant to section 129.2 of the Act.

## 2. PRELIMINARY ISSUES

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

[25] As stated above, none of the Respondents was 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.

[26] Staff provided us with four Affidavits of Service, dated April 20, 2009, to establish that all the Respondents were provided with notice of the merits hearing. In addition, Staff's investigator, Wayne Vanderlaan ("Vanderlaan") testified as to how each of the Respondents was served.

[27] Staff took all reasonable steps to provide the Respondents with a package of documents including: a letter from Staff informing the Respondents of the merits hearing date set during a pre-hearing conference, the Notice of Hearing, the Statement of Allegations, a certified copy of the confidential pre-hearing order of the Commission setting the merits hearing date, as well as cease trade orders that were initially issued by the Commission in 2007 and then continued through 2008.

[28] In addition, we were provided with two Affidavits of Service dated April 1, 2009 from process servers which demonstrate that O'Brien and Da Silva were personally served, and we were provided with two Affidavits of Attempted Service dated April 1, 2009, that the process servers attempted to serve both Campbell and Sylvester at their last known address.

[29] The affidavits and testimony of Vanderlaan establish that:

- (a) Campbell was served personally by Staff with notice of the merits hearing;
- (b) Staff provided notice of the merits hearing to Da Silva by leaving the package of documents with Da Silva's father, who lives at the same residence as Da Silva, who indicated to Staff that he would provide the package of documents to Da Silva. In addition, Da Silva was personally served by the process server;
- (c) Sylvester was served personally by Staff with notice of the merits hearing;
- (d) O'Brien was served personally by Staff with notice of the merits hearing;
- (e) Al-tar was provided notice of the merits hearing by personally serving O'Brien who is the sole director of Al-tar; and
- (f) Alberta Energy and Drago were provided notice of the merits hearing by personally serving Sylvester who is the sole director of both Alberta Energy and Drago.

[30] In addition, we note that leading up to the hearing on the merits, the Respondents were uncooperative with Staff. They were reluctant to attend, refused to attend or rescheduled examinations on several occasions with Staff, and they did not attend many previous appearances in this matter.

[31] In the circumstances, we are satisfied that Staff took all reasonable steps available to provide adequate notice of this proceeding to all of 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**

[32] The standard of proof applicable in Commission proceedings is proof on a balance of probabilities. Staff referred us to *F.H. v. McDougall*, [2008] 3 S.C.R. 41, a recent Supreme Court of Canada decision, which 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.

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

... evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.

[34] The standard of proof in administrative proceedings is the civil standard of a balance of probabilities. In this matter, Staff makes serious allegations against the Respondents. Accordingly, we must be satisfied that there is sufficient clear, convincing and cogent evidence to support our findings. We are satisfied that the events described in these reasons are more likely than not to have occurred.

## **C. The Use of Hearsay**

[35] Since none of the Respondents appeared at the hearing, some of the evidence relating to statements made by the Respondents was hearsay. Specifically, Staff relied on evidence from Staff investigators and testimony that some of the Respondents gave during compelled interviews with Staff.



[36] Subsection 15(1) of the SPPA states:

Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

(a) any oral testimony; and

(b) any document or other thing,

relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[37] In *The Law of Evidence in Canada*, it is stated that:

In proceedings before most administrative tribunals and labour arbitration boards, hearsay evidence is freely admissible and its weight is a matter for the tribunal or board to decide, unless its receipt would amount to a clear denial of natural justice. So long as such hearsay evidence is relevant it can serve as the basis for the decision, whether or not it is supported by other evidence which would be admissible in a court of law.

(John Sopinka, Sidney N. Lederman & Alan W. Bryant, *The Law of Evidence in Canada*, 2d ed. (Markham, Ont.: LexisNexis Butterworths, 1999) at p. 308)

[38] Although hearsay evidence is admissible under the SPPA, the weight to be accorded to such evidence must be determined by the panel. Care must be taken to avoid placing undue reliance on uncorroborated evidence that lacks sufficient indicia of reliability (*Starson v. Swayze*, [2003] 1 S.C.R. 722 at para. 115). In the circumstances, we admitted the hearsay evidence tendered by Staff, subject to our consideration of the weight to be given to that evidence.

[39] With respect to the compelled testimony of the Individual Respondents (O'Brien, Da Silva, Campbell and Sylvester) we note that it was given under oath during the investigation of this specific matter pursuant to section 13 of the Act for the purposes of use in this specific proceeding. We also note that counsel for some of the Respondents was present at some of the examinations during Staff's investigation (specifically, Da Silva and O'Brien had counsel present). In addition, we had in evidence the compelled testimony of an individual, Robert Gomes ("Gomes"), who created the Al-tar website on Campbell and Da Silva's instructions and the Alberta Energy website on Campbell's instructions. Gomes was not a respondent or witness in this matter, but we note that this individual also had counsel present during his compelled interview.

[40] Staff is entitled to use the information and materials of its investigation (i.e. compelled testimony gathered pursuant to sections 11 and 13 of the Act) in this merits hearing which is directly related to the investigation.

[41] Compelled testimony in a merits hearing is helpful in situations where respondents have been uncooperative and have obstructed the investigation and hearing. This is the case in the present matter. During the examinations, the Respondents misled Staff, denied knowledge of many events and tried to avoid and delay this hearing on the merits.

[42] Further, none of the Respondents appeared before us, were represented or were present to object to the use of the hearsay or compelled testimony, to cross-examine on it or to introduce contradictory evidence of their own. As a result, the Respondents have waived their rights to do so. As stated in *Violette v. New Brunswick Dental Society*, [2004] 267 N.B.R. (2d) 205 (C.A.) at para. 80:

In conclusion, I am of the view that the appellant's informed decision not to participate in the hearing before the Discipline Committee constitutes abandonment, leading to waiver of possible breaches of the rules of procedural fairness. This conclusion is hardly surprising. He who seeks fairness must act fairly by raising timely objections. This necessarily requires the affected party's participation.

[43] There was documentary evidence introduced by Staff that corroborated or was consistent with the hearsay evidence given by the Staff investigators. This documentary evidence included copies of emails and faxes from certain of the Respondents referring to conversations with investors and copies of legal documents referring to transactions purportedly discussed between certain of the Respondents and investors.

[44] We find that, taken as a whole, the totality of the evidence is corroborative and consistent.

**D. Jurisdiction: A Significant Nexus Between the Investment Scheme and Ontario**

[45] The majority of the investors involved in this matter resided outside of Ontario. However, we find that the Commission has jurisdiction in this matter as the investment scheme as a whole had a significant nexus to Ontario.

[46] The Supreme Court of Canada addressed this issue in *Gregory & Company Inc. v. Quebec (Securities Commission)*, [1961] S.C.R. 584 (“*Gregory*”). In *Gregory*, the corporate respondent argued that it was not subject to the jurisdiction of the Quebec Securities Commission. Although the respondent had its head office in Montreal, mailed promotional materials and telephoned investors from Montreal, and directed investors to mail payment cheques to Montreal, where it maintained its bank account, the investors resided outside Quebec. The Supreme Court of Canada concluded that the respondent did carry on the business of trading in securities and acting as investment counsel in Quebec:

The fact that the securities traded by [the] appellant would be for the account of customers outside of the province or that its weekly bulletins would be mailed to clients outside of the province, does not, as decided in the Courts below, support the submission that [the] appellant was not trading in securities or acting as investment counsel, in the province, within the meaning and for the purposes of the Act Respecting Securities.

The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by persons therein carrying on such a business.

...

(*Gregory, supra* at p. 3 (QL version))

[47] The Commission has applied this principle set out in *Gregory* and has found in other cases that respondents have acted in furtherance of trades even though there was no evidence that the trades involved investors in Ontario.

[48] For example, in *Re Lett* (2004), 27 O.S.C.B. 3215, the Commission found that the respondents had acted in furtherance of trades and that those acts occurred in Ontario, although there was no evidence that the trades involved investors in Ontario:

The Respondents were all based in the Toronto area, had bank accounts in the Toronto area, carried on business in the Toronto area. Most, if not all, of the documents referred to in the Agreed Statement of Facts and in the six volumes of documents composing the Joint Hearing Brief consist of documents that were either sent by the Respondents from the Toronto area or addressed to them in the Toronto area.

(*Re Lett, supra* at para. 66)

[49] In addition, in *Re Allen* (2005), 28 O.S.C.B. 8541 (“*Allen Merits*”) the Commission dealt with the issue in the following way:

In this case, sales of securities of Andromeda were made by the Respondents to investors in Ontario and in Alberta. A substantial portion of the activities surrounding the sales of these securities by the Respondents took place in Ontario. The issuer is located in Welland, Ontario. The Respondent’s offices and operations were based in Toronto, Ontario. The promotional materials were mailed from Toronto. The phone calls made by the Respondents were made from their Toronto offices and cheques in payment for the purchase of Andromeda securities were also sent to this location.

The Commission has jurisdiction over a trade in securities, notwithstanding that the purchaser is in a different province, provided that some substantial aspect of the transaction occurred within Ontario. In *Gregory & Co. Inc. v. Quebec Securities Commission*, [1961] S.C.R. 584, at para. 10, the Supreme Court of Canada concluded that the fact that the offices and operations of the vendor were in Montreal was sufficient to give the Quebec Securities Commission jurisdiction over sales to extra-provincial purchasers.

(*Allen Merits, supra* at paras. 20 and 21)

[50] Staff also referred us to *R. v. Libman*, [1985] 2 S.C.R. 178 (“*Libman*”). In this case, the Supreme Court of Canada held that the accused could be charged with fraud and conspiracy to commit fraud under the *Criminal Code*, R.S.C. 1985, c. C-46, as

amended, though some elements of the offences occurred outside Canada. Libman and his employees allegedly telephoned U.S. residents and attempted to sell them shares in two Costa Rican gold mining companies. Promotional materials were mailed out from Costa Rica or Panama, investors were told to send their money to offices in Costa Rica or Panama, and Libman met with associates in Costa Rica and Panama to receive his share of the proceeds. However, the “boiler room” was located in Toronto and some of the proceeds were wired back to Toronto.

[51] The Supreme Court in *Libman* also noted that an offence can occur in more than one place:

Although offences are local, the nature of some offences is such that they can properly be described as occurring in more than one place. This is peculiarly the case where a transaction is carried on by mail from one territorial jurisdiction to another, or indeed by telephone from one such jurisdiction to another. This has been recognized by the common law for centuries.

(*Libman, supra* at para. 53 citing *R. v. W. McKenzie Securities Ltd. et al* (1966), 56 D.L.R. 56 at para. 22)

[52] We conclude that the conduct of the Respondents has significant and substantial connections to Ontario. In coming to this conclusion, we considered the following factors: (i) the issuers and offices were located in Ontario; (ii) promotional materials and telephone calls originated in Toronto; (iii) cheques as payments for investments were sent to Toronto; and (iv) bank accounts for the corporate respondents were located in Toronto. Therefore, we find that the Commission has jurisdiction over the conduct of the Respondents in the present matter.

### 3. ISSUES

[53] This matter raises the following issues for our consideration:

- (a) Did the Respondents trade in securities in breach of subsection 25(1)(a) of the Act?
- (b) Did Da Silva and Campbell engage in trades or acts in furtherance of trades that breached the Commission’s cease trade orders dated April 13, 2006 and May 10, 2006?
- (c) Did the Respondents engage in a distribution without a prospectus in breach of subsection 53(1) of the Act?
- (d) Were any registration or prospectus exemptions available to the Respondents?
- (e) Did the Respondents breach subsection 38(2) of the Act by making prohibited undertakings regarding the future value or price of securities?
- (f) Did the Respondents breach subsection 38(3) of the Act by making prohibited representations regarding the future listing of securities on a stock exchange?
- (g) Did the Respondents, directly or indirectly, engage or participate in acts, practices or a course of conduct relating to securities of Al-tar, Alberta Energy and/or Drago that they knew or reasonably ought to have known would perpetrate a fraud in breach of section 126.1 of the Act?
- (h) Was O’Brien responsible for the breaches of Al-tar and was Sylvester responsible for the breaches Alberta Energy and Drago, pursuant to section 129.2 of the Act?
- (i) Was the Respondents’ conduct contrary to the public interest and harmful to the integrity of the Ontario capital markets?

### 4. EVIDENCE

#### A. Evidence Presented

[54] Staff submitted to us documentary evidence, a total of 33 exhibits, and called 12 witnesses:

- two Staff investigators: Scott Boyle (“Boyle”) and Vanderlaan;
- the manager of Apple Self Storage (the “Apple Self Storage Manager”);
- five Al-tar investors: Investor 1, Investor 2, Investor 3, Investor 4, and Investor 5;

- two Alberta Energy investors: Investor 6 and Investor 7; and
- two Drago investors: Investor 8 and Investor 9.

[55] In order to protect the privacy of the Apple Self Storage Manager and the investor witnesses we have anonymized their names and personal information. In addition, to protect the personal information of the Apple Self Storage Manager and the investor witnesses in this matter, we have required that Staff provide a redacted version of the record.

## **B. Summary of Findings**

### **i. The Investment Scheme**

[56] This matter deals with an investment scheme that involved three companies, Al-tar, Alberta Energy and Drago, and four individual respondents O'Brien, Campbell, Da Silva and Sylvester, none of which was registered in any capacity with the Commission.

[57] Staff described the investment scheme at issue to be of a "rolling and temporary" nature. This is a characteristic trait of boiler room type operations. The success of a boiler room to defraud investors is contingent upon a process that typically involves individuals creating companies which purport to be engaged in legitimate businesses. They create schemes that use the current economic/market climate to appeal to investor sentiments. For example, in this case the Respondents created companies purported to be involved in the oil/energy extraction and gold mining industries.

[58] The "rolling and temporary" nature of the scheme typically involves a process comprised of a series of steps: naming and registering a company in a "hot" industry, creating a website to promote the company and its securities, acquiring lists of potential investors, developing a scheme/sales pitch for securities, and creating infrastructure to support the company (i.e. mailboxes, phone lines, virtual offices, couriers, bank accounts ... etc.). The sales pitch used uses high pressure sales tactics and promises high returns, an increased future value and listing on a stock exchange. Press releases containing false and/or misleading information are also issued on an ongoing basis to give progress updates on the company and to create legitimacy to the scheme and entice potential investors to invest or current investors to invest more.

[59] Once the scheme is in place, then comes the receipt and immediate transfer of funds from investors to various accounts controlled by the Respondents or related individuals and entities. At this point, the scheme is abandoned and a new scheme is already up and running with a new company formed (which has a website and support infrastructure...etc.) which solicits investors and involves many of the same players who created the first investment scheme. In addition, we note that names of some investors were obtained from investor lists of other companies such as Limelight and First Global, which were companies that have been subject to Commission proceedings and found to have breached the Act (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 ("*Limelight Merits*") and *Re First Global Ventures, S.A.* (2007), 20 O.S.C.B. 10473 ("*First Global*"). For example, Investor 1, Investor 5 and Investor 8 were all solicited by Limelight prior to being solicited by certain of the Corporate Respondents in this matter, and Investor 2 had invested in First Global prior to being contacted about Al-tar.

[60] Specifically in this case, we were provided evidence that Al-tar was incorporated in Ontario on April 21, 2006. O'Brien was the sole director. The Al-tar website was accessible to the public as of May 3, 2006. Bank accounts were opened on May 8, 2006 (subsequently closed on November 14, 2006), and August 28, 2006 (subsequently closed on April 30, 2007). Mail boxes, phone services and courier accounts, were set up around June 2006. There was an office set up with furniture, computers, telephone lines and staffed with employees. Al-tar's office was located at 981 Coxwell Avenue in Toronto. However, Al-tar's website and promotional materials listed its address as 530 Adelaide Street West, Suite 6131 in Toronto, which was a mail box, and its corporate profile listed its address at 1047A Gerrard Street East in Toronto. Over the six month period from June to December 2006, at least seven press releases were issued by Al-tar.

[61] Meanwhile, a similar set up of operations, characterized by the "rolling and temporary nature" were established for Alberta Energy (company created on November 7, 2006) and Drago (company created on May 17, 2007).

[62] During the course of soliciting the public to purchase shares in Al-tar, Alberta Energy and Drago, representatives from all three of these companies made statements to the public that the shares in the companies would be going public and that the share price would rise dramatically. Potential investors were referred to the websites of Al-tar, Alberta Energy and Drago, and these websites provided information (such as press releases and other promotional material) that contained fraudulent and/or misleading statements.

[63] We conclude that the investment scheme was comprised of ongoing misconduct by the Respondents. It was a continuous scheme that took place over an 18 month period from spring of 2006 until fall of 2007. This was not a series of separate acts; the operations of the three Corporate Respondents were related and rolled into one another.

**ii. The Role of Aliases Used by the Individual Respondents in the Investment Scheme**

[64] The execution of the investment scheme described above was facilitated by the use of aliases by some of the Individual Respondents when communicating with investors and/or potential investors.

[65] Staff submit that they were aware that sales persons for the Corporate Respondents were using the aliases Bill Jakes (“Jakes”), Brown, Daniels, John Andrews (“Andrews”) and Pat Jones (“Jones”). Specifically, Staff took the position that Brown was an alias for Campbell and Daniels was an alias for Da Silva.

[66] With respect to Campbell, we find that there was sufficient evidence presented to us at the hearing to establish that Campbell used the alias Brown. The alias Brown was used in dealings with both Al-tar and Alberta Energy. The testimony of the Apple Self Storage Manager confirmed that Campbell assumed the name Brown. Apple Self Storage provided self storage and mailbox rental services, and Al-tar was a client of this company. During the investigation in September 2007, Vanderlaan and Boyle showed the Apple Self Storage Manager 12 photographs, one of which was Campbell and the remaining photographs were unrelated individuals. When the Apple Self Storage Manager viewed the photographs, he immediately identified the picture of Campbell as the individual he knew to be Brown, who picked up the Purolator packages for Al-tar. At the hearing, the Apple Self Storage Manager confirmed that he recognized Brown when answering questions from the Panel and the following is an excerpt of the relevant testimony:

Chair of the Panel:	... just one question. You did recognize Mr. Mark Brown.
Answer:	Um-hum.
Chair of the Panel:	You had no hesitation recognizing him from the twelve pictures that you were shown?
Answer:	No, I didn't have any hesitation about that. His size and his appearance whenever he came in to the site, you know, it's something you wouldn't forget. Not that he had any – he did anything strange in the site, but it's a face I could not forget.

(Transcript, April 20, 2009 at p. 186 lines 11 to 22)

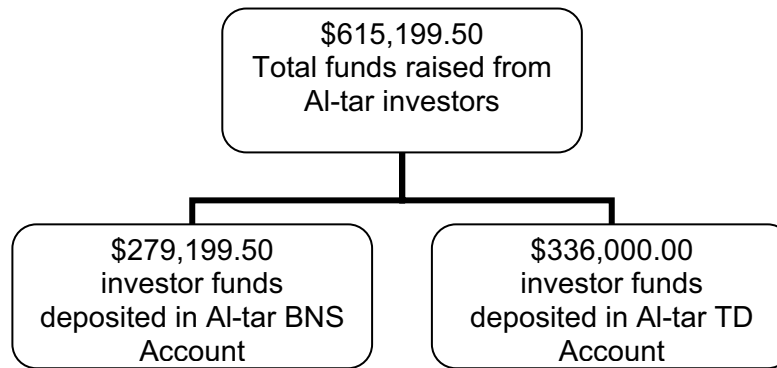
[67] We find that the Apple Self Storage Manager was able to confidently remember and recognize Brown when he was shown a photograph of Campbell. In our view, this confirms that Campbell was using the alias Brown when interacting with others in this matter.

[68] With respect to Da Silva, we find that there was sufficient evidence presented to us at the hearing to establish that Da Silva used the alias Daniels. Vanderlaan testified that several Al-tar investors only dealt with an individual from Al-tar named Daniels. He also provided in evidence phone records that demonstrate that the five Al-tar investors were contacted by phone land lines from two addresses, one of which was 51 Eastpark Blvd. Da Silva admitted in his compelled testimony that 51 Eastpark Blvd. was his home address where he had an office for his company Premium Resource in his basement and that he was the only person who used the office. Based on this evidence, we conclude that Da Silva was using the alias Daniels when phoning these Al-tar investors.

**iii. Funds Raised from Investors**

[69] The evidence shows that from April 2006 to early 2007, Al-tar sold shares to the public that were not previously issued. Shares of Al-tar were sold to at least 120 individual investors in Ontario and elsewhere across Canada. Specifically, Investor 1 invested twice in Al-tar: the first time for \$4,999.50 and the second time for \$2,667.00, Investor 2 invested \$15,000 in Al-tar, Investor 3 also invested twice in Al-tar: the first time for \$4,500 and the second time for \$6,000, Investor 4 also invested twice in Al-tar: the first time for \$2,250 and the second time for \$3,000, and Investor 5 invested \$6,000 in Al-tar.

[70] Al-tar investor funds were deposited in Al-tar's bank accounts at TD Canada Trust account (the “Al-tar TD Account”) and the Bank of Nova Scotia account (the “Al-tar BNS Account”). Specifically, \$279,199.50 from investors was deposited into the Al-tar BNS Account and \$336,000 from investors was deposited into the Al-tar TD Account, for a total of \$615,199.50.



[71] From November 2006 until April 2007, Alberta Energy shares were sold to two investors in the United Kingdom raising \$33,909.53. Specifically, Investor 6 invested \$11,316.50 and Investor 7 invested \$22,593.03. Funds were deposited in the Alberta Energy bank account at TD Canada Trust.

[72] From May 2007 until September 2007, Drago shares were sold to three investors in Canada raising \$9,000. Specifically, Investor 8 invested \$3,000, Investor 9 invested \$1,500 and a third Drago investor who we were provided evidence about but did not testify at the hearing invested \$4,500. Funds were deposited in the Drago bank account at TD Canada Trust.

[73] The evidence shows that during the material time, a total of \$658,109.03 was raised from investors from the sale of shares of the three Corporate Respondents.

[74] Investor funds were deposited into various bank accounts, and were immediately transferred out of these bank accounts in the span of a few days to other accounts controlled by some of the Respondents or related individuals and entities as discussed below. We note that when these transfers of funds were made, they were for amounts that were slightly over or below the individual investors' deposited amounts.

#### iv. Non-respondent Companies that were Linked to the Investment Scheme

[75] While not listed as respondents in this matter, a number of companies were mentioned in the evidence that were linked to the investment scheme. The control/ownership and role of these companies is relevant to understanding the investment scheme and the flow of investor funds. Specifically, these companies received investor funds (with the exception of OSG Capital) and the Individual Respondents are linked to some of these companies as follows:

- **Sterling Services AOS ("Sterling"):** O'Brien was the sole director of Sterling. This company was incorporated on November 24, 2006 and was located at 530 Adelaide St. W., suite 6131 in Toronto. We note that this company had the same address as Al-tar. Sterling received \$33,800 from the Al-tar bank accounts.
- **Canadian Oil Riggers Inc. ("Canadian Oil Riggers"):** Campbell was the sole director of Canadian Oil Riggers. This company was incorporated on July 12, 2006 and was located at 1576 Queen St. W., suite 57 in Toronto. Canadian Oil Riggers received \$174,320.93 from the Al-tar bank accounts, \$33,950 from Alberta Energy and \$8,925 from Drago. In total, Canadian Oil Riggers (controlled by Campbell) received \$217,195.93 from the whole investment scheme.
- **2108709:** Campbell was also listed as the sole director of 2108709. This company was incorporated on July 7, 2006 and was located at 1576 Queen St. W., suite 57 in Toronto (the same address as Canadian Oil Riggers). 2108709 received \$190,000 from Canadian Oil Riggers (of this amount, \$27,274.28 is frozen as a result of the Commission's freeze directions).
- **Zap:** Campbell was also the president of Zap and was listed as the shareholder and beneficial owner with 100% ownership. Sylvester was listed as Zap's secretary and treasurer. This company was incorporated on May 8, 2007 in Nevada and was located at 925 Rathburn Road East in Mississauga. Zap received \$57,000 of investor funds which flowed first to Canadian Oil Riggers, then to 2108709 and then subsequently to Zap (of this amount, \$7,259.49 is frozen as a result of the Commission's freeze directions). According to Vanderlaan's testimony, Zap had no source of capital other than investor funds. Zap used the funds it received to pay for expenses for the Zap Internet Café, which was run by Campbell and Sylvester.
- **Premium Resource Marketing ("Premium Resource"):** Da Silva was the sole director of Premium Resource. This company was incorporated on November 22, 2005 and was located at 51 East Park Blvd. in Toronto, which is Da Silva's home address. Between June 23, 2006 to November 30, 2006, Premium

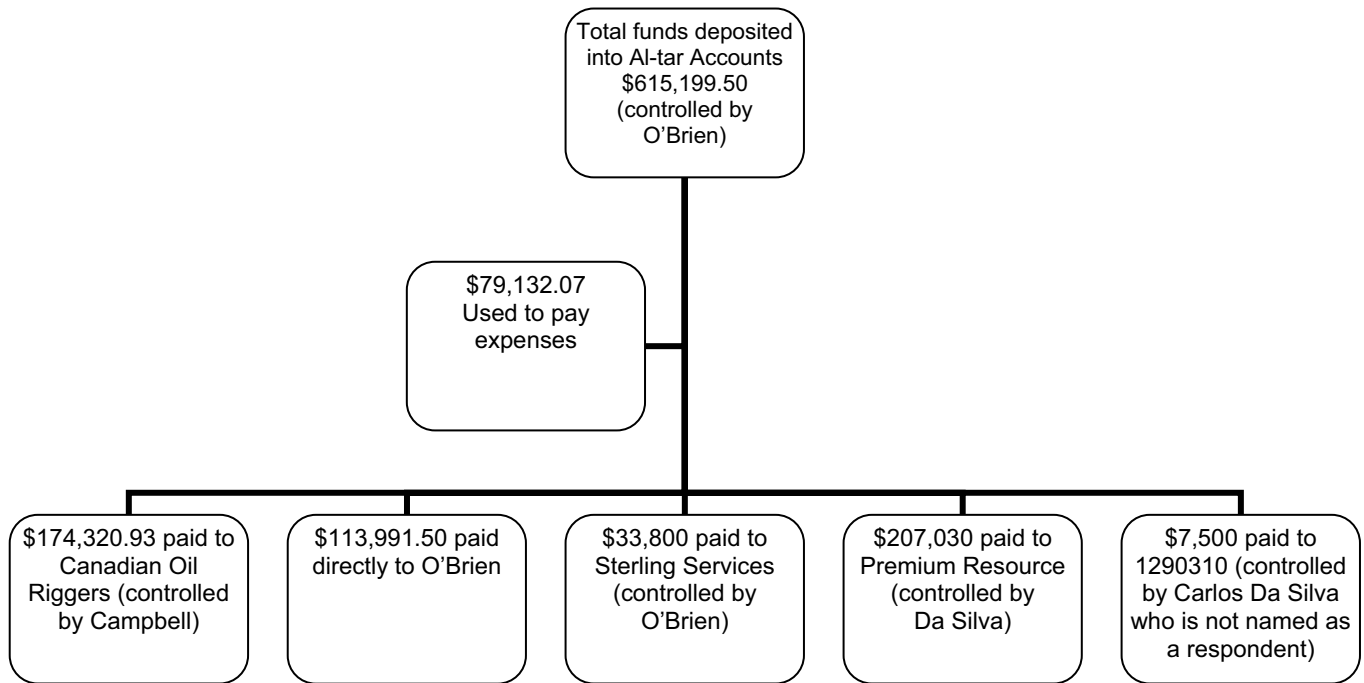
Resource received \$207,030 from the Al-tar bank accounts. According to Da Silva, the funds received were paid as a result of a marketing contract entered into between Al-tar and Premium Resource. We were not provided any evidence regarding this contract during the proceeding.

- **1290310 Ontario Ltd. (“1290310”)**: Carlos Da Silva (who is not a respondent in this matter) was the director of 1290310. This company was incorporated on April 15, 1998 and was located at 21 Flerimac Road in Pickering. 1290310 received \$7,500 from Al-tar. In addition, 1290310 received \$43,259 of investor funds which flowed first to Canadian Oil Riggers, then to 2108709 and then subsequently to 1290310. 1290310 also received a payment of \$9,998 directly from Canadian Oil Riggers.
- **1557581 Ontario Inc. (“1557581”)**: Carlos Da Silva was also a director of 1557581. This company was incorporated on January 16, 2003 and was located at 63 Invermarge Drive in Toronto. 1557581 received \$58,944 of investor funds which flowed first to Canadian Oil Riggers, then to 2108709 and then subsequently to 1557581.
- **OSG Capital Corp (Offshore Solutions Group) (“OSG Capital”)**: According to OSG Capital’s website, this company “has over ten years of investment industry Knowledge and is dedicated to providing unparalleled investment services and trade execution for their clients”. The website also lists OSG Capital’s contact address which is a mailbox in the British Virgin Islands, with a phone number in London, England. Staff also mentioned in their submissions that OSG Capital’s mailbox location was used by numerous other companies. We note that OSG Capital was not named as a respondent in this matter, however, it did promote Alberta Energy on its website. This company did not receive any funds from investors, however, it was involved with communicating with investors for Al-tar and Alberta Energy. We reviewed the evidence before us to determine who controlled OSG Capital. We find that:
  - OSG Capital’s website was created by Gomes and hosted on the same servers as Al-tar and Alberta Energy.
  - OSG Capital responded to emails that were sent to Alberta Energy.
  - OSG Capital was also listed on the letterhead of correspondence (such as correspondence providing share certificates) that was sent to some of those investors and/or on emails. The majority of the correspondence emanating from OSG Capital was signed by Brown, an alias used by Campbell. We also note that Brown was involved with Alberta Energy and Al-tar.
  - In addition, two letters to Investor 7 from OSG Capital were signed by Sylvester in his capacity as President of OSG Capital.

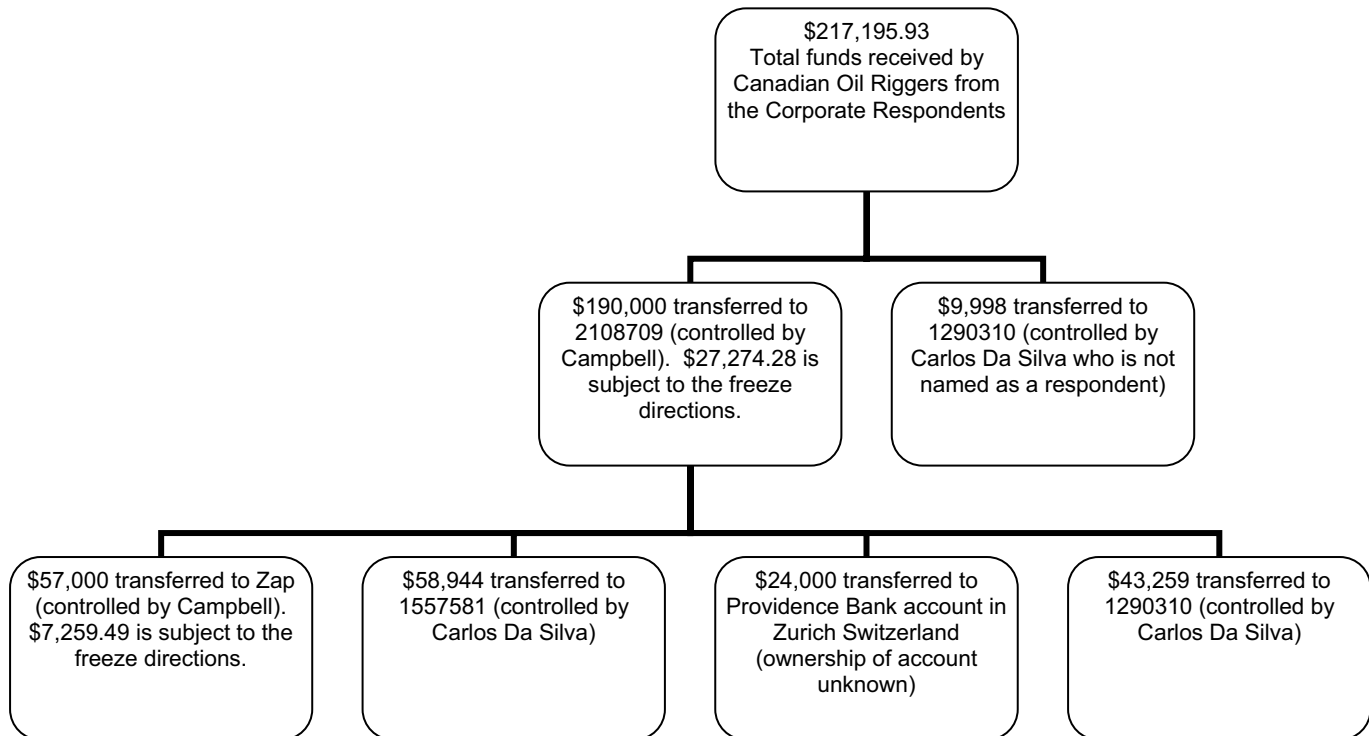
Based on all this information collected, we conclude that OSG Capital was linked to Campbell (using the alias Brown), Sylvester, Alberta Energy and Al-tar.

