

The Ontario Securities Commission

# OSC Bulletin

August 6, 2010

Volume 33, Issue 31

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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

**August 6, 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:

The Harry S. Bray Hearing Room  
Ontario Securities Commission  
Cadillac Fairview Tower  
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Paulette L. Kennedy	—	PLK
Patrick J. LeSage	—	PJL
Carol S. Perry	—	CSP
Charles Wesley Moore (Wes) Scott	—	CWMS

### SCHEDULED OSC HEARINGS

August 10-13, 2010

**Robert Joseph Vanier (a.k.a. Carl Joseph Gagnon)**

10:00 a.m.

s. 127

S. Horgan in attendance for Staff

Panel: JEAT/PLK

August 13, 2010

**Axcess Automation LLC, Axcess Fund Management, LLC, Axcess Fund, L.P., Gordon Alan Driver and David Rutledge, Steven M. Taylor and International Communication Strategies**

10:00 a.m.

s. 127

Y. Chisholm in attendance for Staff

Panel: CSP/SA

August 16, 2010

**Albert Leslie James, Ezra Douse and Dominion Investments Club Inc.**

2:30 p.m.

s. 127 and 127.1

H. Daley in attendance for Staff

Panel: PJL

August 30, 2010

**Brilliant Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York**

11:00 a.m.

s. 127

H. Craig in attendance for Staff

Panel: MGC

September 1, 2010 1:00 p.m.	<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>  s. 37, 127 and 127.1  H. Craig in attendance for Staff  Panel: JDC	September 7-10, 2010 10:00 a.m.	<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>  s. 127  M. Vaillancourt/T. Center in attendance for Staff  Panel: PJL/CSP
September 1, 2010 1:00 p.m.	<b>Christina Harper, Howard Rash, Michael Schaumer, Elliot Feder, Vadim Tsatskin, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff</b>  s. 127  H. Craig in attendance for Staff  Panel: JDC	September 8, 2010 10:00 a.m.	<b>TBS New Media Ltd., TBS New Media PLC, CNF Food Corp., CNF Candy Corp., Ari Jonathan Firestone and Mark Green</b>  s. 127  H. Craig in attendance for Staff  Panel: JEAT
September 1, 2010 1:00 p.m.	<b>Global Energy Group, Ltd. and New Gold Limited Partnerships</b>  s. 127  H. Craig in attendance for Staff  Panel: JDC	September 8, 2010 10:30 a.m.	<b>Lehman Brothers &amp; Associates Corp., Greg Marks, Michael Lehman (a.k.a. Mike Laymen), Kent Emerson Lounds and Gregory William Higgins</b>  s. 127  H. Craig in attendance for Staff  Panel: JEAT
September 2, 2010 10:00 a.m.	<b>Abel Da Silva</b>  s. 127  M. Boswell in attendance for Staff  Panel: TBA	September 13, 15-24, 2010 10:00 a.m.	<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>  s. 127  M. Britton in attendance for Staff  Panel: TBA
September 3, 2010 10:00 a.m.	<b>Gold-Quest International, Health and Harmony, Iain Buchanan and Lisa Buchanan</b>  s. 127  H. Craig in attendance for Staff  Panel: JEAT/CSP/SA	September 13-24, October 4-8, October 13-19, 2010 10:00 a.m.	<b>Sulja Bros. Building Supplies, Ltd., Petar Vucicevich, Kore International Management Inc., Andrew Devries, Steven Sulja, Pranab Shah, Tracey Banumas and Sam Sulja</b>  s. 127 and 127.1  J. Feasby in attendance for Staff  Panel: TBA

September 15-17, 20-21 and 24, 2010	<b>Coventree Inc., Geoffrey Cornish and Dean Tai</b>	October 13, 2010	<b>Ameron Oil and Gas Ltd. and MX-IV, Ltd.</b>
	s. 127	10:00 a.m.	s. 127
October 4, 6-8, 13-15, 18-19, 25 and 27-29, 2010	J. Waechter in attendance for Staff		M. Boswell in attendance for Staff
	Panel: JEAT/MGC/PLK		Panel: TBA
10:00 a.m.		October 13, 2010	<b>QuantFX Asset Management Inc., Vadim Tsatskin, Lucien Shtromvasser and Rostislav Zemlinsky</b>
September 22, 2010	<b>Rezwealth Financial Services Inc., Pamela Ramoutar, Chris Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc. and Sylvan Blackett</b>	10:30 a.m.	s. 127
9:00 a.m.	s.127(1) and (5)		H. Craig in attendance for Staff
	A. Heydon in attendance for Staff		Panel: TBA
	Panel: TBA	October 21, 2010	<b>Ciccone Group, Medra Corporation, 990509 Ontario Inc., Tadd Financial Inc., Cachet Wealth Management Inc., Vince Ciccone, Darryl Brubacher, Andrew J. Martin., Steve Haney, Klaudiusz Malinowski and Ben Giangrosso</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
10:00 a.m.	s. 127 and 127.1		P. Foy in attendance for Staff
	S. Horgan in attendance for Staff		Panel: TBA
	Panel: MCH/CWMS	October 25-29, 2010	<b>IBK Capital Corp. and William F. White</b>
September 29 – October 1, 2010	<b>Wilton J. Neale, Multiple Streams of Income (MSI) Inc., and 360 Degree Financial Services Inc.</b>	10:00 a.m.	s. 127
10:00 a.m.	s. 127 and 127.1		M. Vaillancourt in attendance for Staff
	H. Daley in attendance for Staff		Panel: TBA
	Panel: JEAT/CSP	November 15-18, November 24 – December 2, 2010	<b>Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)</b>
October 4-8, 13-15, December 6, 8-10, 2010	<b>Sextant Capital Management Inc., Sextant Capital GP Inc., Otto Spork, Robert Levack and Natalie Spork</b>	10:00 a.m.	s. 127 and 127.1
10:00 a.m.	s. 127		D. Ferris in attendance for Staff
	T. Center in attendance for Staff		Panel: TBA
	Panel: JDC/CSP		

November 22, 2010	<b>Georges Benarroch, Linda Kent, Marjorie Ann Glover and Credifinance Securities Limited</b>	January 17-21, 2011	<b>Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin</b>
10:00 a.m.	s. 21.7	10:00 a.m.	s. 127
	A. Heydon in attendance for Staff		H. Craig in attendance for Staff
	Panel: JDC/CSP		Panel: TBA
November 29, 2010	<b>Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiants</b>	January 31-February 7, February 9-18, February 23, 2011	<b>Anthony Ianno and Saverio Manzo</b>
9:30 a.m.	<b>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>		s. 127 and 127.1
	s. 127 and 127.1	10:00 a.m.	A. Clark in attendance for Staff
	H. Craig in attendance for Staff		Panel: TBA
	Panel: MGC	January 31, February 1-7 and 9-11, 2011	<b>Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk</b>
		10:00 a.m.	s. 37, 127 and 127.1
			C. Price in attendance for Staff
			Panel: TBA
December 2, 2010	<b>Richvale Resource Corp., Marvin Winick, Howard Blumenfeld, Pasquale Schiavone, and Shafi Khan</b>	February 11, 2011	<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>
9:30 a.m.	s. 127(7) and 127(8)	10:00 a.m.	s. 127(7) and 127(8)
	H. Craig in attendance for Staff		M. Boswell in attendance for Staff
	Panel: TBA		Panel: TBA
January 10, 12-21 and 24, 2011	<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>	February 14-18, February 23-March 7, March 9-11, 2011	<b>Agoracom Investor Relations Corp., Agora International Enterprises Corp., George Tsiolis and Apostolis Kondakos (a.k.a. Paul Kondakos)</b>
10:00 a.m.	s. 127 and 127.1	10:00 a.m.	s. 127
	H. Daley in attendance for Staff		T. Center in attendance for Staff
	Panel: TBA		Panel: TBA



February 25, 2011	<b>Hillcorp International Services, Hillcorp Wealth Management, Suncorp Holdings, 1621852 Ontario Limited, Steven John Hill, and Danny De Melo</b>	TBA	<b>Frank Dunn, Douglas Beatty, Michael Gollogly</b>
10:00 a.m.	s. 127		s. 127
	A. Clark in attendance for Staff		K. Daniels in attendance for Staff
	Panel: TBA	TBA	Panel: TBA
March 1-7, 9-11, 21 and 23-31, 2011	<b>Paul Donald</b>		s. 127
	s. 127		P. Foy in attendance for Staff
10:00 a.m.	C. Price in attendance for Staff		Panel: TBA
	Panel: TBA	TBA	<b>Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling</b>
March 7, 2011	<b>Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton</b>		s. 127(1) and 127.1
10:00 a.m.	s. 127		J. Superina, A. Clark in attendance for Staff
	H. Craig in attendance for Staff	TBA	Panel: TBA
	Panel: TBA		<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>
March 30, 2011	<b>Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang</b>		s. 127
10:00 a.m.	s. 127 and 127.1		M. Boswell in attendance for Staff
	M. Britton in attendance for Staff		Panel: TBA
	Panel: TBA	TBA	<b>FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun</b>
TBA	<b>Yama Abdullah Yaqeen</b>		s. 127
	s. 8(2)		M. Boswell in attendance for Staff
	J. Superina in attendance for Staff		Panel: TBA
	Panel: TBA	TBA	<b>FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun</b>
TBA	<b>Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell</b>		s. 127
	s. 127		C. Price in attendance for Staff
	J. Waechter in attendance for Staff		Panel: TBA
	Panel: TBA		

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>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>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>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>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>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>Lehman Cohort Global Group Inc., Anton Schnedl, Richard Unser, 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>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>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      **Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmony, Harmony Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale**

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA      **Lyndz Pharmaceuticals Inc., James Marketing Ltd., Michael Eatch and Rickey McKenzie**

s.127(1) and (5)

J. Feasby in attendance for Staff

Panel: TBA

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

s. 127(1)

M. Britton in attendance for Staff

Panel: TBA

TBA      **Nelson Financial Group Ltd., Nelson Investment Group Ltd., Marc D. Boutet, Stephanie Lockman Sobol, Paul Manuel Torres, H.W. Peter Knoll**

s. 127

P. Foy in attendance for Staff

Panel: TBA

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

s. 127

M. Boswell in attendance for Staff

Panel: TBA

TBA      **Sunil Tulsiani, Tulsiani Investments Inc., Private Investment Club Inc., and Gulfland Holdings LLC**

s. 127

J. Feasby in attendance for Staff

Panel: TBA

TBA      **Shane Suman and Monie Rahman**

s. 127 and 127(1)

C. Price in attendance for Staff

Panel: JEAT/PLK

TBA      **Paladin Capital Markets Inc., John David Culp and Claudio Fernando Maya**

s. 127

C. Price in attendance for Staff

Panel: TBA

TBA      **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**

s. 127

H. Craig in attendance for Staff

Panel: TBA

#### ADJOURNED SINE DIE

**Global Privacy Management Trust and Robert Cranston**

**S. B. McLaughlin**

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

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

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

**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**

**ADJOURNED SINE DIE**

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

**1.1.2 Notice of Correction – York Rio Resources Inc.  
et al.**

**NOTICE OF CORRECTION**

**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 RUNC, GEORGE  
SCHWARTZ, PETER ROBINSON, ADAM  
SHERMAN, RYAN DEMCHUK, MATTHEW OLIVER,  
GORDON VALDE AND SCOTT BASSINGDALE**

The orders in this matter dated March 3, 2010, June 10, 2010 and July 21, 2010 [published at 33 OSCB 2121, 33 OSCB 5530 and 33 OSCB 6877, respectively] contain recitals that note that the Statement of Allegations issued by Staff of the Commission is dated March 2, 2009. These orders should be corrected to state that the Statement of Allegations in this matter is dated March 2, 2010.

In the first recital in the order dated March 3, 2010, "Brascan" should read "Brasilcan".

**July 29, 2010**

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

**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 WITHDRAWAL**

**WHEREAS** on June 9, 2010, Staff of the Ontario Securities Commission ("Staff" and the "Commission", respectively) filed a Statement of Allegations pursuant to section 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended;

**AND WHEREAS** on June 10, 2009, the Commission issued a Notice of Hearing for a hearing on July 19, 2010 to consider whether it is in the public interest to approve a settlement agreement entered into by Staff and the respondents, Paladin Capital Markets Inc. and John David Culp;

**AND WHEREAS** John David Culp died on or about July 17, 2010;

**TAKE NOTICE** that Staff withdraw the allegations against John David Culp.

Dated at Toronto this 3rd day of August 2010

**STAFF OF THE  
ONTARIO SECURITIES COMMISSION**

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

"Cullen Price"  
Litigation Counsel

**1.2 Notices of Hearing**

**1.2.1 Georges Benarroch et al. – s. 21.7**

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

**AND**

**IN THE MATTER OF  
GEORGES BENARROCH, LINDA KENT,  
MARJORIE ANN GLOVER AND  
CREDIFINANCE SECURITIES LIMITED**

**AND**

**IN THE MATTER OF  
A DECISION OF THE INVESTMENT INDUSTRY  
REGULATORY ORGANIZATION OF CANADA**

**NOTICE OF HEARING  
Section 21.7**

**TAKE NOTICE THAT** the Ontario Securities Commission will hold a hearing pursuant to section 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, to consider the Application made by Georges Benarroch, Linda Kent, Marjorie Ann Glover and Credifinance Securities Limited for a review of a decision of the Investment Industry Regulatory Organization of Canada made April 13, 2010;

**AND TAKE FURTHER NOTICE THAT** the hearing will be held on November 22, 2010 at 10:00 a.m. at the Commission's offices at 20 Queen Street West, 17th Floor, Toronto, Ontario.

Dated at Toronto this 30th day of July, 2010

"Daisy Aranha"  
Per: John Stevenson  
Secretary to the Commission

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

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

**FOR IMMEDIATE RELEASE  
July 30, 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** – Following a hearing held on July 19, 2010, the Commission issued an Order in the above named matter which provides that the hearing is adjourned to August 5, 2010 at 10:00 a.m.

A copy of the Order dated July 19, 2010 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

For media inquiries:

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

Theresa Ebdon  
Senior Communications Specialist  
416-593-8307

Robert Merrick  
Senior Communications Specialist  
416-593-2315

For investor inquiries:

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

**1.4.2 Lehman Cohort Global Group Inc. et al.**

**FOR IMMEDIATE RELEASE  
July 30, 2010**

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

**AND**

**IN THE MATTER OF  
LEHMAN COHORT GLOBAL GROUP INC.,  
ANTON SCHNEDL, RICHARD UNZER,  
ALEXANDER GRUNDMANN AND  
HENRY HEHLSINGER**

**TORONTO** – Following the hearing on the merits in the above noted matter, the Panel released its Reasons and Decision.