**v. Disbursements of Investors’ Funds**

[76] Total investor funds raised by Al-tar was \$615,199.50. The evidence presented to us shows that these funds were distributed to individuals and related entities as shown in the chart below:



[77] Most of the funds raised by Al-tar were transferred to Canadian Oil Riggers. Similarly, the majority of investor funds collected by Alberta Energy and Drago were also transferred to Canadian Oil Riggers. In total Canadian Oil Riggers received \$217,195.93. These funds were subsequently distributed to accounts controlled by some of the Respondents or related individuals and entities as shown in the chart on the next page:



[78] To summarize, the evidence shows that the majority of the total funds of \$658,109.03 raised from Al-tar, Alberta Energy and Drago investors was immediately distributed to individuals and other related entities as described below:

- Canadian Oil Riggers, controlled by Campbell, received in total \$217,195.93. Most of these funds were subsequently distributed out as follows:



- Carlos Da Silva and/or companies controlled by him who were not named as respondents received a total \$112,201 from Canadian Oil Riggers. We have no evidence as to what these payments were for.
- A deposit of \$24,000 was made to a Swiss bank account. We were not provided with any details regarding who controlled this account.
- Zap, which was controlled by Campbell, received \$57,000.
- O'Brien received a total of \$147,791.50 directly and through Sterling.
- Da Silva received a total of \$207,030 through Premium Resource.

[79] Staff presented evidence to show that \$79,132.07 was used by Al-tar for corporate expenditures. These expenditures were for cash withdrawals, personal expenses (such as purchases at liquor and grocery stores in Ontario and New Brunswick), and expenditures relating to the investments scheme (such as payments for the courier, lease and telephone bills). The evidence did not show any legitimate expenses relating to any of Al-tar's purported business activities in the oil, gas, exploration or mining industries.

## 5. ANALYSIS

### A. Did the Respondents Trade in Securities in Breach of subsection 25(1)(a) of the Act?

#### i. The Applicable Law

[80] 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;

...

#### **Registration**

[81] Registration requirements play a key role in Ontario securities law and form one of the cornerstones of the regulatory framework of the Act. 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 *Limelight Merits*, *supra* 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.

[82] Further, as stated in *Gregory*, *supra* at 588:

The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by persons therein carrying on such a business. For the attainment of this object, trading in securities is defined in s. 14 [now s. 1.1]; registration is provided for in s. 16 [now s. 25] as a requisite to trade in securities ...

#### **Trading**

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

[...]

(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

[84] 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, supra* 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. As explained in the case *Re Costello* (2003), 26 O.S.C.B. 1617 at para. 47:

There is no bright line separating acts, solicitations and conduct indirectly in furtherance of a trade from acts, solicitations and conduct not in furtherance of a trade. Whether a particular act is in furtherance of an actual trade is a question of fact that must be answered in the circumstances of each case. A useful guide is whether the activity in question had a sufficiently proximate connection to an actual trade.

[85] The case law has established that the following conduct has been found to have been an act in furtherance of a trade:

- acceptance of investors funds from investors (*Re Lett, supra* at para. 49);
- depositing investor cheques for the purchase of shares in a bank account (*Limelight Merits, 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);
- issuing and signing share certificates and instructing solicitors in connection with the issuance and exchange of shares (*Del Bianco v. Alberta (Securities Commission)*, [2004] A.J. No. 122 (C.A.) at para. 9); or
- setting up websites intended to “excite the reader” about the company’s prospects, soliciting potential investors by utilizing the content of the website, and/or using numerous misleading statements, which investors relied on when making their investments. The Commission has found that persons who provide the content and maintain websites that have a “proximate connection” to a trade have engaged in acts in furtherance of a trade (see: *Re First Federal Capital (Canada) Corp.* (2004), 27 O.S.C.B. 1603 and *Re American Technology Exploration Corp.* (1998), L.N.B.C.S.C. 1).

[86] It is also important to note that solicitation or direct contact with investors is not required for an act to constitute an act in furtherance of a trade (*Allen Merits, supra* at para. 85).

[87] 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.

## ii. Analysis

[88] The following are our findings regarding breaches of subsection 25(1)(a) of the Act based on the evidence presented at the hearing.

### **Registration**

[89] We find that none of the Respondents in this matter was ever registered with the Commission in any capacity, and as discussed later on, no registration exemptions were available to the Respondents as none of the investors was an accredited investor.

### **Trading and Acts in Furtherance of Trades**

#### **O’Brien**

[90] We find that O’Brien’s conduct in connection with Al-tar breached subsection 25(1)(a) of the Act.

[91] With respect to Al-tar, O'Brien who was its sole director, engaged in the following conduct:

- He opened the Al-tar bank accounts. Specifically, O'Brien opened the Al-tar BNS Account on May 8, 2006 and was listed as the sole owner and signatory. The Al-tar BNS Account was closed on November 14, 2006. He also opened the Al-tar TD Account on August 28, 2006 and was listed as the sole owner, President and sole signatory on the account. This account was closed on April 30, 2007.
- He admitted in his compelled testimony that he was the only individual that deposited investor cheques into the Al-tar bank accounts.
- He opened the Al-tar mailbox account at Apple Self Storage on June 6, 2006. We note that this was the address listed on Al-tar's website. O'Brien was also authorized to pick up packages for Al-tar from Apple Self Storage. Al-tar's mailbox account was closed on May 25, 2007.
- He opened the Al-tar Purolator courier account in June 2006 and invoices for this account were paid for by cheques signed by him from Al-tar bank accounts.
- He rented an apartment at 981 Coxwell Ave. in September or October 2006, and the office furniture and computers were moved into this apartment. Records provided in evidence show that there were nine phone lines for this address and 46 calls were made to 19 Al-tar investors from this address.
- He contracted for phone and answering services from AnswerPlus Inc. for two telephone numbers, 416-201-5250 and 1-888-568-6669. The 1-888-568-6669 toll free number appeared on the Al-tar website and the 416-201-5250 number appeared on correspondence sent to investors as a contact number.
- Investors received correspondence, share certificates, emails, an Executive Summary, and press releases that were signed or sent by O'Brien in his capacity as President and CEO of Al-tar. This was admitted in O'Brien's compelled testimony: he signed (in his capacity as President and CEO of Al-tar) share certificates, correspondence welcoming investors as Al-tar shareholders, fax cover sheets and emails that were all sent to investors either prior to investing or after investing. However, with respect to correspondence, although he signed documents (such as share certificates and correspondence to investors), O'Brien explained in his compelled testimony that he did not create the actual documents. According to O'Brien, it was Campbell who created the documents and Campbell would bring the documents to O'Brien on about a weekly basis to be signed. O'Brien's signature was also on the Al-tar Executive Summary document that was sent to Al-tar investors.
- Phone records show that O'Brien personally called Al-tar investors from his cell phone. Staff's investigator Vanderlaan testified that on O'Brien's cell phone bill he found a number of long distance calls to Al-tar investors and that Staff phoned these investors and verified that they were in fact contacted by O'Brien.
- O'Brien spoke to a number of investors regarding Al-tar's prospects. For example, Vanderlaan testified that two investors from Manitoba were contacted by O'Brien, and O'Brien reassured them on the phone that Al-tar would be going public once the price of oil goes back up.
- He wrote cheques from the Al-tar bank accounts to pay himself, Canadian Oil Riggers, Sterling, Premium Resource and 1290310. He also completed point-of-sale transactions and obtained cash withdrawals from the Al-tar bank accounts. We note that O'Brien was the sole director of Sterling and Sterling received the sum of \$33,800 from the Al-tar TD account.
- He received \$147,791.50 of Al-tar's investor funds (\$113,991.50 directly from the Al-tar bank accounts and \$33,800 that was paid to Sterling).

[92] To summarize, from the conduct listed above, it is evident that O'Brien was Al-Tar's sole owner, President and CEO, he established and set up the Al-tar office and O'Brien arranged the payments for Al-tar's office services. He was responsible for setting up the infrastructure for Al-tar, including, opening bank accounts, mailboxes, phone lines, renting the apartment ... etc.

[93] O'Brien contacted and communicated with investors regarding Al-tar's business and securities. He also signed correspondence and share certificates that were sent to investors.

[94] O'Brien was also involved with the transfer of investor funds. He received funds from Al-tar investors and deposited them into the Al-tar bank accounts. He then subsequently transferred Al-tar investor funds to himself, Canadian Oil Riggers, Sterling, Premium Resource and 1290310.

[95] We conclude that O'Brien engaged in trades and acts in furtherance of trades in Al-tar securities in Ontario within the meaning of the Act. O'Brien was not registered in any capacity with the Commission. He violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to him (the availability of exemptions is further discussed starting at paragraph 143).

**Campbell**

[96] We find that Campbell's conduct in connection with Al-tar, Alberta Energy and Drago breached subsection 25(1)(a) of the Act.

[97] With respect to Al-tar, Campbell engaged in the following conduct:

- Campbell played an integral role in setting up Al-tar's website: [www.altarenergycorp.com](http://www.altarenergycorp.com). This website was available to the public commencing on May 3, 2006, and it solicited investment in Al-tar, which purported to generate and develop continuous growth for both the company and its shareholders. Gomes, in his compelled testimony, explained that he created the Al-tar website at the instruction of Campbell who provided him with details for the content of the Al-tar website. Gomes also mentioned that Campbell paid him for the development of the Al-tar website in cash, however, he could not recall the exact amount of the payment.
- Campbell also solicited Al-tar investors using the alias Brown (as discussed at paragraphs 66 and 67). Vanderlaan testified that at least eight Al-tar investors spoke to an individual named Brown (which was an alias used by Campbell). Staff also tendered into evidence five investor questionnaires (relating to Al-tar investors who did not testify at the hearing). During the course of the investigation these five Al-tar investors answered a series of questions about Al-tar in the questionnaires. The investor questionnaires show that these five Al-tar investors spoke to Brown prior to investing in Al-tar. These five Al-tar investors invested the following amounts in Al-tar between June and August 2006: \$1,500, \$5,000, \$3,000, \$1,500 and \$1,500.
- Campbell, using the alias Brown, also picked up investor packages, including investor cheques from Apple Self Storage. This was confirmed by the testimony of the Apple Self Storage Manager who identified a picture of Campbell as the individual he knew to be Brown, who picked up the Purolator packages for Al-tar.
- Campbell's company Canadian Oil Riggers also received \$174,320.93 in its bank account from Al-tar. As seen from the flow of funds chart in paragraphs 76 and 77 these funds were Al-tar investor funds that flowed to Canadian Oil Riggers. Subsequently funds from Canadian Oil Riggers were also transferred to 2108709 (another company controlled by Campbell).

[98] In his compelled testimony, Campbell states that his involvement with Al-tar was limited to consulting for Al-tar, although he did not know exactly what Al-tar was actually doing, never produced his consulting contract and was unable to recall what his consulting contract with Al-tar required him to do.

[99] We also note that in his compelled testimony, Campbell explained he was paid a fee for providing names of potential investors to O'Brien. Campbell also admitted that some of the names of investors he provided were Limelight investors.

[100] We conclude that Campbell engaged in trades and acts in furtherance of trades in Al-tar securities in Ontario within the meaning of the Act. Campbell was not registered in any capacity with the Commission. He violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to him (the availability of exemptions is further discussed starting at paragraph 143).

[101] With respect to Alberta Energy, Campbell engaged in the following conduct:

- Along with Sylvester, Campbell was involved with Alberta Energy's banking arrangements. Specifically, Campbell attended when the Alberta Energy TD account was opened, he received the bank card, PIN and signed blank cheques from Sylvester.
- Campbell was involved with providing some of the content for the Alberta Energy website ([www.albertaenergycorp.com](http://www.albertaenergycorp.com)). Specifically, Campbell provided a list of contact names to be used for the Alberta Energy website. The rest of the content of the Alberta Energy website was copied from the Al-tar website. Carlos Da Silva provided Gomes instructions to copy text from the Al-tar website and to use it on the Alberta Energy website, and Campbell was present during some of these discussions. In his compelled testimony, Gomes clarified that all of the content on the Alberta Energy website was copied from the Al-tar website and Campbell provided the list of contacts for the website.

- Campbell rented the mailbox for Alberta Energy at the Money Mart located at 1576 Queen Street West. This is the address which is listed on the Alberta Energy website. In his compelled testimony, Campbell admitted that he was the only person who had access to the Alberta Energy mailbox.
- While using the alias Brown, Campbell solicited investors residing in the United Kingdom. At the hearing, Investor 6 and Investor 7 testified that they spoke to Brown on the phone, who solicited them to purchase Alberta Energy shares. After these discussions with Brown, Investor 7 purchased 13,000 shares of Alberta Energy for US\$19,500 (Canadian conversion was \$22,593.03) and Investor 6 purchased 6,550 Alberta Energy shares for £5000 (Canadian conversion was \$11,316.50). In addition, both of these investors received emails that were from Brown confirming their investment in Alberta Energy and that share certificates would be sent to them.
- Campbell, using the alias Brown, also sent correspondence from OSG Capital to Alberta Energy investors providing wire transfer instructions, confirming their investments, and explaining that share certificates would be sent out.
- Canadian Oil Riggers, which was controlled by Campbell, received a total of \$33,950.53. The evidence before us shows that \$33,909.53 was from Alberta Energy investors. Vanderlaan provided evidence to show that one day after Investor 7's funds were wired to Alberta Energy's TD account, a wire transfer in approximately the same amount was made to the Canadian Oil Riggers account. Similarly, two days after Investor 6's funds were wired to Alberta Energy's TD account, a wire transfer in approximately the same amount was made to the Canadian Oil Riggers account. We note that Campbell is the sole signatory on the Canadian Oil Riggers account.

[102] We conclude that Campbell engaged in trades and acts in furtherance of trades in Alberta Energy securities in Ontario within the meaning of the Act. Campbell was not registered in any capacity with the Commission. He violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to him (the availability of exemptions is further discussed starting at paragraph 143).

[103] With respect to Drago, Campbell admitted in his compelled testimony that he engaged in the following conduct:

- Campbell stated that he set up Drago, as a service for Sylvester and that he was paid for this service.
- Campbell played a role in looking for office space and phone services for Drago. Specifically, Campbell contracted for services for Drago from the Telsec Business Centre, a virtual office, located at 1 Yonge Street in Toronto, which provided phone, fax, answering services and mail collection.
- Campbell attended the Telsec Business Centre to pick up Drago investor cheques that were sent there.
- Campbell attended with Sylvester when the Drago TD account was opened and Sylvester gave Campbell the bank card, PIN along with signed blank cheques. Therefore, Campbell had access to the Drago TD account, which investor funds were deposited into.
- In addition to being paid for his services for setting up Drago, Campbell also explained that he was paid a fee of at least 10% if investors invested in Drago, however, he could not remember if he did receive money from Drago.
- Campbell admitted that he wrote a cheque from the Drago TD account to his company Canadian Oil Riggers for the amount of \$7,475. According to Campbell, this money was to pay him for the services he was providing to Drago. In total, Drago investor funds in the amount of \$8,925 were transferred from Drago to Campbell's Company Canadian Oil Riggers. The transfer of these investor funds to Canadian Oil Riggers was done in an almost identical method as in Alberta Energy, that is funds were transferred from Drago to Canadian Oil Riggers within a few days of the funds being received by Drago.

[104] We conclude that Campbell engaged in trades and acts in furtherance of trades in Drago securities in Ontario within the meaning of the Act. Campbell was not registered in any capacity with the Commission. He violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to him (the availability of exemptions is further discussed starting at paragraph 143).

**Da Silva**

[105] We find that, Da Silva's conduct in connection with Al-tar breached subsection 25(1)(a) of the Act.

[106] With respect to Al-tar, Da Silva engaged in the following conduct:

- Da Silva solicited Al-tar investors using the alias Daniels (as discussed at paragraph 68). Specifically, Investor 1 testified that in early 2006 he was contacted by Daniels to invest in a company called Limelight and then subsequently several months later he was called again to invest in Al-tar. After conversing on the phone with Daniels, Investor 1 invested \$4,999.50 in Al-tar. Investor 2 also testified that he was contacted by Daniels around September 2006, and he was advised that Al-tar was a new company looking for venture capital. Investor 2 invested \$15,000 in Al-tar.
- We were also provided with evidence of phone records showing that phone calls were made to investors from Da Silva's residence at 51 Eastpark Blvd. in Scarborough (where he operated his business Premium Resource in his basement). Specifically, five Al-tar investors were called from Da Silva's residence at 51 Eastpark Blvd.
- Da Silva's company, Premium Resource, received a total of \$207,030 directly from the Al-tar bank accounts. Da Silva admitted he received money from Al-tar from July 2006-2007, although he stated it was for his services as a marketing consultant. We do not accept that Da Silva provided marketing services. We find that he was paid to solicit investor funds and was part of the investment scheme.

[107] In our view, the conduct listed above demonstrates that Da Silva engaged in acts in furtherance of trades of Al-tar securities in Ontario. As established by the case law, soliciting investors is an act in furtherance of a trade and Da Silva (using the alias Daniels) solicited individuals over the phone from his home address and the evidence shows that individuals actually invested in Al-tar after having discussions with him. In addition, investor funds collected by Al-tar were paid out to Da Silva's company Premium Resource.

[108] We conclude that Da Silva engaged in trades and acts in furtherance of trades in Al-tar securities in Ontario within the meaning of the Act. Da Silva was not registered in any capacity with the Commission. He violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to him (the availability of exemptions is further discussed starting at paragraph 143).

#### **Sylvester**

[109] We find that Sylvester's conduct in connection with Alberta Energy and Drago breached subsection 25(1)(a) of the Act.

[110] With respect to Alberta Energy, Sylvester, who was the sole director and President, engaged in the following conduct:

- Sylvester opened the Alberta Energy TD account and was listed as the sole signatory on the account. Sylvester admitted in his compelled testimony that he opened the Alberta Energy TD account on November 14, 2006 and Campbell was with him at the time. Sylvester also gave blank cheques that he signed to Campbell and gave Campbell the bank card and PIN for the account, thus providing Campbell access to the account.
- Sylvester sent correspondence to Investor 7, which he signed in his capacity as President and CEO of OSG Capital. We note that Investor 7's OSG Capital investment statements state that Investor 7 invested in Alberta Energy shares. Therefore, Sylvester through OSG Capital received and managed Alberta Energy investor funds.

[111] We conclude that Sylvester engaged in trades and acts in furtherance of trades in Alberta Energy securities in Ontario within the meaning of the Act. Sylvester was not registered in any capacity with the Commission. He violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to him (the availability of exemptions is further discussed starting at paragraph 143).

[112] With respect to Drago, Sylvester, who was the sole director of Drago, engaged in the following conduct:

- Sylvester opened the Drago TD account in June 2007 and admitted in his compelled evidence that Campbell was with him at the time. Sylvester was also the sole signatory on the account. Sylvester also gave blank cheques that he signed to Campbell and gave Campbell the bank card and PIN for the account, thus providing Campbell access to the account.
- \$9,000 of funds from three Drago investors (\$3000 from Investor 8; \$1,500 from Investor 9; and \$4,500 from an investor who did not testify at the hearing) were deposited into the Drago TD account, which listed Sylvester as the sole signatory.

[113] We conclude that Sylvester engaged in trades and acts in furtherance of trades in Drago securities in Ontario within the meaning of the Act. Sylvester was not registered in any capacity with the Commission. He violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to him (the availability of exemptions is further discussed starting at paragraph 143).

**Al-tar**

[114] We find that Al-tar breached subsection 25(1)(a) of the Act. Specifically:

- Potential Al-tar investors, located in Ontario and elsewhere across Canada, were solicited starting in the spring of 2006 and continuing into early 2007 by telephone, email and fax transmission.
- Potential Al-tar investors were contacted by phone on a repeated basis by Al-tar representatives, including: Daniels, Andrews, Brown, Jakes and Jones to invest in Al-tar shares. These investors were told that Al-tar was an aspiring energy company that was poised to go public and they could expect a return on their investment of up to 300 – 700 percent within six months. Potential investors were sent an Executive Summary and were directed to review Al-tar’s website. In addition, once Al-tar investors invested, follow-up calls were made to these investors to persuade them to reinvest.
- Al-tar corporate documents which dealt with Al-tar share offerings were sent to investors to solicit investment in Al-tar. For example, Al-tar investors were sent the Al-tar Executive Summary (signed by O’Brien as Al-tar’s President and CEO), which promoted the company to solicit investments, which stated, in part:

Dear Investor:

We are seeking self-directed investors for this lucrative private placement and would like to introduce ourselves to qualified parties. Al-Tar Energy Corp. has been set up to take advantage of the opportunities in the oil sector ... If you are seeking an opportunity that offers the potential to achieve gains in both the short term and long term, we may have what you’re looking for. A minimal investment is all it takes to help you get there.

...

We anticipate our initial projects to generate immediate revenues and, once we have sufficient cash reserves, shareholders will receive 50% of all declared dividends. We need investors who share in our vision.

- Al-tar issued press releases which were posted on the Al-tar website and sent to investors to solicit investment or reinvestment in Al-tar shares. The press releases promoted Al-tar as a good value company to invest in. For example:
  - the press release dated September 26, 2006 described Al-tar as a company: “... focused on Growth, Value and Performance as it builds a Super-Independent oil and gas company. This strategy capitalizes on the world-class assets and high-quality, long-life reserves that Altar [sic] has established since its inception.”
  - the press release dated July 19, 2006 also described Al-tar’s business dealings: “Altar [sic] Energy Corp. has entered into a letter of intent with another company that has vast exposure in the tar sands. The agreement is for the acquisition by Altar Energy of rights to recover precious metals from certain tailings produced by the company.”
- Once funds from Al-tar investors were received, Al-tar share certificates along with correspondence, were sent to investors.

[115] In addition, potential investors were directed to Al-tar’s website which contained information to excite, solicit and induce investors. The wording used on the website portrayed Al-tar very positively as a company which was destined for growth and would provide superior returns for investors. For example, the website stated the following:

The principle focus of Al-tar Energy Corp. is to generate continuous growth for both the company and its shareholders. This growth is formulated to be a diverse and stable income and cash flow stream, providing a superior return on shareholder investment.

Our corporate objective is to achieve these shareholder returns by precise evaluation and acquisition of income producing assets. These assets in turn, fall into the company's main stream of investments and businesses that are both complementary to their sectors and profitable to the operations of the company.

We aim to be a rapidly expanding growth-oriented asset accumulation company, engaged in building shareholder value through the acquisition, ownership and operation of strategically chosen investments.

[116] As a result of Al-tar's investment solicitation activities, Al-tar raised a total of \$615,199.50 from 120 investors. We note that first time investors were solicited to buy Al-tar shares at \$1.50 per share and subsequently some of the Al-tar investors were solicited again for a combination of shares and warrants with a price of \$1.00 per share.

[117] At the hearing, we heard from five Al-tar investors who invested the following amounts:

- Investor 1 invested twice in Al-tar: the first share purchase was for 3,333 shares at \$1.50 for a total investment for \$4,999.50, the second investment was for 2,667 shares at a price of \$1.00 per share for a total investment of \$2,667.00. Investor 1 testified that he invested a second time because Al-tar came back to existing shareholders to give them an opportunity to buy in again at a lower price.
- Investor 2 invested \$15,000 (at \$1.00 per share) and received a share certificate for 15,000 shares in Al-tar. In his testimony, Investor 2 explained that he got a deal and paid a reduced price of \$1.00 per share because he referred two other investors to invest in Al-tar.
- Investor 3 invested twice in Al-tar, the first investment was for \$4,500 at \$1.50 per share for 3,000 Al-tar shares and the second investment was for \$6,000 at \$2.00 per share for 3,000 shares plus 3,000 warrants. With respect to the second investment made, Investor 3 testified that he was sent a press release from Al-tar that explained when purchasing a share you would also get a warrant that could be exercised at a later date.
- Investor 4 invested twice in Al-tar. The first investment was for \$2,250 for 1,500 shares at \$1.50 per share. The second investment was for \$3,000 for 1,500 shares at \$2.00 per share and 1,500 warrants. Investor 4 testified that she invested in Al-tar a second time because she was told that Al-tar was progressing and Al-tar felt that their returns would be much bigger than originally anticipated, Al-tar found more precious metals and once they would go public the value of the shares would go up phenomenally.
- Investor 5 invested \$6,000 in Al-tar purchasing 4,000 shares at \$1.50 per share.

[118] We conclude that Al-tar engaged in trades and acts in furtherance of trades in its securities in Ontario within the meaning of the Act. It solicited funds from investors, received funds and issued share certificates. Al-tar also used press releases and its website to portray Al-tar as a legitimate high growth company in order to excite investors and induce them to invest and re-invest. Al-tar and its representatives were not registered in any capacity with the Commission. Al-tar violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to it (the availability of exemptions is further discussed starting at paragraph 143).

### **Alberta Energy**

[119] We find that Alberta Energy breached subsection 25(1)(a) of the Act. Specifically:

- Potential Alberta Energy investors located in Europe were solicited in spring and summer of 2007 by telephone.
- Potential Alberta Energy investors were contacted by phone on a repeated basis by Alberta Energy representatives, including Brown and individuals who worked at OSG Capital (and other individuals, whose names the witnesses could not recall), to invest in Alberta Energy shares.
- Potential Alberta Energy investors were directed to review the website for more information about the company to help them with their investment decisions. The Alberta Energy website was [www.albertaenergycorp.com](http://www.albertaenergycorp.com). It solicited investments in Alberta Energy, which purported to generate and develop continuous growth for both the company and its shareholders. The Alberta Energy website was created and available to the public commencing on November 17, 2006. The content of the Alberta Energy was almost identical to the Al-tar website. It included the identical toll free phone number and the same spelling mistakes as on the Al-tar website. The only differences were the company name, the listed Board of Directors and the listed address. We were also provided with the compelled testimony of Gomes, which stated



that Gomes was instructed to copy the content of the Al-tar website and use it on the Alberta Energy website. Just like the Al-tar website, the content of the Alberta Energy website was designed to excite and induce individuals to invest in Alberta Energy.

- Alberta Energy issued a press release which was posted on the Alberta Energy website and sent to investors to solicit investment in Alberta Energy shares. The February 7, 2007 press release described Alberta Energy's business activities as follows:

Alberta Energy Corp. has entered into a letter of intent to buy a royalty stake in Alberta Oil Sands Pipeline Ltd (AOSPL). ...

AOSPL is the exclusive transporter of synthetic oil production from Syncrude Canada Ltd.'s plant, near Fort McMurray, Alberta, to Edmonton.

- Potential Alberta Energy investors were also enticed by email solicitations which promoted Alberta Energy investments as a good deal and offered investments at a substantial discount. For example, after being solicited on the phone about Alberta Energy, Investor 6 received an email from OSG Capital which stated:

You can buy the stock directly from the company at \$3.00 U.S. But if you buy it from us we are selling it to our clients at \$1.50 U.S. because we bought out 15% of the company and we got a nice discount and we are giving an incentive to new clients and selling the shares at our price as a way to attract new investors to our firm.

You can check out our company web site at: [www.osgcapital.com](http://www.osgcapital.com)

Or check out Alberta Energy's Corp's site at [www.albertaenergycorp.com](http://www.albertaenergycorp.com)

- After investing, Alberta Energy investors were provided with correspondence and share certificates. Correspondence regarding Alberta Energy came from OSG Capital.

[120] As a result of these investment solicitation activities relating to Alberta Energy, two investors invested in Alberta Energy raising a total of \$33,909.53. At the hearing, we heard from the two Alberta Energy investors who invested the following amounts:

- Investor 6 invested £5000 in Alberta Energy (for 6,550 shares at US\$1.50 per share, Canadian conversion was \$11,316.50). Investor 6 testified that he did not receive any documentation regarding Alberta Energy prior to investing, but he was directed to Alberta Energy's website. Based on the website, and internet search, Investor 6 thought Alberta Energy was a reputable company. Investor 6 also received a share certificate for his investment.
- Investor 7 invested US\$19,500 in Alberta Energy (for 13,000 shares at US\$1.50 per share, Canadian conversion was \$22,593.03). Investor 7 also testified that he was provided with the Alberta Energy Executive Summary by email, which he printed off and read prior to investing. Investor 7 was also issued a share certificate for his investment in Alberta Energy.

[121] We conclude that Alberta Energy engaged in trades and acts in furtherance of trades in its securities in Ontario within the meaning of the Act. It solicited funds from investors through OSG Capital, received funds and issued share certificates. Alberta Energy also used false press releases and its website to portray Alberta Energy as a legitimate high growth company to excite investors and induce them to invest. Alberta Energy and its representatives were not registered in any capacity with the Commission. Alberta Energy violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to it (the availability of exemptions is further discussed starting at paragraph 143).

### **Drago**

[122] We find that Drago breached subsection 25(1)(a) of the Act. Specifically:

- Potential Drago investors were solicited in early summer of 2007 by telephone.
- Potential Drago investors were contacted by phone on a repeated basis by salespersons named Jason Strong and Terry Gomez, to invest in Drago shares. We note that these individuals worked for OSG Capital.
- After initial contact with an investor, a Drago Executive Summary document was sent to the investor to convince them to invest. Drago investors were sent information by fax that informed them that they had the

option to either invest in shares at a price of \$2.50 per share with a guaranteed fixed-interest option of 12% or invest in common shares at a price of \$1.50 per share. Investors were also enticed to invest with promises that the share price would increase by ten times in value.

- Drago also solicited investors via its website, [www.dragogoldcorp.com](http://www.dragogoldcorp.com), which was available to the public commencing on May 23, 2007. The website contained promotional information about the company to give investors the impression that it would be a good investment. However, we note that material on the Drago website was copied from the website of another company, Geoandine Mining Corp.
- Once investors agreed to invest, a confirmation fax was sent to investors for their signature and arrangements were made to have a courier to pick up the cheque from the investor. Courier packages for Drago were delivered to the Telsec Business Centre, a virtual office, located at 1 Yonge Street in Toronto.
- Eventually, after investors transferred funds to Drago, Drago share certificates were sent out. However, we note that shares certificates were only sent to investors after investors inquired by phone and fax to get them.

[123] As a result of Drago's investment solicitation activities, three investors invested in Drago raising a total of \$9,000. At the hearing, we heard from two Drago investors who invested the following amounts:

- Investor 8 invested \$3,000 in Drago (2000 Drago shares at \$1.50 per share). Investor 8 testified that he decided to invest in Drago based on the success of Limelight. He explained that he was contacted a year or two earlier to invest in Limelight and he had decided not to invest. However, when he was called about Drago and the salesperson on the phone informed him that they had done so well with Limelight, Investor 8 explained that he felt like he missed the boat on Limelight and now Drago was another opportunity to invest.
- Investor 9 invested \$1,500 (1000 Drago shares at \$1.50 per share). Investor 9 also testified that when he was solicited on the phone, he was told that Drago would be similar to a previous venture called Limelight where investors could get in at an introductory price and then sell out at a higher price.

[124] We conclude that Drago engaged in trades and acts in furtherance of trades in its securities in Ontario within the meaning of the Act. Drago also used its website to advertise and portray Drago as a legitimate high growth company to excite investors and induce them to invest. It solicited funds from investors through OSG Capital, received funds and issued share certificates. Drago and its representatives were not registered in any capacity with the Commission. Drago violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to it (the availability of exemptions is further discussed starting at paragraph 143).

### iii. Findings

[125] Based on the evidence discussed above, we find that all of the Respondents breached subsection 25(1)(a) of the Act by engaging in trades and/or acts in furtherance of trades, none of the Respondents was registered and there were no registration exemptions available to them (the availability of exemptions is further discussed starting at paragraph 143).

## B. Did Da Silva and Campbell engage in trades or acts in furtherance of trades that breached the Commission's cease trade orders dated April 13, 2006 and May 10, 2006?

### i. Commission Order Against Da Silva

[126] On May 10, 2006, the Commission issued its reasons and order in *Allen Sanctions*. Da Silva was a respondent in this matter, and he was ordered, *inter alia* to cease trading for a period of seven years from the date of the order and the order also removed the availability of exemptions. Da Silva was provided with a carve out to trade for his own account in a registered retirement savings plan account.

### ii. Commission Orders Against Campbell

[127] On April 13, 2006 the *Limelight Temporary Order* was issued by the Commission, which ordered Campbell *inter alia* to cease trading in all securities. The *Limelight Temporary Order* also removed the availability of exemptions to Campbell.

[128] The *Limelight Temporary Order* was extended and in force against Campbell until the conclusion of that matter in 2008. On December 8, 2008, the Commission issued a permanent cease trade order against Campbell, with the exception that Campbell could only trade for his own account or that of his spouse in a registered retirement savings plan account.

**iii. Findings**

[129] Based on our review of the evidence regarding breaches of section 25(1) of the Act, we find that both Da Silva and Campbell engaged in trades and acts in furtherance of trades.

[130] This trading took place while Commission orders were in place prohibiting trading activities.

[131] Da Silva engaged in trading activities with respect to Al-tar during July 2006-2007, which overlaps with the Commission order issued on May 10, 2006, which prohibited Da Silva from trading for a period of seven years and removed all exemptions. We note that the trading activities that Da Silva engaged in did not fall under the trading activities permitted by the carve out in the May 10, 2006 Order.

[132] Campbell engaged in trading activities with respect to Al-tar, Alberta Energy and Drago during spring 2006 to fall 2007, which overlaps with the *Limelight Temporary Order* issued on April 13, 2006 which prohibited Campbell from trading in all securities and removed all exemptions.

[133] Therefore, we find that both Da Silva and Campbell breached Commission Orders and this egregious conduct is contrary to the public interest.

**C. Did the Respondents Engage in a Distribution without a Prospectus in Breach of Subsection 53(1) of the Act?**

**i. The Applicable Law**

[134] Subsection 53(1) of the Act sets out the prospectus requirement for trades that comprise 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.

[135] The definition of “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

[...]

[136] 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 (*First Global, supra* at para. 145).

[137] 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**

[138] As established above in our discussion of section 25(1)(a) of the Act, the Respondents all engaged in trades and/or acts in furtherance of a trade, as defined in the Act. The Respondents have therefore met the trading requirement under part (a) of the definition of “distribution” under the Act.

[139] The second requirement of this definition is that the securities in question have not been previously issued. We note that Al-tar, Alberta Energy and Drago were promoted as new companies which would have exceptional growth and eventually be listed on an exchange in the future.

[140] There is no record that any of the Corporate Respondents ever filed as a reporting issuer or filed a prospectus in Ontario. In addition, none of the Individual Respondents ever prepared a prospectus on behalf of any of the Corporate Respondents.

[141] Additionally, there is no evidence that any investors were provided with a prospectus with respect to Al-tar, Alberta Energy or Drago.

iii. Findings

[142] We conclude that all the Respondents engaged in trades or acts in furtherance of trades. At the time of these acts, shares in Al-tar, Alberta Energy and Drago had not previously been issued, and we therefore conclude that the trades constitute a distribution. Since no prospectus was filed for these trades, we find that all the Respondents have contravened section 53(1) of the Act.

D. Were any Registration or Prospectus Exemptions Available to the Respondents?

i. The Applicable Law

[143] National Instrument 45-106 ("NI 45-106") provides exemptions to the registration and prospectus requirements in the Act if certain conditions are met.

[144] Once Staff has shown that the Respondents have traded 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 (*Limelight Merits, supra* at para. 142).

**The Accredited Investor Exemption**

[145] Section 2.3 of NI 45-106 provides an exemption from the prospectus and registration requirements for trades in a security if the purchaser is an accredited investor and is purchasing as principal.

[146] An accredited investor is defined in section 1.1 of NI 45-106 and includes:

[...]

(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.

[...]

ii. Analysis

[147] We find that there is insufficient evidence to establish that the investors qualified as accredited investors.

[148] During the hearing, Staff asked the investors who testified questions about their investment knowledge and financial circumstances at the time they invested in Al-tar, Alberta Energy and/or Drago.

[149] With respect to Al-tar, we note that:

- Investor 1 testified that when he was solicited to purchase Al-tar shares he was not asked any questions about his investment knowledge, assets or income.
- Investor 2 testified that he did not have any experience investing in stocks and that his investment in Al-tar was his first stock investment. Prior to the Al-tar investment, Investor 2 had only made small investments dealing with his bank. Investor 2 testified he was not asked any questions about his income and assets when he was solicited to purchase shares in Al-tar.
- Investor 3 testified that when he was solicited to purchase Al-tar shares he was not asked any questions about his investment knowledge, assets or income. Investor 3 also testified that he had minimal experience investing in the stock market although he had previously purchased some shares in publicly traded companies.

- Investor 4 testified that when solicited to purchase Al-tar shares she was asked questions about her financial situation and her income. She testified that her husband handled the finances and their previous investments were in mutual funds and in her view her husband's investment experience was not very extensive.
- Investor 5 testified that when he was solicited to purchase Al-tar shares he was not asked any questions about his investment knowledge, assets or income. He also testified that he considered his experience investing in stocks to be below average.

[150] Although we did not hear testimony from all 120 Al-tar investors, and it is possible that some of these 120 investors were accredited investors, there was no evidence before us that this was the case. In addition, the evidence of the Al-tar 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.

[151] With respect to Alberta Energy, we heard testimony that:

- Investor 6 was not asked about his financial status prior to investing and Investor 6's testimony revealed that he did not meet the threshold to qualify as an accredited investor. Investor 6 also testified that he was not a sophisticated investor. He had recently come into some money and he invested because Brown was very convincing when he called him about the Alberta Energy investment opportunity.
- Investor 7 did not meet the threshold to qualify as an accredited investor. He testified that he was asked questions about his yearly income, employment and whether he had enough funds to purchase shares. Investor 7 also testified that prior to Alberta Energy he had never invested in stocks before.

[152] With respect to Drago, two Drago investors testified that:

- Investor 8 did not meet the threshold to qualify as an accredited investor. He was not an experienced or sophisticated investor and he did not have a lot of income disposable for investment. In particular, Investor 8 testified that he was a single parent raising three children and trying to get them educated and while Investor 8 had some funds to invest, he did not have much money to throw away.
- Investor 9 did not meet the threshold to qualify as an accredited investor. In his testimony he explained that he was asked about his income and that he told the Drago representative who he talked to on the phone (Terry Gomez) that he was not a qualified investor. However, Terry Gomez assured Investor 9 that he did not have to have a certain income and that he could get in for a very small investment.

[153] We also note that some of the investors were not asked about their financial status prior to investing. However, some investors were asked about their financial status. We find that the investors who were asked about their finances when they were solicited to invest funds were only asked about their finances for the purpose of determining how much money they had available to invest, not to determine their accredited investor status.

[154] As a result, we conclude that none of the investor witnesses met the threshold to qualify as an accredited investor. Therefore, the registration and prospectus exemptions were not available to the Respondents.

### **iii. Findings**

[155] In our view, investors in Al-tar, Alberta Energy and Drago are precisely the type of investors who are meant to be protected by the registration and disclosure requirements. We find it troubling that Al-tar, Alberta Energy and Drago investors were not provided with adequate disclosure. Basically, investors were provided with false and misleading information about Al-tar, Alberta Energy and Drago and they had little clue about what was being done with their money. The majority of these investors had limited investing experience and a number of them testified that it was the first time that they ever invested in stocks.

[156] 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.

[157] Based on the foregoing, we find that there were no registration or prospectus exemptions available to the Respondents.

**E. Did the Respondents Breach Subsection 38(2) of the Act by Making Prohibited Undertakings Regarding the Value or Price of Securities?**

**i. The Applicable Law**

[158] Subsection 38(2) of the Act prohibits persons or companies from making undertakings regarding the future price of securities for the purpose of effecting a trade:

No person or company, with the intention of effecting a trade in a security, shall give any undertaking, written or oral, relating to the future value or price of such security.

[159] The purpose of this section is investor protection. Undertakings as to future value of shares are often made to vulnerable and unsophisticated investors, and this subsection seeks to prevent the sale of securities by means of promises of future prices and returns.

[160] It is important to note that subsection 38(2) requires that an undertaking be made. A simple representation is not enough to trigger this subsection of the Act.

[161] With respect to the meaning of the term “undertaking”, in the *Limelight Merits* case the Commission relied on the interpretation in *Re National Gaming Corp.* (2000), 9 A.S.C.S. 3570 (“*National Gaming*”), where the Alberta Securities Commission (the “ASC”) stated:

... an undertaking is a promise, assurance or guarantee of a future price or value of securities that can be reasonably interpreted as providing the purchaser with a contractual right against the person giving the undertaking if, for any reason, the value or price is not achieved.

(*National Gaming, supra* at p. 16)

[162] In the *Limelight Merits* case, the Commission interpreted subsection 38(2) of the Act and stated that:

... we should not take an overly technical approach to the interpretation of subsection 38(2) and that we should consider all of the surrounding circumstances and the Commission’s regulatory objectives in interpreting the meaning of that section.

(*Limelight Merits, supra* at para. 164)

[163] The Commission also clarified that an undertaking is more than a mere representation; however, it may amount to something less than a legally enforceable obligation (*Limelight Merits, supra* at para. 167).

[164] The Commission case law has found that representations amounting to promises, guarantees or assurances of future value constitute undertakings which breach subsection 38(2) of the Act. For example, in *Aatra Resources Ltd.* (1990), 13 O.S.C.B. 5109, the Commission found that the following express representations regarding the future price of shares were undertakings that breached the Act:

I would assure you, I will practically guarantee you that within the week you will see the stock [...] anywhere from twenty cents (\$0.20) to fifty cents (\$0.50) higher.

(*Aatra Resources Ltd., supra* at para. 34)

[165] Therefore, promises which specify a target value in a specific time frame will comprise the type of conduct that is captured by subsection 38(2) of the Act.

[166] However, not all statements about future value of shares will breach subsection 38(2) of the Act. As explained in the *Limelight Merits* case:

...a mere representation as to future value is not an “undertaking” within the meaning of subsection 38(2) of the Act. Prohibiting all representations as to the future value of securities would ignore the reality of the marketplace.

(*Limelight Merits, supra* at para. 170)

[167] This was also discussed in the *National Gaming* case:

... predictions relating to the future value or price of securities are commonplace in the securities industry, and are not prohibited by the Act. Predictions encompass a broad spectrum. They range from very general predictions about the entire market, to very specific predictions about the value or price of a particular security within a particular time frame. Some predictions are developed with extreme care, based on rigorous, professional research and scientific analysis based on sophisticated market theory. Other predictions may be based on no more than wishful thinking or guesswork. In our view, the shared element of all predictions is that they are merely opinions.

(*National Gaming*, *supra* at p. 16)

[168] Therefore, to determine whether a statement amounts to more than a prediction or speculation about future value and falls into the category of an undertaking, the context of the statement and the specificity of the statement regarding the future value must be considered. In addition, it is “not necessary to show that all the elements of an enforceable contract existed” (*Limelight Merits*, *supra* at para. 167) All of this must be considered in light of the objective of the Act to protect investors.

[169] In order to determine whether the Respondents made undertakings with respect to the future value or price of securities, we must consider the surrounding circumstances and whole context in which statements were made to investors regarding the future value or price of securities of Al-tar, Alberta Energy and Drago.

## ii. Analysis

[170] The following are our findings regarding breaches of subsection 38(2) of the Act based on the evidence presented at the hearing.

### **O'Brien**

[171] We find that there is insufficient evidence to find that O'Brien breached subsection 38(2) of the Act.

[172] We were not provided with any evidence indicating that O'Brien spoke to any investors about Al-tar's share price (or any of the other Corporate Respondents) or made undertakings, including promises which specify a future value for Al-tar's share price in a specific time frame.

[173] As a result, we find that O'Brien did not breach subsection 38(2) of the Act.

### **Campbell**

[174] We find that there is insufficient evidence to find that Campbell breached subsection 38(2) of the Act.

[175] Campbell, using the alias Brown, spoke to investors over the phone and made statements about the target share price of some of the Corporate Respondents.

[176] During the hearing, Investor 6 was asked whether Brown made statements regarding an increase in the share price of Alberta Energy shares. Investor 6 answered, “

To be fair, he probably did, but I can't actually remember. I know it was supposed to be a very quick turnaround. I think originally, the shares were something like about \$3, but they, as an organization, had come together, and they'd already pre-bought a lot of shares for \$1.50 or something like that. Very cheap to get involved.

(Transcript April 23, 2009 at p. 10 lines 14-20)

[177] While the statements made by Campbell to Investor 6 enticed him to invest, these statements fall short of an undertaking.

[178] Investor 7 also testified that Brown spoke to him about investing in Alberta Energy and that it was possible to invest at an early stage to get shares at a good price. Investor 7 also spoke to Terry Gomez about investing in Alberta Energy shares. According to Investor 7, both Brown and Terry Gomez indicated that the share price of Alberta Energy would rise when the company would eventually go public and when the company would eventually find oil and start pumping it out of the ground. However, Investor 7 testified that he could not remember if he was provided any specific numbers regarding the increase in share price.

[179] In our view, the statements made by Campbell (while using the alias Brown) do not qualify as promises or undertakings as to the future share price of the Corporate Respondents. While representations about the future share price were used to entice investors, we find that they were high pressure sales tactics, not statements that qualify as undertakings as there was no guarantee or promise involved.

[180] As a result, we find that Campbell did not breach subsection 38(2) of the Act.

***Da Silva***

[181] We find that there is insufficient evidence to find that Da Silva breached subsection 38(2) of the Act.

[182] Da Silva, using the alias Daniels, spoke to investors over the phone and made statements about the target share price of Al-tar's shares.

[183] We heard testimony from Investor 1 that Daniels told him that Al-tar had a target share price of \$10 to \$15 once the company would go public. He was only told that it was a target price.

[184] Investor 2 testified that he was told by Daniels that Al-tar was "going to hit – hit the market and hoped to be trading at roughly about \$6 a share" (Transcript April 23, 2009 at p. 70 lines 13-14). We note this was an approximate target that was given to Investor 2 and not a firm undertaking.

[185] In our view, the statements made by Da Silva (while using the alias Daniels) do not qualify as promises or undertakings as to the future share price of the Corporate Respondents. While representations about the future share price were used to entice investors, we find that they were high pressure sales tactics, not statements that qualify as undertakings as there was no guarantee or promise involved.

[186] As a result, we find that Da Silva did not breach subsection 38(2) of the Act.

***Sylvester***

[187] We find that there is insufficient evidence to find that Sylvester breached subsection 38(2) of the Act.

[188] We were not provided with any evidence indicating that Sylvester spoke to any investors about the share price of any of the Corporate Respondents.

[189] As a result, we find that Sylvester did not breach subsection 38(2) of the Act.

***Al-tar***

[190] We find that there is insufficient evidence to find that Al-tar breached subsection 38(2) of the Act.

[191] As discussed above, Daniels, on behalf of Al-tar, spoke to Investor 1 and Investor 2 about the future target prices for Al-tar shares, but in our view these statements did not qualify as undertakings.

[192] As a result, we find that Al-tar did not breach subsection 38(2) of the Act.

***Alberta Energy***

[193] We find that there is insufficient evidence to demonstrate that Alberta Energy breached subsection 38(2) of the Act.

[194] We do not have any specific evidence that Alberta Energy itself provided undertakings directly to investors. Alberta Energy investors stated that shares could be purchased through OSG Capital for \$1.50 per share and that Alberta Energy was selling shares directly for \$3.00 per share. Investors were sent an email from OSG Capital signed by Terry Gomez, and not from Alberta Energy or its principle, which stated:

You can buy the stock directly from the company at \$3.00 U.S. But if you buy it from us we are selling it to our clients at \$1.50 U.S. because we bought out 15% of the company and we got a nice discount and we are giving an incentive to new clients and selling the shares at our price as a way to attract new investors to our firm.

[195] While the evidence shows that some undertakings were made about the price of Alberta Energy shares, these undertakings were made by OSG Capital and not Alberta Energy.



[196] As a result, we find that Alberta Energy did not breach subsection 38(2) of the Act.

**Drago**

[197] We find that there is insufficient evidence to find that Drago breached subsection 38(2) of the Act.

[198] Correspondence sent to Drago investors indicated that they could either purchase Drago shares for \$1.50 per share or they could take advantage of purchasing Drago shares at \$2.50 which were subject to a Fixed-Interest Option. Investors were directed to the Executive Summary which provided the following details:

**Guaranteed Fixed-Interest Option:** At the end of the one year investment term, we guaranteed the return of your original investment, plus guaranteed 12% interest on the investment.

[199] Subsection 38(2) requires that the undertaking relate “to the future value or price of such security”. In this case the undertaking does not relate to the future value or price of shares of Drago, it relates to a purported guarantee of return of principal and interest. In our view, the undertaking in this case was intended to entice investors to pay a higher price but it is not an undertaking envisioned in subsection 38(2) of the Act.

[200] Investor 8 also testified that the representative he talked to from Drago, Jason Strong, mentioned that the price of Drago shares would increase, but he could not recall exactly what was said for sure. He also testified that Drago expected to be making money within less than a year and it could potentially become ten times the value. While these statements enticed Drago investors and were high pressure sales tactics contrary to the public interest, we find that the information communicated to Drago investors did not constitute a firm undertaking.

[201] As a result, we find that Drago did not breach subsection 38(2) of the Act.

**iii. Findings**

[202] There is insufficient evidence to find that the Respondents breached subsection 38(2) of the Act.

[203] None of the statements constituted firm promises or undertakings. Nevertheless, we find that those statements about the future value or target price of the shares of Al-tar, Alberta Energy and Drago were high pressure sales tactics. Such statements were used by the Respondents to entice investors and raise funds. In our view this is contrary to the public interest.

**F. Did the Respondents Breach Subsection 38(3) of the Act by Making Prohibited Representations Regarding the Future Listing of Securities?**

**i. The Applicable Law**

[204] Subsection 38(3) of the Act states:

Subject to the regulations, no person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any representation, written or oral, that such security will be listed on any stock exchange or quoted on any quotation and trade reporting system, or that application has been or will be made to list such security upon any stock exchange or quote such security on any quotation and trade reporting system, unless,

- (a) application has been made to list or quote the securities being traded, and securities of the same issuer are currently listed on any stock exchange or quoted on any quotation and trade reporting system; or
- (b) the stock exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation.

[205] Unlike subsection 38(2) of the Act, subsection 38(3) does not require an undertaking. A representation (in other words a statement) is sufficient to trigger a violation of subsection 38(3) of the Act. For example, in the *Limelight Merits* case, the Commission found that evidence of salespersons stating that Limelight shares would be listed on an exchange constituted a breach of subsection 38(3) of the Act (*Limelight Merits*, *supra* at para. 181).

[206] Therefore, we must determine whether the Respondents made any representations, either written or oral, that shares in Al-tar, Alberta Energy and/or Drago would be listed on any stock exchange or quoted on any quotation and trade reporting system.

ii. **Analysis**

[207] Although Staff presented significant evidence in this case that the Respondents made representations about going public, we are not satisfied, in the circumstances of this case, that Staff has proven its subsection 38(3) allegations on a balance of probabilities.

[208] The Respondents made a number of statements to investors that Al-tar, Alberta Energy or Drago would be going public in the near future. The investors testified that they relied on and were influenced by such statements when making their decisions to invest in the shares of Al-tar, Alberta Energy or Drago.

[209] However, we find that these comments did not contain enough specifics to qualify as representations that are prohibited under subsection 38(3) of the Act.

[210] We, therefore, find that there is insufficient evidence to find that the Respondents breached subsection 38(3) of the Act.

[211] Nevertheless, we also find that these statements about going public were false and we conclude that these were made to entice investors to invest or re-invest and that they were used by the Respondents as high pressure sales tactics which we consider to be contrary to the public interest. We discuss this conduct later in section I.

iii. **Findings**

[212] There is insufficient evidence to find that the Respondents breached subsection 38(3) of the Act.

**G. Did the Respondents Engage in Fraud in Breach of Section 126.1 of the Act?**

i. **The Applicable Law**

[213] The basis for an allegation of fraud involving securities is found under section 126.1(b) of the Act, which states:

**126.1 Fraud and market manipulation** – A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,

...

(b) perpetrates a fraud on any person or company.

[214] Fraud is “one of the most egregious securities regulatory violations” and is both “an affront to the individual investors directly targeted” and something that “decreases confidence in the fairness and efficiency of the entire capital market system” (*Re Capital Alternatives Inc.* (2007), A.B.A.S.C. 79 at para. 308 citing D. Johnston & K. D. Rockwell, *Canadian Securities Regulation*, 4th ed., Markham: LexisNexis, 2007 at 420).

[215] The term fraud is not defined in the Act. Due to the recent introduction of the fraud provision in the Act, there are no decisions from the Commission interpreting this provision. However, we can draw out guidance and principles from criminal and administrative law jurisprudence and decisions from other securities commissions.

[216] The British Columbia Court of Appeal addressed the application of the substantially identical fraud provision in the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418, as amended (the “BC Act”) in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 (“*Anderson*”). The Supreme Court of Canada denied leave to appeal the *Anderson* decision ([2004] S.C.C.A. No. 81).

[217] In *Anderson*, the British Columbia Court of Appeal reviewed the legal test for fraud and relied on *R. v. Théroux*, [1993] 2 S.C.R. 5 (“*Théroux*”). In *Théroux*, Justice McLachlin (as she then was) summarized the elements of fraud as follows at paragraph 27:

... the *actus reus* of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.

Correspondingly, the *mens rea* of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

[218] Section 126.1 of the Act has the identical operative language as the fraud provision in the British Columbia Act. In interpreting the fraud provision in the British Columbia Act and with respect to the mental element, the British Columbia Court of Appeal in *Anderson* stated at paragraph 26 that:

...[the fraud provision of the BC Act] does not dispense with proof of fraud, including proof of a guilty mind. . . . Section 57(b) simply widens the prohibition against participation in transactions to include participants who know or ought to know that a fraud is being perpetrated *by others*, as well as those who participate in perpetrating the fraud. It does not eliminate proof of fraud, including proof of subjective knowledge of the facts constituting the dishonest act, by someone involved in the transactions. [emphasis in original]

[219] The British Columbia Court of Appeal in *Anderson* further explained at paragraph 29 that:

Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal law standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element.

[220] The British Columbia Court of Appeal approach to the legal test in the context of securities fraud as set out in *Anderson* was adopted in *Re Capital Alternatives Inc.*, 2007 ABASC 79, which was affirmed in *Alberta (Securities Commission) v. Brost*, [2008] A.J. No. 1071 (C.A.).

[221] For a corporation, it is sufficient to show that its directing minds knew or reasonably ought to have known that the corporation perpetrated a fraud to prove a breach of section 126.1(b) of the Act.

## ii. Analysis

### **O'Brien**

[222] We find that O'Brien in his capacity as sole director of Al-tar, engaged in acts of deceit, falsehoods and other fraudulent means that deprived investors of their funds.

[223] First of all, Al-tar's Executive Summary, which was signed by O'Brien in his capacity as CEO and President, provided false information about Al-tar to give investors the impression that Al-tar was a legitimate business. For example, the Executive Summary stated that:

- At Al-tar Energy Corp. we harness the knowledge of great thinkers and combine that with proven strategies to take advantage of the tremendous opportunities in the direct oil and gas arena with a focus on capital preservation.
- ... currently has under review projects in some 36 countries.
- Al-tar Energy Corp. focuses on premium oil and gas properties in both the royalty sector as well as non-operated cash flow wells.

[224] All of the statements about Al-tar's activities in the oil and gas industry contained false and misleading statements. We find that Al-tar did not engage in any legitimate business in the oil and gas industry. It was only involved in raising funds from investors.

[225] Al-tar's press releases, which listed O'Brien, in his capacity as CEO and President, as the contact for further information about Al-tar, also contained false and misleading statements about the company. For example:

- A press release dated July 10, 2006, included the following false statements:

- Altar [sic] Energy Corp. is pleased to announce the appointment of Joseph Black as Quarry manager. Joseph brings over 15 years experience in hard rock quarrying and the aggregate production business.
- Excellent progress continues to be made in establishing the quarry.
- A press release dated July 19, 2006, included the following false statements:
  - Altar [sic] Energy Corp. has entered into a letter of intent with another company that has vast exposure in the tar sands. The agreement is for the acquisition by Altar Energy of rights to recover precious metals from certain tailings produced by the company.
  - Upon commencement of production, Altar [sic] Energy will receive 85% of the net production revenue ...
- A press release dated August 10, 2006, included the following false statements:
  - Altar [sic] Energy Corp. announced today that it has completed the first 10 million shares of its private placement at \$1.50 and had commenced the next 10 million private offering at \$3.00. The board of directors have agreed to issue a warrant offering to exciting [sic] shareholders of the \$1.50 placement.
  - Eric O'Brien, Chief Executive Office concluded. "Altar [sic] now has a healthy balance sheet in the capable hands of an experienced management team. As such, we can now better leverage our assets, including our project sites, product pipeline, and intellectual property estate. While Altar will continue to build on its exposure in the tar sands, we will also expedite out evolution into a more integrated, production-focused company with broader operational capabilities and resources."
- A press release dated August 28, 2006, included the following false statements:
  - Altar [sic] Energy Corp. ... announces the signing of a co-development agreement with Canadian Resources Inc., that facilitates cooperation in respect of activities on lands where Canadian holds the oil sands rights and Altar holds the overlapping metallic and industrial mineral rights. The co-development agreement with Canadian Resources is similar to agreements in place with Syncrude Canada Ltd. and Suncor Energy Inc.
  - Altar's [sic] land lease holdings in northeastern Alberta total 124,268 hectares of metallic and industrial mineral permits and leases.
  - Altar [sic] is conducting biophysical fieldwork as part of its environmental impact assessment for a permit to operate a limestone quarry, which it expects to file with the Alberta government later this year.
- A press release dated September 5, 2006 contained virtually identical content as Al-tar's previous August 10, 2006 press release.
- A press release dated September 29, 2006, included the following false statements:
  - Altar [sic] Energy Corp. has entered into a letter of intent to buy a royalty stake in Alberta Oil Sands Pipeline Ltd. (AOSPL). The transaction is subject to customary closing conditions and regulatory approval. It is expected to close by November 31, 2006.
  - As one of Canada's (soon to be) leading independent oil and gas companies, Altar's [sic] daily production is expected to exceed 38,000 barrels of oil equivalent in 2011.

[226] All of the transactions mentioned in Al-tar's press releases are outright fabrications. None of them took place. For example, we were also provided with correspondence in evidence that confirmed that the Alberta Oil Sands Pipeline Ltd. transaction was fabricated by Al-tar. In addition, we note that the press releases referred to Al-tar's board of directors, and we had no evidence that Al-tar had a board of directors. Our only evidence is that O'Brien was the sole director of Al-tar.

[227] The facts and figures about Al-tar and its activities mentioned in the press releases were also outright fabrications. For example, Al-tar did not have a quarry, they were not involved with an individual named Joseph Black, there was no production of

oil, no experienced management team, no land lease holdings of any kind, no project sites, no product pipeline and no balance sheet.

[228] As stated above at paragraph 91, O'Brien played an integral role in setting up the infrastructure to get Al-tar operating. Specifically, he incorporated Al-tar and set up the bank accounts, which made it possible for Al-tar to accept and transfer investor funds.

[229] We also find that O'Brien, the sole director of Al-tar, had full knowledge of Al-tar's conduct and raised funds from investors when there was no legitimate business underlying Al-tar. He orchestrated the Al-tar investment scheme. He was fully aware that this would deprive investors of their funds.

[230] Specifically, when asked about Al-tar's business activities in his compelled examination, O'Brien admitted that he did not have much knowledge of Al-tar's activities or the oil and gas industry:

Q. But you said earlier you don't know very much about the oil business.

A. I don't. That's what I was told to say.

Q. Who told you to say that?

A. Mr. Campbell.

Q. Okay. What does limestone extractions from slag mean? Any idea?

A. I have absolutely no idea.

(Transcript, Examination of Eric O'Brien dated December 11, 2007, at p. 46 lines 2-9)

Q. And to your knowledge the company wasn't doing any business other than just raising capital.

A. To my knowledge, yeah.

Q. They weren't engaged in any actual operations, drilling or otherwise?

A. No. You know, I didn't know what they were doing, to be honest with you. I had understood through Abel that there was going to be, you know, acquisition of oil leases.

(Transcript, Examination of Eric O'Brien dated December 11, 2007, at p. 77 lines 7-15)

[231] O'Brien, Al-tar's sole director, had no experience in the oil and gas industry, contrary to what is stated in Al-tar's press releases, business documents and website.

[232] O'Brien also knew that the information about Al-tar's activities in the oil and gas industry disseminated by Al-tar was false. For example, in his compelled examination, he stated that he was unaware of Al-tar being involved in any lease acquisitions or exploration development, contrary to what was stated in the Al-tar press releases.

[233] As a result of O'Brien's conduct and role in the investment scheme, O'Brien received \$147,791.50 of Al-tar investor funds (\$133,991.50 directly and \$33,800 that was paid to Sterling).

[234] In their testimony, the investor witnesses stated that they thought that they were investing in a legitimate business that was operational, had tangible assets, experienced management and which was partnering with other players in the industry.

[235] We find that investors relied on the false information about Al-tar and its business activities when deciding whether to invest in the company. We also find that the false statements enticed some investors to reinvest in Al-tar.

[236] These fraudulent acts caused deprivation to investors. At least 120 investors invested in Al-tar. They lost their funds and were not paid back. Some of these investors lost their life savings. Many investors borrowed money on credit cards and took money out of their registered retirement and education savings plans in order to invest in Al-tar.

[237] We conclude that O'Brien perpetrated a fraud and breached section 126.1(b) of the Act.

## Campbell

[238] We find that Campbell engaged in acts of deceit, falsehoods and other fraudulent means with respect to Al-tar, Alberta Energy and Drago that deprived investors of these three companies of their funds.

[239] As set out in paragraphs 97, 101 and 103, Campbell played an integral role in setting up the infrastructure of the Corporate Respondents. For example, Campbell:

- Provided some of the content for the Al-tar and Alberta Energy websites.
- Accompanied Sylvester when the Alberta Energy and Drago bank accounts were opened and he had direct access to these accounts through bank cards with PINs and signed blank cheques provided to him by Sylvester.
- Rented and controlled the mailbox for Alberta Energy.
- Played a role in setting up infrastructure to get Drago operating.

[240] In addition, Campbell recruited Sylvester to be a director of Alberta Energy. In his compelled testimony Campbell gave the following explanation in his answers to Staff's questions:

- Q. – allowed them [Alberta Energy] to use that address for their purposes? And so to set this company up, let me just get this right, you kind of served up Julian Sylvester to them as being willing to act, you know, the nominee director?
- A. Yeah. Well, I mean, I explained to Julian what was going on and that was pretty well it. I mean, I made him make the decision.

(Transcript, Examination of Dave Campbell, dated December 10, 2007, at p. 110 line 23 to p. 111 line 5)

[241] As discussed in paragraphs 97 and 101, Campbell solicited investors to purchase shares of Al-tar and Alberta Energy. He used the alias Brown when communicating and corresponding with these investors and lied about his true identity. He also used this alias when picking up investor packages which included investor cheques.

[242] We also find that Campbell had full knowledge of the conduct of the three Corporate Respondents and he raised funds from investors when there was no legitimate business underlying any of the Corporate Respondents. He played a key role in setting up the investment scheme. He was fully aware that this would deprive investors of their funds.

[243] This is evident from Campbell's responses in his compelled examination with Staff that took place on December 10, 2007. During this examination Campbell's answers were mostly deliberately unhelpful, confusing or completely lacking in any business or common sense; however Campbell did make a number of admissions about his conduct and the investment scheme.

[244] For example, in his compelled testimony, Campbell admitted that he provided lists of potential investors to Al-tar, he knew that investors would be solicited in some way by Al-tar and he was paid for providing the list of investor names:

- Q. Okay so you would have to call these people up and ask them to invest in Al-tar?
- A. There's a number of ways to do it. I don't know how they [Al-tar] were going to do it.
- Q. But he was willing to buy the list from you.
- A. Yes.
- Q. Okay. So we need an understanding of how much that was, to buy that list.
- A. I don't remember.
- Q. Was it \$100,000?
- A. I'm pretty sure it was a lot more than that.

(Transcript, Examination of Dave Campbell, dated December 10, 2007, at p. 66 line 24 to p. 67 line 11)

Q. And so you don't have any idea as to where the monies came from for Al-tar?

A. No.

Q. But they raised it from people. Do you have that understanding?

A. You are assuming that. I don't know where.

...

A. No. I mean, if he is getting a list, I'm pretty sure somebody or they are hiring somebody or he hired somebody to help raise capital. ...

(Transcript, Examination of Dave Campbell, dated December 10, 2007, at p. 70 line 21 to p. 71 line 9)

Q. ...I'm saying you understood that what they were going to use these lists for was to contact investors; is that accurate?

A. Yes.

Q. And as a result of that, you also played a role in setting up post office boxes for them and finding them places to work and places to do their business, whatever that business was, and sold them the lists to start with on a continuing basis and also even had your friend set up a company for them that would presumably conceal who in fact was really behind the company, doesn't it, and had him open up a bank account as well?

A. Okay.

(Transcript, Examination of Dave Campbell, dated December 10, 2007, at p. 226 line 19 to p. 227 line 7)

[245] Therefore Campbell knew that by providing services such as providing investor lists and setting up the infrastructure and offices for the Corporate Respondents, investors would be solicited for funds and his conduct made it possible to carry out the investment scheme.