A copy of the Reasons and Decision dated July 28, 2010 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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**1.4.3 Paul Donald**

**FOR IMMEDIATE RELEASE**  
**July 30, 2010**

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

**AND**

**IN THE MATTER OF  
PAUL DONALD**

**TORONTO** – The Commission issued an Order in the above named matter which provides that another confidential pre-hearing conference shall be held on a date to be fixed by the Secretary to the Commission, which date shall be approximately 120 days before the commencement on March 1, 2011 of the hearing on the merits.

A copy of the Order dated July 29, 2010 is available at **[www.osc.gov.on.ca](http://www.osc.gov.on.ca)**.

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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**1.4.4 Georges Benarroch et al. – s. 21.7**

**FOR IMMEDIATE RELEASE**  
**July 30, 2010**

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

**AND**

**IN THE MATTER OF  
GEORGES BENARROCH, LINDA KENT,  
MARJORIE ANN GLOVER AND  
CREDIFINANCE SECURITIES LIMITED**

**AND**

**IN THE MATTER OF  
A DECISION OF THE INVESTMENT INDUSTRY  
REGULATORY ORGANIZATION OF CANADA**

**TORONTO** – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on November 22, 2010 at 10:00 a.m. or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated July 30, 2010 and the Application dated May 12, 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  
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Senior Communications Specialist  
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Robert Merrick  
Senior Communications Specialist  
416-593-2315

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

**1.4.5 Sulja Bros. Building Supplies, Ltd. et al.**

**FOR IMMEDIATE RELEASE**  
**August 3, 2010**

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

**AND**

**IN THE MATTER OF  
SULJA BROS. BUILDING SUPPLIES, LTD.,  
PETAR VUCICEVICH, KORE INTERNATIONAL  
MANAGEMENT INC., ANDREW DE VRIES,  
STEVEN SULJA, PRANAB SHAH,  
TRACEY BANUMAS, AND SAM SULJA**

**TORONTO** – The Commission issued an Order following an *in camera* motion hearing held on July 30, 2010.

A copy of the Order dated July 30, 2010 is 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  
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Theresa Ebdon  
Senior Communications Specialist  
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Robert Merrick  
Senior Communications Specialist  
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1-877-785-1555 (Toll Free)

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

**FOR IMMEDIATE RELEASE**  
**August 3, 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** – Staff of the Ontario Securities Commission filed a Notice of Withdrawal against the respondent John David Culp today.

A copy of the Notice of Withdrawal dated August 3, 2010 is 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  
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## Chapter 2

# Decisions, Orders and Rulings

### 2.1 Decisions

#### 2.1.1 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 IPU's 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 IPU's.
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

## 2.1.2 Blumont Capital Corporation et al.

### Headnote

NP 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – a commodity pool subject to National Instrument 81-104 Commodity Pools granted exemptions from National Instrument 81-102 Mutual Funds to engage in short selling of securities up to 40% of net assets, subject to certain conditions and requirements.

### Rules Cited

National Instrument 81-102 Mutual Funds, ss. 2.6(a) and (c), 6.1(1), 19.1.  
National Instrument 81-104 Commodity Pools.

July 28, 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  
BLUMONT CAPITAL CORPORATION  
(the Filer)**  
  
**AND**  
  
**IN THE MATTER OF  
EXEMPLAR CANADIAN FOCUS PORTFOLIO,  
EXEMPLAR GLOBAL OPPORTUNITIES PORTFOLIO,  
EXEMPLAR DIVERSIFIED PORTFOLIO AND  
EXEMPLAR LEADERS PORTFOLIO  
(the Existing Funds)**  
  
**DECISION**

### Background

The principal regulator in the Jurisdiction has received an application from the Filer, the manager of the Existing Funds for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for exemptive relief from sections 2.6(a), 2.6(c) and 6.1(1) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**), to permit each Existing Fund and each “commodity pool” mutual fund for which the Filer or an affiliate of the Filer becomes the manager (the **Future Funds**, together with the Existing Funds, the **Funds**) to sell securities short, provided the aggregate market value of all securities sold short by a Fund does not exceed 40% of the net assets of the Fund on a daily marked-to-market basis, except as otherwise permitted by National Instrument 81-104 *Commodity Pools* (**NI 81-104**), to provide a security interest over the Fund’s assets in connection with such short sales and to deposit the Fund’s assets with Borrowing Agents (as defined below) as security for such transactions (the **Exemption Sought**).

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

1. the Ontario Securities Commission (the **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 each other province and territory of Canada.

## Interpretation

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

## Representations

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

1. Each Fund is or will be a mutual fund established under the laws of Ontario .
2. Each Fund is or will be a “commodity pool” for purposes of NI 81-104 and its securities are or will be offered pursuant to a long form prospectus as required by NI 81-104.
3. The Filer or an affiliate is or will be the manager of the Funds. The head office of the Filer is located in Toronto, Ontario.
4. Neither the Filer nor a Fund is in default of securities legislation in any of the provinces or territories of Canada.
5. The Filer or an affiliate is or will be the investment adviser of the Funds. The Filer has retained or may retain the services of a sub-advisor for some or all of the Funds.
6. A long form prospectus dated April 23, 2010 for each of the Existing Funds has been receipted by the securities regulatory authority or regulator in each province and territory of Canada, except Nunavut. As a result, each Existing Fund is a reporting issuer in all of the provinces and territories of Canada, except Nunavut.
7. Relief has previously been granted by the Canadian securities regulatory authorities in *Halcyon Fund Management Inc.* (November 6, 2007) (the **Existing Relief**) pursuant to which mutual funds managed by the Filer, including the Funds, may currently engage in short selling securities of any one issuer up to 5% of the net assets of the mutual fund, and in securities in aggregate up to a maximum of 20% of the net assets of the mutual fund on a daily marked-to-market basis. The Filer will no longer rely on the Existing Relief in respect of any short selling engaged in by the Funds.
8. As a commodity pool, in addition to its investment options under NI 81-104 which will allow it to invest in currency and commodity forwards, future contracts, options and other over-the-counter derivatives in a manner that a conventional mutual fund cannot, each Fund wants to have the ability to engage in short selling securities of any one issuer up to 10% of the net assets of the Fund, and in securities in aggregate up to a maximum of 40% of the net assets of the Fund on a daily marked-to-market basis, except as otherwise permitted by NI 81-104.
9. The investment practices of the Funds will, except to the extent that exemptive relief has been obtained or as permitted by NI 81-104, comply in all respects with the requirements of Part 2 of NI 81-102.
10. Each short sale made by a Fund will comply with its investment objective.
11. In order to effect short sales of securities, a Fund will borrow securities from either its custodian or a dealer (in either case, a **Borrowing Agent**), which Borrowing Agent may be acting either as principal for its own account or as agent for other lenders of securities.
12. A Fund will implement the following controls when conducting short sales of securities:
  - (a) securities will be sold short for cash, with the Fund assuming the obligation to return to the Borrowing Agent the securities borrowed to effect the short sale;
  - (b) the short sales will be effected through market facilities through which the securities sold short would normally be bought and sold;
  - (c) the Fund will receive cash for securities sold short within normal trading settlement periods for the market in which the short sale is effected;
  - (d) the securities sold short will be liquid securities that:
    - (i) are listed and posted for trading on a stock exchange, and

- A. the issuer of the security has a market capitalization of not less than Cdn. \$300 million, or the equivalent thereof, of such security at the time the short sale is effected; or
  - B. the investment advisor has pre-arranged to borrow for the purposes of such short sale; or
- (ii) are bonds, debentures or other evidences of indebtedness of or guaranteed by the Government of Canada or any province or territory of Canada or the Government of the United States of America;
- (e) the Filer will monitor the short positions of the Fund at least as frequently as daily;
- (f) the Fund deposits its assets with the Borrowing Agent as security in connection with the short sale transaction;
- (g) the Fund keeps proper books and records of all short sales and all of its assets deposited with Borrowing Agents as security;
- (h) the Fund has developed written policies and procedures for the conduct of short sales;
- (i) the Fund has disclosed in its prospectus a description of (i) short selling, (ii) how the Fund engages in short selling, (iii) the risks associated with short selling, and (iv) in the investment strategy section of the prospectus, the Fund's strategy with respect to short selling and the exemptive relief obtained with respect to such short selling;
- (j) the Fund has disclosed in its prospectus the following information:
  - (i) that there are written policies and procedures in place that set out the objectives and goals for short selling and the risk management procedures applicable to short selling;
  - (ii) who is responsible for setting and reviewing the policies and procedures referred to in the preceding paragraph, how often the policies and procedures are reviewed, and the extent and nature of the involvement of the Filer or other applicable parties in the risk management process;
  - (iii) the trading limits and other controls on short selling and who is responsible for authorizing the trading and placing limits or other controls on the trading;
  - (iv) whether there are individuals or groups that monitor the risks independent of those who trade; and
  - (v) whether risk measurement procedures or simulations are used to test the portfolio under stress conditions.

### Decision

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

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

1. the aggregate market value of all securities sold short by a Fund does not exceed 40% of the net assets of the Fund on a daily marked-to-market basis, except as otherwise permitted by NI 81-104;
2. at the time securities of a particular issuer are sold short, the aggregate market value of all short positions of the Fund in that issuer, whether direct short positions or indirect short positions through specified derivatives, will not exceed 10% of the net assets of the Fund;
3. despite condition 2, the Fund shall not include in the determination referred to in condition 2 a security or an instrument that is a component of, but that represents less than 10% of,
  - (i) a stock or bond index that is the underlying interest of a specified derivative; or
  - (ii) the securities held by the issuer of an index participation unit;

4. the Fund holds “cash cover” (as defined in NI 81-102) in an amount, including the Fund’s assets deposited with Borrowing Agents as security in connection with short sale transactions, that is at least 150% of the aggregate market value of all equity securities sold short by the Fund on a daily marked-to-market basis;
5. no proceeds from short sales of securities by the Fund will be used by the Fund to purchase long positions in securities other than cash cover;
6. the Fund maintains appropriate internal controls regarding its short sales, including written policies and procedures, risk management controls and proper books and records;
7. any short sale made by the Fund will be subject to compliance with its investment objective;
8. for short sale transactions in Canada, every dealer that holds assets of the Fund as security in connection with short sale transactions by the Fund will be a registered dealer in Canada and a member of a self-regulatory organization that is a participating member of the Canadian Investor Protection Fund;
9. for short sale transactions outside of Canada, every dealer that holds assets of the Fund as security in connection with short sale transactions by the Fund will:
  - (i) be a member of a stock exchange that requires the dealer to be subject to regulatory audit; and
  - (ii) have a net worth in excess of the equivalent of Cdn. \$50 million determined from its most recent audited financial statements that have been made public;
10. except where the Borrowing Agent is the custodian or a sub-custodian of the Fund, when the Fund deposits its assets with a Borrowing Agent as security in connection with a short sale transaction, the amount of the assets of the Fund deposited with the Borrowing Agent does not, when aggregated with the amount of the assets of the Fund already held by the Borrowing Agent as security for outstanding short sale transactions by the Fund, exceed 10% of the net assets of the Fund, taken at market value at the time of the deposit; and
11. the security interest provided by the Fund over any of its assets that is required to enable the Fund to effect short sale transactions will be made in accordance with industry practice for that type of transaction and relate only to obligations arising under such short sale transactions.

“Darren McKall”  
Assistant Manager, Investment Funds  
Ontario Securities Commission

**2.1.3 Wellington West Capital Inc. / Capital Wellington Ouest et al.**

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 81-105 Mutual Fund Sales Practices – relief from subsection 7.1(3) of NI 81-105 granted to participating dealer and its representatives to pay a commission rebate to clients when clients switch into related mutual funds – relief subject to conditions that mitigate conflicts.

**Applicable Legislative Provisions**

National Instrument 81-105 Mutual Funds Sales Practices, ss. 7.1(3), 9.1.

July 16, 2010

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
MANITOBA AND ONTARIO  
(the Jurisdiction)**

**AND**

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

**AND**

**IN THE MATTER OF  
WELLINGTON WEST CAPITAL INC. /  
CAPITAL WELLINGTON OUEST  
("Wellington Securities")**

**AND**

**WELLINGTON WEST FINANCIAL SERVICES INC.  
("Wellington Financial") (collectively with  
Wellington Securities, the "Filers")**

**AND**

**WELLINGTON WEST ASSET MANAGEMENT INC.  
(the "Manager")**

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions ("**Decision Maker**") has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") for an exemption under section 9.1 of National Instrument 81-105 *Mutual Fund Sales Practices* ("**NI 81-105**") exempting the Filers and any other future dealer subsidiaries of Wellington West Holdings Inc. (collectively, the "**Wellington Dealers**") and their representatives from the prohibition contained in subsection 7.1(3) of NI 81-105

prohibiting the Filers and their representatives from paying to a securityholder all or any part of a fee or commission payable by the securityholder on the redemption of securities of a mutual fund that occurs in connection with the purchase by the securityholder of securities of another mutual fund that is not in the same mutual fund family (a "**commission rebate**") where either of the Filers is a member of the organization of the mutual fund the securities of which are being acquired (the "**Requested Relief**").

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

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

**Interpretation**

Defined terms contained in NI 81-105 and in National Instrument 14-101 *Definitions* 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 Filers and the Manager:

1. Wellington Financial is registered in all provinces and territories of Canada as a dealer in the category of mutual fund dealer (or equivalent). Wellington Financial is also registered with the Ontario Securities Commission as an exempt market dealer. Wellington Financial is a member of the Mutual Fund Dealers Association of Canada.
2. Wellington Securities is registered in all provinces, but not in any of the territories, of Canada as a dealer in the category of investment dealer. Wellington Securities is a member of the Investment Industry Regulatory Organization of Canada.
3. The Filers and the Manager are wholly owned subsidiaries of Wellington West Holdings Inc. ("**WWHI**"). The Manager is the manager of the NxT Group of Funds, a family of open-ended mutual funds (individually, a "**Fund**", and collectively, the "**NxT Funds**") whose securities



are offered under a simplified prospectus in all provinces and territories of Canada except Quebec.