[246] In fact Campbell also admitted that he had control over the investor funds at a certain time. When questioned about Alberta Energy's bank account, Campbell gave the following answers:

Q. Who has control over the money?

A. I did at one time and I think Eric did.

Q. You did at one time.

A. Which companies, I don't remember. I don't know if it was that one, if I had it or if Eric has it. Basically, what Julian did was just sign the cheques and leave them blank, yes.

Q. So money that moved through this account, into and out of, you at a certain point in time had control over it.

A. I don't know if it was for that company [Alberta Energy]. It could have been Drago.

Q. It could have been Drago?

A. Yes.

(Transcript, Examination of Dave Campbell, dated December 10, 2007, at p. 116 lines 6-19)

[247] Campbell also acknowledged that he wrote Al-tar cheques to himself:

Q. So given that, sir, are you now willing to acknowledge that you filled out this Al-Tar Energy cheque payable to yourself?

A. It's possible. Yes.

Q. ... I guess by saying it's possible, you are acknowledging that you were that closely involved with Al-Tar, that you could write your own cheques -

A. Yeah. I meet him at, like a donut shop and filled it out. That's about it.

(Transcript, Examination of Dave Campbell, dated December 10, 2007, at p. 136 line 17 to p. 137 line 1)

Q. Did you receive that cheque?

A. I'm sure I did.

Q. Well, it's payable to your company.

A. Yeah.

Q. Did you write that cheque?

A. Possibly, yes.

...

Q. And you think you possibly wrote it.

A. Okay, I did.

Q. Who else would have written it?

A. All right. I did.

Q. You did write it.

A. Yes.

(Transcript, Examination of Dave Campbell, dated December 10, 2007, at p. 169 line 18 to p. 170 line 7)

[248] We also find that Campbell knew that the Corporate Respondents were not engaged in any legitimate business activities.

[249] Campbell admitted in his compelled testimony that although he was involved with the Corporate Respondents, he did not have any experience working with oil companies.

[250] In his compelled examination, Campbell stated that he did not know what the Corporate Respondents were doing. In our view this is a lie. Later on in that same compelled examination Campbell admitted that he knew that the activities of Al-tar, Alberta Energy and Drago were linked, however he gave evasive answers when Staff questioned him about the companies' specific activities:

Q. So Drago was supposed to be Alberta Energy and Al-Tar? They are all supposed to be one and the same?

A. Yes.

Q. All the same. Raising money for these three companies were all one and the same purpose.

A. To do the deal with the company in Alberta.



Q. To do the deal with the company in Alberta. But you can't tell me the name of the company in Alberta?

A. No, I don't remember the name. ...

(Transcript, Examination of Dave Campbell, dated December 10, 2007, at p. 116 line 25 to p. 117 line 11)

[251] As a result of Campbell's conduct and role in the investment scheme, Campbell (through his company Canadian Oil Riggers) received a total of \$217,195.93 of investor funds from the Corporate Respondents. This amount is broken down as follows:

- With respect to Al-tar investor funds, Campbell received \$174,320.93 from Al-tar (as seen from the flow of funds chart in paragraph 76)
- With respect to Alberta Energy investor funds, Campbell, received \$33,909.50 from Alberta Energy.
- With respect to Drago investor funds, Campbell received \$8,925.00 from Drago.

[252] These fraudulent acts caused deprivation to investors. We note that these investors lost their funds and were not paid back.

[253] We conclude that Campbell perpetrated a fraud and breached section 126.1(b) of the Act.

#### **Da Silva**

[254] We find that Da Silva engaged in acts of deceit, falsehoods and other fraudulent means that deprived Al-tar investors of their funds.

[255] As set out in paragraph 106, Da Silva played an integral role soliciting Al-tar investors. As part of the scheme to solicit investors, Da Silva used an alias Daniels (as described in paragraph 68). He deceived investors about his identity when communicating with them. The evidence in this matter shows that individuals actually invested in Al-tar after having discussions with Da Silva (while he used the alias Daniels).

[256] In his compelled examination, Da Silva explained that he had a contract between Al-tar and his company Premium Resources indicating that as principal of Premium Resource he was to provide services for Al-tar. As compensation, Da Silva was to receive a flat fee of \$500,000 – regardless of whether the work was completed or not. According to Da Silva, he was supposed to do internet research on mergers and acquisitions in the oil and gas industry and provide reports to O'Brien. However, when Staff requested these reports, invoices or any materials in support of this work, Da Silva was unable to provide any documentation. As stated above at paragraph 106, we do not accept that Da Silva provided marketing services or other services related to a contract with Al-tar. We find that he was paid to solicit investor funds and was part of the investment scheme.

[257] We also find that Da Silva, who played the role of an Al-tar sales representative, had full knowledge about Al-tar's conduct and he raised funds from investors when there was no legitimate business underlying Al-tar. He was fully aware that this would deprive investors of their funds.

[258] Da Silva stated in his compelled examination that he was contracted by Al-tar to acquire land leases, find partnership deals with anybody who had land leases, research drilling capabilities, and deal with the oil and gas industry. However, Da Silva also stated that he did not keep any business records for his company. Da Silva also admitted that he was not familiar with this process and had never been involved in the oil and gas industry. We agree with Staff's submission, that Da Silva's actions defy common business sense. If this was a legitimate consulting business that Da Silva was running, then he would have had records and sample reports and other clients. In our view, based on the evidence, Da Silva was not engaged in legitimate consulting for Al-tar, rather he had a role in the investment scheme and received investor funds.

[259] Da Silva also knew that Al-tar's principal, O'Brien, was soliciting funds from investors and he knew that these funds were being used to pay him:

I asked him [O'Brien] specifically where did this money come from, and he told me in no uncertain terms that he was raising capital through selling units or shares ... My concern was getting paid for my services. That's all I know.

(Transcript, Examination of Abel Da Silva, dated November 21, 2007, at p. 54 line 24 to p. 55 line 10)

[260] We note that at a later date, Da Silva lied in his affidavit, dated December 18, 2007, and contradicted the statement he made in his compelled testimony about the source of funds he was paid with. Da Silva's affidavit stated at paragraph 20 that:

I have no direct knowledge of the original source of the funds that were paid to me by Al-Tar. I know nothing about the finances of Al-Tar or the manner in which it was capitalized. ...

[261] Da Silva's statement in his compelled examination is consistent with the overwhelming evidence of his involvement in the scheme.

[262] He also knew or ought to have known that Al-tar's activities stated in Al-tar press releases were false. These press releases discussed Al-tar's business deals and acquisitions, something that Da Silva was supposed to have arranged for Al-tar according to the purported contract between him and Al-tar. However, Da Silva denied knowledge of Al-tar's purported activities discussed in the press releases.

[263] As a result of his conduct and role in the investment scheme, Da Silva received \$207,030 of Al-tar investor funds which were paid to his company Premium Resource. As discussed above at paragraph 106 we found that these funds were paid to Da Silva to compensate him for soliciting investor funds.

[264] These fraudulent acts caused deprivation to investors. We note that these investors lost their funds and were not paid back.

[265] We conclude that Da Silva perpetrated a fraud and breached section 126.1(b) of the Act.

### **Sylvester**

[266] We find that Sylvester engaged in acts of deceit, falsehoods and other fraudulent means that deprived Alberta Energy and Drago investors of their funds.

[267] Sylvester, the sole director of Alberta Energy, stated that he was unfamiliar with the company Alberta Energy; however at a later point in his compelled examination he admitted that he was listed as President and CEO of Alberta Energy since its inception and that he registered the company.

[268] When Sylvester, the sole director of Drago, opened the Drago bank account accompanied by Campbell, the bank was told that that the company was engaged in field research and consulting and mineral mining. This was untrue.

[269] Sylvester's name was also listed on the Alberta Energy website, which contained false information and information copied from the Al-tar website. Specifically, the Alberta Energy website stated that:

Mr. Sylvester has been President & Chief Executive Officer of Alberta Energy Corp. since it's inception. He has been a senior executive officer of Embridge [sic] for over 7 years and is a director of a number of Embridge subsidiaries. He is a member of the North American Review Board of Peak Oil Holdings, Inc. (world leader in the study of peak oil theories) and is also a member of the board of the Coal Alliance Group, (global management consulting, technology services and outsourcing company).

[270] This description of Sylvester's experience as a senior executive was completely fabricated and false.

[271] We also find that Sylvester, as the sole director of Alberta Energy and Drago, had full knowledge of the conduct of these companies and he had knowledge that this conduct would deprive investors of their funds.

[272] We note that as discussed at paragraph 110, Sylvester was also the President of OSG Capital, which was a company that was related to this whole investment scheme but not a respondent in this proceeding.

[273] In his compelled examination, Sylvester admitted he was aware fraudulent conduct was taking place. Specifically:

- Sylvester admitted that he did not know anything about mineral mining. He also admitted that he did not know what Alberta Energy and Drago were being used for, although he was the sole director of both companies. However, when opening bank accounts with Campbell, Sylvester did not question or verify the business activities of Alberta Energy or Drago and he allowed for false information about the companies to be used to open bank accounts, which was an integral part of the investment scheme.

- Sylvester also admitted that the content of Alberta Energy's website was false.

[274] Sylvester also explained in his compelled testimony that the reason he got involved with Campbell and the investment scheme is because he wanted to make money:

[Campbell's] going to show me how to make some money ... it was going to be simple and he was going to teach me how to do it. It looked like he was making money. I was like, hey, no problem. We went and set up a bank account ...

(Transcript, Examination of Julian Sylvester dated May 2, 2008, at p. 17 lines 1-5)

[275] As a result of Sylvester's conduct and role in the investment scheme, \$9,000 of Drago investor funds were paid into the Drago bank account which Sylvester was the sole signatory.

[276] We find that Sylvester engaged in acts of deceit, falsehoods and other fraudulent means with respect to Alberta Energy and Drago for the sole purpose of raising funds from investors when he knew there was no legitimate business aspect to Alberta Energy or Drago.

[277] These fraudulent acts caused deprivation to investors. We note that these investors lost their funds and were not paid back.

[278] We conclude that Sylvester perpetrated a fraud and breached section 126.1(b) of the Act.

#### **Al-tar**

[279] We find that Al-tar engaged in many acts of deceit, falsehoods and other fraudulent means that deprived investors of their funds.

[280] First of all, Al-tar's website contained false information about the company. It stated that:

- Al-tar "is a growing independent energy company based in Toronto, Ontario, engaged in oil and gas lease acquisitions, exploration and development".
- "The Company will specialize in acquiring oil and gas leases that have potential for increased oil and natural gas production utilizing new technologies".
- Al-tar "will acquire oil and gas leases that have proven reserves".
- Al-tar "focuses on premium oil and gas properties in both the royalty sector as well as non-operated cash flow wells".
- Al-tar "is poised to expand globally at a rapid rate to create greater shareholder value".

[281] Al-tar also falsely stated on forms when opening bank accounts that it was involved with leasing land in the Alberta Oil sands, limestone extraction from oil slag and investor transactions.

[282] In addition, Al-tar's Executive Summary, which was signed by O'Brien, provided false information about the company to give investors the impression that Al-tar was a legitimate business. The content of the Executive Summary is addressed above at paragraph 223.

[283] Furthermore, as discussed at paragraph 225, Al-tar issued press releases that contained false and fabricated information about Al-tar's business activities and transactions.

[284] When Al-tar's structure and activities are looked at as a whole, we find that the following facts are also indicators that Al-tar had no legitimate business purpose and the company was fraudulent:

- Al-tar representatives used aliases when dealing with investors.
- The two Al-tar bank accounts were only open for a short period of time, six and eight months respectively.
- The address of a post office box was listed as an office location.

- Investor funds were deposited in the two Al-tar bank accounts and immediately transferred to other accounts controlled by some of the respondents or related individuals and entities.
- Investor funds were used for personal expenditures.
- Calls to investors were made from various locations, but investors were only provided a mailbox address as the company's location.
- Investors were subjected to repeated calls prior to agreeing to invest.
- The share price for Al-tar shares varied with no apparent basis for valuation.
- Al-tar had no board of directors, no operating assets or infrastructure, no experienced management and we were not provided with any evidence of legitimate books and records kept by the company.

[285] All of the statements about Al-tar's activities are completely false. We find that Al-tar did not engage in any legitimate business in any industry. Staff's investigation in this matter did not locate any assets, operations or legitimate business expenses. Al-tar was only involved in raising funds fraudulently from investors.

[286] For a corporate respondent it is sufficient to show that its directing minds knew or reasonably ought to have known that the acts of the corporation perpetrated a fraud to prove a breach of section 126.1(b).

[287] O'Brien was the directing mind and sole director of Al-tar. He had full knowledge of the fraudulent conduct which took place and deprived investors of their funds. As set out in paragraphs 230 to 232, O'Brien had no experience in the oil and gas industry and he knew the information contained in Al-tar's press releases and website was false. O'Brien, Al-tar's President, CEO and sole director knew that Al-tar was not engaged in any legitimate activities in any industry.

[288] Investors relied on the false and fabricated information about Al-tar and its business activities when deciding whether to invest in the company. Therefore, these fraudulent acts caused deprivation to investors. Through the investment scheme Al-tar raised a total of \$615,199.50 from investors. We note that these investors lost their funds and were not paid back.

[289] We conclude that Al-tar perpetrated a fraud and breached section 126.1(b) of the Act.

### ***Alberta Energy***

[290] We find that Alberta Energy engaged in acts of deceit, falsehoods and other fraudulent means that deprived investors of their funds.

[291] Al-tar's website contained false information about the company and this was addressed at paragraph 119. The Alberta Energy website was almost identical to the Al-tar website and included the identical toll free phone number and the same spelling mistakes. The only difference was that the Alberta Energy website had a different company name, board of directors and address.

[292] As discussed at paragraph 119, Alberta Energy issued a press release dated February 7, 2007 that contained false and fabricated information about Alberta Energy's business activities and transactions.

[293] Similar to Al-tar, Alberta Energy did not have any legitimate business activity other than soliciting funds from investors. It also had a virtual office. In addition, Alberta Energy sales persons used aliases when contacting investors and investors were not aware of who they were really talking to or corresponding with. These are all indicia of a fraudulent investment scheme.

[294] For a corporate respondent it is sufficient to show that its directing minds knew or reasonably ought to have known that the acts of the corporation perpetrated a fraud to prove a breach of section 126.1(b).

[295] Sylvester was the directing mind and sole director of Alberta Energy. He had full knowledge of the fraudulent conduct which took place and that it deprived investors of their funds. Sylvester, the sole director of Alberta Energy, had no experience in the mining and/or oil and gas industries and he claimed to not know what Alberta Energy did, contrary to what was stated in corporate documents sent to investors. Alberta Energy was not engaged in any legitimate activities. As CEO and sole director of Alberta Energy, Sylvester knew or ought to have known of Alberta Energy's activities, that its website contained false information and that information in Alberta Energy's press releases was untrue.

[296] Investors relied on the false information about Alberta Energy and its business activities when deciding whether to invest in the company. Therefore, these fraudulent acts caused deprivation to investors. Through the investment scheme Alberta Energy raised a total of \$33,909.53 from investors. We note that these investors lost their funds and were not paid back.

[297] As a result, we find that Alberta Energy perpetrated a fraud and breached section 126.1(b) of the Act.

**Drago**

[298] We find that Drago engaged in acts of deceit, falsehoods and other fraudulent means that deprived investors of their funds.

[299] Drago's website contained false information about the company. We note that material on the Drago website was copied from the website of another company, Geoandine Mining Corp.

[300] Drago's website also referred to the Arkaroola Copper-Gold-Uranium Project ("Arkaroola Project") in South Australia. Alliance Resources, a publicly traded company on the Australian Exchange, operates the Arkaroola Project and confirmed through correspondence that the claims on the Drago website in relation to the Arkaroola Project are false.

[301] Investors were also referred to the Drago website. The website contained false promotional information about the company to give investors the impression that it would be a good investment.

[302] In addition, Drago issued a press release containing false and misleading information. This press release, dated April 15, 2007, stated that Drago "... signed an engagement letter for a proposed private placement on a firm underwriting basis of 10 Million units at a price of \$1.50 per unit, for gross proceeds to Drago of \$15,000,000." Sylvester confirmed in his compelled examination that this press release was not true.

[303] Similar to Al-tar and Alberta Energy, Drago did not have any legitimate business activity other than soliciting funds from investors. It also had a virtual office.

[304] For a corporate respondent it is sufficient to show that its directing minds knew or reasonably ought to have known that the acts of the corporation perpetrated a fraud to prove a breach of section 126.1(b).

[305] Sylvester was the directing mind and sole director of Drago. He had full knowledge of the fraudulent conduct which took place and that it deprived investors of their funds. Drago was not engaged in any legitimate activities. Sylvester, as CEO and sole director of Drago, knew or ought to have known of Drago's activities, that its website contained false information and that information in Drago's press releases was untrue.

[306] Through the investment scheme Drago raised a total of \$9,000 from investors. We note that these investors lost their funds and were not paid back.

[307] We conclude that Drago perpetrated a fraud and breached section 126.1(b) of the Act.

**iii. Findings**

[308] In our view the investment scheme involving Al-tar, Alberta Energy and Drago was fraudulent. The Corporate Respondents did not engage in any legitimate business activities as purported in their promotional materials, press releases and websites. None of the Corporate Respondents engaged in any activity other than soliciting funds from investors. There were no assets relating to any legitimate business activity at all with respect to any of the Corporate Respondents.

[309] The Individual Respondents involved in the scheme had no experience in the oil and gas or mining industries, which were the industries the Corporate Respondents were purportedly involved in.

[310] The Corporate Respondents all operated out of virtual offices. The Corporate Respondents had websites which contained false information which were used to entice investors to invest.

[311] Investors were referred to the Al-tar, Alberta Energy and Drago websites and were provided with the Executive Summaries and press releases, all of which contained false information about the Corporate Respondents in order to entice them to invest or reinvest. This false information mislead investors as to what they were really investing in.

[312] Members of the public were cold-called on a repeated basis by sales representatives (some of whom used aliases) using high pressure sales tactics to persuade individuals to invest.

[313] Once funds were received from investors by the Corporate Respondents, these funds were immediately transferred to bank accounts controlled by the Individual Respondents and others. These funds were used to pay personal expenses and none of the funds were spent on any legitimate business purpose.

[314] Once investors invested, they had a difficult time reaching contact persons at the Corporate Respondents to verify the status of their investment.

[315] The investment scheme that the Corporate Respondents were involved in was of a rolling nature. The activities surrounding each of the Corporate Respondents was short lived, once one company was being wound up (i.e. Al-tar), another was getting off the ground (i.e. Alberta Energy and/or Drago). In our view, this conduct was designed so that the Respondents would avoid detection.

[316] In our view, the overlapping character of the investment scheme, the fleeting nature of the operations and the brief window of opportunity that the Respondents used to exploit and sell shares to the unsuspecting public underscores the fraudulent conduct in this case.

[317] We find that the Corporate Respondents were solely created to defraud investors and engaged in fraudulent activity. We also find that the Individual Respondents were aware of this for the most part, or they ought to have been aware given the nature of their role as integral players in this fraudulent investment scheme. They were also aware of the scale and magnitude of the impact on investors.

[318] The Respondents were perpetrating a fraud on investors across Canada and the U.K. A total of \$658,109.63 was raised from the sale of shares of Al-tar, Alberta Energy and Drago. We note that these investor lost all their funds and were not paid back.

[319] We conclude that the Respondents all breached section 126.1(b) of the Act.

#### **H. Was O'Brien Responsible for the Breaches by Al-tar and was Sylvester Responsible for the Breaches by Alberta Energy and Drago, Pursuant to Section 129.2 of the Act?**

##### **i. The Applicable Law**

[320] According to section 129.2 of the Act, a director or officer is deemed to be liable for a breach of securities law by the issuer where the director or officer authorized, permitted or acquiesced in the issuer's non-compliance with the Act. Specifically, section 129.2 states:

129.2 For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

[321] Basically, the director or officer is also held responsible as the directing mind behind the company's actions.

[322] In subsection 1(1) of the Act, a "director" is defined as "a director of a company or an individual performing a similar function or occupying a similar position for any person" and an "officer" is defined as:

- (a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager,
- (b) every individual who is designated as an officer under a by-law or similar authority of the registrant or issuer, and
- (c) every individual who performs functions similar to those normally performed by an individual referred to in clause (a) or (b).

[323] The language of section 129.2 also uses the terms "authorize", "permit" and "acquiesce". "Acquiesce" means to agree or consent quietly without protest. "Authorize" means to give official approval or permission, to give power or authority or to give justification. "Permit" means to allow, consent, tolerate, give permission or authorize permission particularly in writing.

##### **ii. Analysis**

###### **O'Brien**

[324] O'Brien is the sole director of Al-tar. This is stated on Al-tar's Corporation Profile Report.

[325] O'Brien's conduct as set out in paragraph 91 also shows that he was the directing mind behind Al-tar, and that he permitted, authorized or acquiesced to the conduct engaged in by Al-tar. To summarize, O'Brien:

- incorporated Al-tar;
- set up the infrastructure for Al-tar. For example, O'Brien set up Al-tar's offices, opened the Al-tar bank accounts as sole signatory, opened the Al-tar mailbox at Apple Self Storage, opened the Puralator account and contracted for phone/fax and answering services for Al-tar...etc.;
- transferred investor funds/wrote cheques from the Al-tar bank accounts to himself, Sterling Services, Premium Resource and Canadian Oil Riggers;
- in his capacity as President and CEO of Al-tar, he signed Al-tar correspondence, share certificates, emails, an Executive Summary and press releases that were sent to investors and potential investors;
- spoke to a number of investors regarding Al-tar's prospects; and
- received \$147,791.50 of Al-tar investor funds.

[326] It is clear that O'Brien not only permitted Al-tar's conduct, but O'Brien also acted on behalf of Al-tar, executed Al-tar's investment scheme and made Al-tar's conduct possible by organizing and setting up the whole company and receiving investor funds.

[327] O'Brien was the directing mind behind all of Al-tar's actions in this investment scheme, and as the sole director, O'Brien was ultimately responsible for the conduct of Al-tar. Pursuant to section 129.2 of the Act, O'Brien is liable for Al-tar's breaches of the Act.

### **Sylvester**

[328] Sylvester is the sole director of Alberta Energy. This is stated on Alberta Energy's Corporation Profile Report.

[329] Sylvester's conduct as set out in paragraph 110 also shows that he was the directing mind behind Alberta Energy. To summarize, Sylvester:

- was listed as a director on the Alberta Energy website, which was designed to excite readers about Alberta Energy's prospects;
- was listed on the Alberta Energy Executive Summary as President and CEO;
- set up the Alberta Energy bank account and was the sole signatory; and
- signed blank cheques for the Alberta Energy bank account.

[330] In addition, Sylvester is the sole director of Drago. This is stated on Drago's Corporation Profile Report. As a sole director, Sylvester was ultimately responsible for the conduct of Drago.

[331] Sylvester's conduct as set out in paragraph 112 also shows that he was the directing mind behind Drago. To summarize, Sylvester:

- set up the Drago bank account into which investor funds were deposited and he was the sole signatory of that account; and
- signed blank cheques for the Drago bank account.

[332] We find that Sylvester was the directing mind behind Alberta Energy and Drago, and as the sole director of these companies, he permitted their conduct. Pursuant to section 129.2 of the Act, Sylvester is liable for Alberta Energy and Drago's breaches of the Act.

### **iii. Findings**

[333] Accordingly, we conclude that O'Brien authorized, permitted or acquiesced in Al-tar's contraventions of the Act and he is responsible for Al-tar's conduct in this matter pursuant to section 129.2 of the Act.

[334] We also conclude that Sylvester authorized, permitted or acquiesced in Alberta Energy and Drago's contraventions of the Act and he is responsible for Alberta Energy and Drago's conduct in this matter pursuant to section 129.2 of the Act.

**I. Was the Conduct of the Respondents Contrary to the Public Interest?**

**i. The Applicable Law**

[335] 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.

[336] In pursuing the purposes of the Act, the Commission must consider fundamental principles as stated in section 2.1 of the Act. The relevant parts of section 2.1 of the Act are as follows:

- 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.

[337] Staff alleges that the conduct of the Respondents is contrary to the public interest.

**ii. Analysis**

[338] 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. All of the Respondents engaged in trades without proper registration. There was never any prospectus prepared for the issuance of the shares of the Corporate Respondents. We find that there were no exemptions available to any of the Respondents. 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.

[339] The investment scheme was characterized by high pressure sales tactics. In *First Global* the Commission made the following comment with respect to high pressure sales tactics:

High pressure sales tactics encompass a broad range of activity that has the effect of persuading individuals to invest inappropriately. A key characteristic of high pressure sales tactics is that these tactics put individuals in a position where they are pressured to make a decision quickly because the investment opportunity may disappear. High pressure sales tactics include, but are not limited to, selling tactics designed to induce, and having the effect of inducing, clients to purchase securities inappropriate to their situation on the basis of inadequate investment information and/or misinformation as to the issuers of the securities, the value of the securities, and the prospects of the issuer and the securities. Comments that give the impression that shares are attractive and quick action is needed because an investment opportunity will expire in a short time frame and repeatedly calling investors to get them to make an investment decision quickly based on misleading information also qualify as high pressure sales tactics.

*(First Global, supra at para. 158)*

[340] Just as in *First Global*, high pressure sales tactics were used in this case. Investors were called on a repeated basis (often by individuals using aliases) to invest in the Corporate Respondents. Comments regarding the future value of shares and that the Corporate Respondents would be going public in a short period of time were made to investors to entice them to invest or reinvest otherwise they would lose out on an opportunity. Investors testified that they were influenced by such statements when making their decision to invest in the Corporate Respondents. We find that these kinds of high pressure sales tactics are improper and unacceptable and contrary to the public interest.

[341] In addition, through their trading activities in relation to this investment scheme, Da Silva breached the Commission Order dated May 10, 2006 and Campbell breached the Commission Order dated April 13, 2006. Breaches of previous Commission orders are very serious as it shows a party's disregard for their obligations and responsibilities under Ontario securities law. This egregious conduct was also contrary to the public interest.



[342] All of the Respondents also engaged in fraud in breach of section 126.1(b) of the Act.

[343] The investment scheme as a whole was fraudulent. Virtual offices and mailboxes were used as the addresses of the Corporate Respondents to give the appearance that there was a legitimate address and location for the business. Aliases were used when investors were solicited.

[344] A review of the evidence in this matter reveals that the Corporate Respondents did not carry on any business other than raising funds from investors. Their promotional materials, websites and press releases contained false and misleading information about fictitious activities. The Corporate Respondents were purportedly involved in the oil and gas and mineral mining industries, however, the evidence revealed that none of them were involved in any legitimate business in any industry.

[345] The whole investment scheme involving the three Corporate Respondents raised \$658,109.03. Once funds were raised from investors, the majority of these funds were deposited into the bank accounts of the Corporate Respondents and then immediately transferred to other accounts controlled by some of the respondents or related individuals and entities. The Individual Respondents used investor funds for personal use. The only business-related expenditures were to facilitate raising funds from investors.

[346] This matter dealt with egregious conduct involving significant contraventions of the Act including fraud. The fraudulent activities of the Respondents caused significant harm to investors and investors were deprived of their funds. Investors of Al-tar, Alberta Energy and Drago lost their entire investments totaling \$658,109.03.

[347] In this matter the investment scheme and the conduct of the Respondents undermine the integrity of and confidence in the capital markets, and this is clearly contrary to the public interest.

### iii. Findings

[348] We conclude that all of the Respondents engaged in conduct contrary to the public interest.

## 6. DECISION

[349] For the reasons stated above we find that:

- (a) all the Respondents breached subsection 25(1)(a) of the Act;
- (b) Da Silva breached the Commission Order dated May 10, 2006 and Campbell breached the Commission Order dated April 13, 2006;
- (c) all the Respondents breached subsection 53(1) of the Act;
- (d) there were no exemptions available to the Respondents;
- (e) none of the Respondents breached subsection 38(2) of the Act;
- (f) none of the Respondents breached subsection 38(3) of the Act;
- (g) all the Respondents breached section 126.1(b) of the Act.
- (h) pursuant to section 129.2 of the Act, O'Brien is liable for Al-tar's conduct and Sylvester is liable for Alberta Energy and Drago's conduct.
- (i) all of the Respondents acted contrary to the public interest.

[350] 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 11th day of June, 2010.

\_\_\_\_\_  
"Suresh Thakrar"  
Suresh Thakrar

\_\_\_\_\_  
"Carol S. Perry"  
Carol S. Perry

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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
Carbiz Inc.	11 June 10	23 June 10		
INTERCABLE ICH INC.	11 June 10	23 June 10		
Firstgold Corp.	11 June 10	23 June 10		
Redline Communications Group Inc.	11 June 10	23 June 10		
Axiotron Corp.	11 June 10	23 June 10		
Synergex Corporation	11 June 10	23 June 10		
Bassett Media Group Corp.	15 June 10	28 June 10		

### 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	24 Feb 10	11 June 10	11 June 10
Redline Communications Group Inc.	07 April 10	19 Apr 10	19 Apr 10	11 June 10	11 June 10
Synergex Corporation	08 Apr 10	20 Apr 10	20 Apr 10	11 June 10	11 June 10
Delta Uranium Inc.	16 June 10	28 June 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		
Axiotron Corp.	12 Feb 10	24 Feb 10	24 Feb 10	11 June 10	11 June 10
Redline Communications Group Inc.	07 April 10	19 Apr 10	19 Apr 10	11 June 10	11 June 10
Synergex Corporation	08 Apr 10	20 Apr 10	20 Apr 10	11 June 10	11 June 10
Freeport Capital Inc.	05 May 10	17 May 10	17 May 10		
SonnenEnergy Corp.	06 May 10	18 May 10	18 May 10		
Newlook Industries Corp.	06 May 10	18 May 10	18 May 10		
TriNorth Capital Inc.	07 May 10	19 May 10	19 May 10		

**Cease Trading Orders**

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<b>Company Name</b>	<b>Date of Order or Temporary Order</b>	<b>Date of Hearing</b>	<b>Date of Permanent Order</b>	<b>Date of Lapse/ Expire</b>	<b>Date of Issuer Temporary Order</b>
Diamond International Exploration Inc.	14 May 10	26 May 10	26 May 10		
MedX Health Corp.	17 May 10	28 May 10	28 May 10		
Echo Energy Canada Inc.	25 May 10	07 June 10	07 June 10		
Delta Uranium Inc.	16 June 10	28 June 10			

## Chapter 5

# Rules and Policies

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### 5.1.1 Amendments to Form 81-101F2 Contents of Annual Information Form under NI 81-101 Mutual Fund Prospectus Disclosure

**AMENDMENTS TO  
FORM 81-101F2  
CONTENTS OF ANNUAL INFORMATION FORM  
UNDER  
NATIONAL INSTRUMENT 81-101  
MUTUAL FUND PROSPECTUS DISCLOSURE**

1. National Instrument 81-101 *Mutual Fund Prospectus Disclosure* is amended by this Instrument.
2. Form 81-101F2 *Contents of Annual Information Form* is amended by repealing Item 10.4, including the Instructions under that Item, and substituting the following:

*“10.4 – Brokerage Arrangements*

- (1) If any brokerage transactions involving the client brokerage commissions of the mutual fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or a third party, other than order execution, state
  - (a) the process for, and factors considered in, selecting a dealer to effect securities transactions for the mutual fund, including whether receiving goods or services in addition to order execution is a factor, and whether and how the process may differ for a dealer that is an affiliated entity;
  - (b) the nature of the arrangements under which order execution goods and services or research goods and services might be provided;
  - (c) each type of good or service, other than order execution, that might be provided; and
  - (d) the method by which the portfolio adviser makes a good faith determination that the mutual fund, on whose behalf the portfolio adviser directs any brokerage transactions involving client brokerage commissions to a dealer in return for the provision of any order execution goods and services or research goods and services, by the dealer or a third party, receives reasonable benefit considering both the use of the goods or services and the amount of client brokerage commissions paid.
- (2) Since the date of the last annual information form, if any brokerage transactions involving the client brokerage commissions of the mutual fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or third party, other than order execution, state
  - (a) each type of good or service, other than order execution, that has been provided to the manager or the portfolio adviser of the mutual fund; and
  - (b) the name of any affiliated entity that provided any good or service referred to in paragraph (a), separately identifying each affiliated entity and each type of good or service provided by each affiliated entity.
- (3) If any brokerage transactions involving the client brokerage commissions of the mutual fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or a third party, other than order execution, state that the name of any other dealer or third party that provided a good or service referred to in paragraph (2)(a), that was not disclosed under paragraph (2)(b), will be provided upon request by contacting the mutual fund or mutual fund family at [insert telephone number] or at [insert mutual fund or mutual fund family e-mail address].

*INSTRUCTIONS:*

*Terms defined in NI 23-102 – Use of Client Brokerage Commissions have the same meaning where used in this Item.”*

3. This Instrument comes into force on June 30, 2010.

**5.1.2 Amendments to Form 41-101F2 Information Required in an Investment Fund Prospectus under NI 41-101 General Prospectus Requirements**

**AMENDMENTS TO  
FORM 41-101F2  
INFORMATION REQUIRED IN  
AN INVESTMENT FUND PROSPECTUS  
UNDER  
NATIONAL INSTRUMENT 41-101  
GENERAL PROSPECTUS REQUIREMENTS**

1. National Instrument 41-101 *General Prospectus Requirements* is amended by this Instrument.
2. Form 41-101F2 *Information Required in an Investment Fund Prospectus* is amended by adding the following Item and accompanying Instructions immediately after Item 19.2:

*“19.2.1 – Brokerage Arrangements*

Under the sub-heading “Brokerage Arrangements”,

- (a) If any brokerage transactions involving the client brokerage commissions of the investment fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or a third party, other than order execution, state
  - (i) the process for, and factors considered in, selecting a dealer to effect securities transactions for the investment fund, including whether receiving goods or services in addition to order execution is a factor, and whether and how the process may differ for a dealer that is an affiliated entity;
  - (ii) the nature of the arrangements under which order execution goods and services or research goods and services might be provided;
  - (iii) each type of good or service, other than order execution, that might be provided; and
  - (iv) the method by which the portfolio adviser makes a good faith determination that the investment fund, on whose behalf the portfolio adviser directs any brokerage transactions involving client brokerage commissions to a dealer in return for the provision of any order execution goods and services or research goods and services, by the dealer or a third party, receives reasonable benefit considering both the use of the goods or services and the amount of client brokerage commissions paid;
- (b) If any brokerage transactions involving the client brokerage commissions of the investment fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or a third party, other than order execution, since the date of the investment fund’s last prospectus or last annual information form, whichever one is the most recent, state
  - (i) each type of good or service, other than order execution, that has been provided to the manager or the portfolio adviser of the investment fund; and
  - (ii) the name of any affiliated entity that provided any good or service referred to in subparagraph (i), separately identifying each affiliated entity and each type of good or service provided by each affiliated entity; and
- (c) If any brokerage transactions involving the client brokerage commissions of the investment fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or a third party, other than order execution, state that the name of any other dealer or third party that provided a good or service referred to in paragraph (b)(i), that was not disclosed under paragraph (b)(ii), will be provided upon request by contacting the investment fund or investment fund family at [insert telephone number] or at [insert investment fund or investment fund family e-mail address].

*INSTRUCTIONS:*

*Terms defined in NI 23-102 – Use of Client Brokerage Commissions have the same meaning where used in this Item.*

3. This Instrument comes into force on June 30, 2010.



5.1.3 NI 24-101 Institutional Trade Matching and Settlement

**CANADIAN SECURITIES ADMINISTRATORS**  
**NATIONAL INSTRUMENT 24-101**  
**INSTITUTIONAL TRADE MATCHING AND SETTLEMENT**

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**NATIONAL INSTRUMENT 24-101  
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT**

**PART 1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions —**

In this Instrument,

“clearing agency” means,

- (a) in Ontario, a clearing agency recognized by the securities regulatory authority under section 21.2 of the *Securities Act* (Ontario),
- (b) in Québec, a clearing house for securities recognized by the securities regulatory authority, and
- (c) in every other jurisdiction, an entity that is carrying on business as a clearing agency in the jurisdiction;

“custodian” means a person or company that holds securities for the benefit of another under a custodial agreement or other custodial arrangement;

“DAP/RAP trade” means a trade

- (a) executed for a client trading account that permits settlement on a delivery against payment or receipt against payment basis through the facilities of a clearing agency, and
- (b) for which settlement is made on behalf of the client by a custodian other than the dealer that executed the trade;

“institutional investor” means a client of a dealer that has been granted DAP/RAP trading privileges by the dealer;

“marketplace” has the same meaning as in National Instrument 21-101 *Marketplace Operation*;

“matching service utility” means a person or company that provides centralized facilities for matching, but does not include a clearing agency;

“North American region” means Canada, the United States, Mexico, Bermuda and the countries of Central America and the Caribbean;

“registered firm” means a person or company registered under securities legislation as a dealer or adviser;

“trade-matching agreement” means, for trades executed with or on behalf of an institutional investor, a written agreement entered into among trade-matching parties setting out the roles and responsibilities of the trade-matching parties in matching those trades and including, without limitation, a term by which the trade-matching parties agree to establish, maintain and enforce policies and procedures designed to achieve matching as soon as practical after a trade is executed;

“trade-matching party” means, for a trade executed with or on behalf of an institutional investor,

- (a) a registered adviser acting for the institutional investor in processing the trade,
- (b) if a registered adviser is not acting for the institutional investor in processing the trade, the institutional investor unless the institutional investor is
  - (i) an individual, or
  - (ii) a person or company with total securities under administration or management not exceeding \$10 million,
- (c) a registered dealer executing or clearing the trade, or
- (d) a custodian of the institutional investor settling the trade;

“trade-matching statement” means, for trades executed with or on behalf of an institutional investor, a signed written statement of a trade-matching party confirming that it has established, maintains and enforces policies and procedures designed to achieve matching as soon as practical after a trade is executed;

“T” means the day on which a trade is executed;

“T+1” means the next business day following T;

“T+2” means the second business day following T;

“T+3” means the third business day following T.

## 1.2 Interpretation — trade matching and Eastern Time —

- (1) In this Instrument, matching is the process by which
  - (a) the details and settlement instructions of an executed DAP/RAP trade are reported, verified, confirmed and affirmed or otherwise agreed to among the trade-matching parties, and
  - (b) unless the process is effected through the facilities of a clearing agency, the matched details and settlement instructions are reported to a clearing agency.
- (2) Unless the context otherwise requires, a reference in this Instrument to
  - (a) a time is to Eastern Time, and
  - (b) a day is to a twenty-four hour day from midnight to midnight Eastern Time.

## PART 2 APPLICATION

- 2.1 This Instrument does not apply to
- (a) a trade in a security of an issuer that has not been previously issued or for which a prospectus is required to be sent or delivered to the purchaser under securities legislation,
  - (b) a trade in a security to the issuer of the security,
  - (c) a trade made in connection with a take-over bid, issuer bid, amalgamation, merger, reorganization, arrangement or similar transaction,
  - (d) a trade made in accordance with the terms of conversion, exchange or exercise of a security previously issued by an issuer,
  - (e) a trade that is a securities lending, repurchase, reverse repurchase or similar financing transaction,
  - (f) a trade in a security of a mutual fund to which National Instrument 81-102—*Mutual Funds* applies,
  - (g) a trade to be settled outside Canada,
  - (h) a trade in an option, futures contract or similar derivative, or
  - (i) a trade in a negotiable promissory note, commercial paper or similar short-term debt obligation that, in the normal course, would settle in Canada on T.

## PART 3 TRADE MATCHING REQUIREMENTS

### 3.1 Matching deadlines for registered dealer —

- (1) A registered dealer shall not execute a DAP/RAP trade with or on behalf of an institutional investor unless the dealer has established, maintains and enforces policies and procedures designed to achieve matching as soon as practical after such a trade is executed and in any event no later than 12 p.m. (noon) on T+1.

- (2) Despite subsection (1), the dealer may adapt its policies and procedures to permit matching to occur no later than 12 p.m. (noon) on T+2 for a DAP/RAP trade that results from an order to buy or sell securities received from an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from a geographical region outside of the North American region.

**3.2 Pre-DAP/RAP trade execution documentation requirement for dealers —**

A registered dealer shall not open an account to execute a DAP/RAP trade for an institutional investor or accept an order to execute a DAP/RAP trade for the account of an institutional investor unless its policies and procedures are designed to encourage each trade-matching party to

- (a) enter into a trade-matching agreement with the dealer, or
- (b) provide a trade-matching statement to the dealer.

**3.3 Matching deadlines for registered adviser —**

- (1) A registered adviser shall not give an order to a dealer to execute a DAP/RAP trade on behalf of an institutional investor unless the adviser has established, maintains and enforces policies and procedures designed to achieve matching as soon as practical after such a trade is executed and in any event no later than 12 p.m. (noon) on T+1.
- (2) Despite subsection (1), the adviser may adapt its policies and procedures to permit matching to occur no later than 12 p.m. (noon) on T+2 for a DAP/RAP trade that results from an order to buy or sell securities received from an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from a geographical region outside of the North American region.

**3.4 Pre-DAP/RAP trade execution documentation requirement for advisers —**

A registered adviser shall not open an account to execute a DAP/RAP trade for an institutional investor or give an order to a dealer to execute a DAP/RAP trade for the account of an institutional investor unless its policies and procedures are designed to encourage each trade-matching party to

- (a) enter into a trade-matching agreement with the adviser, or
- (b) provide a trade-matching statement to the adviser.

**PART 4 REPORTING BY REGISTERED FIRMS**

**4.1 Exception reporting requirement**

A registered firm shall deliver Form 24-101F1 to the securities regulatory authority no later than 45 days after the end of a calendar quarter if

- (a) less than 90 per cent of the DAP/RAP trades executed by or for the registered firm during the quarter matched within the time required in Part 3, or
- (b) the DAP/RAP trades executed by or for the registered firm during the quarter that matched within the time required in Part 3 represent less than 90 per cent of the aggregate value of the securities purchased and sold in those trades.

**PART 5 REPORTING REQUIREMENTS FOR CLEARING AGENCIES**

- 5.1 A clearing agency through which trades governed by this Instrument are cleared and settled shall deliver Form 24-101F2 to the securities regulatory authority no later than 30 days after the end of a calendar quarter.

**PART 6 REQUIREMENTS FOR MATCHING SERVICE UTILITIES**

**6.1 Initial information reporting —**

- (1) A person or company shall not carry on business as a matching service utility unless
- (a) the person or company has delivered Form 24-101F3 to the securities regulatory authority, and

(b) at least 90 days have passed since the person or company delivered Form 24-101F3.

(2) During the 90 day period referred to in subsection (1), if there is a significant change to the information in the delivered Form 24-101F3, the person or company shall inform the securities regulatory authority in writing immediately of that significant change by delivering an amendment to Form 24-101F3 in the manner set out in Form 24-101F3.

## **6.2 Anticipated change to operations —**

At least 45 days before implementing a significant change to any item set out in Form 24-101F3, a matching service utility shall deliver an amendment to the information in the manner set out in Form 24-101F3.

## **6.3 Ceasing to carry on business as a matching service utility —**

(1) If a matching service utility intends to cease carrying on business as a matching service utility, it shall deliver a report on Form 24-101F4 to the securities regulatory authority at least 30 days before ceasing to carry on that business.

(2) If a matching service utility involuntarily ceases to carry on business as a matching service utility, it shall deliver a report on Form 24-101F4 as soon as practical after it ceases to carry on that business.

## **6.4 Ongoing information reporting and record keeping —**

(1) A matching service utility shall deliver Form 24-101F5 to the securities regulatory authority no later than 30 days after the end of a calendar quarter.

(2) A matching service utility shall keep such books, records and other documents as are reasonably necessary to properly record its business.

## **6.5 System requirements —**

For all of its core systems supporting trade matching, a matching service utility shall

(a) consistent with prudent business practice, on a reasonably frequent basis, and, in any event, at least annually,

(i) make reasonable current and future capacity estimates,

(ii) conduct capacity stress tests of those systems to determine the ability of the systems to process transactions in an accurate, timely and efficient manner,

(iii) implement reasonable procedures to review and keep current the testing methodology of those systems,

(iv) review the vulnerability of those systems and data centre computer operations to internal and external threats, including breaches of security, physical hazards and natural disasters, and

(v) maintain adequate contingency and business continuity plans;

(b) annually cause to be performed an independent review and written report, in accordance with generally accepted auditing standards, of the stated internal control objectives of those systems; and

(c) promptly notify the securities regulatory authority of a material failure of those systems.

## **PART 7 TRADE SETTLEMENT**

### **7.1 Trade settlement by registered dealer —**

(1) A registered dealer shall not execute a trade unless the dealer has established, maintains and enforces policies and procedures designed to facilitate settlement of the trade on a date that is no later than the standard settlement date for the type of security traded prescribed by an SRO or the marketplace on which the trade would be executed.

(2) Subsection (1) does not apply to a trade for which terms of settlement have been expressly agreed to by the counterparties to the trade at or before the trade was executed.

**PART 8 REQUIREMENTS OF SELF-REGULATORY ORGANIZATIONS AND OTHERS**

- 8.1 A clearing agency or matching service utility shall have rules or other instruments or procedures that are consistent with the requirements of Parts 3 and 7.
- 8.2 A requirement of this Instrument does not apply to a member of an SRO if the member complies with a rule or other instrument of the SRO that deals with the same subject matter as the requirement and that has been approved, non-disapproved, or non-objected to by the securities regulatory authority and published by the SRO.

**PART 9 EXEMPTION**

**9.1 Exemption —**

- (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.
- (3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

**PART 10 EFFECTIVE DATES AND TRANSITION**

Note: This unofficial consolidation does not include sections 10.1 and 10.2 which contain coming-into-force provisions and transitional provisions which are only of historical interest.
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FORM 24-101F1

REGISTERED FIRM  
EXCEPTION REPORT OF  
DAP/RAP TRADE REPORTING AND MATCHING

CALENDAR QUARTER PERIOD COVERED:

From: \_\_\_\_\_ to: \_\_\_\_\_

REGISTERED FIRM IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of registered firm (if sole proprietor, last, first and middle name):
2. Name(s) under which business is conducted, if different from item 1:
- 3a. Address of registered firm's principal place of business:
- 3b. Indicate below the jurisdiction of your principal regulator within the meaning of NI 31-103 *Registration Requirements and Exemptions*:
  - Alberta
  - British Columbia
  - Manitoba
  - New Brunswick
  - Newfoundland & Labrador
  - Northwest Territories
  - Nova Scotia
  - Nunavut
  - Ontario
  - Prince Edward Island
  - Québec
  - Saskatchewan
  - Yukon
- 3c. Indicate below all jurisdictions in which you are registered:
  - Alberta
  - British Columbia
  - Manitoba
  - New Brunswick
  - Newfoundland & Labrador
  - Northwest Territories
  - Nova Scotia
  - Nunavut
  - Ontario
  - Prince Edward Island
  - Québec
  - Saskatchewan
  - Yukon
4. Mailing address, if different from business address:
5. Type of business:                     Dealer                     Adviser
6. Category of registration:
7. (a) Registered Firm NRD number:  
(b) If the registered firm is a participant of a clearing agency, the registered firm's CUID number:

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- 8. Contact employee name:
- Telephone number:
- E-mail address:

**INSTRUCTIONS:**

Deliver this form for both equity and debt DAP/RAP trades together with Exhibits A, B and C pursuant to section 4.1 of the Instrument, covering the calendar quarter indicated above, within 45 days of the end of the calendar quarter if

- (a) less than 90 per cent of the equity and/or debt DAP/RAP trades executed by or for you during the quarter matched within the time required in Part 3 of the Instrument, or
- (b) the equity and/or debt DAP/RAP trades executed by or for you during the quarter that matched within the time required in Part 3 of the Instrument represent less than 90 per cent of the aggregate value of the securities purchased and sold in those trades.

**EXHIBITS:**

**Exhibit A – DAP/RAP trade statistics for the quarter**

Complete Tables 1 and 2 below for each calendar quarter.

(1) *Equity DAP/RAP trades*

<i>Entered into CDS by deadline (to be completed by dealers only)</i>				<i>Matched by deadline</i>			
<b># of Trades</b>	<b>%</b>	<b>\$ Value of Trades</b>	<b>%</b>	<b># of Trades</b>	<b>%</b>	<b>\$ Value of Trades</b>	<b>%</b>

(2) *Debt DAP/RAP trades*

<i>Entered into CDS by deadline (to be completed by dealers only)</i>				<i>Matched by deadline</i>			
<b># of Trades</b>	<b>%</b>	<b>\$ Value of Trades</b>	<b>%</b>	<b># of Trades</b>	<b>%</b>	<b>\$ Value of Trades</b>	<b>%</b>

**Exhibit B – Reasons for not meeting exception reporting thresholds**

Describe the circumstances or underlying causes that resulted in or contributed to the failure to achieve the percentage target for matched equity and/or debt DAP/RAP trades within the maximum time prescribed by Part 3 of the Instrument. Reasons given could be one or more matters within your control or due to another trade-matching party or service provider. If you have insufficient information to determine the percentages, the reason for this should be provided. See also Companion Policy 24-101CP to the Instrument.

**Exhibit C – Steps to address delays**

Describe what specific steps you are taking to resolve delays in the equity and/or debt DAP/RAP trade reporting and matching process in the future. Indicate when each of these steps is expected to be implemented. The steps being taken could be internally focused, such as implementing a new system or procedure, or externally focused, such as meeting with a trade-matching party to determine what action should be taken by that party. If you have insufficient information to determine the



percentages, the steps being taken to obtain this information should be provided. See also Companion Policy 24-101CP to the Instrument.

**CERTIFICATE OF REGISTERED FIRM**

The undersigned certifies that the information given in this report on behalf of the registered firm is true and correct.

DATED at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
(Name of registered firm - type or print)

\_\_\_\_\_  
(Name of director, officer or partner - type or print)

\_\_\_\_\_  
(Signature of director, officer or partner)

\_\_\_\_\_  
(Official capacity - type or print)

FORM 24-101F2

**CLEARING AGENCY  
 QUARTERLY OPERATIONS REPORT OF  
 INSTITUTIONAL TRADE REPORTING AND MATCHING**

**CALENDAR QUARTER PERIOD COVERED:**

From: \_\_\_\_\_ to: \_\_\_\_\_

**IDENTIFICATION AND CONTACT INFORMATION:**

1. Full name of clearing agency:
2. Name(s) under which business is conducted, if different from item 1:
3. Address of clearing agency's principal place of business:
4. Mailing address, if different from business address:
5. Contact employee name:  
 Telephone number:  
 E-mail address:

**INSTRUCTIONS:**

Deliver this form together with all exhibits pursuant to section 5.1 of the Instrument, covering the calendar quarter indicated above, within 30 days of the end of the calendar quarter.

Exhibits shall be provided in an electronic file, in the following file format: "CSV" (Comma Separated Variable) (e.g., the format produced by Microsoft Excel).

**EXHIBITS:**

**1. DATA REPORTING**

**Exhibit A – Aggregate matched trade statistics**

For client trades, provide the information to complete Tables 1 and 2 below for each month in the quarter. These two tables can be integrated into one report. Provide separate aggregate information for trades that have been reported or entered into your facilities as matched trades by a matching service utility.

Month/Year: \_\_\_\_\_ (MMM/YYYY)

Table 1 — Equity trades:

	Entered into clearing agency by dealers				Matched in clearing agency by custodians			
	# of Trades	% Industry	\$ Value of Trades	% Industry	# of Trades	% Industry	\$ Value of Trades	% Industry
T								
T+1 - noon								
T+1								
T+2								
T+3								
>T+3								
Total								

Table 2 — Debt trades:

	Entered into clearing agency by dealers				Matched in clearing agency by custodians			
	# of Trades	% Industry	\$ Value of Trades	% Industry	# of Trades	% Industry	\$ Value of Trades	% Industry
T								
T+1 - noon								
T+1								
T+2								
T+3								
>T+3								
Total								

**Legend**

“# of Trades” is the total number of transactions in the month;  
 “\$ Value of Trades” is the total value of the transactions (purchases and sales) in the month.

**Exhibit B – Individual matched trade statistics**

Using the same format as Exhibit A above, provide the relevant information for each participant of the clearing agency in respect of client trades during the quarter that have been entered by the participant and matched within the timelines indicated in Exhibit A.

**CERTIFICATE OF CLEARING AGENCY**

The undersigned certifies that the information given in this report on behalf of the clearing agency is true and correct.

DATED at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
 (Name of clearing agency - type or print)

\_\_\_\_\_  
 (Name of director, officer or partner - type or print)

\_\_\_\_\_  
 (Signature of director, officer or partner)

\_\_\_\_\_  
 (Official capacity - type or print)

**FORM 24-101F3**

**MATCHING SERVICE UTILITY  
NOTICE OF OPERATIONS**

**DATE OF COMMENCEMENT INFORMATION:**

Effective date of commencement of operations: \_\_\_\_\_ (DD/MMM/YYYY)

**TYPE OF INFORMATION:**             INITIAL SUBMISSION             AMENDMENT

**MATCHING SERVICE UTILITY IDENTIFICATION AND CONTACT INFORMATION:**

1. Full name of matching service utility:
2. Name(s) under which business is conducted, if different from item 1:
3. Address of matching service utility's principal place of business:
4. Mailing address, if different from business address:
5. Contact employee name:  
Telephone number:  
E-mail address:
6. Legal counsel:  
Firm name:  
Telephone number:  
E-mail address:

**GENERAL INFORMATION:**

7. Website address:
8. Date of financial year-end: \_\_\_\_\_ (DD/MMM/YYYY)
9. Indicate the form of your legal status (e.g., corporation, limited or general partnership), the date of formation, and the jurisdiction under which you were formed:  
Legal status:     CORPORATION             PARTNERSHIP  
                       OTHER (SPECIFY):  
(a) Date of formation: \_\_\_\_\_ (DD/MMM/YYYY)  
(b) Jurisdiction and manner of formation:
10. Specify the general types of securities for which information is being or will be received and processed by you for transmission of matched trades to a clearing agency (e.g. exchange-traded domestic equity and debt securities, exchange-traded foreign equity and debt securities, equity and debt securities traded over-the-counter).

**INSTRUCTIONS:**

Deliver this form together with all exhibits pursuant to section 6.1 or 10.2(4) of the Instrument.

For each exhibit, include your name, the date of delivery of the exhibit and the date as of which the information is accurate (if different from the date of the delivery). If any exhibit required is not applicable, a full statement describing why the exhibit is not applicable shall be furnished in lieu of the exhibit. To the extent information requested for an exhibit is identical to the information

requested in another form that you have filed or delivered under National Instrument 21-101 *Marketplace Operation*, simply attach a copy of that other form and indicate in this form where such information can be found in that other form.

If you are delivering an amendment to Form 24-101F3 pursuant to section 6.1(2) or 6.2 of the Instrument, and the amended information relates to an exhibit that was delivered with such form, provide a description of the change and complete and deliver an updated exhibit. If you are delivering Form 24-101F3 pursuant to section 10.2(4) of the Instrument, simply indicate at the top of this form under "Date of Commencement Information" that you were already carrying on business as a matching service utility in the relevant jurisdiction on the date that Part 6 of the Instrument came into force.

**EXHIBITS:**

**1. CORPORATE GOVERNANCE**

**Exhibit A – Constatng documents**

Provide a copy of your constating documents, including corporate by-laws and other similar documents, as amended from time to time.

**Exhibit B – Ownership**

List any person or company that owns 10 per cent or more of your voting securities or that, either directly or indirectly, through agreement or otherwise, may control your management. Provide the full name and address of each person or company and attach a copy of the agreement or, if there is no written agreement, briefly describe the agreement or basis through which the person or company exercises or may exercise control or direction.

**Exhibit C – Officials**

Provide a list of the partners, officers, directors or persons performing similar functions who presently hold or have held their offices or positions during the current and previous calendar year, indicating the following for each:

1. Name.
2. Title.
3. Dates of commencement and expiry of present term of office or position and length of time the office or position held.
4. Type of business in which each is primarily engaged and current employer.
5. Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.
6. Whether the person is considered to be an independent director.

**Exhibit D – Organizational structure**

Provide a narrative or graphic description of your organizational structure.

**Exhibit E – Affiliated entities**

For each person or company affiliated to you, provide the following information:

1. Name and address of affiliated entity.
2. Form of organization (e.g., association, corporation, partnership).
3. Name of jurisdiction and statute under which organized.
4. Date of incorporation in present form.
5. Brief description of nature and extent of affiliation or contractual or other agreement with you.
6. Brief description of business services or functions.

7. If a person or company has ceased to be affiliated with you during the previous year or ceased to have a contractual or other agreement relating to your operations during the previous year, provide a brief statement of the reasons for termination of the relationship.

## **2. FINANCIAL VIABILITY**

### **Exhibit F – Audited financial statements**

Provide your audited financial statements for the latest financial year and a report prepared by an independent auditor.

## **3. FEES**

### **Exhibit G – Fee list, fee structure**

Provide a complete list of all fees and other charges imposed, or to be imposed, by you for use of your services as a matching service utility, including the cost of establishing a connection to your systems.

## **4. ACCESS**

### **Exhibit H – Users**

Provide a list of all users or subscribers for which you provide or propose to provide the services of a matching service utility. Identify the type(s) of business of each user or subscriber (e.g., custodian, dealer, adviser or other party).

If applicable, for each instance during the past year in which any user or subscriber of your services has been prohibited or limited in respect of access to such services, indicate the name of each such user or subscriber and the reason for the prohibition or limitation.

### **Exhibit I – User contract**

Provide a copy of each form of agreement governing the terms by which users or subscribers may subscribe to your services of a matching service utility.

## **5. SYSTEMS AND OPERATIONS**

### **Exhibit J – System description**

Describe the manner of operation of your systems for performing your services of a matching service utility (including, without limitation, systems that collect and process trade execution details and settlement instructions for matching of trades). This description should include the following:

1. The hours of operation of the systems, including communication with a clearing agency.
2. Locations of operations and systems (e.g., countries and cities where computers are operated, primary and backup).
3. A brief description in narrative form of each service or function performed by you.

## **6. SYSTEMS COMPLIANCE**

### **Exhibit K – Security**

Provide a brief description of the processes and procedures implemented by you to provide for the security of any system used to perform your services of a matching service utility.

### **Exhibit L – Capacity planning and measurement**

1. Provide a brief description of capacity planning/performance measurement techniques and system and stress testing methodologies.
2. Provide a brief description of testing methodologies with users or subscribers. For example, when are user/subscriber tests employed? How extensive are these tests?

**Exhibit M – Business continuity**

Provide a brief description of your contingency and business continuity plans in the event of a catastrophe.

**Exhibit N – Material systems failures**

Provide a brief description of policies and procedures in place for reporting to regulators material systems failures. Material systems failures include serious incidents that result in the interruption of the matching of trades for more than thirty minutes during normal business hours.

**Exhibit O – Independent systems audit**

1. Briefly describe your plans to provide an annual independent audit of your systems.
2. If applicable, provide a copy of the last external systems operations audit report.

**7. INTEROPERABILITY**

**Exhibit P – Interoperability agreements**

List all other matching service utilities for which you have entered into an *interoperability* agreement. Provide a copy of all such agreements.

**8. OUTSOURCING**

**Exhibit Q – Outsourcing firms**

For each person or company (outsourcing firm) with whom or which you have an outsourcing agreement or arrangement relating to your services of a matching service utility, provide the following information:

1. Name and address of the outsourcing firm.
2. Brief description of business services or functions of the outsourcing firm.
3. Brief description of the outsourcing firm's contingency and business continuity plans in the event of a catastrophe.

**CERTIFICATE OF MATCHING SERVICE UTILITY**

The undersigned certifies that the information given in this report on behalf of the matching service utility is true and correct.

DATED at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
(Name of matching service utility - type or print)

\_\_\_\_\_  
(Name of director, officer or partner - type or print)

\_\_\_\_\_  
(Signature of director, officer or partner)

\_\_\_\_\_  
(Official capacity - type or print)

**FORM 24-101F4**

**MATCHING SERVICE UTILITY  
NOTICE OF CESSATION OF OPERATIONS**

**DATE OF CESSATION INFORMATION:**

- Type of information:          VOLUNTARY CESSATION  
                                       INVOLUNTARY CESSATION

Effective date of operations cessation: \_\_\_\_\_ (DD/MMM/YYYY)

**MATCHING SERVICE UTILITY IDENTIFICATION AND CONTACT INFORMATION:**

1. Full name of matching service utility:
2. Name(s) under which business is conducted, if different from item 1:
3. Address of matching service utility's principal place of business:
4. Mailing address, if different from business address:
5. Legal counsel:  
    Firm name:  
    Telephone number:  
    E-mail address:

**INSTRUCTIONS:**

Deliver this form together with all exhibits pursuant to section 6.3 of the Instrument.

For each exhibit, include your name, the date of delivery of the exhibit and the date as of which the information is accurate (if different from the date of the delivery). If any exhibit required is not applicable, a full statement describing why the exhibit is not applicable shall be furnished in lieu of the exhibit.

**EXHIBITS:**

**Exhibit A**

Provide the reasons for your cessation of business.

**Exhibit B**

Provide a list of all the users or subscribers for which you provided services during the last 30 days prior to you ceasing business. Identify the type(s) of business of each user or subscriber (e.g., custodian, dealer, adviser, or other party).

**Exhibit C**

List all other matching service utilities for which an *interoperability* agreement was in force immediately prior to cessation of business.



**CERTIFICATE OF MATCHING SERVICE UTILITY**

The undersigned certifies that the information given in this report on behalf of the matching service utility is true and correct.

DATED at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

\_\_\_\_\_  
(Name of matching service utility - type or print)

\_\_\_\_\_  
(Name of director, officer or partner - type or print)

\_\_\_\_\_  
(Signature of director, officer or partner)

\_\_\_\_\_  
(Official capacity - type or print)

FORM 24-101F5

**MATCHING SERVICE UTILITY  
QUARTERLY OPERATIONS REPORT OF  
INSTITUTIONAL TRADE REPORTING AND MATCHING**

**CALENDAR QUARTER PERIOD COVERED:**

From: \_\_\_\_\_ to: \_\_\_\_\_

**MATCHING SERVICE UTILITY IDENTIFICATION AND CONTACT INFORMATION:**

1. Full name of matching service utility:
2. Name(s) under which business is conducted, if different from item 1:
3. Address of matching service utility's principal place of business:
4. Mailing address, if different from business address:
5. Contact employee name:  
Telephone number:  
E-mail address:

**INSTRUCTIONS:**

Deliver this form together with all exhibits pursuant to section 6.4 of the Instrument, covering the calendar quarter indicated above, within 30 days of the end of the calendar quarter.

Exhibits shall be reported in an electronic file, in the following format: "CSV" (Comma Separated Variable) (e.g., the format produced by Microsoft Excel).

If any information specified is not available, a full statement describing why the information is not available shall be separately furnished.

**EXHIBITS**

**1. SYSTEMS REPORTING**

**Exhibit A – External systems audit**

If an external audit report on your core systems was prepared during the quarter, provide a copy of the report.

**Exhibit B – Material systems failures reporting**

Provide a brief summary of all material systems failures that occurred during the quarter and for which you were required to notify the securities regulatory authority under section 6.5(c) of the Instrument.

**2. DATA REPORTING**

**Exhibit C – Aggregate matched trade statistics**

Provide the information to complete Tables 1 and 2 below for each month in the quarter. These two tables can be integrated into one report.

Month/Year: \_\_\_\_\_ (MMM/YYYY)

Table 1 — Equity trades:

	Entered into matching service utility by dealer-users/subscribers				Matched in matching service utility by other users/subscribers			
	# of Trades	% Industry	\$ Value of Trades	% Industry	# of Trades	% Industry	\$ Value of Trades	% Industry
T								
T+1 - noon								
T+1								
T+2								
T+3								
>T+3								
Total								

Table 2 — Debt trades:

	Entered into matching service utility by dealer-users/subscribers				Matched in matching service utility by other users/subscribers			
	# of Trades	% Industry	\$ Value of Trades	% Industry	# of Trades	% Industry	\$ Value of Trades	% Industry
T								
T+1 - noon								
T+1								
T+2								
T+3								
>T+3								
Total								

**Legend**

“# of Trades” is the total number of transactions in the month;  
 “\$ Value of Trades” is the total value of the transactions (purchases and sales) in the month.

**Exhibit D – Individual matched trade statistics**

Using the same format as Exhibit C above, provide the relevant information for each user or subscriber in respect of trades during the quarter that have been entered by the user or subscriber and matched within the timelines indicated in Exhibit C.

**CERTIFICATE OF MATCHING SERVICE UTILITY**

The undersigned certifies that the information given in this report on behalf of the matching service utility is true and correct.