4. WWHI is not a reporting issuer. WWHI has a total of 417 holders of common shares. Included in the 417 share holders, 199 are dealing representatives of Wellington Securities and 42 are dealing representatives of Wellington Financial, all of whom hold shares directly or indirectly through a registered plan, and including family trusts and family holding corporations (the "**Dealer Representative Shareholders**")
5. The 199 Dealer Representative Shareholders with Wellington Securities currently own 55% of the issued and outstanding shares of WWHI. Of the 199 Dealer Representatives, 194 own 2% or less of the outstanding shares of WWHI, 4 own more than 2% and up to 5%, and 1 owns more than 5% (Charlie Spiring, who owns just under 20%).
6. The 42 Dealer Representative Shareholders with Wellington Financial currently own 3% of the issued and outstanding shares of WWHI.
7. None of the Dealer Representative Shareholders have a direct equity interest in the Manager. The Manager is 100% owned subsidiary of WWHI, which gives the Dealer Representative Shareholders an indirect interest in the Manager.
8. The Filers are the principal distributors for the NxT Funds and, therefore, the Filers are members of the organization of the NxT Funds pursuant to NI 81-105.
9. The Filers may in the future become a member of the organization of other mutual funds, since the parent company of the Filers may acquire interests in corporations that are managers of mutual funds ("**Future Affiliated Funds**").
10. The simplified prospectus of the NxT Funds and of any Future Affiliated Funds will contain disclosure concerning the Filers, WWHI and the Manager, including information concerning the aggregate equity interests of the Dealer Representative Shareholders in WWHI.
11. The Filers are participating dealers for many mutual funds offered for sale in Canada that are managed by unrelated fund managers.
12. The Filers and their representatives are free to choose which mutual funds to recommend to their clients and consider recommending the NxT Funds or Future Affiliated Funds to their clients in the same way as they consider recommending other third party mutual funds. The Filers and their representatives comply with their obligations at law and only recommend mutual funds that they believe would be suitable for their clients and in

accordance with the clients' investment objectives. In the event that any participating dealers sell securities of NxT Funds to their clients, the NxT Funds will provide the Filers with compensation described in the simplified prospectus of the Funds and in the same manner as NxT Funds will for any such participating dealer.

13. All compensation and sales incentives paid to the Filers by NxT Funds and Future Affiliated Funds comply with NI 81-105. The Filers also comply with NI 81-105 and, in particular, with Part 4 of NI 81-105, in their compensation practices with their sales representatives.
14. Neither the Filers nor the representatives of the Filers are, or will be, subject to quotas (whether express or implied) in respect of selling securities of the NxT Funds or Future Affiliated Funds.
15. Except as permitted by NI 81-105, none of the Filers or any other member of the organization of the NxT Funds or Future Affiliated Funds provides or will provide any incentive (whether express or implied) to any representative or to the Filers (as applicable) to encourage the representatives to recommend to clients the NxT Funds or Future Affiliated Funds over third party mutual funds.
16. Subsection 7.1(3) of NI 81-105 prohibits the Filers or representatives of the Filers from reimbursing their clients for any fees or commissions incurred by such clients when they decide to switch into a NxT Fund or Future Affiliated Funds from another mutual fund. Section 7.1 allows the Filers and their representatives to pay commission rebates when the client decides to switch from one third party fund to another third party fund, provided the disclosure and consent procedure established in Section 7.1 is followed.
17. Payment of commission rebates by the Filers and their representative benefit the client so that the client does not incur costs in switching from one fund to another.

### Decision

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

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

1. The Filers and their representatives will comply with the informed written consent provisions of paragraph 7.1(1)(a) of NI 81-105.
2. The NxT Funds or a Future Affiliated Fund will comply with the disclosure provisions of Part 8 of NI 81-105. The simplified prospectus for the NxT Funds or a Future Affiliated Fund will include

disclosure in the form attached as appendix A to this decision, including:

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

- (a) that the Filers have obtained the relief set out in this decision document;
  - (b) the relationship as between WWHI, the Filers, the Manager, NxT Funds and the Future Affiliated Funds ;
  - (c) the aggregated equity interest of the Dealer Representative Shareholders in WWHI as at the date of the simplified prospectus.
3. The client of the Filers and their representatives will be advised in writing and in advance of finalizing the switch that any commission rebate proposed to be made available in connection with the purchase of a NxT Fund or Future Affiliated Funds will:
- (a) be available to the client regardless of which NxT Fund, Future Affiliated Fund, or unrelated third party fund the redemption proceeds are to be invested in;
  - (b) not be conditional upon the purchase of the securities of a NxT Fund or a Future Affiliated Fund; and
  - (c) in all cases, be not more than the amount of the gross sales commission earned by the Filers on the client's purchase of a NxT Fund or a Future Affiliated Fund;.
4. The actual amount of the commission rebate paid in respect of the switch will not be more than the amount referred to in paragraph 3. (c) above.
5. The Filers or their representatives that provide a commission rebate will not be reimbursed directly or indirectly in respect of that commission rebate in connection with a switch to a NxT Fund or a Future Affiliated Fund by any member of the organization of the NxT Funds or any member of the organization of the Future Affiliated Funds.
6. The Filers' compliance policies and procedures that relate to this Decision will emphasize that any commission rebate agreed to be paid to a client by a representative cannot be conditional on the client acquiring a NxT Fund or a Future Affiliated Fund and will be made available to the client if the client wishes to switch to an unrelated third party fund.
7. This Decision shall cease to be operative with respect to a Decision Maker following the coming into force of a rule of that Decision Maker which replaces or amends section 7.1 of NI 81-105.

**Appendix A**  
***Additional Prospectus Disclosure***

Each of WWCI and WWFS has obtained exemptive relief from applicable securities regulatory authorities to permit it or its representatives (or their associates) to pay, on behalf of an investor in the Funds, the commissions associated with the redemption of mutual funds of other mutual fund families in connection with the purchase of NxT Funds on conditions which include, among other things, that this simplified prospectus of the Funds discloses the relationship between Wellington West Holdings Inc. ("**WWHI**"), WWCI, WWFS, and the Manager and NxT Funds, including the indirect equity interests in the Manager held by representatives of WWCI and WWFS.

**Relationship between WWHI, WWCI, WWFS, the Manager and NxT Funds**

The Manager is the manager of NxT Funds. WWCI and WWAM and the Manager are affiliated companies, as they are each a wholly owned subsidiary of WWHI. Further information about these corporate relationships is contained in the annual information form of the NxT Funds.

**Equity Interests of WWCI and WWFS Representatives in WWAM.**

As at the date of this simplified prospectus, there were approximately • common shares ("**WWHI Shares**") of WWHI outstanding. To the extent that a person owns WWHI, they will have an equity interest in the Manager.

As at the date of this simplified prospectus, the representatives of WWCI (either directly or through a registered plan, and inclusive of family holding corporations and family trusts of such representatives) held approximately • WWHI Shares, or approximately •% of the outstanding Shares on such date. The representatives of WWFS (either directly or through a registered plan, and inclusive of family holding corporations and family trusts of such representatives) held approximately • WWHI Shares, or approximately •% of the outstanding WWHI Shares. The following representatives of WWCI and/or WWFS (either directly or through a registered plan and inclusive of family holding corporations and family trusts of such representative(s)) own 5% or more of WWHI Shares as at the date of this simplified prospectus:

Representative Name	Number of WWHI Shares owned	% of WWHI Shares owned

While their level of ownership will change over time, it is not expected that their holdings will exceed 80% of the outstanding WWHI Shares.

## 2.1.4 Man Investments Canada Corp. and Man Canada AHL Alpha Fund

### Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – mutual funds granted relief from certain restrictions in National Instrument 81-102 Mutual Funds for securities lending transactions, including (i) the 50% limit on lending; (ii) the requirement to use a custodial lending agent; and (iii) the requirement to hold the collateral during the course of the transactions – mutual funds invest their assets in a basket of Canada equity securities that are pledged to a counterparty as security for funds' performance under a forward contract – funds to lend up to 100% of basket of Canadian equity securities – counterparty will only release securities for lending in exchange for security interest over collateral received by the fund for the loaned securities – not practical for custodian to act as lending agent as it may not have possession or control over the basket of Canadian equity securities – decision revokes and replaces earlier decision to permit manager to lend securities directly as well as through an agent that is not the funds' custodian – manager or agent lending securities will comply with sections 2.15 and 2.16 as if they were the agent appointed under those provisions.

### Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.12(1), 2.12(1)2, 2.12(1)12, 2.12(3), 2.15, 2.16, 6.8(5), 19.1.

July 14, 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  
MAN INVESTMENTS CANADA CORP.  
(the Filer)**

**AND**

**MAN CANADA AHL ALPHA FUND  
(the Present Fund)**

**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) exemptive relief (the **Securities Lending Relief**) for the Present Fund, together with all other mutual funds now or in the future managed by the Filer in respect of which the representations set out below are applicable (collectively, the **Funds** and each, a **Fund**), from the following provisions of National Instrument 81-102 – *Mutual Funds* (**NI 81-102**):
- (i) paragraph 2.12(1)1 of NI 81-102 to permit each Fund to enter into securities lending transactions that will not be administered in compliance with all the requirements of sections 2.15 and 2.16 of NI 81-102;
  - (ii) paragraph 2.12(1)2 of NI 81-102 to permit each Fund to enter into securities lending transactions that do not fully comply with all the requirements of section 2.12 of NI 81-102;
  - (iii) paragraph 2.12(1)12 of NI 81-102 to permit each Fund to enter into securities lending transactions in which the aggregate market value of securities loaned by the Fund exceeds 50% of the total assets of the Fund;

- (iv) paragraph 2.12(3) of NI 81-102 to permit each Fund, during the term of a securities lending transaction, to not hold or to dispose of any non-cash collateral delivered to it as a collateral in the transaction;
  - (v) section 2.15 of NI 81-102 to permit the Filer to lend securities of each Fund either through an agent ("**Agent**") that is not the custodian or sub-custodian of the Fund or directly to a borrower;
  - (vi) section 2.16 of NI 81-102 to the extent this section contemplates that securities lending transactions be entered into through an agent appointed under section 2.15 of NI 81-102;
  - (vii) subsection 6.8(5) of NI 81-102 to permit the collateral delivered to each Fund in connection with a securities lending transaction to not be held under the custodianship of the custodian or a sub-custodian of the Fund; and
- (b) revocation of the decision granted by the principal regulator to the Filer and the Funds on April 20, 2010 (the **Prior Decision**), to be replaced in its entirety by the decision herein (the **Revocation Relief**).

The Securities Lending Relief and the Revocation Relief are collectively referred to as 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 subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (together with Ontario, collectively, the **Qualifying Jurisdictions**).

### Interpretation

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

### Representations

This decision is based on the following facts represented by the Filer on behalf of each Fund:

### Facts

1. The Filer was incorporated under the *Canada Business Corporations Act* by articles of incorporation dated March 22, 2006 as Man Alternative Investments Canada Corp. The Filer's name was changed to Man Investments Canada Corp. pursuant to articles of amendment dated June 26, 2006.
2. The Filer is registered as an adviser in the category of Portfolio Manager in Ontario and Alberta. The Filer is also registered as a dealer in the category of Exempt Market Dealer in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia. The Filer's head office is located in Toronto, Ontario.
3. Each Fund is a mutual fund to which NI 81-102 applies. Each Fund is also a commodity pool subject to National Instrument 81-104 *Commodity Pools*. The securities of each Fund are qualified for distribution in each of the Qualifying Jurisdictions pursuant to a prospectus that has been prepared and filed in accordance with the securities legislation of the Qualifying Jurisdictions. Each Fund is, accordingly, a reporting issuer in each of the Qualifying Jurisdictions.
4. The OSC is the principal regulator to review and grant the Exemption Sought as the head office of the Filer is in the Province of Ontario.
5. The Filer and the Funds are not in default of securities legislation in any of the Qualifying Jurisdictions.
6. Each Fund's investment objectives include seeking the provision of tax-efficient returns based on returns of specific types of investments. Each Fund's investment objectives state that it may use specified derivatives to seek to provide these returns.
7. Each Fund pursues its investment objectives by means of specified derivatives. Generally, each Fund invests its assets in a portfolio of non-dividend paying common shares of Canadian public companies (**Common Share Portfolio**). The Common Share Portfolio of a Fund is generally a static portfolio that is not actively managed except in

limited circumstances. Each Fund also enters into one or more forward contracts (each, a **Forward Contract**) with one or more financial institutions (each, a **Counterparty**) to effectively replace the economic return on its Common Share Portfolio with the economic return on an underlying interest (such as another mutual fund, one or more indices, or a notional basket of different securities) to achieve the Fund's investment objectives.

8. Each Fund pledges its Common Share Portfolio to the Counterparty (or the portion thereof that is subject to the relevant Forward Contract with that Counterparty) as collateral security for performance of the Fund's obligations under the Forward Contract with that Counterparty. The Common Share Portfolio (or that portion thereof) is held by the Counterparty pursuant to the applicable Forward Contract.
9. The Filer proposes to engage in securities lending transactions on behalf of each Fund that may represent up to 100% of the net assets of that Fund, in order to earn additional returns for that Fund. The Filer may lend the securities of a Fund to one or more borrowers indirectly through an Agent, other than the custodian or sub-custodian of the Fund, which shall be acceptable to the Filer and the Counterparty and shall be either a Canadian financial institution (including a Counterparty) or an affiliate of a Canadian financial institution. It is not commercially practical for a Fund's custodian or sub-custodian to act as Agent with respect to the Fund's Common Share Portfolio for the reason set out in paragraph 8 above.
10. The Filer will ensure that any Agent through which a Fund lends securities maintains appropriate internal controls, procedures and records for securities lending transactions as prescribed in subsection 2.16(2) of NI 81-102.
11. If the Filer lends securities to borrowers directly on behalf of a Fund, the Filer will, in administering such securities lending transactions, exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, and will ensure that the borrower maintains appropriate internal controls, procedures, and records for securities lending transactions as prescribed in subsection 2.16(2) of NI 81-102.
12. A Counterparty must release its security interest in the securities of the Common Share Portfolio in order to allow the Fund to lend such securities, provided that the Fund grants the Counterparty a security interest in the collateral held by the Fund for the loaned securities.
13. To facilitate the Counterparty's release of its security interest in the securities in the Common Share Portfolio of a Fund, the Filer will ensure the securities of the Common Share Portfolio of the Fund are loaned to an affiliate of the Counterparty, which will be a registered dealer and a member of the Investment Industry Regulatory Organization of Canada (**IIROC**) or another borrower that is acceptable to both the Filer and the Counterparty. To facilitate the Counterparty's perfection of its security interest in the collateral held by the Fund for the loaned securities, the Filer will ensure that the Fund's collateral for the loan is held by an affiliate of the Counterparty, which will be a registered dealer and a member of IIROC.
14. The collateral received by a Fund in respect of a securities lending transaction, and in which the Counterparty will have a security interest, will be in the form of cash, qualified securities and/or other collateral permitted by NI 81-102, other than collateral described in sub-paragraph 2.12(1)6(d) or in paragraph (b) of the definition of "qualified security" under NI 81-102. The non-cash collateral received by a Fund in respect of a securities lending transaction, and in which the Counterparty will have a security interest, will not be re-invested in any other types of investment products.
15. The prospectus of each Fund discloses that the Fund may enter into securities lending transactions. Other than as set forth herein, any securities lending transactions on behalf of a Fund will be conducted in accordance with the provisions of NI 81-102.
16. Upon obtaining the Exemption Sought, the Funds will no longer rely on the Prior Decision.