DATED at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
(Name of matching service utility- type or print)

\_\_\_\_\_  
(Name of director, officer or partner - type or print)

\_\_\_\_\_  
(Signature of director, officer or partner)

\_\_\_\_\_  
(Official capacity - type or print)

**CANADIAN SECURITIES ADMINISTRATORS**  
**COMPANION POLICY 24-101CP**  
**TO NATIONAL INSTRUMENT 24-101 —**  
**INSTITUTIONAL TRADE MATCHING AND SETTLEMENT**

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**COMPANION POLICY 24-101CP  
TO NATIONAL INSTRUMENT 24-101 —  
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT**

**PART 1 INTRODUCTION, PURPOSE AND DEFINITIONS<sup>1</sup>**

**1.1 Purpose of Instrument** — National Instrument 24-101 — *Institutional Trade Matching and Settlement* (Instrument) provides a framework in provincial securities regulation for more efficient and timely trade settlement processing, particularly institutional trades. The increasing volumes and dollar values of securities traded in Canada and globally by institutional investors mean existing back-office systems and procedures of market participants are challenged to meet post-execution processing demands. New requirements are needed to address the increasing risks. The Instrument is part of a broader initiative in the Canadian securities markets to implement straight-through processing (STP).<sup>2</sup>

**1.2 General explanation of matching, clearing and settlement —**

(1) *Parties to institutional trade* — A typical trade with or on behalf of an institutional investor might involve at least three parties:

- a registered adviser or other *buy-side* manager acting for an institutional investor in the trade—and often acting on behalf of more than one institutional investor in the trade (i.e., multiple underlying institutional client accounts) — who decides what securities to buy or sell and how the assets should be allocated among the client accounts;
- a registered dealer (including an Alternative Trading System registered as a dealer) responsible for executing or clearing the trade; and
- any financial institution or registered dealer (including under a *prime brokerage* arrangement) appointed to hold the institutional investor's assets and settle trades.

(2) *Matching* — A first step in settling a securities trade is to ensure that the buyer and the seller agree on the details of the transaction, a process referred to as trade confirmation and affirmation or trade *matching*.<sup>3</sup> A registered dealer who executes trades with or on behalf of others is required to report and confirm trade details, not only with the counterparty to the trade, but also with the client for whom it acted or the client with whom it traded (in which case, the client would be the counterparty). Similarly, a registered adviser or other buy-side manager is required to report trade details and provide settlement instructions to its custodian. The parties must agree on trade details — sometimes referred to as *trade data elements* — as soon as possible so that errors and discrepancies in the trades can be discovered early in the clearing and settlement process.

(3) *Matching process* — Verifying the trade data elements is necessary to *match* a trade executed on behalf of or with an institutional investor. Matching occurs when the relevant parties to the trade have, after verifying the trade data elements, reconciled or agreed to the details of the trade. Matching also requires that any custodian holding the institutional investor's assets be in a position to affirm the trade so that the trade can be ready for the clearing and settlement process through the facilities of the clearing agency. To illustrate, trade matching usually includes these following activities:

- (a) The registered dealer notifies the buy-side manager that the trade was executed.

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<sup>1</sup> In this Companion Policy, the terms “CSA”, “we”, “our” or “us” are used interchangeably and generally mean the same thing as *Canadian securities regulatory authorities* defined in National Instrument 14-101 — *Definitions*.

<sup>2</sup> For a discussion of Canadian STP initiatives, see Canadian Securities Administrators' (CSA) Discussion Paper 24-401 on *Straight-through Processing* and Request for Comments, April 16, 2004 (2004) 27 OSCB 3971 to 4031 (Discussion Paper 24-401); and CSA Notice 24-301 — *Responses to Comments Received on Discussion Paper 24-401 on Straight-through Processing, Proposed National Instrument 24-101 Post-trade Matching and Settlement, and Proposed Companion Policy 24-101CP to National Instrument 24-101 Post-trade Matching and Settlement*, February 11, 2005 (2005) 28 OSCB 1509 to 1526.

<sup>3</sup> The processes and systems for matching of “non-institutional trades” in Canada have evolved over time and become automated, such as retail trades on an exchange, which are matched or *locked-in* automatically at the exchange, or direct non-exchange trades between two participants of a clearing agency, which are generally matched through the facilities of the clearing agency. Dealer to dealer trades are subject to Investment Industry Regulatory Organization of Canada (IIROC) Member Rule 800.49, which provides that trades in non-exchange traded securities (including government debt securities) among dealers must be entered or accepted or rejected through the facilities of an “Acceptable Trade Matching Utility” within one hour of the execution of the trade.

- (b) The buy-side manager advises the dealer and any custodian(s) how the securities traded are to be allocated among the underlying institutional client accounts managed by the buy-side manager.<sup>4</sup> For so-called *block settlement trades*, the dealer sometimes receives allocation information from the buy-side manager based only on the number of custodians holding institutional investors' assets instead of on the actual underlying institutional client accounts managed by the buy-side manager.
  - (c) The dealer reports and confirms the trade details to the buy-side manager and clearing agency. The trade details required to be confirmed for matching, clearing and settlement purposes are generally similar to the information required in the customer trade confirmation delivered pursuant to securities legislation or self-regulatory organization (SRO) rules.<sup>5</sup>
  - (d) The custodian or custodians of the assets of the institutional investor verify the trade details and settlement instructions against available securities or funds held for the institutional investor. After trade details are agreed, the buy-side manager instructs the custodian(s) to release funds and/or securities to the dealer through the facilities of the clearing agency.
- (4) *Clearing and settlement* — The *clearing* of a trade begins after the execution of the trade. After matching is completed, clearing will involve the calculation of the mutual obligations of participants for the exchange of securities and money—a process which generally occurs within the facilities of a clearing agency. The *settlement* of a trade is the moment when the securities are transferred finally and irrevocably from one participant to another in exchange for a corresponding transfer of money. In the context of settlement of a trade through the facilities of a clearing agency, often acting as central counterparty, settlement will be the discharge of obligations in respect of funds or securities, computed on a net basis, between and among the clearing agency and its participants. Through the operation of novation and set-off in law or by contract, the clearing agency becomes a counterparty to each trade so that the mutual obligation to settle the trade is between the clearing agency and each participant.

### 1.3 Section 1.1 - Definitions and scope —

- (1) *Clearing agency* — Today, the definition of *clearing agency* applies only to The Canadian Depository for Securities Limited (CDS). The definition takes into account the fact that securities regulatory authorities in Ontario and Québec currently recognize or otherwise regulate clearing agencies in Canada under provincial securities legislation.<sup>6</sup> The functional meaning of *clearing agency* can be found in the securities legislation of certain jurisdictions.<sup>7</sup>
- (2) *Custodian* — While investment assets are sometimes held directly by investors, most are held on behalf of the investor by or through securities accounts maintained with a financial institution or dealer. The definition of *custodian* includes both a financial institution (non-dealer custodian) and a dealer acting as custodian (dealer custodian). Most institutional investors, such as pension and mutual funds, hold their assets through custodians that are prudentially-regulated financial institutions. However, others (like hedge funds) often maintain their investment assets with dealers under so-called *prime-brokerage* arrangements. A financial institution or dealer in Canada need not necessarily have a direct contractual relationship with an institutional investor to be considered a custodian of portfolio assets of the institutional investor for the purposes of the Instrument if it is acting as sub-custodian to a global custodian or international central securities depository.
- (3) *Institutional investor* — A client of a dealer that has been granted DAP/RAP trading privileges is an institutional investor. This will likely be the case whenever a client's investment assets are held by or through securities accounts maintained with a custodian instead of the client's dealer that executes its trades. While the expression "institutional

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<sup>4</sup> We remind registered advisers of their obligations to ensure fairness in allocating investment opportunities among their clients. An adviser must establish, maintain and apply policies and procedures that provide reasonable assurance that the firm and each individual acting on its behalf fairly allocates investment opportunities among its clients. If the adviser allocates investment opportunities among its clients, the firm's fairness policies should, at a minimum, indicate the method used to allocate the following: (i) price and commission among client orders when trades are bunched or blocked; (ii) block trades and initial public offerings (IPOs) among client accounts, and (iii) block trades and IPOs among client orders that are partially filled, such as on a pro-rata basis. The fairness policies should also address any other situation where investment opportunities must be allocated.

A summary of the fairness policies must be delivered to each client at the time the adviser opens an account for the client, and in a timely manner if there is a significant change to the summary last delivered to the client.

See sections 14.3 and 14.10 of National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103) and section 14.10 of the Companion Policy to NI 31-103.

<sup>5</sup> See, for example, section 36 of the *Securities Act* (Ontario), The Toronto Stock Exchange (TSX) Rule 2-405 and IIROC Member Rule 200.1(h).

<sup>6</sup> CDS is also regulated by the Bank of Canada pursuant to the *Payment Clearing and Settlement Act* (Canada).

<sup>7</sup> See, for example, s. 1(1) of the *Securities Act* (Ontario).

trade” is not defined in the Instrument, we use the expression in this Companion Policy to mean broadly any DAP/RAP trade.

- (4) DAP/RAP trade — The concepts *delivery against payment* and *receipt against payment* are generally understood by the industry. They are also defined terms in the Notes and Instructions (Schedule 4) to the *Joint Regulatory Financial Questionnaire and Report* of the Canadian SROs. All DAP/RAP trades, whether settled by a non-dealer custodian or a dealer custodian, are subject to the requirements of Part 3 of the Instrument. The definition of DAP/RAP trade excludes a trade for which settlement is made on behalf of a client by a custodian that is also the dealer that executed the trade.
- (5) Trade-matching party — An institutional investor, whether Canadian or foreign-based, may be a trade-matching party. As such, it, or its adviser that is acting for it in processing a trade, should enter into a trade-matching agreement or provide a trade-matching statement under Part 3 of the Instrument. However, an institutional investor that is an individual or a person or company with total securities under administration or management not exceeding \$10 million, is not a trade-matching party. A custodian that settles a trade on behalf of an institutional investor is also a trade-matching party and should enter into a trade-matching agreement or provide a trade-matching statement. However, a foreign global custodian or international central securities depository that holds Canadian portfolio assets through a local Canadian sub-custodian would not normally be considered a trade-matching party if it is not a clearing agency participant or otherwise directly involved in settling the trade in Canada.
- (6) Application of Instrument — Part 2 of the Instrument enumerates certain types of trades that are not subject to the Instrument.

## PART 2 TRADE MATCHING REQUIREMENTS

**2.1 Trade data elements** — Trade data elements that must be verified and agreed to are those identified by the SROs or the best practices and standards for institutional trade processing established and generally adopted by the industry. See section 2.4 of this Companion Policy. To illustrate, trade data elements that should be transmitted, compared and agreed to may include the following:

- (a) *Security identification*: standard numeric identifier, currency, issuer, type/class/series, market ID; and
- (b) *Order and trade information*: dealer ID, account ID, account type, buy/sell indicator, order status, order type, unit price/face amount, number of securities/quantity, message date/time, trade transaction type, commission, accrued interest (fixed income), broker settlement location, block reference, net amount, settlement type, allocation sender reference, custodian, payment indicator, IM portfolio/account ID, quantity allocated, and settlement conditions.

**2.2 Trade matching deadlines for registered firms** — The obligation of a registered dealer or registered adviser to establish, maintain and enforce policies and procedures, pursuant to sections 3.1 and 3.3 of the Instrument, will require the dealer or adviser to take reasonable steps to achieve matching as soon as practical after the DAP/RAP trade is executed and in any event no later than 12 p.m. (noon) on T+1. If the trade results from an order to buy or sell securities received from an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from a geographical region outside of the North American region, the deadline for matching is 12 p.m. (noon) on T+2 (subsections 3.1(2) and 3.3(2)). As defined, the North American region comprises Canada, the United States, Mexico, Bermuda and the countries of Central America and the Caribbean.

**2.3 Choice of trade-matching agreement or trade-matching statement —**

- (1) Establishing, maintaining and enforcing policies and procedures —
  - (a) Under sections 3.2 and 3.4, a registered dealer’s or registered adviser’s policies and procedures must be designed to encourage trade-matching parties to (i) enter into a trade-matching agreement with the dealer or adviser or (ii) provide or make available a trade-matching statement to the dealer or adviser. The purpose of the trade-matching agreement or trade-matching statement is to ensure that all trade-matching parties have established, maintain, and enforce appropriate policies and procedures designed to achieve matching of a DAP/RAP trade as soon as practical after the trade is executed. If the dealer or adviser is unable to obtain a trade-matching agreement or statement from a trade-matching party, it should document its efforts in accordance with its policies and procedures.
  - (b) The parties described in paragraphs (a), (b), (c), and (d) of the definition “trade-matching party” in section 1.1 of the Instrument need not necessarily all be involved in a trade for the requirements of sections 3.2 and 3.4 of the Instrument to apply. There is no need for an adviser to be involved in the matching process of an institutional investor’s trades for the requirement to apply. In this case, the trade-matching parties that should



have appropriate policies and procedures in place would be the institutional investor, the dealer and the custodian.

- (c) The Instrument does not provide the form of a trade-matching agreement or trade-matching statement other than it be in writing. Subsections (2) and (3) below provide some guidance on these documents. A trade-matching agreement or trade-matching statement should be signed by a senior executive officer of the entity to ensure its policies and procedures are given sufficient attention and priority within the entity's senior management. A senior executive officer would include any individual who is (a) the chair of the entity, if that individual performs the functions of the office on a full time basis, (b) a vice-chair of the entity, if that individual performs the functions of the office on a full time basis, (c) the president, chief executive officer or chief operating officer of the entity, and (d) a senior vice-president of the entity in charge of the entity's operations and back-office functions.

(2) Trade-matching agreement —

- (a) A registered dealer or registered adviser need only enter into one trade-matching agreement with the other trade-matching parties for new or existing DAP/RAP trading accounts of an institutional investor for all future trades in relation to such account. The trade-matching agreement may be a single multi-party agreement among the trade-matching parties, or a network of bilateral agreements. A single trade-matching agreement is also sufficient for the general and all sub-accounts of the registered adviser or buy-side manager. If the dealer or adviser uses a trade-matching agreement, the form of such agreement may be incorporated into the institutional account opening documentation and may be modified from time to time with the consent of the parties.
- (b) The agreement must specify the roles and responsibilities of each of the trade-matching parties and should describe the minimum standards and best practices to be incorporated into the policies and procedures that each party has in place. This should include the timelines for accomplishing the various steps and tasks of each trade-matching party for timely matching. For example, the agreement may include, as applicable, provisions dealing with:

*For the dealer executing and/or clearing the trade:*

- how and when the notice of trade execution (NOE) is to be given to the institutional investor or its adviser, including the format and content of the NOE (e.g., electronic);
- how and when trade details are to be entered into the dealer's internal systems and the clearing agency's systems;
- how and when the dealer is to correct or adjust trade details entered into its internal systems or the clearing agency's systems as may be required to agree to trade details with the institutional investor or its adviser;
- general duties of the dealer to cooperate with other trade-matching parties in the investigation, adjustment, expedition and communication of trade details to ensure trades can be matched within prescribed timelines.

*For the institutional investor or its adviser:*

- how and when to review the NOE's trade details, including identifying any differences from its own records;
- how and when to notify the dealer of trade differences, if any, and resolve such differences;
- how and when to determine and communicate settlement details and account allocations to the dealer and/or custodian(s);
- general duties of the institutional investor or its adviser to cooperate with other trade-matching parties in the investigation, adjustment, expedition and communication of trade details to ensure trades can be matched within prescribed timelines.

*For the custodian settling the trade at the clearing agency:*

- how and when to receive trade details and settlement instructions from institutional investors or their advisers;
- how and when to review and monitor trade details submitted to the clearing agency on an ongoing basis for items entered and awaiting affirmation or challenge;
- how and when to report to institutional investors or their advisers on an ongoing basis changes to the status of a trade and the matching of a trade;
- general duties of the custodian to cooperate with other trade-matching parties in the investigation, adjustment, expedition and communication of trade details to ensure trades can be matched within prescribed timelines.

- (3) Trade-matching statement — A single trade-matching statement is sufficient for the general and all sub-accounts of the registered adviser or buy-side manager. A registered dealer or registered adviser may accept a trade-matching statement signed by a senior executive officer of a trade-matching party without further investigation and may continue to rely upon the statement for all future trades in an account, unless the dealer or adviser has knowledge that any statements or facts set out in the statement are incorrect. Mass mailings or emails of a trade-matching statement, or the posting of a single uniform trade-matching statement on a Website, would be acceptable ways of providing the statement to other trade-matching parties. A registered firm may rely on a trade-matching party's representations that the trade-matching statement was provided to the other trade-matching parties without further investigation.
- (4) Monitoring and enforcement of undertakings in trade-matching documentation — Registered dealers and advisers should use reasonable efforts to monitor compliance with the terms or undertakings set out in the trade-matching agreements or trade-matching statements in accordance with their policies and procedures.

Registered dealers and advisers should also take active steps to address problems if the policies and procedures of other trade-matching parties appear to be inadequate and are causing delays in the matching process. Such steps might include imposing monetary incentives (e.g. penalty fees) or requesting a third party review or assessment of the party's policies and procedures. This approach could enhance cooperation among the trade-matching parties leading to the identification of the root causes of failures to match trades on time.

#### **2.4 Determination of appropriate policies and procedures —**

- (1) Best practices — We are of the view that, when establishing appropriate policies and procedures, a party should consider the industry's generally adopted best practices and standards for institutional trade processing. It should also include those policies and procedures into its regulatory compliance and risk management programs.
- (2) Different policies and procedures — We recognize that appropriate policies and procedures may not be the same for all registered dealers, registered advisers and other market participants because of the varying nature, scale and complexity of a market participant's business and risks in the trading process. For example, policies and procedures designed to achieve matching may differ among a registered dealer that acts as an "introducing broker" and one that acts as a "carrying broker".<sup>8</sup> In addition, if a dealer is not a clearing agency participant, the dealer's policies and procedures to expeditiously achieve matching should be integrated with the clearing arrangements that it has with any other dealer acting as carrying or clearing broker for the dealer. Establishing appropriate policies and procedures may require registered dealers, registered advisers and other market participants to upgrade their systems and enhance their interoperability with others.<sup>9</sup>

#### **2.5 Use of matching service utility —** The Instrument does not require the trade-matching parties to use the facilities or services of a matching service utility to accomplish matching of trades within the prescribed timelines. However, if such facilities or services are made available in Canada, the use of such facilities or services may help a trade-matching party's compliance with the Instrument's requirements.

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<sup>8</sup> See IIROC Member Rule 35 — *Introducing Broker / Carrying Broker Arrangements*.

<sup>9</sup> See Discussion Paper 24-401, at p. 3984, for a discussion of *interoperability*.

### **PART 3 INFORMATION REPORTING REQUIREMENTS**

#### **3.1 Exception reporting for registered firms —**

- (a) Part 4 of the Instrument requires a registered firm to complete and deliver to the securities regulatory authority Form 24-101F1 and related exhibits. Form 24-101F1 need only be delivered if less than a percentage target of the DAP/RAP trades executed by or for the registered firm in any given calendar quarter have matched within the time required by the Instrument. Tracking of a registered firm's trade matching statistics may be outsourced to a third party service provider, including a clearing agency or custodian. However, despite the outsourcing arrangement, the registered firm retains full legal and regulatory liability and accountability to the Canadian securities regulatory authorities for its exception reporting requirements. If a registered firm has insufficient information to determine whether it has achieved the percentage target of matched DAP/RAP trades in any given calendar quarter, it must explain in Form 24-101F1 the reasons for this and the steps it is taking to obtain this information in the future.
- (b) Form 24-101F1 requires registered firms to provide aggregate quantitative information on their equity and debt DAP/RAP trades. They must also provide qualitative information on the circumstances or underlying causes that resulted in or contributed to the failure to achieve the percentage target for matched equity and/or debt DAP/RAP trades within the maximum time prescribed by Part 3 of the Instrument and the specific steps they are taking to resolve delays in the trade reporting and matching process in the future. Registered firms should provide information that is relevant to their circumstances. For example, dealers should provide information demonstrating problems with NOEs or reporting of trade details to the clearing agency. Reasons given for the failure could be one or more matters within the registered firm's control or due to another trade-matching party or service provider.
- (c) The steps being taken by a registered firm to resolve delays in the matching process could be internally focused, such as implementing a new system or procedure, or externally focused, such as meeting with a trade-matching party to determine what action should be taken by that party. Dealers should confirm what steps they have taken to inform and encourage their clients to comply with the requirements or undertakings of the trade-matching agreement and/or trade-matching statement. They should confirm what problems, if any, they have encountered with their clients, other trade-matching parties or service providers. They should identify the trade-matching party or service provider that appears to be consistently not meeting matching deadlines or to have no reasonable policies and procedures in place. Advisers should provide similar information, including information demonstrating problems with communicating allocations or with service providers or custodians.

#### **3.2 Regulatory reviews of registered firm exception reports —**

- (a) We will review the completed Forms 24-101F1 on an ongoing basis to monitor and assess compliance by registered firms with the Instrument's matching requirements. We will identify problem areas in matching, including identifying trade-matching parties that have no or weak policies and procedures in place to ensure matching of trades is accomplished within the time prescribed by Part 3 of the Instrument. Monitoring and assessment of registered firm matching activities may be undertaken by the SROs in addition to, or in lieu of, reviews undertaken by us.
- (b) Consistent inability to meet the matching percentage target will be considered as evidence by the Canadian securities regulatory authorities that either the policies and procedures of one or more of the trade matching parties have not been properly designed or, if properly designed, have been inadequately complied with. Consistently poor qualitative reporting will also be considered as evidence of poorly designed or implemented policies and procedures. See also section 2.3(4) of this Companion Policy for a further discussion of our approach to compliance and enforcement of the trade-matching requirements of the Instrument.

**3.3 Other information reporting requirements —** Clearing agencies and matching service utilities are required to include in Forms 24-101F2 and 24-101F5 certain trade-matching information in respect of their participants or users/subscribers. The purpose of this information is to facilitate monitoring and enforcement by the Canadian securities regulatory authorities or SROs of the Instrument's matching requirements.

**3.4 Forms delivered in electronic form —** Registered firms may complete their Form 24-101F1 on-line on the CSA's website at the following URL addresses:

In English: [http://www.securities-administrators.ca/industry\\_resources.aspx?id=52](http://www.securities-administrators.ca/industry_resources.aspx?id=52)

In French: [http://www.autorites-valeurs-mobilieres.ca/ressources\\_professionnelles.aspx?id=52](http://www.autorites-valeurs-mobilieres.ca/ressources_professionnelles.aspx?id=52)

- 3.5 Confidentiality of information** — The forms delivered to the securities regulatory authority by a registered firm, clearing agency and matching service utility under the Instrument will be treated as confidential by us, subject to the applicable provisions of the freedom of information and protection of privacy legislation adopted by each province and territory. We are of the view that the forms contain intimate financial, commercial and technical information and that the interests of the providers of the information in non-disclosure outweigh the desirability of making such information publicly available. However, we may share the information with SROs and may publicly release aggregate industry-wide matching statistics on equity and debt DAP/RAP trading in the Canadian markets.

#### **PART 4 REQUIREMENTS FOR MATCHING SERVICE UTILITIES**

##### **4.1 Matching service utility —**

- (1) Part 6 of the Instrument sets out reporting, systems capacity, and other requirements of a matching service utility. The term *matching service utility* expressly excludes a clearing agency. A matching service utility would be any entity that provides the services of a post-execution centralized matching facility for trade-matching parties. It may use technology to match in real-time trade data elements throughout a trade's processing lifecycle. A matching service utility would not include a registered dealer who offers "local" matching services to its institutional investor-clients.
- (2) A matching service utility would be viewed by us as an important infrastructure system involved in the clearing and settlement of securities transactions. We believe that, while a matching service utility operating in Canada would largely enhance operational efficiency in the capital markets, it would raise certain regulatory concerns. Comparing and matching trade data are complex processes that are inextricably linked to the clearance and settlement process. A matching service utility concentrates processing risk in the entity that performs matching instead of dispersing that risk more to the dealers and their institutional investor-clients. Accordingly, we believe that the breakdown of a matching service utility's ability to accurately verify and match trade information from multiple market participants involving large numbers of securities transactions and sums of money could have adverse consequences for the efficiency of the Canadian securities clearing and settlement system. The requirements of the Instrument applicable to a matching service utility are intended to address these risks.

- 4.2 Initial information reporting requirements for a matching service utility** — Sections 6.1(1) and 10.2(4) of the Instrument require any person or company that carries on or intends to carry on business as a matching service utility to deliver Form 24-101F3 to the securities regulatory authority. We will review Form 24-101F3 to determine whether the person or company that delivered the form is an appropriate person or company to act as a matching service utility for the Canadian capital markets. We will consider a number of factors when reviewing the form, including:

- (a) the performance capability, standards and procedures for the transmission, processing and distribution of details of trades executed on behalf of institutional investors;
- (b) whether market participants generally may obtain access to the facilities and services of the matching service utility on fair and reasonable terms;
- (c) personnel qualifications;
- (d) whether the matching service utility has sufficient financial resources for the proper performance of its functions;
- (e) the existence of, and interoperability arrangements with, another entity performing a similar function for the same type of security; and
- (f) the systems report referred to in section 6.5(b) of the Instrument.

- 4.3 Change to significant information** — Under section 6.2 of the Instrument, a matching service utility is required to deliver to the securities regulatory authority an amendment to the information provided in Form 24-101F3 at least 45 days before implementing a significant change involving a matter set out in Form 24-101F3. In our view, a significant change includes a change to the information contained in the General Information items 1-10 and Exhibits A, B, E, G, I, J, O, P and Q of Form 24-101F3.

##### **4.4 Ongoing information reporting and other requirements applicable to a matching service utility —**

- (1) Ongoing quarterly information reporting requirements will allow us to monitor a matching service utility's operational performance and management of risk, the progress of interoperability in the market, and any negative impact on access to the markets. A matching service utility will also provide trade matching data and other information to us so that we can monitor industry compliance.

- (2) Completed forms delivered by a matching service utility will provide useful information on whether it is:
- (a) developing fair and reasonable linkages between its systems and the systems of any other matching service utility in Canada that, at a minimum, allow parties to executed trades that are processed through the systems of both matching service utilities to communicate through appropriate, effective interfaces;
  - (b) negotiating with other matching service utilities in Canada fair and reasonable charges and terms of payment for the use of interface services with respect to the sharing of trade and account information; and
  - (c) not unreasonably charging more for use of its facilities and services when one or more counterparties to trades are customers of other matching service utilities than the matching service utility would normally charge its customers for use of its facilities and services.

**4.5 Capacity, integrity and security system requirements —**

- (1) The activities in section 6.5(a) of the Instrument must be carried out at least once a year. We would expect these activities to be carried out even more frequently if there is a significant change in trading volumes that necessitates that these functions be carried out more frequently in order to ensure that the matching service utility can appropriately service its clients.
- (2) The independent review contemplated by section 6.5(b) of the Instrument should be performed by competent and independent audit personnel, in accordance with generally accepted auditing standards. Depending on the circumstances, we would consider accepting a review performed and written report delivered pursuant to similar requirements of a foreign regulator to satisfy the requirements of this section. A matching service utility that wants to advocate for that result must submit a request for discretionary relief.
- (3) The notification of a material systems failure under section 6.5(c) of the Instrument should be provided promptly from the time the incident was identified as being material and should include the date, cause and duration of the interruption and its general impact on users or subscribers. We consider promptly to mean within one hour from the time the incident was identified as being material. Material systems failures include serious incidents that result in the interruption of the matching of trades for more than thirty minutes during normal business hours.

**PART 5 TRADE SETTLEMENT**

- 5.1 Trade settlement by dealer** — Section 7.1 of the Instrument is intended to support and strengthen the general settlement cycle rules of the SROs and marketplaces. Current SRO and marketplace rules mandate a standard T+3 settlement cycle period for most transactions in equity and long term debt securities.<sup>10</sup> If a dealer is not a participant of a clearing agency, the dealer's policies and procedures to facilitate the settlement of a trade should be combined with the clearing arrangements that it has with any other dealer acting as carrying or clearing broker for the dealer.

**PART 6 REQUIREMENTS OF SELF-REGULATORY ORGANIZATIONS AND OTHERS**

- 6.1 Standardized documentation** — Without limiting the generality of section 8.2 of the Instrument, an SRO may require its members to use, or recommend that they use, a standardized form of trade-matching agreement or trade-matching statement prepared or approved by the SRO, and may negotiate on behalf of its members with other trade-matching parties and industry associations to agree on the standardized form of trade-matching agreement or trade-matching statement to be used by all relevant sectors in the industry (dealers, buy-side managers and custodians).

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<sup>10</sup> See, for example, IIROC Member Rule 800.27 and TSX Rule 5-103(1).

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## Chapter 7

# Insider Reporting

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This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see [www.carswell.com](http://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](http://www.sedi.ca)).





## Chapter 8

# Notice of Exempt Financings

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### REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price (\$)	# of Securities Distributed
05/20/2010	11	Augen Gold Corp. - Flow-Through Shares	450,000.00	N/A
05/14/2010	44	Augen Gold Corp. - Flow-Through Shares	4,441,500.15	6,404,236.00
05/27/2010	34	Canadian Horizons First Mortgage Investment Corporation - Preferred Shares	4,109,357.00	1,030,857.00
03/06/2010	4	Canadian Orebodies Inc. - Common Shares	0.00	350,000.00
05/27/2010	20	CareVest Blended Mortgage Investment Corporation - Preferred Shares	2,454,434.00	2,454,434.00
05/27/2010	25	CareVest Capital Blended Mortgage Investment Corp. - Preferred Shares	1,382,157.00	1,382,157.00
05/27/2010	14	CareVest First Mortgage Investment Corporation - Preferred Shares	664,555.00	664,555.00
03/20/2010	1	Carpathian Gold Inc. - Common Shares	0.00	5,000,000.00
02/22/2010	5	Champion Minerals Inc. - Units	1,080,000.00	1,800,000.00
07/14/2009	1	CI Short-Term Advantage Trust (Internal) - Units	24,999,999.91	2,443,076.31
05/13/2010	15	Colstar Ventures Inc. - Units	787,500.00	2,250,000.00
02/19/2010	63	Condor Resources Inc. - Units	3,240,000.00	10,800,000.00
05/17/2010	6	Crown Minerals Inc. - Flow-Through Shares	400,000.00	2,916,666.00
02/17/2010	7	D-Box Technologies Inc. - Common Shares	7,242,510.10	N/A
06/01/2010	2	Development Notes Limited Partnership - Units	295,000.00	295,000.00
03/02/2009 to 03/20/2009	1	Diamonds Trust Series1 - Common Shares	36,164.73	400.00
03/19/2009 to 03/20/2009	1	Direxon Bear - Common Shares	88,887.06	2,300.00
03/12/2009 to 03/17/2009	1	Direxon EGY Bull - Common Shares	294,823.34	10,500.00
03/11/2009 to 03/17/2009	1	Direxon Fin Bull 3X Shares - Common Shares	428,267.77	69,800.00
03/20/2009	1	Direxon Techn Bull 3XSH - Common Shares	58,348.09	900.00
05/28/2010	53	Eagle Hill Exploration Corporation - Common Shares	3,750,000.00	16,500,000.00
05/26/2010 to 05/28/2010	5	Eagle Landing Retail Limited Partnership - Units	175,000.00	175,000.00

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
05/20/2010	5	Energate Inc. - Units	5,317,317.54	N/A
03/31/2009	1	Energy Select Sector SPDR - Common Shares	542,046.39	10,000.00
02/11/2010	16	Enseco Energy Services Corp. - Units	8,000,000.00	40,000,000.00
01/01/2008 to 12/31/2008	8	Equity International Investment Trust - Units	49,789,879.00	36,282.78
05/25/2010	84	ESO Uranium Corp. - Flow-Through Shares	2,000,000.00	6,666,666.00
02/16/2010	115	Esperanza Silver Corporation - Units	5,000,000.00	4,000,000.00
10/01/2008 to 09/30/2009	3	Fidelity ClearPath Institutional 2010 Portfolio - Units	51,298,719.64	330,675.47
10/01/2008 to 09/30/2009	3	Fidelity ClearPath Institutional 2015 Portfolio - Units	23,109,038.34	402,356.91
05/25/2010	212	Feronia Inc. - Receipts	15,778,009.60	N/A
10/01/2008 to 09/30/2009	3	Fidelity ClearPath Institutional 2040 Portfolio - Units	70,947,175.46	1,795,228.29
10/01/2008 to 09/30/2009	3	Fidelity ClearPath Institutional 2020 Portfolio - Units	143,493,388.81	1,547,169.58
10/01/2008 to 09/30/2009	3	Fidelity ClearPath Institutional 2025 Portfolio - Units	32,436,201.47	655,441.84
10/01/2008 to 09/30/2009	3	Fidelity ClearPath Institutional 2030 Portfolio - Units	142,808,574.52	2,359,087.87
10/01/2008 to 09/30/2009	3	Fidelity ClearPath Institutional 2035 Portfolio - Units	21,887,176.97	718,607.14
10/01/2008 to 09/30/2009	3	Fidelity ClearPath Institutional 2045 Portfolio - Units	10,173,327.70	486,163.53
10/01/2008 to 09/30/2009	3	Fidelity ClearPath Institutional Income Portfolio - Units	5,402,834.26	129,664.61
09/01/2009 to 09/15/2009	3	Financial Select Sector SPDR - Common Shares	351,202.14	22,600.00
03/02/2009 to 03/20/2009	5	Financial Select Sector SPDR - Common Shares	14,315,828.43	1,276,000.00
06/01/2010	1	First Leaside Fund - Trust Units	26,197.50	25,000.00
05/26/2010	1	First Leaside Universal Limited Partnership - Units	25,000.00	25,000.00
05/27/2010	3	First Leaside Wealth Management Inc. - Preferred Shares	201,451.00	201,451.00
04/26/2010	40	First Point Minerals Corp. - Units	7,370,000.00	14,740,000.00
05/31/2010	22	Gemoscan Canada Inc. - Units	594,000.00	2,970,000.00
02/08/2010	2	Gold Canyon Resources Inc. - Common Shares	360,000.00	1,714,285.00
02/09/2010	8	Golden Dawn Minerals Inc. - Units	240,994.50	N/A
05/06/2010	45	Golden Hope Mines Limited - Units	1,905,259.90	10,584,276.00

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
01/01/2008 to 12/31/2008	7	Guardian - Units	298,890.39	N/A
01/01/2008 to 12/31/2008	2	Guardian Balanced Fund - Units	3,980,694.42	277,491.38
01/01/2008 to 12/31/2008	4	Guardian Canada Plus 130/30 Equity Fund - Units	66,670,834.73	N/A
01/01/2008 to 12/31/2008	2	Guardian Canadian 130/30 Equity Fund - Units	263,661.00	30,119.85
01/01/2008 to 12/31/2008	25	Guardian Canadian Bond Fund - Units	9,231,140.95	N/A
01/01/2008 to 12/31/2008	32	Guardian Canadian Equity Fund - Units	81,685,635.83	N/A
01/01/2008 to 12/31/2008	20	Guardian Canadian Growth Equity Fund - Units	288,266.00	N/A
01/01/2008 to 12/31/2008	68	Guardian Canadian Plus Equity Fund - Units	1,135,226.34	N/A
01/01/2008 to 12/31/2008	12	Guardian Canadian Small/Mid Cap Equity Fund - Units	287,542.16	N/A
01/01/2008 to 12/31/2008	2	Guardian Canadian Value Equity Fund - Units	23,950.04	2,851.85
01/01/2008 to 12/31/2008	2	Guardian Global 130/30 Equity Fund - Units	2,079,506.83	21,947.74
01/01/2008 to 12/31/2008	19	Guardian Global Equity Fund - Units	6,644,901.25	N/A
01/01/2008 to 12/31/2008	21	Guardian High Yield Bond Fund - Units	17,362,732.79	N/A
01/01/2008 to 12/31/2008	12	Guardian Income Trust Fund - Units	2,414,584.11	N/A
01/01/2008 to 12/31/2008	2	Guardian Index-Enhanced Bond Fund - Units	62,794.12	6,370.22
01/01/2008 to 12/31/2008	3	Guardian International 130/30 Equity Fund - Units	1,480,864.80	N/A
01/01/2008 to 12/31/2008	13	Guardian International Equity Fund - Units	1,091,819.92	N/A
01/01/2008 to 12/31/2008	3	Guardian U.S. 130/30 Equity Fund - Units	1,243,523.30	N/A
01/01/2008 to 12/31/2008	19	Guardian U.S. Equity Fund - Units	1,252,148.50	N/A
05/26/2010	12	Habanero Resources Inc. - Flow-Through Shares	315,000.00	2,150,000.00
09/11/2009 to 09/15/2009	1	Health Care Select Sector - Common Shares	12,347.02	400.00
03/03/2009 to 03/09/2009	1	Health Care Select Sector - Common Shares	381,833.97	13,800.00

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
09/10/2009	1	Horizons BetaPro Comex Gold - Common Shares	66,709.74	3,300.00
03/23/2009	1	Horizons BetaPro Comex Gold - Common Shares	20,690.57	900.00
03/17/2009	1	Horizons BetaPro S&P TSX Capped ETF - Common Shares	138,829.02	24,600.00
03/16/2009 to 03/17/2009	1	Horizons BetaPro S&P Bull PlusUnit - Common Shares	340,412.41	58,400.00
09/10/2009	1	Horizons BetaPro S&P/TSX Glo - Common Shares	62,901.79	4,400.00
03/11/2009	1	Horizons BetaPro Nymex Crude Oil Bull - Common Shares	112,851.48	15,800.00
01/15/2008 to 12/31/2009	25	HughesLittle Balanced Fund - Units	1,018,849.00	100,359.45
01/15/2008 to 12/31/2008	27	HughesLittle Value Fund - Units	4,014,500.00	361,131.36
03/11/2010	9	IAMGOLD Corporation - Flow-Through Shares	31,500,000.00	1,575,000.00
05/27/2010	16	IAS Energy Inc. - Units	133,950.00	1,339,500.00
05/25/2010 to 05/31/2010	50	IGW Real Estate Investment Trust - Units	1,517,768.58	N/A
05/25/2010	2	Interface Biologies Inc. - Notes	333,334.00	N/A
03/16/2009	1	iPath Dow Jones- AIG Commodity Index - Common Shares	108,177.91	2,700.00
09/11/2009 to 09/20/2009	2	iPath S&P500 VIX Short-Term Futures ETN - Common Shares	937,075.90	17,100.00
09/08/2009 to 09/16/2009	4	iShares Cdn S&P/TSX 60 Index Fund - Common Shares	498,484.00	27,280.00
03/02/2009 to 03/19/2009	3	iShares CDN S&P/TSX 60 Index Fund - Common Shares	4,243,507.51	270,817.00
03/17/2009	2	iShares Inc MSCI Australia Index - Common Shares	1,701,181.31	108,462.00
03/11/2009	1	iShares Inc MSCI Hong Kong Index - Common Shares	82,227.80	7,000.00
03/11/2009 to 03/20/2009	2	iShares Inc MSCI Japan Index - Common Shares	436,384.71	46,480.00
03/11/2009 to 03/16/2009	1	iShares Inc MSCI United Kingdom Index - Common Shares	208,129.65	17,000.00
03/26/2009	1	iShares Inc Pacific ExJapan - Common Shares	114,089.96	3,500.00
09/04/2009 to 09/17/2009	2	iShares Inc. MSCI Japan Index - Common Shares	351,829.05	32,600.00
09/16/2009 to 09/17/2009	2	iShares Material Sector Index Fund - Common Shares	273,516.40	14,600.00

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
09/11/2009 to 09/30/2009	4	iShares MSCI Emerging Mkts Index - Common Shares	7,136,974.99	173,105.00
03/11/2009 to 03/23/2009	3	iShares MSCI Emerging Mkts Index - Common Shares	8,342,775.30	225,226.00
03/19/2009 to 03/20/2009	1	iShares Russell 1000 Growth - Common Shares	193,685.48	4,400.00
03/03/2009 to 03/09/2009	2	iShares Russell 1000 Value - Common Shares	294,494.74	6,700.00
09/03/2009 to 09/29/2009	3	iShares Russell 2000 - Common Shares	15,153,907.11	255,600.00
03/04/2009 to 03/26/2009	3	iShares Russell 2000 - Common Shares	4,349,571.30	843,000.00
03/05/2009 to 03/19/2009	2	iShares Russell 2000 Growth - Common Shares	552,247.81	10,800.00
03/04/2009 to 03/26/2009	2	iShares Russell 2000 Value Index Fund - Common Shares	199,148.81	4,400.00
03/11/2009 to 03/20/2009	2	iShares Silver Trust - Common Shares	1,501,666.20	93,500.00
03/09/2009	1	iShares SPSC600 Barval - Common Shares	171,336.38	4,200.00
03/20/2009	1	iShares S&P 500 Growth Index - Common Shares	52,135.83	1,000.00
03/26/2009	1	iShares S&P 500 Index Fund - Common Shares	29,284,325.03	281,800.00
09/01/2009	2	iShares S&P Global Financial Sector Index Fund - Common Shares	144,646.87	3,000.00
09/17/2009 to 09/21/2009	2	iShares S&P Global materials Sector Index Fund - Common Shares	208,625.50	3,400.00
03/02/2009 to 03/18/2009	1	iShares TR MSCI EAFE IDX - Common Shares	3,333,538.63	76,500.00
03/04/2009 to 03/16/2009	1	iShares TR S&P Euro Plus - Common Shares	458,135.57	15,500.00
09/03/2009 to 09/24/2009	2	iUnits S&P/TSX CN Gold Idx - Common Shares	4,557,454.24	206,300.00
05/31/2010	17	Jager Holdings Inc. - Debentures	1,050,000.00	1,050,000.00
06/08/2010	79	Kallisto Energy Corp. - Common Shares	8,603,100.00	N/A
06/08/2010	5	Kallisto Energy Corp. - Flow-Through Shares	1,500,000.60	1,578,948.00
05/25/2010	61	Kelso Technologies Inc. - Units	827,000.00	8,270,000.00
05/15/2010	1	Kingwest Canadian Equity Portfolio - Units	5,321.25	495.58
05/15/2010	1	Kingwest US Equity Portfolio - Units	3,565.44	267.94
03/19/2009	1	KPW Regional Banking ETF - Common Shares	810,153.63	31,000.00
05/25/2010	1	Lateegra Gold Corp. - Common Shares	60,000.00	250,000.00

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
06/01/2010	76	Lincoln Mining Corporation - Units	3,989,446.86	18,133,849.00
02/17/2010	1	Lions Peak International Innovation Fund L.P. - Limited Partnership Units	100,000.00	100.00
05/31/2010	21	Mainstream Minerals Corporation - Units	231,950.04	3,313,572.00
05/03/2010	1	Marathon Legacy Securities Public-Private Investment Fund Ltd. - Common Shares	10,116,000.00	N/A
01/01/2009 to 12/31/2009	4592	McLean & Partners Global Balanced Pool - Trust Units	66,090,350.64	8,342,834.59
01/01/2009 to 12/31/2009	1579	McLean & Partners Private Global Dividend Growth Pool - Trust Units	31,656,855.12	4,637,257.30
01/01/2009 to 12/31/2009	906	McLean & Partners Private International Equity Pool - Trust Units	31,603,719.26	4,863,816.92
05/28/2010	1	McNally Capital Mezzanine Fund L.P. - Limited Partnership Interest	10,000,000.00	10,000,000.00
02/12/2010	2	Micromem Technologies Inc. - Units	60,000.00	133,333.00
09/01/2009 to 09/02/2009	1	Midcap SPDR Trust Series 1 - Common Shares	21,424,501.00	170,000.00
02/09/2010 to 02/12/2010	54	Midlands Minerals Corporation - Units	3,575,042.15	10,214,403.00
05/26/2010 to 05/28/2010	4	Miracle Mile Limited Partnership - Units	225,000.00	225,000.00
05/19/2010	4	Mylan Inc. - Notes	833,606.01	N/A
01/01/2008 to 12/31/2008	64	Natcan Canadian Bond Fund - Units	80,419,902.15	942,182.93
01/01/2008 to 12/31/2008	62	Natcan Canadian Equity Fund - Units	112,554,310.75	318,336.75
01/01/2008 to 12/31/2008	57	Natcan Global Equity Fund - Units	46,524,576.00	547,288.84
01/01/2008 to 12/31/2008	67	Natcan International Equity Fund - Units	136,053,849.76	164,485.06
01/01/2008 to 12/31/2008	221	Natcan Money Market Fund - Units	4,148,410,936.95	4,154,116.31
01/01/2008 to 12/31/2008	33	Natcan Small Cap Equity Fund - Units	14,155,600.00	16,662.86
01/01/2008 to 12/31/2008	68	Natcan Social Value Canadian Equity Fund - Units	47,725,888.00	467,246.90
01/01/2008 to 12/31/2008	21	Natcan U.S. Equity Fund - Units	47,690,510.16	88,947.27
02/16/2010	13	Nevsun Resources Ltd. - Common Shares	117,000,000.00	52,000,000.00
05/31/2010	5	Newbaska Gold and Copper Mines Ltd, - Common Shares	17,500.00	175,000.00
02/08/2010 to 02/17/2010	24	Newport Canadian Equity Fund - Units	268,500.00	2,226.61

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
02/08/2010 to 02/17/2010	15	Newport Fixed Income Fund - Units	1,142,316.45	10,758.77
02/08/2010	5	Newport Global Equity Fund - Units	61,995.00	1,080.59
02/08/2010 to 02/17/2010	45	Newport Yield Fund - Units	2,735,815.78	24,569.53
04/30/2010	4	Newstart Canada - Debt	198,000.00	4.00
05/01/2010	3	North American Financial Group Inc. - Debt	80,000.00	3.00
05/10/2010 to 05/20/2010	26	PAKIT Inc. - Common Shares	1,105,967.00	1,105,967.00
04/23/2010	2	Patheon Inc. - Notes	11,000,000.00	N/A
02/19/2010	58	PharmaGap Inc. - Units	855,625.00	5,185,606.00
05/07/2010 to 05/27/2010	96	PHM DME Healthcare Inc. - Common Shares	4,523,139.60	22,615,698.00
09/15/2009	1	Powershares QQQ Nasdaq 100 - Common Shares	134,258.33	3,000.00
03/04/2009 to 03/16/2009	1	Powershares QQQ Nasdaq 100 - Common Shares	517,772.10	15,000.00
03/02/2009 to 03/16/2009	1	PowerSHS DB CMDTYIDX Track Unit - Common Shares	91,865.75	3,900.00
03/16/2009	1	PowerSHS DB Multi Sect Comm TRDB - Common Shares	44,944.84	1,500.00
02/25/2009	1	Process Capital Corp. - Common Shares	15,000,000.00	N/A
03/27/2009	1	ProShares Ultra S&P 500 - Common Shares	58,502.99	2,200.00
10/01/2008 to 09/30/2009	1	Pyramis Canadian Bond Core Plus Fund - Units	1,166,920.00	100,000.00
10/01/2008 to 09/30/2009	21	Pyramis Canadian Bond Trust - Units	131,668,511.39	4,637,325.63
10/01/2008 to 09/30/2009	35	Pyramis Canadian Core Equity Trust - Units	262,462,913.97	6,324,499.77
10/01/2008 to 09/30/2009	1	Pyramis Canadian Long Bond Core Plus Trust - Units	98,023,391.86	9,802,339.19
10/01/2008 to 09/30/2009	30	Pyramis Canadian Long Bond Trust - Units	108,012,037.59	10,195,367.93
10/01/2008 to 09/30/2009	12	Pyramis Canadian Systematic Equity Trust - Units	141,285,755.60	1,974,570.24
10/01/2008 to 09/30/2009	2	Pyramis Concentrated International Small Cap Trust - Units	1,252,985.31	73,124.00
10/01/2008 to 09/30/2009	1	Pyramis Currency Hedged Emerging Markets Debt Trust - Units	3,754,348.86	339,394.36
10/01/2008 to 09/30/2009	2	Pyramis Currency Hedged Global Bond Trust - Units	2,339,545.10	210,618.74

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
10/01/2008 to 09/30/2009	1	Pyramis Currency Hedged International Growth Trust - Units	1,220,963.31	115,918.00
10/01/2008 to 09/30/2009	1	Pyramis Currency Hedged U.S. Large Cap Core Non-registered Trust - Units	3,635,889.93	344,274.06
10/01/2008 to 09/30/2009	4	Pyramis Emerging Markets Equity Trust - Units	2,499,621.42	475,016.34
10/01/2008 to 09/30/2009	1	Pyramis Global Bond Fund - Units	10,609,820.85	921,383.60
10/01/2008 to 09/30/2009	14	Pyramis International Growth Trust - Units	56,474,407.66	2,404,309.76
10/01/2008 to 09/30/2009	2	Pyramis Select Emerging Markets Equity Trust - Units	14,873,206.14	1,455,176.85
10/01/2008 to 09/30/2009	12	Pyramis Select Global Equity Trust - Units	79,315,747.92	3,235,241.00
10/01/2008 to 09/30/2009	23	Pyramis Select International Equity Trust - Units	240,786,577.39	10,007,928.49
10/01/2008 to 09/30/2009	1	Pyramis Strategic Balanced Trust - Units	9,664.10	1,000.00
10/01/2008 to 09/30/2009	3	Pyramis U.S. Large Cap Core Non-registered Trust - Units	19,685,256.34	2,580,173.37
10/01/2008 to 09/30/2009	14	Pyramis U.S. Large Cap Core Trust - Units	19,308,053.35	707,726.46
05/27/2010	19	Radius Gold Inc. - Common Shares	2,522,764.35	5,606,143.00
02/16/2010	2	Rainy Mountain Royalty Corp. - Common Shares	6,500.00	50,000.00
05/27/2010	60	Reunion Gold Corporation - Common Shares	3,145,000.00	31,450,000.00
05/28/2010	7	Rio Alto Mining Limited - Common Shares	943,108.00	1,257,477.00
05/25/2010	1	Rocmec Mining Inc. - Debentures	1,380,000.00	N/A
01/01/2008 to 12/31/2008	137	Roundtable Growth Fund - Trust Units	6,947,953.23	694,795.32
12/18/2008	137	Roundtable Closed Fund - Trust Units	6,879,946.07	687,994.61
01/01/2008 to 01/15/2008	24	Roundtable Focused Equity Fund - Trust Units	3,418,615.86	382,358.86
01/01/2008 to 12/01/2008	36	Roundtable Opportunities Fund - Trust Units	12,633,150.51	2,221,946.40
01/20/2010	37	Sarona Frontier Markets Fund I LP - Limited Partnership Units	9,368,054.38	8,805,112.00
01/02/2009 to 12/24/2009	8	Select Canadian Equity Managed Fund - Units	26,744,538.77	3,422,301.13
07/16/2009 to 12/31/2009	8	Select Canadian Equity Managed Fund - Units	23,164,962.43	3,062,512.74
01/02/2009 to 12/24/2009	8	Select Income Managed Fund - Units	98,564,556.11	9,771,628.15



**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
07/16/2008 to 12/31/2008	8	Select Income Managed Fund - Units	43,900,629.54	4,357,361.05
07/16/2008 to 12/31/2008	8	Select US Equity Managed Fund - Units	20,215,157.00	2,753,487.35
01/02/2009 to 12/24/2009	8	Select US Equity Managed Fund - Units	25,116,271.74	3,661,884.00
05/31/2010	3	SG Alberta Inc. - Common Shares	24,485.00	N/A
01/02/2009 to 12/16/2009	3	SLI Bond Pooled Fund - Units	16,307,121.48	152,653.44
01/06/2009 to 12/31/2009	1	SLI Canadian Value Equity Pooled Fund - Units	3,200,303.93	48,326.58
01/02/2009 to 12/30/2009	3	SLI Capped Canadian Equity Pooled Fund - Units	13,147,488.84	195,190.43
01/15/2009 to 12/15/2009	2	SLI Diversified Pooled Fund - Units	3,236,584.07	39,115.00
01/21/2009 to 10/23/2009	4	SLI International Equity Pooled Fund - Units	18,757,264.39	313,880.51
03/13/2009 to 12/15/2009	3	SLI LDI Bond Pooled Fund - Units	13,809,507.97	135,685.96
01/13/2009 to 12/15/2009	7	SLI Money Market Pooled Fund - Units	19,883,781.83	190,486.96
01/02/2009 to 12/16/2009	4	SLI US Equity Pooled Fund - Units	7,424,237.31	107,936.79
02/12/2010	53	Soltoro Ltd. - Units	2,350,250.00	6,715,000.00
09/11/2009 to 09/23/2009	3	SPDR Gold Trust - Common Shares	5,392,229.31	51,600.00
03/09/2009 to 03/25/2009	8	SPDR Gold Trust - Common Shares	8,148,412.65	72,041.00
09/11/2009 to 09/15/2009	1	SPDR S&P HomebuildersETF - Common Shares	77,058.83	4,600.00
01/01/2009 to 09/16/2009	3	SPDR S&P Retail ETF - Common Shares	22,033,541.49	636,300.00
03/02/2009 to 03/12/2009	3	SPDR S&P Retail ETF - Common Shares	3,320,597.59	133,500.00
01/01/2008 to 12/31/2008	7	SSGA Australia Index Fund - Units	12,296,190.44	273,397.92
01/01/2008 to 12/31/2008	6	SSGA Austria Index Fund - Units	2,049,412.29	35,804.59
01/01/2008 to 12/31/2008	6	SSGA Belgium Index Fund - Units	2,829,236.56	71,662.92
01/01/2008 to 12/31/2008	2	SSGA Canadian Long Term Government Bond Index Fund - Units	49,433,349.15	4,336,801.63
01/01/2008 to 12/31/2008	1	SSGA Canadian Real Return Bond Index Fund - Units	16,979,835.94	1,409,348.93

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
01/01/2008 to 12/31/2008	17	SSGA Canadian Short Term Investment Fund - Units	475,841,238.16	47,584,123.82
01/01/2008 to 12/31/2008	6	SSGA Denmark Index Fund - Units	2,223,848.85	23,230.78
01/01/2008 to 12/31/2008	7	SSGA Enhanced Canadian Long Term Bond Fund - Units	187,966,642.42	18,806,107.94
01/01/2008 to 12/31/2008	18	SSGA Enhanced Canadian Universe Bond Fund - Units	283,745,742.89	24,724,268.68
01/01/2008 to 12/31/2008	6	SSGA Finland Index Fund - Units	2,661,619.78	25,380.65
01/01/2008 to 12/31/2008	7	SSGA France Index Fund - Units	23,312,966.15	371,225.02
01/01/2008 to 12/31/2008	7	SSGA Germany Index Fund - Units	21,686,628.23	356,218.78
01/01/2008 to 12/31/2008	6	SSGA Greece Index Fund - Units	1,991,203.61	175,328.44
01/01/2008 to 12/31/2008	7	SSGA Hong Kong Index Fund - Units	3,523,848.32	39,849.31
01/01/2008 to 12/31/2008	6	SSGA Ireland Index Fund - Units	1,982,837.61	108,970.83
01/01/2008 to 12/31/2008	7	SSGA Italy Index Fund - Units	13,670,554.03	500,800.45
01/01/2008 to 12/31/2008	7	SSGA Japan Index Fund - Units	43,521,176.79	5,173,445.79
01/01/2008 to 12/31/2008	4	SSGA MA Naxdaq 100 Stock Index Futures Fund - Units	1,504,000.00	438,891.82
01/01/2008 to 12/31/2008	16	SSGA MSCI EAFE Index Fund - Units	212,974,506.88	25,586,504.74
01/01/2008 to 12/31/2008	6	SSGA Netherlands Index Fund - Units	7,539,282.56	103,697.86
01/01/2008 to 12/31/2008	4	SSGA New Zealand Index Fund - Units	722,491.15	33,858.52
01/01/2008 to 12/31/2008	6	SSGA Norway Index Fund - Units	2,296,791.04	39,573.74
01/01/2008 to 12/31/2008	6	SSGA Portugal Index Fund - Units	1,835,838.90	185,396.34
01/01/2008 to 12/31/2008	7	SSGA Singapore Index Fund - Units	2,178,214.37	44,097.99
01/01/2008 to 12/31/2008	7	SSGA Spain Index Fund - Units	11,147,394.94	178,830.35
01/01/2008 to 12/31/2008	7	SSGA Sweden Index Fund - Units	4,424,050.97	55,842.12
01/01/2008 to 12/31/2008	7	SSGA Switzerland Index Fund - Units	12,058,183.38	166,464.24

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
01/01/2008 to 12/31/2008	18	SSGA S&P 500 Index Fund for Canadian Pension Plans - Units	182,958,455.51	3,201,992.01
01/01/2008 to 12/31/2008	11	SSGA S&P 500 Index Fund Hedged to Canadian Dollars for Canadian Pension Plans - Units	157,478,467.96	26,115,713.82
01/01/2008 to 12/31/2008	4	SSGA S&P 500 Stock Index Futures Fund - Units	93,937,293.10	7,907,057.83
01/01/2008 to 12/31/2008	4	SSGA S&P/TSX Capped Equity Index Fund - Units	32,762,316.44	3,261,189.06
01/01/2008 to 12/31/2008	7	SSGA United Kingdom Index Fund - Units	40,497,369.31	893,141.52
05/27/2010	9	Sub Capital Inc. - Units	72,450.09	805,001.00
09/01/2009 to 09/30/2009	6	S&P Depository Receipts TR Unit - Common Shares	107,583,513.49	953,420.00
03/02/2009 to 03/31/2009	7	S&P Depository Receipts TR Unit - Common Shares	172,241,642.14	1,813,500.00
10/30/2009	1	The Black Creek Focus Fund - Units	1,500,000.00	15,841.30
02/09/2010	232	The Westaim Corporation - Receipts	273,426,500.00	230,208,300.00
06/01/2010	1	UBS AG, Jersey Branch - Certificate	68,721.75	135.00
05/19/2010	1	UBS AG, Jersey Branch - N/A	91,298.30	1,000.00
05/21/2010	1	UBS AG, Jersey Branch - N/A	41,966.87	37.00
05/27/2010 to 05/28/2010	3	UBS AG, London Branch - Certificate	638,577.99	45.00
06/01/2010	4	UBS AG, London Branch - Certificate	182,480.35	13.00
05/19/2010	1	UBS AG, London Branch - Units	2,655,360.00	2,000.00
03/25/2009	1	Ultrashort Real estate ProShares - Common Shares	7,287,146.01	95,500.00
03/04/2009 to 03/10/2009	3	United States Oil Fund LP - Common Shares	2,273,044.60	66,300.00
03/20/2009	1	US Gasoline Fund - Common Shares	111,236.49	3,500.00
03/06/2009	1	Vanguard Emerging Markets Vipers - Common Shares	102,071.98	4,080.00
03/20/2009	1	Vanguard Europe - Common Shares	72,195.93	1,800.00
05/14/2010 to 05/21/2010	184	Velo Energy Inc. - Units	8,247,095.00	27,490,315.00
02/18/2010	1	Walbridge Mining Company Limited - Common Shares	50,000.00	166,666.00
05/28/2010	40	Walton Southern U.S. Land Investment Corporation - Common Shares	828,960.00	82,896.00
05/28/2010	8	Walton Southern U.S. Land LP - Limited Partnership Units	999,039.29	93,893.00

**Notice of Exempt Financings**

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<b>Transaction Date</b>	<b># of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b># of Securities Distributed</b>
05/28/2010	4	Walton TX Austin Land Limited Partnership - Limited Partnership Units	193,997.50	18,250.00
05/26/2010 to 06/01/2010	2	Wimberly Fund - Trust Units	25,238.00	25,238.00
05/26/2010 to 06/01/2010	6	Wimberly Fund - Trust Units	78,203.00	78,203.00
05/21/2010	24	Yangarra Resources Ltd. - Common Shares	2,059,999.70	3,745,454.00
05/06/2010 to 05/12/2010	8	Yukon-Nevada Gold Corp. - Common Shares	9,150,624.72	33,274,999.00

## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

Angle Energy Inc.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated June 11, 2010  
NP 11-202 Receipt dated June 11, 2010

**Offering Price and Description:**

\$55,300,000.00 - 7,000,000 Subscription Receipts each representing the right to receive one Common Share

Price: \$7.90 per Subscription Receipt

**Underwriter(s) or Distributor(s):**

FirstEnergy Capital Corp.  
Cormark Securities Inc.  
Dundee Securities Corporation  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
National Bank Financial Inc.  
Peters & Co. Limited

**Promoter(s):**

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**Project #1595892**

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**Issuer Name:**

CanElson Drilling Inc.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated June 15, 2010  
NP 11-202 Receipt dated June 15, 2010

**Offering Price and Description:**

\$29,700,000.00 - 11,000,000 Common Shares Price: \$2.70 per Offered Share

**Underwriter(s) or Distributor(s):**

Peters & Co. Limited  
Lightyear Capital Inc.  
HSBC Securities (Canada) Inc.  
Thomas Weisel Partners Canada Inc.

**Promoter(s):**

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**Project #1596770**

**Issuer Name:**

CI Money Market Fund  
Portfolio Series Conservative Fund  
Select Canadian Equity Managed Corporate Class  
Select Income Advantage Managed Corporate Class  
Select International Equity Managed Corporate Class  
Select U.S. Equity Managed Corporate Class  
Signature Global Corporate Class  
Signature Global Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectuses dated June 14, 2010  
NP 11-202 Receipt dated June 15, 2010

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

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**Promoter(s):**

CI Investments Inc.

**Project #1596541**

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**Issuer Name:**

Canadian Credit Card Trust  
Principal Regulator - Quebec

**Type and Date:**

Preliminary Based Shelf Prospectus dated June 14, 2010  
NP 11-202 Receipt dated June 15, 2010

**Offering Price and Description:**

Up to \$1,700,000,000.00 Credit Card Receivables-Backed Notes

**Underwriter(s) or Distributor(s):**

National Bank Financial Inc.

**Promoter(s):**

National Bank of Canada

**Project #1596459**

**Issuer Name:**

CGX Energy Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated June 11, 2010  
NP 11-202 Receipt dated June 14, 2010

**Offering Price and Description:**

Up to \$65,000,000.00 - \* Units Price: \$\* Units

**Underwriter(s) or Distributor(s):**

Cormark Securities Inc.  
RBC Dominion Securities Inc.  
Canaccord Genuity Corp.  
Dundee Securities Corporation  
Macquarie Capital Markets Canada Ltd.  
Jennings Capital Inc.  
Toll Cross Securities Inc.

**Promoter(s):**

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**Project #1595905**

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**Issuer Name:**

Charter Real Estate Investment Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated June 9, 2010  
NP 11-202 Receipt dated June 9, 2010

**Offering Price and Description:**

\$10,000,000.00 - Offering of Rights to purchase Units  
Price: \$● per Unit

**Underwriter(s) or Distributor(s):**

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**Promoter(s):**

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**Project #1594891**

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**Issuer Name:**

Claymore Broad Commodity ETF  
Claymore China ETF  
Claymore Inverse Natural Gas Commodity ETF  
Claymore Long-Term Natural Gas Commodity ETF  
Claymore Managed Futures ETF  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated June 9, 2010  
NP 11-202 Receipt dated June 9, 2010

**Offering Price and Description:**

Units

**Underwriter(s) or Distributor(s):**

Claymore Investments, Inc.

**Promoter(s):**

Claymore Investments Inc.

**Project #1594831**

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**Issuer Name:**

Crystallex International Corporation  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated June 11, 2010  
NP 11-202 Receipt dated June 11, 2010

**Offering Price and Description:**

\$35,000,000.00 - 70,000,000 Units Price: \$0.50 per Unit

**Underwriter(s) or Distributor(s):**

Macquarie Capital Markets Canada Ltd.  
GMP Securities L.P.

**Promoter(s):**

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**Project #1595878**

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**Issuer Name:**

Dalradian Resources Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated June 11, 2010  
NP 11-202 Receipt dated June 11, 2010

**Offering Price and Description:**

\$\* - \* Units Price: \$\* per Unit

**Underwriter(s) or Distributor(s):**

GMP Securities L.P.  
Dundee Securities Corporation  
Clarus Securities Inc.  
Cormark Securities Inc.

**Promoter(s):**

Patrick F.N. Anderson

**Project #1595801**

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**Issuer Name:**

Fortress Paper Ltd.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated June 14, 2010  
NP 11-202 Receipt dated June 14, 2010

**Offering Price and Description:**

\$40,866,500.00 - 1,739,000 Common Shares Price:  
\$23.50 per Common Share

**Underwriter(s) or Distributor(s):**

Dundee Securities Corporation  
Jennings Capital Inc.  
Raymond James Ltd.  
TD Securities Inc.

**Promoter(s):**

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**Project #1596222**

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**Issuer Name:**

Horizons AlphaPro Balanced ETF  
Horizons AlphaPro Corporate Bond ETF  
Horizons AlphaPro Global Dividend ETF  
Horizons AlphaPro S&P/TSX 60 Equal Weight Index ETF  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated June 8, 2010  
NP 11-202 Receipt dated June 10, 2010

**Offering Price and Description:**

Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

AlphaPro Management Inc.  
Project #1594976

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**Issuer Name:**

Innovente Inc.  
Principal Regulator - Quebec

**Type and Date:**

Preliminary Long Form Prospectus dated June 7, 2010  
NP 11-202 Receipt dated June 9, 2010

**Offering Price and Description:**

\$6,000,000.00 - Minimum \* Units \$12,000,000 - Maximum \*  
Units Price: \$\* per Unit

**Underwriter(s) or Distributor(s):**

Industrial Alliance Securities Inc.  
M Partners Inc.

**Promoter(s):**

Richard Painchaud  
Project #1594572

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**Issuer Name:**

MacMillan Minerals Inc.

**Type and Date:**

Amended and Restated Preliminary Non-Offering Long  
Form Prospectus dated June 10, 2010  
Received on June 10, 2010

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

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**Promoter(s):**

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Project #1542185

**Issuer Name:**

Med BioGene Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Amended and Restated Preliminary Short Form Prospectus  
dated June 9, 2010 amending and restating the Amended  
and Restated Preliminary Short Form Prospectus May 7,  
210

NP 11-202 Receipt dated June 10, 2010

**Offering Price and Description:**

U.S.\$\* - 2,777,778 Common Shares  
Price: U.S.\$\* per Common Share

**Underwriter(s) or Distributor(s):**

Dundee Securities Corporation

**Promoter(s):**

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Project #1520094

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**Issuer Name:**

MEG Energy Corp.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Long Form PREP Prospectus dated June 14,  
2010

NP 11-202 Receipt dated June 14, 2010

**Offering Price and Description:**

\$\* - \* Common Shares Price: \$\* per Common Share

**Underwriter(s) or Distributor(s):**

Credit Suisse Securities (Canada), Inc.  
BMO Nesbitt Burns Inc.