### **Decision**

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

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

- (a) with respect to the exemption from paragraph 2.12(1)12 of NI 81-102, each Fund enters into a Forward Contract with an applicable Counterparty and grants that Counterparty a security interest in the securities subject to that Forward Contract and, in connection with a securities lending transaction relative to those securities,

- (i) receives the collateral that
    - (A) is prescribed by paragraphs 2.12(1)3 to 6 of NI 81-102 other than collateral described in subparagraph 2.12(1)6(d) or in paragraph (b) of the definition of qualified security; and
    - (B) is marked to market on each business day in accordance with paragraph 2.12(1)7 of NI 81-102;
  - (ii) has the rights set forth in paragraphs 2.12(1)8, 2.12(1)9 and 2.12(1)11 of NI 81-102;
  - (iii) complies with paragraph 2.12(1)10 of NI 81-102; and
  - (iv) lends its securities only to borrowers that are acceptable to the Fund and the Counterparty, and that have an approved credit rating (as defined in NI 81-102) or whose obligations to the Fund are fully and unconditionally guaranteed by persons or companies that have such a credit rating;
- (b) with respect to the exemption from subsection 2.12(3) of NI 81-102, each Fund provides a security interest to the applicable Counterparty in the collateral delivered to it as collateral pursuant to a securities lending transaction as described in representation 12;
- (c) with respect to the exemption from subsection 2.15 of NI 81-102:
- (i) where the Filer lends securities of a Fund directly to a borrower, the Filer complies with the requirements of section 2.15 of NI 81-102 as if it were the agent contemplated by that section; and
  - (ii) where the Filer lends securities of a Fund through an Agent,
    - (A) the Filer and the Fund enter into a written agreement with the Agent that complies with each of the requirements set forth in subsection 2.15(4) of NI 81-102; and
    - (B) the Agent administering the securities lending transaction of each Fund:
      - (I) is in compliance with the standard of care prescribed in subsection 2.15(5) of NI 81-102; and
      - (II) is a bank or trust company described in paragraph 1 or 2 of section 6.2 of NI 81-102 or the investment bank affiliate of such bank or trust company that is registered as an investment dealer or in an equivalent registration category;
- (d) with respect to the exemption from section 2.16 of NI 81-102,
- (i) where the Filer lends securities of a Fund directly to a borrower, the Filer and the Fund comply with the requirements of section 2.16 of NI 81-102 as if the Filer itself were the agent contemplated in that section; and
  - (ii) where the Filer lends securities of a Fund through an Agent, the Filer and the Fund comply with the requirements of section 2.16 of NI 81-102 as if the Agent appointed by the Filer were the agent contemplated in that section; and
- (e) with respect to the exemption from subsection 6.8(5) of NI 81-102, each Fund:
- (i) provides a security interest to the applicable Counterparty in the collateral delivered to it as collateral pursuant to a securities lending transaction as described in representation 12; and
  - (ii) the collateral delivered to the Fund pursuant to the securities lending transaction is held by an affiliate of the Counterparty, which will be a registered dealer and a member of IIROC, as described in representation 13.

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

## 2.1.5 BMO Asset Management Inc.

### 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 and pooled 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).

July 21, 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 ASSET MANAGEMENT INC.  
(the Filer)

AND

THE NI 81-102 FUNDS  
(as defined below)

DECISION

### Background

The principal regulator in the Jurisdiction has received an application from the Filer 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 (the **Legislation**) exempting the NI 81-102 Funds from the prohibition in Subsection 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, a **Pooled Fund** and, collectively, the **Pooled 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 Filer has provided notice that Subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in all of the provinces and territories of Canada other than Ontario (the **Passport 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. The Filer is a corporation incorporated under the laws of the Province of Ontario. It is registered as a portfolio manager in each of the provinces and territories of Canada (the Jurisdictions), as an exempt market dealer in Ontario and Newfoundland and Labrador and as commodity trading manager in Ontario.
- 2. The head office of the Filer is located in Toronto, Ontario.
- 3. The Filer is an indirect wholly-owned subsidiary of Bank of Montreal.
- 4. Each of the NI 81-102 Funds and the Pooled 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. The Filer, or an affiliate of the Filer, will be the manager and/or portfolio adviser of each Fund.
- 5. The Filer, or an affiliate of the Filer is, or may be, the trustee of certain Funds that are created as trusts.
- 6. Each of the NI 81-102 Funds is, or will be, a reporting issuer and qualified for distribution in each of the Jurisdictions pursuant to a simplified prospectus and annual information form prepared and filed in accordance with securities legislation.



7. Each of the Pooled Funds is, or will be, qualified for distribution in the Jurisdictions pursuant to exemptions from the prospectus requirement and will not be a reporting issuer.
8. The Filer and each of the existing Funds are not in default of securities legislation in any of the Jurisdictions.
9. A Fund may be an associate of the Filer, or of an affiliate of the Filer, that is the manager, portfolio adviser or trustee of an NI 81-102 Fund.
10. The Filer wishes to be able to enter into Inter-Fund Trades of debt securities between an NI 81-102 Fund and a Pooled Fund.
11. The manager of each NI 81-102 Fund has established, or will establish, an independent review committee (**IRC**) in respect of each NI 81-102 Fund in accordance with the requirements of NI 81-107.
12. Inter-Fund Trades involving an NI 81-102 Fund will be referred to the relevant IRC of such NI 81-102 Fund under Subsection 5.2(1) of NI 81-107 and the manager of such NI 81-102 Fund 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.
13. The manager of each Pooled Fund will establish an IRC in respect of each Pooled Fund. The mandate of the IRC of the Pooled Funds will be to approve Inter-Fund Trades between a Pooled Fund and another Fund.
14. 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 the IRC 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 Subsection 5.2(2) of NI 81-107.
15. At the time of an Inter-Fund Trade, the Filer (or its affiliate) will have in place policies and procedures to enable the NI 81-102 Funds to engage in Inter-Fund Trades with the Pooled Funds.
16. Each Inter-Fund Trade will be consistent with the investment objective of the NI 81-102 Fund.
17. The Filer, or an affiliate of the Filer, will comply with the following procedures when entering into Inter-Fund Trades between an NI 81-102 Fund and a Pooled Fund:
  - (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) the 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 (**CO**) to address the matter 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 orders are to be executed on a timely basis; 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.
18. The Filer 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 the Filer, or an affiliate of the Filer, in connection with the execution of transactions on behalf of NI 81-102 Funds.
19. The Filer is unable to rely upon the exemption from Subsection 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 the Pooled Funds are not subject to NI 81-107.

**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 IRC of each Fund has approved the Inter-Fund Trade in respect of the Fund in accordance with Subsection 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.

“Darren McKall”  
Assistant Manager, Investment Funds  
Ontario Securities Commission

## **2.1.6 CI Investments Inc. and Signature Select Global Fund**

### **Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from sections 15.3(2), 15.3(4)(c), 15.6(a)(i), 15.6(d), 15.8(2)(a) and 15.8(3)(a) of National Instrument 81-102 Mutual Funds to permit a mutual fund that has not distributed securities under a simplified prospectus in a jurisdiction for 12 consecutive months to present performance data in sales communications for periods before the time when the mutual fund offered its securities under a simplified prospectus – the fund distributed its securities under prospectus exemptions prior to becoming a reporting issuer – the fund has complied with the investment restrictions and practices in NI 81-102 since inception – the fund will be managed substantially similarly after it commences distributing securities under a simplified prospectus – the fund has prepared annual and interim financial statements in accordance with National Instrument 81-106 Investment Fund Continuous Disclosure since inception – the performance data of the fund for the time period before it became a reporting issuer is significant information for investors.

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from section 4.4 of National Instrument 81-106 Investment Fund Continuous Disclosure for the purposes of the relief requested from Form 81-106F1, Items 3.1(7), 4.1(1) in respect of the requirement to comply with subsections 15.3(2) and 15.3(4)(c) of National Instrument 81-102 Mutual Funds, 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1 and Items 3(1) and 4 of Part C of Form 81-106F1 to permit a mutual fund to include in its annual and interim management reports of fund performance the financial highlights and past performance of the fund that are derived from the fund's annual and interim financial statements that pertain to time periods when the fund was not a reporting issuer – the fund distributed its securities under prospectus exemptions prior to becoming a reporting issuer – the fund has complied with the investment restrictions and practices in NI 81-102 since inception – the fund will be managed substantially similarly after it commences distributing securities under a simplified prospectus – the fund has prepared annual and interim financial statements in accordance with National Instrument 81-106 Investment Fund Continuous Disclosure since inception – the financial highlights and performance data of the fund for the time periods before it became a reporting issuer is significant information for investors.

### **Applicable Legislative Provisions**

National Instrument 81-102 Mutual Funds, ss. 15.3(2), 15.3(4)(c), 15.6(a)(i), 15.6(b), 15.6(d), 15.8(2)(a), 15.8(3)(a), 19.1.  
National Instrument 81-106 Mutual Fund Continuous Disclosure, ss. 4.4 and 17.1.  
Form 81-106F1, Part B, Items 3.1(7), 4.1(1), 4.1(2), 4.2(1), 4.3(1), 4.3(2).  
Form 81-106F1, Part C, Items 3(1) and 4.

July 29, 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  
CI INVESTMENTS INC.  
(the Filer)**

**AND**

**SIGNATURE SELECT GLOBAL FUND  
(the Fund)**

**DECISION**

## Background

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

- (a) sections 15.3(2), 15.3(4)(c), 15.6(a)(i), 15.6(d), 15.8(2)(a) and 15.8(3)(a) of NI 81-102 to permit the Fund to include its performance data since the inception of the Fund in sales communications notwithstanding that:
  - (i) the Fund has not distributed its securities under a simplified prospectus for 12 consecutive months; and
  - (ii) the performance data will relate to a period prior to the Fund offering its securities under a simplified prospectus

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

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

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

## Interpretation

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

## Representations

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

1. The Fund is an open-ended mutual fund trust created under the laws of the Province of Ontario on October 27, 2006 (the **Inception Date**) and is governed by a declaration of trust dated April 2, 2007, as amended.
2. The Filer is the manager of the Fund. The head office of the Filer is located in Ontario.
3. Since the Inception Date until the date of the receipt issued for the Fund's first simplified prospectus and annual information form dated July 14, 2010 (collectively, the **Prospectus**) filed pursuant to National Instrument 81-101 – *Mutual Fund Prospectus Disclosure* (**NI 81-101**), units of the Fund (**Units**) have been distributed to investors on a prospectus-exempt basis in accordance with National Instrument 45-106 – *Prospectus and Registration Exemptions* and its predecessor legislation in each province and territory of Canada.
4. The Filer and the Fund are, to the best of their knowledge, not in default of securities legislation in any province or territory of Canada.
5. Upon the issuance of the receipt for the Fund's Prospectus on July 22, 2010, the Fund has been permitted to commence distributing its securities to the public and the Fund has also become a reporting issuer under the securities legislation of each province and territory of Canada. In addition, the Fund has become subject to the requirements of National Instrument 81-102 – *Mutual Funds* (**NI 81-102**) and National Instrument 81-106 – *Investment Fund Continuous Disclosure* (**NI 81-106**) that apply only to investment funds that are reporting issuers.
6. Since the Inception Date, as a "mutual fund in Ontario", the Fund has prepared and sent annual and interim financial statements to all holders of its securities in accordance with NI 81-106.
7. Since the Inception Date, the Fund has complied with the investment restrictions and practices contained in NI 81-102, including not using leverage in the management of its portfolio.
8. The Fund will be managed substantially similarly after it becomes a reporting issuer as it was prior to becoming a reporting issuer. As a result of the Fund becoming a reporting issuer:
  - (a) the Fund's investment objectives have not changed, other than to provide additional detail as required by NI 81-101;

- (b) the management fee charged to the Fund in respect of its existing class of units has not changed;
  - (c) the day-to-day administration of the Fund has not changed, other than to comply with the additional regulatory requirements associated with being a reporting issuer (none of which would have impacted the portfolio management of the Fund) and to provide additional features that are available to investors of mutual funds managed by the Filer, as described in the Prospectus; and
  - (d) the management expense ratio of the Fund will increase by less than 0.10%, which the Filer considers to be an immaterial amount.
9. The Filer proposes to present the performance data of the Fund for the time period since the Inception Date in sales communications pertaining to the Fund.
10. Without the Requested Relief, sales communications pertaining to the Fund would not be permitted to include performance data until the Fund has distributed securities under a simplified prospectus in a jurisdiction for 12 consecutive months and sales communications pertaining to the Fund would only be permitted to include performance data for the period commencing after the date on which the Fund commences distributing securities under a simplified prospectus.
11. As a reporting issuer, the Fund is required by NI 81-106 to prepare and send annual and interim management reports of fund performance (**MRFPs**) to all holders of its securities on an annual and interim basis.
12. The most recent financial statements required to be prepared by the Fund under NI 81-106 are the annual financial statements for the year ended December 31, 2009. The Filer proposes to prepare the MRFP in respect of these financial statements and to file these financial statements and MRFP. The Filer proposes that the Prospectus incorporate by reference the Fund's most recent annual financial statements and the related annual MRFP, until such documents are superseded by more current financial statements and MRFPs of the Fund.
13. The Filer has filed a separate application for exemptive relief from certain provisions of NI 81-106 (the **NI 81-106 Relief**) to enable the Fund to include in its MRFPs the financial highlights and performance data of the Fund that are derived from its annual and interim financial statements for the time periods prior to its becoming a reporting issuer.
14. The performance and other financial data of the Fund for the time period before it became a reporting issuer is significant and meaningful information for existing and prospective investors 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 Requested Relief is granted provided that:

- (a) any sales communication that contains performance data of the Fund relating to a period prior to when the Fund was a reporting issuer discloses:
  - (i) that the Fund was not a reporting issuer during such period; and
  - (ii) that the expenses of the Fund would have been higher during such period had the Fund been subject to the additional regulatory requirements applicable to a reporting issuer;
- (b) the information provided under the heading "Fund Expenses Indirectly Borne by Investors" in Part B of the Fund's simplified prospectus based on the management expense ratio for the Units for the Fund's financial year ended December 31, 2009 be accompanied by disclosure that:
  - (i) the information is based on the MER of the Fund for its last completed financial year when its Units were offered privately; and
  - (ii) the Fund's MER may increase as a result of the Fund offering its Units under the simplified prospectus;
- (c) the Fund's Prospectus incorporates by reference the Fund's annual financial statements for the financial year ended December 31, 2009 and the related annual MRFP until such documents are superseded by more current financial statements and MRFPs of the Fund; and

(d) the Fund prepares its MRFPs in accordance with the NI 81-106 Relief.