Barclays Capital Canada Inc.

Morgan Stanley Canada Limited

**Promoter(s):**

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Project #1596295

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**Issuer Name:**

NEXX Systems, Inc.  
Principal Regulator - Ontario

**Type and Date:**

Amended and Restated Preliminary Long Form PREP  
Prospectus dated June 8, 2010 amending and restating the  
Preliminary Long Form PREP Prospectus dated April 6,  
2010 as amended by the Amended and Restated  
Preliminary Long Form PREP Prospectus dated May 14,  
2010

NP 11-202 Receipt dated June 9, 2010

**Offering Price and Description:**

\$\* - \* Common Shares Price: \$\* per Common Share

**Underwriter(s) or Distributor(s):**

Canaccord Genuity Corp.  
CIBC World Markets Inc.

Macquarie Capital Markets Canada Ltd.

TD Securities Inc.

**Promoter(s):**

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Project #1561419

**Issuer Name:**

Northgate Minerals Corporation  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Base Shelf Prospectus dated June 11, 2010  
NP 11-202 Receipt dated June 11, 2010

**Offering Price and Description:**

\$250,000,000.00:  
Debt Securities  
Common Shares  
Warrants to Purchase Equity Securities  
Warrants to Purchase Debt Securities  
Share Purchase Contracts  
Share Purchase or Equity Units  
Subscription Receipts  
Preference Shares  
Units

**Underwriter(s) or Distributor(s):**

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**Promoter(s):**

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**Project #1595884**

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**Issuer Name:**

NxT EQ 35 Income & Growth Fund  
NxT EQ 60 Balanced Fund  
NxT EQ 75 Balanced Growth Fund  
NxT Short Term Income Fund  
Principal Regulator - Manitoba

**Type and Date:**

Preliminary Simplified Prospectuses dated June 8, 2010  
NP 11-202 Receipt dated June 9, 2010

**Offering Price and Description:**

Class I, O1 and O2 Units

**Underwriter(s) or Distributor(s):**

Wellington West Capital Inc.  
Wellington West Financial Services Inc.

**Promoter(s):**

Wellington West Asset Management Inc.

**Project #1594559**

**Issuer Name:**

Pathway Oil & Gas 2010 Flow-Through Limited Partnership  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated June 9, 2010  
NP 11-202 Receipt dated June 11, 2010

**Offering Price and Description:**

\$10,000,000.00 (Maximum Offering); \$2,500,000.00  
(Minimum Offering) - A Maximum of 1,000,000 and a  
Minimum of 250,000 Limited Partnership Units Minimum  
Subscription: 250 Limited Partnership Units  
Subscription Price: \$10.00 per Limited Partnership Unit

**Underwriter(s) or Distributor(s):**

Wellington West Capital Inc.  
HSBC Securities (Canada) Inc.  
Burgeonvest Bick Securities Limited  
Canaccord Genuity Corp.  
Raymond James Ltd.  
Macquarie Private Wealth Inc.  
Mackie Research Capital Corporation  
Dundee Securities Corporation  
Desjardins Securities Inc.  
Industrial Alliance Securities Inc.  
Laurentian Bank Securities Inc.  
M. Partners Inc.

**Promoter(s):**

Pathway Oil & Gas 2010 Inc.

**Project #1595791**

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**Issuer Name:**

ROI Canadian Retirement Fund  
ROI Sceptre Retirement Growth Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectuses dated June 7, 2010  
NP 11-202 Receipt dated June 9, 2010

**Offering Price and Description:**

Series R Units

**Underwriter(s) or Distributor(s):**

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**Promoter(s):**

Return on Innovation Management Ltd.

**Project #1594787**



**Issuer Name:**

TD Asian Growth Class  
TD Asian Growth Fund  
TD Canadian Blue Chip Equity Class  
TD Canadian Bond Fund  
TD Canadian Core Plus Bond Fund  
TD Canadian Equity Class  
TD Canadian Small-Cap Equity Class  
TD Canadian Value Class  
TD Canadian Value Fund  
TD Corporate Bond Capital Yield Fund  
TD Dividend Growth Class  
TD Emerging Markets Class  
TD Emerging Markets Fund  
TD Global Growth Class  
TD Global Multi-Cap Class  
TD Global Select Fund  
TD Global Sustainability Class  
TD Global Sustainability Fund  
TD Global Value Fund  
TD Health Sciences Fund  
TD Income Advantage Portfolio  
TD International Equity Fund  
TD International Equity Growth Fund  
TD International Growth Class  
TD Monthly Income Fund  
TD Short Term Bond Fund  
TD Short Term Investment Class  
TD U.S. Blue Chip Equity Fund  
TD U.S. Index Currency Neutral Fund  
TD U.S. Large-Cap Value Class  
TD U.S. Large-Cap Value Fund  
TD U.S. Mid-Cap Growth Class  
TD U.S. Mid-Cap Growth Fund  
TD Ultra Short Term Bond Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectuses dated June 9, 2010  
NP 11-202 Receipt dated June 10, 2010

**Offering Price and Description:**

Investor Series Units, Premium Series Units, Investor Series Shares, O-Series Units, D-Series Units

**Underwriter(s) or Distributor(s):**

TD Investment Services Inc.  
TD Investment Services Inc. (for Investor Series units)  
TD Investment Services Inc. (for Investor Series and e-Series units)  
TD Investment Services Inc.(for Investor Series units)  
TD Investment Services Inc. (for Investor Series and e-Series Units)  
TD Investment Services Inc. (for Investor Series)  
TD Asset Management Inc. (for Investor Series units)  
TD Investment Services Inc. (for Investor Series and Premium Series units)

**Promoter(s):**

TD Asset Management Inc.

**Project #1594953**

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**Issuer Name:**

TD Asian Growth Class  
TD Canadian Blue Chip Equity Class  
TD Canadian Equity Class  
TD Canadian Small-Cap Equity Class  
TD Canadian Value Class  
TD Dividend Growth Class  
TD Emerging Markets Class  
TD Global Growth Class  
TD Global Multi-Cap Class  
TD Global Sustainability Class  
TD International Growth Class  
TD Short Term Investment Class  
TD U.S. Large-Cap Value Class  
TD U.S. Mid-Cap Growth Class  
TD Ultra Short Term Bond Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectuses dated June 9, 2010  
NP 11-202 Receipt dated June 10, 2010

**Offering Price and Description:**

Advisor Series, F-Series Units, Advisor Series and F-Series Shares

**Underwriter(s) or Distributor(s):**

TD Investment Services Inc. (for Investor Series units)  
TD Investment Services Inc.(for Investor Series units)  
TD Investment Services Inc. (for Investor Series and e-Series Units)  
TD Investment Services Inc. (for Investor Series and e-Series units)  
TD Asset Management Inc. (for Investor Series units)

**Promoter(s):**

TD Asset Management Inc.

**Project #1595014**

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**Issuer Name:**

Timbercreek Global Real Estate Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated June 9, 2010  
NP 11-202 Receipt dated June 11, 2010

**Offering Price and Description:**

\$ \* ( \* ) Maximum  
\$12.00 per Class A Unit  
\$12.00 per Class B Unit

**Underwriter(s) or Distributor(s):**

BMO Nesbitt Burns Inc.  
Raymond James Ltd.  
CIBC World Markets Inc.  
Macquarie Capital Markets Canada Ltd.  
National Bank Financial Inc.  
Scotia Capital Inc.  
Manulife Securities Inc.  
HSBC Securities (Canada) Inc.  
Canaccord Genuity Corp.  
GMP Securities L.P.  
M Partners Inc.

**Promoter(s):**

Timbercreek Asset Management Inc.

**Project #1595723**

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**Issuer Name:**

Volta Resources Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated June 15, 2010  
NP 11-202 Receipt dated June 15, 2010

**Offering Price and Description:**

\$34,499,900.00 - 22,258,000 Common Shares Issuable on  
Exercise of 22,258,000 Special Warrants

**Underwriter(s) or Distributor(s):**

Cormark Securities Inc.  
GMP Securities L.P.  
Wellington West Capital Markets Inc.  
M Partners Inc.

**Promoter(s):**

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**Project #1596623**

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**Issuer Name:**

407 International Inc.  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated June 8, 2010 to the Base Shelf  
Prospectus dated November 18, 2009  
NP 11-202 Receipt dated June 10, 2010

**Offering Price and Description:**

\$2,000,000,000.00 - Medium-Term Notes (Secured)

**Underwriter(s) or Distributor(s):**

BMO Nesbitt Burns Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
Scotia Capital Inc.  
National Bank Financial Inc.  
Casgrain & Company Limited  
CIBC World Markets Inc.  
Merrill Lynch Canada Inc.

**Promoter(s):**

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**Project #1497137**

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**Issuer Name:**

American Manganese Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Amended and Restated Short Form Prospectus dated  
June 10, 2010 to the Short Form Prospectus dated June 4,  
2010

NP 11-202 Receipt dated June 11, 2010

**Offering Price and Description:**

\$882,522.00 - 4,011,464 Units Price: \$0.22 per Unit

**Underwriter(s) or Distributor(s):**

Pope & Company Limited

**Promoter(s):**

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**Project #1563778**

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**Issuer Name:**

BMO Aggressive Growth ETF Portfolio  
BMO Balanced ETF Portfolio  
BMO Growth ETF Portfolio  
BMO Security ETF Portfolio  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated June 10, 2010  
NP 11-202 Receipt dated June 14, 2010

**Offering Price and Description:**

Series A Securities @ Net Asset Value

**Underwriter(s) or Distributor(s):**

BMO Investments Inc.

**Promoter(s):**

BMO Investments Inc.

**Project #1580062**

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**Issuer Name:**

Caldwell High Income Equity Fund  
Caldwell Balanced Fund  
Caldwell Meisels Canada Fund (formerly Caldwell Canada  
Fund)  
Caldwell Exchange Fund  
Caldwell Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated June 11, 2010  
NP 11-202 Receipt dated June 15, 2010

**Offering Price and Description:**

Mutual Fund Units @ Net Asset Value

**Underwriter(s) or Distributor(s):**

Caldwell Securities Ltd.

**Promoter(s):**

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**Project #1569753**

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**Issuer Name:**

Series A, B, D, F, H and I Units of:  
Capital International - Growth and Income  
Capital International - Global Equity  
Capital International - International Equity  
Capital International - U.S. Equity  
Series A, B, F, H and I Units of:  
Capital International - Canadian Core Plus Fixed Income  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated June 11, 2010  
NP 11-202 Receipt dated June 14, 2010

**Offering Price and Description:**

Series A, B, D, F, H and I Units @ Net Asset Value

**Underwriter(s) or Distributor(s):**

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**Promoter(s):**

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**Project #1579140**

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**Issuer Name:**

Dynamic Focus+ Balanced Fund  
(Series A, Series F, Series I, Series O and Series T)  
Dynamic Focus+ Equity Fund  
(Series A, Series F, Series I and Series O)  
Dynamic Focus+ Resource Fund  
(Series A, Series F, Series I, Series IP, Series O and Series OP)  
Dynamic Focus+ Wealth Management Fund  
(Series A, Series F, Series I, Series O and Series T)  
Dynamic Dividend Fund  
(Series A, Series F, Series I, Series O and Series T)  
Dynamic Dividend Income Fund  
(Series A, Series F, Series I, Series O and Series T)  
Dynamic Energy Income Fund  
(Series A, Series F, Series I, Series IP, Series O, Series OP and Series T)  
Dynamic Equity Income Fund (Series A, Series F, Series I, Series O and Series T)  
Dynamic Small Business Fund  
(Series A, Series F, Series I, Series IP, Series O and Series OP)  
Dynamic Strategic Yield Fund  
(Series A, Series F, Series I and Series O)  
Dynamic Advantage Bond Fund (Series A, Series F, Series I and Series O)  
Dynamic Canadian Bond Fund (Series A, Series F, Series I and Series O)  
Dynamic Dollar-Cost Averaging Fund (Series A)  
Dynamic High Yield Bond Fund  
(Series A, Series F, Series FP, Series I, Series O, Series OP and Series P)  
Dynamic Real Return Bond Fund (Series A, Series F, Series I and Series O)  
Dynamic Short Term Bond Fund (Series A and Series F)  
Dynamic Power American Currency Neutral Fund  
(Series A, Series F, Series I and Series O)  
Dynamic Power American Growth Fund  
(Series A, Series F, Series I, Series IP, Series O, Series OP and Series T)  
Dynamic Power Balanced Fund  
(Series A, Series F, Series I, Series IP, Series O, Series OP and Series T)  
Dynamic Power Canadian Growth Fund  
(Series A, Series F, Series I, Series IP, Series O, Series OP and Series T)  
Dynamic Power Small Cap Fund  
(Series A, Series F, Series I and Series O)  
Dynamic Diversified Real Asset Fund (Series A, Series F, Series I and Series O)  
Dynamic Global Infrastructure Fund (Series A, Series F, Series I, Series O and Series T)  
Dynamic Global Real Estate Fund  
(Series A, Series F, Series I, Series IP, Series O, Series OP and Series T)  
Dynamic Precious Metals Fund (Series A, Series F, Series I and Series O)  
Dynamic Strategic All Income Portfolio (Series A)  
Dynamic Strategic Growth Portfolio (Series A)  
Dynamic American Value Fund (Series A, Series F, Series I, Series O and Series T)  
Dynamic Canadian Dividend Fund (Series A, Series F, Series I and Series O)

Dynamic Dividend Value Fund  
(Series A, Series F, Series I, Series IT, Series O and Series T)  
Dynamic European Value Fund (Series A, Series F, Series I and Series O)  
Dynamic Far East Value Fund  
(Series A, Series F, Series I, Series IP, Series O and Series OP)  
Dynamic Global Discovery Fund (Series A, Series F, Series I, Series O and Series T)  
Dynamic Global Dividend Value Fund  
(Series A, Series F, Series I, Series IT, Series O and Series T)  
Dynamic Global Value Balanced Fund (Series A, Series F, Series I, Series O and Series T)  
Dynamic Global Value Fund (Series A, Series F, Series I, Series IT, Series O and Series T)  
Dynamic Value Balanced Fund (Series A, Series F, Series I, Series O and Series T)  
Dynamic Value Fund of Canada (Series A, Series F, Series I, Series O and Series T)  
DynamicEdge Balanced Portfolio  
(Series A, Series F, Series FT, Series I, Series IT, Series O and Series T)  
DynamicEdge Balanced Growth Portfolio  
(Series A, Series F, Series FT, Series I, Series IT, Series O and Series T)  
DynamicEdge Equity Portfolio  
(Series A, Series F, Series FT, Series I, Series IT, Series O and Series T)  
DynamicEdge Growth Portfolio  
(Series A, Series F, Series FT, Series I, Series IT, Series O and Series T)  
Dynamic Dividend Income Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I, Series O and Series T)  
Dynamic Strategic Yield Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I and Series T)  
Dynamic Advantage Bond Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I and Series T)  
Dynamic Power American Growth Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I, Series IP, Series O, Series OP and Series T)  
Dynamic Power Balanced Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I, Series IP, Series O, Series OP and Series T)  
Dynamic Power Canadian Growth Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I, Series IP, Series O, Series OP and Series T)  
Dynamic Power Global Balanced Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I, Series IP, Series O, Series OP and Series T)  
Dynamic Power Global Growth Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I, Series IP, Series O, Series OP and Series T)

Dynamic Power Global Navigator Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I, Series IP, Series O, Series OP and Series T)  
Dynamic Canadian Dividend Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I, Series O and Series T)  
Dynamic Canadian Value Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I, Series IP, Series O, Series OP and Series T)  
Dynamic EAFE Value Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I, Series O and Series T)  
Dynamic Global Discovery Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I, Series O and Series T)  
Dynamic Global Dividend Value Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I, Series O and Series T)  
Dynamic Global Value Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I, Series IP, Series O, Series OP and Series T)  
Dynamic Value Balanced Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I, Series O and Series T)  
Dynamic Global Energy Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I, Series IP, Series O, Series OP and Series T)  
Dynamic Strategic Gold Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I and Series O)  
DynamicEdge Balanced Class Portfolio of Dynamic Global Fund Corporation  
(Series A, Series F, Series FT, Series I, Series IT, Series O and Series T)  
DynamicEdge Balanced Growth Class Portfolio of Dynamic Global Fund Corporation  
(Series A, Series F, Series FT, Series I, Series IT, Series O and Series T)  
DynamicEdge Equity Class Portfolio of Dynamic Global Fund Corporation  
(Series A, Series F, Series FT, Series I, Series IT, Series O and Series T)  
DynamicEdge Growth Class Portfolio of Dynamic Global Fund Corporation  
(Series A, Series F, Series FT, Series I, Series IT, Series O and Series T)  
Dynamic Aurion Canadian Equity Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I, Series O and Series T)  
Dynamic Aurion Tactical Balanced Class of Dynamic Global Fund Corporation  
(Series A, Series F, Series I, Series O and Series T)  
DMP Canadian Dividend Class of Dynamic Global Fund Corporation (Series A and Series F)  
DMP Canadian Value Class of Dynamic Global Fund Corporation (Series A and Series F)  
DMP Global Value Class of Dynamic Global Fund Corporation (Series A and Series F)

DMP Power Canadian Growth Class of Dynamic Global Fund Corporation (Series A and Series F)  
DMP Power Global Growth Class of Dynamic Global Fund Corporation (Series A and Series F)  
DMP Resource Class of Dynamic Global Fund Corporation (Series A and Series F)  
DMP Value Balanced Class of Dynamic Global Fund Corporation (Series A and Series F)  
Principal Regulator - Ontario  
**Type and Date:**  
Amendment #2 dated May 31, 2010 to the Simplified Prospectuses and Annual Information Form dated December 23, 2009  
NP 11-202 Receipt dated June 10, 2010  
**Offering Price and Description:**  
-  
**Underwriter(s) or Distributor(s):**  
Goodman & Company Investment Counsel Ltd..  
**Promoter(s):**  
Goodman & Company Investment Counsel Ltd.  
**Project #1501539**

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**Issuer Name:**  
DynamicEdge 2020 Portfolio (Series A, F, I, O and T securities)  
DynamicEdge 2025 Portfolio (Series A, F, I, O and T securities)  
DynamicEdge 2030 Portfolio (Series A, F, I, O and T securities)  
DynamicEdge 2020 Class Portfolio (Series A, F, I and T securities)  
DynamicEdge 2025 Class Portfolio (Series A, F, I and T securities)  
DynamicEdge 2030 Class Portfolio (Series A, F, I and T securities)  
Principal Regulator - Ontario  
**Type and Date:**  
Amendment #1 dated May 31, 2010 to the Simplified Prospectuses and Annual Information Forms dated April 16, 2010  
NP 11-202 Receipt dated June 10, 2010  
**Offering Price and Description:**  
-  
**Underwriter(s) or Distributor(s):**  
Goodman & Company, Investment Counsel Ltd.  
**Promoter(s):**  
Goodman & Company, Investment Counsel Ltd.  
**Project #1543486**

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**Issuer Name:**

Malbex Resources Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated June 14, 2010  
NP 11-202 Receipt dated June 14, 2010

**Offering Price and Description:**

Up to \$10,999,999.80 - 36,666,666 Units Price: \$0.30 per Unit

**Underwriter(s) or Distributor(s):**

Dundee Securities Corporation  
Clarus Securities Inc.  
GMP Securities L.P.

**Promoter(s):**

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**Project #1578909**

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**Issuer Name:**

Series A and Series O Units of:  
Marquis Institutional Balanced Portfolio (also Series T Units and V Units)  
Marquis Institutional Balanced Growth Portfolio (also Series T Units and V Units)  
Marquis Institutional Growth Portfolio (also Series T Units and V Units)  
Marquis Institutional Equity Portfolio (also Series T Units and V Units)  
Marquis Institutional Canadian Equity Portfolio (also Series T Units and V Units)  
Marquis Institutional Global Equity Portfolio (also Series T Units and V Units)  
Marquis Institutional Bond Portfolio (also Series V Units)  
Marquis Balanced Portfolio (also Series T Units)  
Marquis Balanced Growth Portfolio (also Series T Units)  
Marquis Growth Portfolio (also Series T Units)  
Marquis Equity Portfolio (also Series T Units)  
Marquis Balanced Income Portfolio  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated June 7, 2010 to the Simplified Prospectuses and Annual Information Forms dated November 23, 2009  
NP 11-202 Receipt dated June 11, 2010

**Offering Price and Description:**

Series A, Series O, Series T and Series V Units @ Net Asset Value

**Underwriter(s) or Distributor(s):**

GOODMAN & COMPANY, INVESTMENT COUNSEL LTD.  
Goodman & Company, Investment Counsel Ltd.

**Promoter(s):**

GOODMAN & COMPANY, INVESTMENT COUNSEL LTD.

**Project #1486024**

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**Issuer Name:**

MD BALANCED FUND (Class A and I units)  
MD BOND FUND (Class A and I units)  
MD BOND AND MORTGAGE FUND (Class A and I units)  
MD DIVIDEND FUND (Class A and I units)  
MD EQUITY FUND (Class A and I units)  
MD GROWTH INVESTMENTS LIMITED (Series A and Series I shares)  
MD INCOME & GROWTH FUND (Class A and I units)  
MD INTERNATIONAL GROWTH FUND (Class A and I units)  
MD INTERNATIONAL VALUE FUND (Class A and I units)  
MD MONEY FUND (Class A units)  
MD SELECT FUND (Class A and I units)  
MD AMERICAN GROWTH FUND (Class A and I units)  
MD AMERICAN VALUE FUND (Class A and I units)  
MD CONSERVATIVE PORTFOLIO (Class A units)  
MD MODERATE BALANCED PORTFOLIO (Class A units)  
MD BALANCED GROWTH PORTFOLIO (Class A units)  
MD MAXIMUM GROWTH PORTFOLIO (Class A units)  
MDPIM CANADIAN EQUITY POOL (Class A units)  
MDPIM US EQUITY POOL (Class A units)  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated June 11, 2010  
NP 11-202 Receipt dated June 15, 2010

**Offering Price and Description:**

Series A and Series I units; Series A and Series I shares

**Underwriter(s) or Distributor(s):**

MD Management Limited

**Promoter(s):**

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**Project #1576010**

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**Issuer Name:**

MDPIM Canadian Bond Pool  
MDPIM Canadian Long Term Bond Pool  
MDPIM Dividend Pool  
MDPIM Canadian Equity Pool (Private Trust Class units)  
MDPIM US Equity Pool (Private Trust Class units)  
MDPIM International Equity Pool  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated June 11, 2010  
NP 11-202 Receipt dated June 15, 2010

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

MD Management Limited

MD Management Ltd.

**Promoter(s):**

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**Project #1576040**

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**Issuer Name:**

Orocobre Limited  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated June 9, 2010  
NP 11-202 Receipt dated June 9, 2010

**Offering Price and Description:**

C\$20,000,000.00 - 10,000,000 Ordinary Shares Issuable  
on Conversion of 10,000,000 Subscription Receipts -  
C\$2.00 Per Subscription Receipt.

**Underwriter(s) or Distributor(s):**

Cormack Securities Inc.  
CIBC World Markets Inc.  
Canaccord Financial Ltd.  
Dundee Securities Corporation  
Byron Securities Limited

**Promoter(s):**

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**Project #1575837**

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**Issuer Name:**

Richmont Mines Inc.  
Principal Regulator - Quebec

**Type and Date:**

Final Short Form Prospectus dated June 9, 2010  
NP 11-202 Receipt dated June 9, 2010

**Offering Price and Description:**

\$15,000,000.00 - 3,000,000 Common Shares Price: \$5.00  
per Offered Share

**Underwriter(s) or Distributor(s):**

Desjardins Securities Inc.  
CIBC World Markets Inc.  
Dundee Securities Corporation  
National Bank Financial Inc.

**Promoter(s):**

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**Project #1592271**

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**Issuer Name:**

Ridgewood Canadian Investment Grade Bond Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated June 9, 2010  
NP 11-202 Receipt dated June 10, 2010

**Offering Price and Description:**

\$50,000,000.00 Maximum (4,000,000 Units)

**Underwriter(s) or Distributor(s):**

TD Securities Inc.  
RBC Dominion Securities Inc.  
CIBC World Markets Inc.  
BMO Nesbitt Burns Inc.  
GMP Securities L.P.  
National Bank Financial Inc.  
Scotia Capital Inc.  
HSBC Securities (Canada) Inc.  
Raymond James Ltd,  
Canaccord Financial Ltd.  
Dundee Securities Corporation  
Macquarie Capital Markets Canada Ltd.  
Manulife Securities Incorporated  
Wellington West Capital Markets Inc.

**Promoter(s):**

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**Project #1567879**

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**Issuer Name:**

SMC Man AHL Alpha Fund  
Principal Regulator - Ontario

**Type and Date:**

Amended and Restated Long Form Prospectus dated June  
3, 2010 amending and restating the Long Form Prospectus  
dated March 5, 2010  
NP 11-202 Receipt dated June 11, 2010

**Offering Price and Description:**

Class A Units and Class F Units @ Net Asset Value

**Underwriter(s) or Distributor(s):**

Scotia Capital Inc.

**Promoter(s):**

Scotia Capital Inc.

**Project #1518995**

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**Issuer Name:**

Student Transportation Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated June 14, 2010  
NP 11-202 Receipt dated June 14, 2010

**Offering Price and Description:**

\$50,000,000.00 - 6.75% Convertible Subordinated  
Unsecured Debentures Price: \$1,000 per Debenture

**Underwriter(s) or Distributor(s):**

Scotia Capital Inc.  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
TD Securities Inc.  
Wellington West Capital Markets Inc.  
Raymond James Ltd.  
Cormark Securities Inc.

**Promoter(s):**

-

**Project #1594129**

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**Issuer Name:**

Titan Balanced Growth Portfolio  
Titan Balanced Income Portfolio  
Titan Balanced Portfolio  
Titan Growth Portfolio  
Titan Money Market Fund  
Principal Regulator - Alberta

**Type and Date:**

Final Simplified Prospectuses and Annual Information Form  
dated June 10, 2010  
NP 11-202 Receipt dated June 10, 2010

**Offering Price and Description:**

Series A, Series B, Series D and Series I Units

**Underwriter(s) or Distributor(s):**

Partners In Planning Financial Services Ltd.

**Promoter(s):**

Titan Funds Incorporated

**Project #1577612**

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**Issuer Name:**

Alya Ventures Ltd.  
Principal Jurisdiction - British Columbia

**Type and Date:**

Preliminary CPC Prospectus dated April 14, 2010  
Withdrawn on June 14, 2010

**Offering Price and Description:**

\$550,000.00 - 5,500,000 Common Shares Price: \$0.10 per  
Common Share

**Underwriter(s) or Distributor(s):**

Union Securities Ltd.

**Promoter(s):**

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**Project #1564025**

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**Issuer Name:**

Fortess Energy Inc.  
Principal Jurisdiction – Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated March 31, 2010  
Amendment to Preliminary Short Form Prospectus dated  
April 1, 2010

Withdrawn on June 15, 2010

**Offering Price and Description:**

\$550,000.00 - 5,500,000 Common Shares Price: \$0.10 per  
Common Share

**Underwriter(s) or Distributor(s):**

Union Securities Ltd.

**Promoter(s):**

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**Project #1557944**

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## Chapter 12

# Registrations

### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: Sun Life Asset Management Inc. To: Sun Life Global Investments (Canada) Inc./Placements mondiaux Sun Life (Canada) Inc.	Portfolio Manager	May 31, 2010
Voluntary Surrender of Registration	Behr & Associates Inc.	Exempt Market Dealer	June 9, 2010
Change of Registration Category	Mawer Investment Management Ltd.	From: Mutual Fund Dealer, Exempt Market Dealer, Portfolio Manager To: Portfolio Manager, Mutual Fund Dealer	June 9, 2010
Change of Registration Category	Venator Capital Management Ltd.	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	June 9, 2010
Voluntary Surrender of Registration	First Quadrant, L.P.	Portfolio Manager (International Adviser)	June 10, 2010
Voluntary Surrender of Registration	SG Asset Management (Singapore) Ltd.	Portfolio Manager (International Adviser)	June 11, 2010
Consent to Suspension	Regenesis Capital Management Inc.	Exempt Market Dealer	June 11, 2010
Name Change	From: IBFC Group Inc. To: P2P Financial Inc.	Exempt Market Dealer	June 11, 2010

**Registrations**

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<b>Type</b>	<b>Company</b>	<b>Category of Registration</b>	<b>Effective Date</b>
Voluntary Surrender of Registration	Mesirow Financial Investment Management, Inc.	Portfolio Manager (International Adviser)	June 14, 2010

## Chapter 13

# SROs, Marketplaces and Clearing Agencies

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### 13.2 Marketplaces

#### 13.2.1 TriAct Canada Marketplace LP (MATCH Now) – Proposed Changes to the Operations of MATCH Now to Introduce a New Order Type and to Change the Handling of Anonymous Orders – Notice and Request for Feedback

##### TRIACT CANADA MARKETPLACE LP (MATCH NOW)

##### PROPOSED CHANGES TO THE OPERATIONS OF MATCH NOW TO INTRODUCE A NEW ORDER TYPE AND TO CHANGE THE HANDLING OF ANONYMOUS ORDERS

##### NOTICE AND REQUEST FOR FEEDBACK

MATCH Now is proposing to introduce a new order type: the Midpoint Only order and is planning to change the handling of anonymous orders. A MATCH Now notice describing the proposals is posted on the OSC's website, and will be published in the OSC Bulletin on June 18, 2010.

Pursuant to OSC Staff Notice 21-703 – Transparency of the Operations of Stock Exchanges and Alternative Trading systems, Commission staff invite market participants to provide the Commission with feedback on the proposed changes.

Feedback on the proposed changes should be in writing and submitted by **July 9, 2010** to:

Market Regulation Branch  
Ontario Securities Commission  
Suite 1903, Box 55  
20 Queen Street West  
Toronto, ON M5H 3S8  
Fax: (416) 595-8940  
email: [marketregulation@osc.gov.on.ca](mailto:marketregulation@osc.gov.on.ca)

and to:

Heather Killian  
Chief Operating Officer  
TriAct Canada Marketplace LP  
The Exchange Tower  
130 King Street West  
Suite 1050, P.O. Box 83  
Toronto, ON M5X 1B1  
Phone: (416) 861-1010 ext. 0262  
email: [hkillian@triactcanada.com](mailto:hkillian@triactcanada.com)

If the proposed changes do not raise any regulatory concerns, MATCH Now may implement the proposed changes by **July 26, 2010**.

### 13.2.2 TriAct Canada Marketplace LP (MATCH Now) – Notice of Proposed Changes

#### TRIACT CANADA MARKETPLACE LP (MATCH NOW) NOTICE OF PROPOSED CHANGES

MATCH Now has announced plans to implement the changes described below. It is publishing this Notice of Proposed Changes in accordance with the requirements set out in OSC Staff Notice 21-703.

Any questions regarding these changes should be addressed to Heather Killian, Chief Operating Officer:  
[hkillian@trifactcanada.com](mailto:hkillian@trifactcanada.com) 416-861-1010 ext. 0262

#### Description of Proposed Changes and Reasons for Changes

##### Midpoint Only Order Type

MATCH Now plans to introduce a Midpoint Only order type. A Midpoint Only order will allow liquidity providers the option to trade only at the midpoint, both with other Liquidity Providing (LP) orders and with Marketflow (MF) orders. The reason for this new order type is to address customer demand. The option to always trade midpoint will reduce market impact resulting from post-trade information. In addition, it will provide MF orders with greater price improvement when available *prior* to trading at the current 80:20 split.

##### Anonymous Order Handling

MATCH Now plans to change the handling of anonymous orders such that they are first matched with the same (underlying) broker number prior to participating among other brokers. Unattributed trades will continue to be reported with broker #001. The benefit of allowing anonymous order flow to match within a broker's own order flow is a reduction in execution fees for MATCH Now subscribers.

#### Expected Impact

##### Midpoint Only Order Type

Subscribers will be able to send orders to the liquidity destination opting to trade at the midpoint for all executions. The matching algorithm will be modified to introduce an extra level of tiering to give preference to orders which choose to trade at the midpoint. This tiering will apply to matches occurring between LP orders and MF orders. LP orders offering midpoint will receive priority in the match cycle. LP orders which are not midpoint only will execute after midpoint orders have been satisfied.

##### Anonymous Order Handling

Anonymous orders will participate first against order flow from the same broker number before executing among all other brokers.

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