"Darren McKall"  
Assistant Manager  
Ontario Securities Commission

## 2.1.7 CI Investments Inc. and Signature Select Global Fund

### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from section 4.4 of National Instrument 81-106 Investment Fund Continuous Disclosure for the purposes of the relief requested from Form 81-106F1, Items 3.1(7), 4.1(1) in respect of the requirement to comply with subsections 15.3(2) and 15.3(4)(c) of National Instrument 81-102 Mutual Funds, 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1 and Items 3(1) and 4 of Part C of Form 81-106F1 to permit a mutual fund to include in its annual and interim management reports of fund performance the financial highlights and past performance of the fund that are derived from the fund's annual and interim financial statements that pertain to time periods when the fund was not a reporting issuer – the fund distributed its securities under prospectus exemptions prior to becoming a reporting issuer – the fund has complied with the investment restrictions and practices in NI 81-102 since inception – the fund will be managed substantially similarly after it commences distributing securities under a simplified prospectus – the fund has prepared annual and interim financial statements in accordance with National Instrument 81-106 Investment Fund Continuous Disclosure since inception – the financial highlights and performance data of the fund for the time periods before it became a reporting issuer is significant information for investors.

### Applicable Legislative Provisions

National Instrument 81-106 Mutual Fund Continuous Disclosure, ss. 4.4, 17.1.  
Form 81-106F1, Part B, Items 3.1(7), 4.1(1), 4.1(2), 4.2(1), 4.3(1), 4.3(2).  
Form 81-106F1, Part C, Items 3(1) and 4.

July 29, 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  
CI INVESTMENTS INC.  
(the Filer)**

**AND**

**SIGNATURE SELECT GLOBAL FUND  
(the Fund)**

**DECISION**

### Background

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

- (a) section 4.4 of NI 81-106 for the purposes of the relief requested herein from Form 81-106F1 – *Contents of Annual and Interim Management Report of Fund Performance* (**Form 81-106F1**); and
- (b) items 3.1(7), 4.1(1) in respect of the requirement to comply with sections 15.3(2) and 15.3(4)(c) of National Instrument 81-102 – *Mutual Funds* (**NI 81-102**), 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1 and Items 3(1) and 4 of Part C of Form 81-106F1 to permit the Fund to include in its annual and interim management reports of fund performance (**MRFPs**) the financial highlights and performance data of the Fund that are derived from the Fund's annual and interim financial statements that pertain to time periods prior to the Fund becoming a reporting issuer

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

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

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

### Interpretation

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

### Representations

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

1. The Fund is an open-ended mutual fund trust created under the laws of the Province of Ontario on October 27, 2006 (the **Inception Date**) and is governed by a declaration of trust dated April 2, 2007, as amended.
2. The Filer is the manager of the Fund. The head office of the Filer is located in Ontario.
3. Since the Inception Date until the date of the receipt issued for the Fund's first simplified prospectus and annual information form dated July 14, 2010 (collectively, the **Prospectus**) filed pursuant to National Instrument 81-101 – *Mutual Fund Prospectus Disclosure* (**NI 81-101**), units of the Fund (**Units**) have been distributed to investors on a prospectus-exempt basis in accordance with National Instrument 45-106 – *Prospectus and Registration Exemptions* and its predecessor legislation in each province and territory of Canada.
4. The Filer and the Fund are, to the best of their knowledge, not in default of securities legislation in any province or territory of Canada.
5. Upon the issuance of the receipt for the Fund's Prospectus on July 22, 2010, the Fund has been permitted to commence distributing its securities to the public and the Fund has become a reporting issuer under the securities legislation of each province and territory of Canada. The Fund has also become subject to the requirements of National Instrument 81-102 – *Mutual Funds* (**NI 81-102**) and National Instrument 81-106 – *Investment Fund Continuous Disclosure* (**NI 81-106**).
6. Since the Inception Date, as a "mutual fund in Ontario", the Fund has prepared and sent annual and interim financial statements to all holders of its securities in accordance with NI 81-106.
7. Since the Inception Date, the Fund has complied with the investment restrictions and practices contained in NI 81-102, including not using leverage in the management of its portfolio.
8. The Fund will be managed substantially similarly after it becomes a reporting issuer as it was prior to becoming a reporting issuer. As a result of the Fund becoming a reporting issuer:
  - (a) the Fund's investment objectives have not changed, other than to provide additional detail as required by NI 81-101;
  - (b) the management fee charged to the Fund in respect of its existing class of units has not changed;
  - (c) the day-to-day administration of the Fund has not changed, other than to comply with the additional regulatory requirements associated with being a reporting issuer (none of which would have impacted the portfolio management of the Fund) and to provide additional features that are available to investors of mutual funds managed by the Filer, as described in the Prospectus; and
  - (d) the management expense ratio of the Fund will increase by less than 0.10%, which the Filer considers to be an immaterial amount.
9. As a reporting issuer, the Fund is required by NI 81-106 to prepare and send annual and interim MRFPs to all holders of its securities on an annual and interim basis.



10. The most recent financial statements required to be prepared by the Fund under NI 81-106 are the annual financial statements for the year ended December 31, 2009. The Filer proposes to prepare the MRFP in respect of these financial statements and to file these financial statements and MRFP. The Filer proposes that the Prospectus incorporate by reference the Fund's most recent annual financial statements and the related annual MRFP, until such documents are superseded by more current financial statements and MRFPs of the Fund.
11. Without the Requested Relief, the MRFPs of the Fund cannot include financial highlights and performance data derived from its annual and interim financial statements for the time periods prior to its becoming a reporting issuer.
12. The Filer also proposes to present the performance data of the Fund for the time period since the Inception Date in sales communications that pertain to the Fund. The Filer has filed a separate application for exemptive relief from certain provisions of NI 81-102 (the **NI 81-102 Relief**) to permit the Fund to include its performance data since the Inception Date in sales communications.
13. The performance and other financial data of the Fund for the time period before it became a reporting issuer is significant and meaningful information for existing and prospective investors 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 Requested Relief is granted provided that:

- (a) any MRFP that includes performance data or financial highlights of the Fund relating to a period prior to when the Fund was a reporting issuer discloses:
  - (i) that the Fund was not a reporting issuer during such period;
  - (ii) that the expenses of the Fund would have been higher during such period had the Fund been subject to the additional regulatory requirements applicable to a reporting issuer; and
  - (iii) that the financial statements of the Fund for such period are available to investors upon request;
- (b) the Filer makes the financial statements of the Fund since the Inception Date available to investors upon request; and
- (c) the Fund prepares the Prospectus and sales communications in accordance with the NI 81-102 Relief.

"Darren McKall"  
Assistant Manager  
Ontario Securities Commission

## 2.1.8 Qtrade Fund Management Inc. et al.

### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Dual application – Lapse date of mutual fund prospectus extended until merger of certain funds and implementation of changes to other funds, including change of fundamental investment objectives, fees, and redesignation of unit series – Issuer will prepare and file a new simplified prospectus and annual information form reflecting the proposed changes for the funds it will continue distributing – Extension of lapse date will not affect the currency or accuracy of the information contained in the prospectus.

### Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 147.

July 27, 2010

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

AND

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

AND

IN THE MATTER OF  
QTRADE FUND MANAGEMENT INC.  
(THE FILER)

AND

QFM MONEY MARKET FUND  
QFM FIXED INCOME FUND  
(TOGETHER, THE TERMINATING FUNDS)

AND

QFM GLOBAL EQUITY FUND  
QFM GLOBAL SECTOR TARGET FUND  
QFM STRUCTURED YIELD FUND  
QFM WORLD BALANCED FUND  
(collectively, the Continuing Funds,  
and together with the Terminating Funds,  
the Funds)

### DECISION

### Background

- 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer on behalf of the Funds for a decision (the Exemption Sought)

under the securities legislation of the Jurisdictions (the Legislation) that:

- (a) the time limits for the renewal of the simplified prospectus (Simplified Prospectus) and annual information form (Annual Information Form) of the Funds dated August 27, 2009, as amended and restated April 1, 2010 and amended May 10, 2010, with the exception of the Terminating Funds, be extended to those time limits that would be applicable if the lapse date of the Simplified Prospectus and Annual Information Form was October 12, 2010 ; and
- (b) the time limit for the distribution of the Terminating Funds under the Simplified Prospectus and Annual Information Form be extended to permit the continued distribution of the Terminating Funds until the end of business on October 5, 2010.

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

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan and Manitoba, and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### Interpretation

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

### Representations

- 3 This decision is based on the following facts represented by the Filer:
  1. the Filer is a corporation governed by the *Canada Business Corporations Act*, with its head office in Vancouver, British Columbia; the Filer is the manager, trustee and portfolio adviser of the Funds; the Filer is not in default of any of the requirements of the Legislation;

2. the Funds are open-ended mutual fund trusts established under the laws of British Columbia;
3. the Funds are reporting issuers under the Legislation; none of the Funds is in default of any of the requirements of the Legislation;
4. securities of the Funds are currently qualified for distribution in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario (the Relief Jurisdictions) under the Simplified Prospectus and Annual Information Form; securities of the Funds are also qualified for distribution in Quebec under a simplified prospectus dated April 1, 2010, as amended May 10, 2010; the Funds do not require the Exemption Sought in Quebec;
5. the lapse date for the distribution of securities of the Funds under the Simplified Prospectus and Annual Information Form is August 27, 2010 (the Lapse Date);
6. pursuant to the Legislation, provided a pro forma simplified prospectus is filed not less than 30 days before August 27, 2010, a final version of the simplified prospectus is filed by September 6, 2010, and a receipt for the simplified prospectus is issued by the securities regulatory authorities by September 16, 2010, the securities of the Funds may be distributed in the Relief Jurisdictions without interruption during the simplified prospectus renewal period;
7. on April 30, 2010, the Filer announced by press release, in connection with which a material change report and amendment to the Simplified Prospectus were filed on SEDAR, that it is proposing a number of structural changes to the Funds, including the mergers of the Terminating Funds into other mutual funds managed by the Filer and the change of the fundamental investment objectives and fees and redesignation of unit series of certain Continuing Funds;
8. the Filer also intends to change the registrar and transfer agent for the Funds (together with the changes in representation 7, the Proposed Changes); due to a situation beyond the Filer's reasonable control, the change of registrar and transfer agent for the Funds must be postponed from its August 29, 2010 planned completion date to October 12, 2010; the Proposed Changes are therefore expected to be completed by October 12, 2010;
9. the Proposed Changes will be effected in accordance with applicable requirements of the Legislation, including National Instrument 81-102 *Mutual Funds*, National Instrument 81-106 *Investment Fund Continuous Disclosure* and National Instrument 81-107 *Independent Review Committee for Investment Funds*;
10. in the absence of this order, section 2.5 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* and section 62 of the *Securities Act* (Ontario) would require that the Funds file a final simplified prospectus and annual information form by September 6, 2010 and receive a final receipt by September 16, 2010;
11. the independent review committee for the Funds has reviewed the proposed mergers of the Terminating Funds with respect to conflict of interest issues and has determined that the mergers achieve a fair and reasonable result for the Funds; the Filer has determined that, subject to obtaining all applicable investor and regulatory approvals, it is in the best interests of the Terminating Funds and their unitholders to effect the mergers of the Terminating Funds following the completion of the change of registrar and transfer agent, after which the Terminating Funds will be wound up; if the Exemption Sought is granted, the Filer intends to cease offering the Terminating Funds under the Simplified Prospectus and Annual Information Form at the close of business on October 5, 2010 and cease redemption by the close of business on October 8, 2010; the Filer expects sales principally to be to existing investors in the Terminating Funds participating in systematic trading programs, including pre-authorized purchase plans and automatic rebalancing services;
12. in view of the required postponement of the change of registrar and transfer agent, and consequentially the Terminating Fund mergers, there will be a period following the Lapse Date of just over one month during which a renewal prospectus for the Terminating Funds would be required in order to allow for the continued distribution of their securities before they are merged; in order to reduce the cost of renewing the Simplified Prospectus and Annual Infor-

mation Form in August and then subsequently amending and restating the renewed simplified prospectus in October following the implementation of the proposed Terminating Fund mergers, the Filer wishes to have relief to continue to distribute securities of the Terminating Funds until the close of business on October 5, 2010;

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

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

13. the Filer has determined that, subject to obtaining all applicable investor and regulatory approvals, it is in the best interests of the Continuing Funds and their unitholders to effect the redesignation of unit series following the completion of the change of registrar and transfer agent and to effect all of the Proposed Changes at the same time;
14. in view of the required postponement of the change of registrar and transfer agent, and consequentially the Proposed Changes including the redesignation of unit series, and in order to avoid potential investor confusion and to reduce the cost of renewing the Simplified Prospectus and Annual Information Form in August and then subsequently amending and restating the renewed simplified prospectus in October following the implementation of the Proposed Changes, the Filer wishes to extend the Lapse Date of the Simplified Prospectus and Annual Information Form for the Funds (with the exception of the Terminating Funds) to October 12, 2010 so that the renewal simplified prospectus can be filed following completion of the Proposed Changes; and
15. since August 27, 2009, the date of the Simplified Prospectus and Annual Information Form, no undisclosed material change has occurred in respect of the Funds; accordingly, the Simplified Prospectus and Annual Information Form present up to date information regarding the Funds; the extension requested will not affect the currency or accuracy of the information contained in the Simplified Prospectus and Annual Information Form, and, accordingly, would not be prejudicial to the public interest.

#### Decision

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

**2.1.9 Cumberland Private Wealth Management Inc. et al.**

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application by mutual funds to cease being reporting issuers under securities legislation – Mutual funds not eligible to rely on simplified process set out in CSA Staff Notice 12-307 because beneficially owned by more than 50 persons – Mutual fund securities distributed by manager/portfolio manager exclusively to managed accounts fully managed by it – Mutual fund securities distributed on exempt basis to managed accounts pursuant to available regulatory and discretionary exemptions from dealer registration and prospectus requirements – No need to renew prospectus to continue distributions to managed accounts.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(b).  
CSA Staff Notice 12-307 Applications for a Decision that an Issuer is not a Reporting Issuer.

July 28, 2010

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,  
MANITOBA, ONTARIO AND NOVA SCOTIA  
(the Jurisdictions)**

**AND**

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

**AND**

**IN THE MATTER OF  
CUMBERLAND PRIVATE WEALTH MANAGEMENT  
INC. (CPWM) AND CUMBERLAND INVESTMENT  
MANAGEMENT INC. (CIMI)**

**AND**

**IN THE MATTER OF  
CUMBERLAND CAPITAL APPRECIATION FUND  
CUMBERLAND INCOME FUND  
(collectively, the Funds and, with CPWM and CIMI,  
the Filers)**

**DECISION**

**Background**

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

that each Fund is not a reporting issuer in each Jurisdiction (the **Exemptive Relief Sought**).

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

- (a) the Ontario Securities Commission (the **OSC**) is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

**Interpretation**

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

**Representations**

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

1. CPWM is a corporation organized under the *Business Corporations Act* (Ontario) (**OBCA**). Its head office is in Toronto, Ontario. CPWM is registered as an investment dealer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador. CPWM is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**). CPWM provide portfolio investment management services in accordance with the rules of IIROC.
2. CIMI is a corporation organized under the OBCA. It is not registered as a dealer or an adviser in any of the Jurisdictions. CIMI is proposing to apply for registration as an investment fund manager with the OSC in accordance with the requirements of National Instrument 31-103 *Registration Requirements and Exemptions*, unless CPWM is appointed investment fund manager of the Funds. In that case, CPWM would apply for registration as an investment fund manager.
3. CPWM and CIMI are “affiliates” as defined in National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**).
4. Each of the Funds is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia pursuant to a simplified prospectus dated July 17, 2009, prepared in accordance with the requirements of National Instrument 81-101 *Mutual Funds Prospectus Disclosure*.
5. CIMI is the trustee of the Funds. CPWM is the portfolio adviser and distributor of the Funds. CIMI is the current investment fund manager of

- the Funds, and either CIMI or CPWM will be the investment fund manager of the Funds.
6. The Funds are not in default of securities legislation in the Jurisdictions.
  7. CPWM provides discretionary investment management services (the **Managed Services**), primarily to high net worth individuals, institutions and foundations (individually, the **Client** and, collectively, the **Clients**) to each Client through a managed account (**Managed Account**).
  8. Each Client enters into a discretionary investment management agreement (the **Managed Account Agreement**) with CPWM, whereby the Client appoints CPWM to provide the Managed Services. Based on the size of the assets of the Client and depending on the allocation of a Client's assets to a particular asset class, CPWM either manages the Client's assets on a segregated account basis or invests the Client's assets in one or more Funds.
  9. CPWM sends each Client a quarterly statement showing current holdings and a summary of all transactions carried out in their Managed Account during the quarter. In addition, clients are provided with monthly or quarterly account statements (depending on account activity) as well as trade confirmations for each purchase or redemption of units of the Funds. The CPM is available to review and discuss with Clients all account statements and portfolio valuations.
  10. The Funds are only distributed to Managed Account clients of CPWM and therefore are not widely distributed. All investors in the Funds are invested through a Managed Account with CPWM.
  11. Each Fund pays or will pay all administration fees and expenses relating to its operation, including any management fees payable to the investment fund manager of the Fund and investment management fees or performance fees payable by the Fund to CPWM. Each Fund pays to the investment fund manager of that Fund a nominal fixed management fee (currently \$2,500). None of the Funds charges or will charge a commission to investors. Typically, CPWM receives investment management fees directly from investors in each of the Funds based upon a percentage of the value of the Clients Managed Account and no investment management fees are payable by the Fund to CPWM. The terms of these fees, as well as any investment management or performance fees payable by a Fund to CPWM, are detailed in each Client's Managed Account Agreement or in another agreement with the client.
  12. Where CPWM invests on behalf of a Managed Account in a Fund to which CPWM will charge an investment management fee or performance fee, the necessary steps will be taken to ensure that there will be no duplication of fees between a Managed Account and the Funds.
  13. Each of the Funds is a reporting issuer in all Jurisdictions as a result of having filed a prospectus in the Jurisdictions.
  14. The Funds currently distribute their units to Managed Account Clients in the Jurisdictions pursuant to a simplified prospectus dated July 17, 2009 (the **Prospectus**), prepared pursuant to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.
  15. Absent an exemption, the Funds are prohibited in Ontario from distributing, and CPWM is effectively prohibited from investing in, units of the Funds for the Managed Accounts in Ontario, in circumstances where the individual Client who is the beneficial owner of the Managed Account is not otherwise qualified as a "accredited investor", is not a Secondary Managed Account as defined in an order of the OSC dated May 18, 2007 or does not otherwise use the \$150,000 minimum investment exemption available under NI 45-106.
  16. Pursuant to an order of the Ontario Securities Commission dated July 13, 2010 (the **Ontario Decision**), CPWM is now permitted to distribute units of the Funds under an exemption from the prospectus requirements to Managed Account Clients in Ontario in circumstances where the Client is not an "accredited investor", is not a Secondary Managed Account as defined in an order of the OSC dated May 18, 2007 and does not invest a minimum of \$150,000 in each Fund.
  17. As a result of the Ontario Decision, CIMI will not renew the Prospectus and instead proposes to distribute units of the Funds to its Managed Account Clients pursuant to exemptions from the prospectus requirement.
  18. Investors in the Funds are only comprised of, and will in the future only be comprised of, persons from the following categories:
    - (a) investors who qualify as "accredited investors", as defined in NI 45-106, other than pursuant to paragraph (q) of the definition;
    - (b) investors outside of Ontario, who have entered into a Managed Account Agreement with CPWM, making CPWM the accredited investor on behalf of the Client's Managed Account pursuant to paragraph (q) of the "accredited investor" definition in NI 45-106; and
    - (c) investors in Ontario, who have entered into a Managed Account Agreement with

CPWM, where CPWM is relying on the Ontario Decision.

19. Each of the Funds has more than 51 unitholders in total in Canada. In addition, each of the Funds has 15 or more unitholders in one or more jurisdictions in Canada.
20. The only reason that the Funds are not eligible for relief pursuant to CSA Staff Notice 12-307 *Application for a Decision that an Issuer is not a Reporting Issuer* is because of the number of unitholders in each Fund.
21. CPWM will send a notice to all unitholders of the Funds, advising that the Funds have applied for and received a decision that the Funds have ceased to be reporting issuers and explaining the implications of such fact. As there are no redemption charges payable by unitholders in the Funds, Clients will be permitted to instruct CPWM if they no longer wish to be invested in the Funds and there will be no fees associated with such change.
22. The financial statements of the Funds will be prepared and delivered to unitholders in accordance with the requirements of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106). The Funds intend to rely on the filing exemption set out in section 2.11 of NI 81-106.

#### Decision

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

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

"Kevin J. Kelly"  
Commissioner  
Ontario Securities Commission

"The Honourable James D. Carnwath Q.C."  
Commissioner  
Ontario Securities Commission

## 2.1.10 Genworth MI Canada Inc.

### Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Take-over Bids – Exemption from the proportionate take-up requirements in section 97.2(1) of the Securities Act (Ontario) – Exemption from the extension take-up requirements in section 98.3(4) of the Securities Act (Ontario) – Dutch auction – An issuer conducting an issuer bid under a modified Dutch auction procedure requires relief from the requirements for proportionate take up, and to take up and pay for securities if all terms and conditions are met and the issuer bid is under-subscribed. The issuer is disclosing the maximum dollar amount of shares it will acquire under the bid, and the minimum and maximum amount it will pay for shares tendered; as a result, the potential for confusion is minimal – The issuer will comply with the U.S. regime in connection with the Offer.

### Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 97.2(1), 98.3(4) and 104(2)(c).  
OSC Rule 62-504, s. 4.2(2).

August 3, 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  
GENWORTH MI CANADA 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**) that, in connection with the proposed purchase by the Filer of a portion of its outstanding common shares (the **Shares**) pursuant to an issuer bid (the **Offer**), the Filer be exempt from the following requirements in the Legislation (the **Exemption Sought**):

- (a) to take up and pay for securities deposited pursuant to the Offer proportionately according to the number of securities deposited by each depositing security holder;
- (b) to provide disclosure of the proportionate take-up and payment in the issuer bid circular (the **Circular**); and
- (c) to not extend the Offer if all the terms and conditions of the Offer have been complied with or waived unless the Filer first takes up all Shares deposited and not withdrawn under the Offer.

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



## Interpretation

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

## Representations

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

1. The Filer is a corporation existing under the *Canada Business Corporations Act* and a reporting issuer in each of the Jurisdictions. The Filer is not on the list of defaulting reporting issuers maintained by the Securities Regulator in each of the Jurisdictions that maintains such a list.
2. The authorized share capital of the Filer consists of an unlimited number of common shares (Shares), an unlimited number of preferred shares (**Preferred Shares**) and one special share. As of June 30, 2010, 117,100,000 Shares, no Preferred Shares and one special share were issued and outstanding.
3. Brookfield Life Assurance Company Limited (**Brookfield**) is the beneficial owner of 67,325,900 Shares (representing approximately 57.5% of the outstanding Shares) and one special share.
4. The Shares are listed on the Toronto Stock Exchange (**TSX**) under the symbol "MIC".
5. On July 13, 2010, the closing price of the Shares on the TSX was C\$23.10 and on such date the Shares had an aggregate market value of approximately C\$2,705,010,000, based on such closing price. Based on such closing price, the Shares, excluding the Shares held by Brookfield, had an aggregate market value of approximately C\$1,149,781,710.
6. The Filer made the Offer on July 19, 2010 by way of a modified Dutch auction procedure as follows:
  - a. the Circular specifies the maximum aggregate purchase price of Shares which the Filer will purchase under the Offer (the **Specified Dollar Amount**);
  - b. the Circular specifies the range of prices within which the Filer is prepared to purchase the Shares (the **Price Range**);
  - c. the Filer will fund the purchase of Shares pursuant to the Offer, together with the fees and expenses of the Offer, from available cash on hand;
  - d. each holder of Shares (collectively, the **Shareholders**) wishing to tender to the Offer has the right either to:
    - i. specify the lowest price within the Price Range (an **Auction Price**) at which that Shareholder is willing to sell its tendered Shares (an **Auction Tender**), or
    - ii. elect to tender a number of shares that will allow them to retain the Shareholder's proportionate interest in the Filer following the completion of the Offer (a **Proportionate Tender**);
  - e. Shareholders may make multiple Auction Tenders but not in respect of the same Shares (i.e. shareholders may tender different Shares at different prices but cannot tender the same Shares at different prices); Shareholders who make a Proportionate Tender must tender all Shares beneficially owned by them to the Offer; Shareholders who make an Auction Tender may not make a Proportionate Tender; Shareholders who make a Proportionate Tender may not make an Auction Tender;
  - f. any Shareholder who owns fewer than 100 Shares and tenders all of such Shareholder's Shares pursuant to an Auction Tender at or below the Purchase Price will be considered to have made an "**Odd-Lot Tender**";
  - g. the Filer will determine the purchase price payable per Share (the **Purchase Price**) based on the Auction Prices and the number of Shares specified in valid Auction Tenders; the Purchase Price will be the lowest price that enables the Filer to purchase that number of Shares tendered pursuant to valid Auction Tenders having an aggregate purchase price not to exceed an amount (the **Auction Tender Limit Amount**) equal to (i) the Specified Dollar Amount less (ii) the product of (A) the Specified Dollar Amount and (B) a fraction, the numerator of which is the aggregate number of Shares owned by shareholders making valid Proportionate Tenders, and the denominator of which is the aggregate number of Shares outstanding at the time of the expiry of the Offer;

- h. if the aggregate purchase price for Shares validly tendered pursuant to Auction Tenders at Auction Prices at or below the Purchase Price is less than or equal to the Auction Tender Limit Amount, the Filer will purchase all Shares so deposited pursuant to Auction Tenders.
  - i. if the aggregate purchase price for Shares validly tendered pursuant to Auction Tenders at Auction Prices at or below the Purchase Price is greater than the Auction Tender Limit Amount, the Filer will purchase a portion of the Shares so deposited pursuant to Auction Tenders, determined as follows: (i) the Filer will purchase all such Shares tendered by Shareholders pursuant to Odd-Lot Tenders; and (ii) the Filer will purchase on a *pro rata* basis that portion of such Shares having an aggregate purchase price equal to (A) the Auction Tender Limit Amount, less (B) the aggregate amount paid by the Filer for Shares tendered pursuant to Odd-Lot Tenders;
  - j. the Filer will purchase at the Purchase Price that portion of the Shares owned by Shareholders making valid Proportionate Tenders that results in the tendering Shareholders maintaining their proportionate Share ownership following completion of the Offer;
  - k. the number of Shares that the Filer will purchase pursuant to the Offer and the aggregate purchase price will vary depending on whether the aggregate purchase price payable in respect of Shares required to be purchased pursuant to Auction Tenders (the **Auction Tender Purchase Amount**) is equal to or less than the Auction Tender Limit Amount. If the Auction Tender Purchase Amount is equal to the Auction Tender Limit Amount, the Filer will purchase Shares for an aggregate purchase price equal to the Specified Dollar Amount; if the Auction Tender Purchase Amount is less than the Auction Tender Limit Amount, the Filer will purchase proportionately fewer Shares, with a proportionately lower aggregate purchase price;
  - l. all Shares purchased by the Filer pursuant to the Offer (including Shares tendered at Auction Prices below the Purchase Price) will be purchased at the Purchase Price. Shareholders will receive the Purchase Price in cash; all Auction Tenders and Proportionate Tenders will be subject to adjustment to avoid the purchase of fractional Shares; all payments to Shareholders will be subject to deduction of applicable withholding taxes; and
  - m. all Shares tendered at prices above the Purchase Price or otherwise invalidly tendered will be returned to the appropriate Shareholders.
7. The Offer is subject to Regulation 14E (**Regulation 14E**) promulgated under the United States *Securities Exchange Act of 1934*, as amended. A majority of the Filer's Shares are beneficially held by residents of the United States, including those held indirectly through Brookfield by Genworth Financial Inc.
8. Brookfield (which beneficially owns approximately 57.5% of the outstanding Shares) has advised the Filer that it intends to make a Proportionate Tender.
9. Until expiry of the Offer, all information about the number of Shares tendered and the prices at which the Shares are tendered will be required to be kept confidential by the depositary and the Filer until the Purchase Price has been determined.
10. Shareholders who do not accept the Offer will continue to hold the number of Shares owned before the Offer and their proportionate Share ownership will increase following completion of the Offer.
11. The Filer may elect to extend the bid in circumstances where the Offer is undersubscribed. Under the Legislation, an issuer may not extend an issuer bid if all the terms and conditions of the issuer bid have been complied with or waived unless the issuer first takes up all the securities deposited and not withdrawn under the issuer bid (the **Extension Take Up Requirement**). Regulation 14E requires an issuer to pay for all equity securities deposited under an issuer bid promptly following the expiry of the bid and, subject to an exception not available in the circumstances described herein, does not permit the bid to be extended after the initial take up of and payment for the securities.
12. The Filer intends to rely on the exemption from the formal valuation requirements applicable to issuer bids under Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**) set out in subsection 3.4(b) of MI 61-101 (the **Liquid Market Exemption**).
13. There is a "liquid market" for the Shares, as such term is defined in MI 61-101, because:
- a. there is a published market for the Shares (**TSX**);

- b. during the 12 months before announcement of the issuer bid:
    - i. the number of outstanding Shares was at all times at least 5,000,000 (excluding Shares beneficially owned, or over which control and direction was exercised, by related parties and securities that were not freely tradeable);
    - ii. the aggregate trading volume of Shares on TSX was at least 1,000,000 Shares;
    - iii. there were at least 1,000 trades in the Shares on TSX; and
    - iv. the aggregate value of the trades in the Shares on TSX was at least C\$15,000,000; and
  - c. the market value of the Shares on TSX, as determined in accordance with MI 61-101, was at least C\$75,000,000 for June 2010;
14. Based on the facts set forth in paragraph 13 and the maximum number of Shares that may be purchased under the Offer, assuming an aggregate purchase price equal to the Specified Dollar Amount, the Filer has determined that there is a liquid market for the Shares and that it is reasonable to conclude that, following the completion of the Offer, there will be a market for holders of Shares who do not tender to the Offer that is not materially less liquid than the market that existed at the time the Offer was announced.
15. The Circular:
- a. discloses the mechanics for the take-up of and payment for Shares as described in paragraph 6 above;
  - b. explains that, by tendering Shares at the lowest price in the Price Range under an Auction Tender or by tendering Shares under a Proportionate Tender, a Shareholder can reasonably expect that the Shares so tendered will be purchased at the Purchase Price, subject to proration and other terms of the Offer as specified in paragraph 6 above;
  - c. discloses that the Filer has filed for an exemption from the Extension Take Up Requirement;
  - d. discloses that Brookfield has advised that it intends to make a Proportionate Tender;
  - e. discloses the facts supporting the Filer's reliance on the Liquid Market Exemption; and
  - f. except to the extent exemptive relief is granted pursuant to this Decision, contains the disclosure prescribed by the Legislation for issuer bids.

## **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. Shares deposited under the Offer and not withdrawn are taken up and paid for, or dealt with, in the manner described in paragraph 6 above;
- b. the Filer is eligible to rely on the Liquid Market Exemption and complies with the representations in paragraph 13 above; and
- c. the Filer complies with the requirements of Regulation 14E in respect of the conduct of the Offer.

"Mary G. Condon"  
Commissioner  
Ontario Securities Commission

"James D. Carnwath"  
Commissioner  
Ontario Securities Commission

**2.1.11 Toronto-Dominion Bank et al. – s. 5.1 of OSC Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions**

**Headnote**

Section 5.1 of the OSC Rule 48-501 Trading during Distributions, Formal Bids and Share Exchange Transactions (Rule) – exemption granted from trading restrictions imposed by sections 2.1(a) and 2.2 of the Rule.

**Rules Cited**

Ontario Securities Commission Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions.

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

**AND**

**ONTARIO SECURITIES COMMISSION RULE 48-501  
TRADING DURING DISTRIBUTIONS, FORMAL  
BIDS AND SHARE EXCHANGE TRANSACTIONS  
(the Rule)**

**AND**

**IN THE MATTER OF  
THE TORONTO-DOMINION BANK  
THE CANADA TRUST COMPANY  
TD ASSET MANAGEMENT INC.  
TD WATERHOUSE CANADA INC.,  
TD WATERHOUSE PRIVATE INVESTMENT COUNSEL INC.,  
TD ASSET MANAGEMENT USA INC. AND  
TD SECURITIES INC.**

**DECISION  
(Section 5.1 of the Rule)**

**UPON** the Director (as defined in the Act) having received an application (the Application) from The Toronto-Dominion Bank (TD Bank), The Canada Trust Company (TCTC), TD Asset Management Inc. (TDAM), TD Waterhouse Canada Inc. (TDWCI), TD Waterhouse Private Investment Counsel Inc. (TDWPIC), TD Asset Management USA Inc. (TDAM USA) and TD Securities Inc. (TDSI) for a decision (or its equivalent) pursuant to section 5.1 of the Rule exempting certain insiders of TD Bank, and exempting TCTC, TDAM, TDWCI, TDWPIC and TDAM USA (the Asset Managers), from trading restrictions imposed upon issuer-restricted persons by section 2.2 of the Rule, and exempting TDSI from certain trading restrictions imposed upon dealer-restricted persons by section 2.1(a) of the Rule;

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

**AND UPON** TD Bank, each of the Asset Managers and TDSI having represented to the Director that:

1. TD Bank is a Schedule I bank under the *Bank Act* (Canada).
2. Certain insiders of TD Bank (Non-Access Insiders) do not in the ordinary course receive, or have access to, undisclosed material facts or material changes (Material Information) concerning TD Bank or its securities and are exempt from insider reporting requirements pursuant to section 9.2 of National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (NI 55-104).
3. TCTC is a wholly-owned subsidiary of TD Bank. Its principal business is acting as a trustee for personal and corporate clients. It is regulated by the Office of the Superintendent of Financial Institutions Canada.
4. TDAM is a wholly-owned subsidiary of TD Bank that carries on the business of a portfolio manager throughout Canada. It is registered as a portfolio manager under the securities legislation of all provinces and territories of Canada, as an

exempt market dealer under the Act and the *Securities Act* (Newfoundland and Labrador), and as a commodity trading manager under the *Commodity Futures Act* (Ontario).

5. TDWCI is a wholly-owned subsidiary of TD Bank. It is registered as an investment dealer under the securities legislation of all provinces and territories of Canada, and it is a member of the Investment Industry Regulatory Organization of Canada (IIROC) and an approved participant of the Montreal Exchange (ME).
6. TDWPIC is a wholly-owned subsidiary of TD Bank, is registered as a portfolio manager under the securities legislation of all provinces and territories of Canada and as an exempt market dealer under the Act and the *Securities Act* (Newfoundland and Labrador).
7. TDAM USA is a wholly-owned subsidiary of TD Bank. It carries on the business of an adviser in the United States and is registered as such with the U.S. Securities and Exchange Commission (the SEC).
8. Each of the Asset Managers manages accounts on behalf of clients at arms length to TD Bank and its affiliates who have granted the Asset Manager discretionary investment authority over the assets in the clients' accounts (Managed Accounts) and who have provided the Asset Manager with express written consent to exercise such discretionary investment authority to purchase Shares on behalf of the Managed Accounts (Authorized Managed Accounts).
9. TDAM is the manager of investment funds that have an Independent Review Committee that has approved the purchase of common shares of TD Bank (Shares) by the investment funds, both in the ordinary course and during the Restricted Period, as defined below, in accordance with either section 6.2 of National Instrument 81-107 *Independent Review Committee for Investment Funds* or the terms and conditions of an exemption that has been granted by the Commission (an Authorized TDAM Fund);
10. TD Bank is the sponsor and administrator of the Employee Future Builder Savings Plan (EFBSP) and the Employee Ownership Plan (EOP), two voluntary savings programs that are available to all employees of TD Bank and its affiliates that are resident in Canada including, without limitation, insiders of TD Bank that are not Non-Access Insiders (Access Insiders).
11. TDSI is a wholly-owned subsidiary of TD Bank that conducts an institutional brokerage business throughout Canada. It is registered as an investment dealer under the securities legislation of all provinces and territories of Canada, and it is a member of IIROC and the TSX Venture Exchange, a participating organization of The Toronto Stock Exchange and an approved participant of the ME.
12. TD Bank and The South Financial Group, Inc. (South Financial) have entered into an Agreement and Plan of Merger (the Merger Agreement) pursuant to which South Financial will be acquired by TD Bank. Pursuant to the Merger Agreement, a newly-formed wholly-owned subsidiary of TD Bank will merge with and into South Financial with South Financial surviving the merger.
13. In connection with TD Bank's acquisition of South Financial (the Acquisition), South Financial's common shareholders will be entitled to receive, in exchange for each share of South Financial common stock owned by the shareholder, either (i) U.S. \$0.28 in cash, if a cash election is made, or (ii) 0.004 shares plus cash in lieu of any fractional share interests.
14. The Acquisition is subject to the approval of South Financial's shareholders.
15. TDSI has been appointed by TD Bank as TD Bank's advisor in respect of the Acquisition and its compensation for such services is dependant upon the outcome of the Acquisition.
16. The Shares that are to be delivered to the shareholders of South Financial pursuant to the Merger Agreement are being registered under the *Securities Act of 1933* pursuant to a registration statement on Form F-4 that has been filed with the SEC. South Financial proposes to mail a proxy statement/prospectus (the Proxy Statement) to its shareholders as soon as practicable following the declaration of the Form F-4s effectiveness. The meeting of South Financial's shareholders that is being held to consider the Acquisition will be convened approximately 20 business days following the date of the mailing.
17. TD Bank could issue up to approximately 900,000 Shares (the "Merger Distribution") as consideration for the shares of South Financial that it will acquire pursuant to the Acquisition.
18. As a result of the Merger Distribution, each of the Non-Access Insiders, each Access Insider, the Asset Managers and TDSI is an issuer-restricted person, and TDSI is also a dealer-restricted person, for purposes of the Rule.

19. As an issuer-restricted person, each of the Non-Access Insiders, the Access Insiders, the Asset Managers and TD Bank is subject to trading restrictions (the Trading Restrictions) that prohibit it from purchasing Shares for either its own account or for any account over which it exercises control or direction during the issuer-restricted period applicable to the Merger Distribution (the Restricted Period).
20. The Restricted Period will begin on the date of dissemination of the Proxy Statement and end on the date on which the proposed Acquisition is approved by the shareholders of South Financial or the proposed Acquisition is terminated.
21. The Shares meet the requirements in the Rule to be considered a "highly-liquid security".
22. As a dealer-restricted person, TDSI is exempt from the Trading Restrictions because the Shares are highly-liquid securities.
23. As a dealer-restricted person, TDSI is prohibited from purchasing Shares for an account which TDSI knows, or reasonably ought to know, is an account of an issuer-restricted person.
24. The Non-Access Insiders comprise officers of TD Bank and its subsidiaries other than executive officers of TD Bank, directors of TD Bank subsidiaries, and directors and officers of issuers that are insiders of TD Bank and the subsidiaries of such issuers that do not in the ordinary course of business receive, or have access to, undisclosed Material Information concerning TD Bank or its securities. Accordingly, although the Non-Access Insiders are therefore removed from the orbit of the executive officers of TD Bank who may have access to undisclosed Material Information in relation to the proposed Acquisition, they will be unable to purchase Shares during the Restricted Period for either their own accounts or accounts over which they exercise control or direction that have beneficiaries that would not be prohibited from purchasing Shares for their own accounts in the absence of the exemption sought on behalf of TD Bank and the Non-Access Insiders pursuant to the Application even though the Shares are highly-liquid securities for purposes of the Rule.
25. In the absence of an exemption from the Trading Restrictions that has been sought on behalf of the Non-Access Insiders, a Non-Access Insider would be unable to purchase Shares for either his or her own account or an account over which the Non-Access Insider exercises control or direction during the Restricted Period.
26. In the absence of an exemption from the Trading Restrictions that has been sought on behalf of the Asset Managers pursuant to the Application, each Asset Manager would be unable to purchase Shares during the Restricted Period on behalf of Authorized Managed Accounts.
27. In the absence of an exemption from the Trading Restrictions that has been sought on behalf of TDAM pursuant to the Application, TDAM will be unable to purchase Shares on behalf of Authorized TDAM Funds throughout the Restricted Period.
28. In the absence of the exemptions sought by the Asset Managers pursuant the Application, each Asset Manager would be precluded from discharging its fiduciary obligation to its Authorized Managed Accounts, and TDAM would be precluded from discharging its fiduciary obligation to the Authorized TDAM Funds, in accordance with their investment objectives throughout the Restricted Period even though the Shares are highly-liquid securities.
29. As the administrator of the EFBSP and the EOP (collectively, the Employee Plans), TD Bank pays all administration and investment management fees associated with the execution of the investment options that are selected by Employee Plan participants. TD Bank makes all Share purchases on behalf of the Employee Plans and their participants through TDSI.
30. Each of the Employee Plans is an automatic securities purchase plan for purposes of Part 5 of all NI 55-104.
31. In the absence of an exemption from the Trading Restrictions that has been sought on behalf of the Access Insider, an Access Insider who is a participant in an Employee Plan would be unable to purchase Shares in accordance with the terms and conditions of the Employee Plan during the Restricted Period.
32. In the absence of an exemption from the Trading Restrictions that has been sought on behalf of TD Bank, TD Bank would be unable to purchase Shares in accordance with the terms and conditions of an Employee Plan on behalf of an insider of TD Bank who is a participant in the Employee Plan (a "Participating Insider") during the Restricted Period.
33. Although TDSI will be able to purchase Shares for its own account or for accounts over which it exercises control or direction throughout the Restricted Period in reliance upon the exemption for highly-liquid securities that is available pursuant to section 3.1(1)(b) of the Rule, it will be unable to purchase Shares on behalf of the Non-Access Insiders when they are purchasing Shares for their own accounts, and it will be unable to purchase Shares on behalf of TD

Bank when it is purchasing Shares on behalf of a Participating Insider, during the Restricted Period in the absence of an exemption from section 2.1(a) of the Rule.

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

**IT IS THE DECISION** of the Director pursuant to section 5.1 of the Rule that for purposes of the Acquisition, the following are exempt from section 2.2 of the Rule:

- (a) purchases of Shares by a Non-Access Insider for either his or her own account or an account over which the Non-Access Insider exercises control or direction;
- (b) purchases of Shares in accordance with the terms and conditions of an Employee Plan by an Access Insider who is a participant in the Employee Plan;
- (c) purchases of Shares by an Asset Manager on behalf of an Authorized Managed Account;
- (d) purchases of Shares by TDAM on behalf of an Authorized TDAM Fund; and
- (e) purchases of Shares by TD Bank on behalf of a Participating Insider in accordance with the terms and conditions of an Employee Plan.

**IT IS ALSO THE DECISION** of the Director pursuant to section 5.1 of the Rule that for the purposes of the Acquisition, TDSI is exempt from section 2.1(a) of the Rule in respect of any purchases of Shares on behalf of a Non-Access Insider who is purchasing the Shares for his or her own account and on behalf of a Participating Insider when it is purchasing shares in accordance with the terms and conditions of an Employee Plan.

July 30, 2010

"Susan Greenglass"  
Director, Market Regulation Branch

## 2.1.12 Med BioGene Inc.

### Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from prospectus requirements in connection with the use of electronic roadshow materials during the waiting period for a prospectus offering – Issuer offering securities by prospectus in Canada and in the US – Electronic roadshow will comply with US offering rules – All sales to Canadian investors will be made through a Canadian registrant – If the electronic roadshow materials contain a misrepresentation, any Canadian investor who views the materials and subsequently purchases under the Canadian prospectus has a right to sue the issuer and the Canadian underwriters.

### Applicable Legislative Provisions

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

June 15, 2010

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

**AND**

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

**AND**

**IN THE MATTER OF  
MED BIOGENE INC.  
(the Filer)**

**DECISION**

### Background

- 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for a ruling exempting the Filer from the prospectus requirement to permit the Filer to post certain Website Materials during the portion of the Waiting Period between the date of this decision document and the date of the Final Prospectus (the Exemption Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### Interpretation

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

### Representations

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



1. the Filer's predecessor was incorporated under the *Canada Business Corporations Act* on October 16, 2002, and transitioned to the *Business Corporations Act* (British Columbia ) on July 20, 2005; effective April 28, 2006, to facilitate a listing of the Filer's common shares on the TSX Venture Exchange, the Filer's predecessor company acquired Dragon-Tex (Group) Limited, a company incorporated under the *Business Corporations Act* (Alberta); in connection with the acquisition, the Filer undertook a series of concurrent transactions resulting in the Filer being a company amalgamated under the *Business Corporation Act* (British Columbia) on April 28, 2006;
2. the Filer has one wholly-owned subsidiary, DTX Acquisition Company Inc., which is a company amalgamated under the *Business Corporation Act* (Alberta) on April 28, 2006; DTX Acquisition Company Inc. has no active business and holds no assets;
3. the principal office of the Filer is located at 300-2386 East Mall, Gerald McGavin Building, Vancouver, British Columbia, Canada V6T 1Z3;
4. on June 9, 2010, the Filer filed an amended and restated preliminary short form prospectus (Preliminary Prospectus) in British Columbia, Alberta and Ontario (the Canadian Jurisdictions) in respect of an offering of 2,777,778 common shares of the Filer (the Offering); contemporaneously, the Filer also filed an amended registration statement with the United States Securities and Exchange Commission (SEC) in respect of the Offering;
5. on June 10, 2010, the Filer received a receipt from the British Columbia Securities Commission, as principal regulator, in respect of the Preliminary Prospectus and on June 9, 2010, the Filer received a confirmation receipt from the SEC in respect of the registration statement;
6. during the period between the date of the receipt for the Preliminary Prospectus and the date of the receipt for the final prospectus (the Final Prospectus) for the Offering (the Waiting Period), the Filer intends to utilize electronic roadshow materials (the Website Materials) as part of the marketing of the Offering; in light of the international nature of the Offering, the Filer intends to make the Website Materials available equally to prospective Canadian and U.S. Investors;
7. Rule 433(d)(8)(ii) under the U.S. Securities Act of 1933, which came into effect in December 2005, requires the Filer to either file the Website Materials with the SEC or make them "available without restriction by means of graphic communication to any person...";
8. compliance with applicable U.S. securities laws requires the Filer to either make the Website Materials available in a manner that affords unrestricted access to the public, or file the Website Materials on the SEC's EDGAR system, which will have the same effect of affording unrestricted access;
9. doing so is contrary to Canadian securities laws, in particular, the prospectus requirement and activities that are permissible during the Waiting Period which, when applied together, require that access to the Website Materials be controlled by the Filer or the underwriters by such means as password protection and otherwise, as suggested by National Policy 47-201 *Trading Securities Using the Internet and Other Electronic Means* (NP 47-201);
10. the Filer wishes to comply with applicable U.S. securities laws by posting the Website Materials on the website [www.retailroadshow.com](http://www.retailroadshow.com) without any restriction on their accessibility;
11. all information about the Filer's securities will be contained in the Preliminary Prospectus;
12. the Website Materials will contain a statement that information conveyed through the Website Materials does not contain all of the information in the Preliminary Prospectus, including any amendments to it, and the Final Prospectus, including any amendments to it, and that prospective purchasers should review all of those prospectuses, in addition to the Website Materials, for complete information;
13. the Website Materials will be fair and balanced;
14. Canadian purchasers will only be able to purchase common shares of the Filer under the Offering through an underwriter that is registered in the Jurisdiction of residence of the purchaser under the Final Prospectus;
15. the Filer acknowledges that the Exemption Sought relates only to the posting of the Website Materials, and not in respect of the Final Prospectus; and

16. the Filer is not in default of securities legislation.

**Decision**

- 4 Each of the Decision Makers is satisfied that the test set out in the Legislation for the Decision Maker to make the decision has been met.

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

- (a) the Filer and the Canadian underwriters provide each Canadian purchaser of the Filer's common shares under the Final Prospectus, including any amendments to it, with a contractual right of action against the Filer and the Canadian underwriters as described in the disclosure required by condition 2;
- (b) the Preliminary Prospectus, including any amendments to it, and the Final Prospectus, including any amendments to it, state that Canadian purchasers of the Filer's common shares have a contractual right of action against the Filer and the Canadian underwriters, substantially in the following form:

“We may make available certain material describing the Offering (the “Website Materials”) on website services such as [www.retailroadshow.com](http://www.retailroadshow.com) and/or [www.netroadshow.com](http://www.netroadshow.com) under the heading “Med BioGene Inc.” in accordance with US federal securities laws during the period prior to obtaining a final receipt for the final short form prospectus relating to this offering (the “Final Prospectus”) from the securities regulatory authorities in British Columbia, Alberta and Ontario (the “Canadian Jurisdictions”). In order to give purchasers in each of the Canadian Jurisdictions the same unrestricted access to the Website Materials as provided to US purchasers, we have applied for and obtained exemptive relief in a decision dated June [ ], 2010 from the securities regulatory authorities in each of the Canadian Jurisdictions. Under the terms of that exemptive relief, we and each of the Canadian Underwriters signing the certificate contained in the Final Prospectus agreed that, if the Website Materials contained any untrue statement of a material fact or omitted to state a material fact required to be stated or necessary in order to make any statement therein not misleading in light of the circumstances in which it was made (a “misrepresentation”), a purchaser resident in a Canadian Jurisdiction who purchases Offered Shares under the Final Prospectus during the period of distribution has, without regard to whether the purchaser relied on the misrepresentation, rights against us and each of the Canadian Underwriters for the misrepresentation that are equivalent to the rights under section 131 of the *Securities Act* (British Columbia) or the comparable provision of the securities legislation in each of the other Canadian Jurisdictions, as if that misrepresentation was contained in the Final Prospectus.”;

- (c) the Website Materials will not include comparables unless the comparables are also included in the Preliminary Prospectus;
- (d) the Website Materials will also contain a hyperlink to the Preliminary Prospectus, including any amendments to it, and the Final Prospectus including any amendments to it, as at and after such time as a particular prospectus is filed; and
- (e) at least one underwriter signing the Preliminary Prospectus, including any amendments to it, and the Final Prospectus, including any amendments to it, will be registered in each of the Canadian Jurisdictions.

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

## 2.1.13 South Coast British Columbia Transportation Authority

### Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Exemption from prospectus requirements for situations other than a corporate acquisition or reorganization; trades to business associates; debt settlements; or trades involving employee investment plans and consultants – Issuer seeks prospectus relief for distributions of debt securities that are analogous to debt securities of or guaranteed by any municipal corporation in Canada, or debt securities secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated – The issuer's structure and obligations are analogous to municipal corporations in British Columbia – The issuer will only issue debt securities – The debt securities issued will be at least as safe as the debt securities of many municipalities in British Columbia given the statutory authority of the issuer to raise revenues through property and other taxes.

### Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 74.

July 12, 2010

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

**AND**

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

**AND**

**IN THE MATTER OF  
SOUTH COAST BRITISH COLUMBIA  
TRANSPORTATION AUTHORITY  
(the Filer)**

**DECISION**

### Background

- 1 The local securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for relief from the prospectus requirement in connection with distributions of debt securities of the Filer (the Exemption Sought).

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

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

### Interpretation

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

## Representations

- 3 This decision is based on the following facts represented by the Filer:
1. the Filer (formerly known as the Greater Vancouver Transportation Authority) is a regional public transportation authority that was established in 1998 under the *Greater Vancouver Transportation Authority Act* (British Columbia); the *Greater Vancouver Transportation Authority Act* (British Columbia) was amended and re-named the *South Coast British Columbia Transportation Authority Act* (British Columbia) (the Act) in November 2007;
  2. the governance structure of the Filer includes a board of directors consisting of 9 members; a mayors' council on regional transportation composed of 22 members – the mayors from all 21 municipalities within the Filer's transportation service region and a representative from the Tsawwassen First Nation; and a regional transportation commissioner;
  3. the Filer has a head office at 1600 – 4720 Kingsway, Burnaby, British Columbia; the Filer does not have share capital;
  4. the Filer is not a reporting issuer or its equivalent in any jurisdiction of Canada;
  5. to its knowledge, the Filer is not in default of any of the requirements of the applicable securities legislation in any Jurisdiction;
  6. the Filer is responsible for the provision of an integrated regional public transportation system in Metro Vancouver, which includes the major road network as well as public transit;
  7. under the Act, the Filer may raise revenues by means of taxes (including property taxes, fuel taxes and parking sales taxes), levies, project toll charges, user fees and motor vehicle charges; revenues raised by means of property taxes are collected by the applicable municipality on behalf of the Filer; section 7(7) of the Act prohibits the adoption of deficit budgets (after taking into account any cumulative funded surpluses) and sections 194(4) and 200(3) of the Act require that financial plans be balanced;
  8. under the Act, the Filer is restricted from incurring debt obligations that exceed the greater of (i) \$1 billion 50 million, (ii) such higher amount that has been ratified by the board of directors of the Greater Vancouver Regional District, and (iii) an amount proposed in a supplementary transportation and financial plan that has been approved by the mayors' council, after consultation with the Greater Vancouver Regional District; the Filer's debt obligation 'cap' is currently \$2 billion 800 million;
  9. the Filer intends to issue debt securities to finance capital expenditures;
  10. the Filer anticipates that the purchasers of the debt securities will primarily be institutional investors who would qualify as "accredited investors" under National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106);
  11. the Filer intends to obtain a credit rating from an "approved credit rating organization" (as that term is defined in NI 45-106) prior to the initial issuance of any debt securities.

## Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that for each Jurisdiction, this decision will terminate if the Act is amended to remove the Filer's power to assess property taxes.

"Brent W. Aitken"  
Vice Chair  
British Columbia Securities Commission

**2.2 Orders**

**2.2.1 Paladin Capital Markets Inc. et al. – s. 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**

**ORDER  
Section 127(1)**

**WHEREAS** on June 9, 2010, Commission Staff filed a Statement of Allegations pursuant to section 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act");

**AND WHEREAS** on June 10, 2009, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing for a hearing on July 19, 2010 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. ("Paladin") and John David Culp ("Mr. Culp");

**AND WHEREAS** on July 19, 2010, counsel for Staff attended the hearing but neither of Paladin nor Mr. Culp attended;

**AND WHEREAS** on July 19, 2010, counsel for Staff advised the Commission that Staff understood that Mr. Culp died on or about July 17, 2010;

**AND WHEREAS** on July 19, 2010, counsel for Staff requested that the settlement hearing in respect of Paladin be adjourned to August 5, 2010;

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

**AND WHEREAS** by Commission order made July 13, 2010, pursuant to section 3.5(3) of the Act, any one of W. David Wilson, James E. A. Turner, Kevin J. Kelly, Carol S. Perry, Patrick J. LeSage, James D. Carnwath and Mary G. Condon,, acting alone is authorized to exercise the powers of the Commission under the Act, subject to subsection 3.5(4) of the Act, to make orders under section 127 of the Act;

**IT IS ORDERED** that the hearing is adjourned to August 5, 2010 at 10:00 a.m.

Dated at Toronto this 19th day of July 2010

"James D. Carnwath"  
Commissioner

**2.2.2 Paul Donald – s. 127**

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

**AND**

**IN THE MATTER OF  
PAUL DONALD**

**ORDER  
(Section 127)**

**WHEREAS** the Ontario Securities Commission ("the Commission") issued a Notice of Hearing and Staff of the Commission ("Staff") filed a Statement of Allegations in this matter on May 20, 2010;

**AND WHEREAS** on June 7, 2010, counsel for Staff appeared before the Commission and the matter was adjourned on consent to a confidential pre-hearing conference to be held July 28, 2010 and the hearing on the merits was scheduled to commence March 1, 2011;

**AND WHEREAS** on July 28, 2010 the Commission held a pre-hearing conference that counsel for Staff and the Respondent attended;

**AND UPON HEARING** submissions from counsel for Staff and from counsel for the Respondent;

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

**IT IS ORDERED** that another confidential pre-hearing conference shall be held on a date to be fixed by the Secretary to the Commission, which date shall be approximately 120 days before the commencement on March 1, 2011 of the hearing on the merits.

**DATED** at Toronto this 29th day of July, 2010.

"James E. A. Turner"

**2.2.3 Sulja Bros. Building Supplies, Ltd. et al.**

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

**AND**

**IN THE MATTER OF  
SULJA BROS. BUILDING SUPPLIES, LTD.,  
PETAR VUCICEVICH, KORE INTERNATIONAL  
MANAGEMENT INC., ANDREW DE VRIES,  
STEVEN SULJA, PRANAB SHAH,  
TRACEY BANUMAS, AND SAM SULJA**

**ORDER**

**WHEREAS** on July 30, 2010, the respondents Petar Vucicevich ("Vucicevich"), Pranab Shah ("Shah") and Tracey Banumas ("Banumas") brought a motion before the Ontario Securities Commission (the "Commission") requesting that all of the evidence to be presented by two witnesses at the hearing on the merits of this matter not be admitted on grounds that it is protected by solicitor-client privilege;

**AND WHEREAS** on July 30, 2010, we ruled that this motion be heard *in camera*, pursuant to section 9 of the *Statutory Powers Procedure Act*;

**AND WHEREAS** we have reviewed the motion materials filed by Vucicevich, Shah and Banumas and by staff of the Commission ("Staff"), and we have considered the submissions made by counsel for Vucicevich, Shah and Banumas and Staff at the hearing of the motion;

**AND WHEREAS** we are of the opinion that it is appropriate to make this order;

**IT IS ORDERED THAT:**

1. The motion brought by the Respondents Vucicevich, Shah and Banumas is dismissed, without prejudice to the right of the Respondents to make any objection to the admissibility of evidence submitted at the hearing on the merits on the grounds that evidence is subject to solicitor-client privilege.
2. This order shall not restrict the panel hearing this matter on the merits from making any order it considers appropriate with respect to the evidence to be admitted or as to the applicability of solicitor-client privilege to any such evidence.

Dated at Toronto this 30th day of July, 2010.

"James E. A. Turner"

"Carol S. Perry"

**2.2.4 Canadian National Railway Company – s. 104(2)(c)**

**Headnote**

Clause 104(2)(c) – Issuer bid – relief from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act – Issuer proposes to purchase, at a discounted purchase price, up to 2,000,000 of its common shares from one of its shareholders and/or such shareholder's affiliates – due to discounted purchase price, proposed purchases cannot be made through TSX trading system – but for the fact that the proposed purchases cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in reliance upon the issuer bid exemption available under section 101.2 of the Act and in accordance with the TSX rules governing normal course issuer bid purchases – no adverse economic impact on or prejudice to issuer or public shareholders – proposed purchases exempt from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act, subject to conditions, including that the issuer not purchase more than one-third of the maximum number of shares to be purchased under its normal course issuer bid by way of off-exchange block purchases.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 94 to 94.8, 97 to 98.7, 104(2)(c).

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

**AND**

**IN THE MATTER OF  
CANADIAN NATIONAL RAILWAY COMPANY**

**ORDER  
(clause 104(2)(c))**

**UPON** the application (the "**Application**") of Canadian National Railway Company (the "**Issuer**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to clause 104(2)(c) of the Act exempting the Issuer from the requirements of sections 94 to 94.8 and 97 to 98.7 of the Act (the "**Issuer Bid Requirements**") in respect of the proposed purchases by the Issuer of up to 2,000,000 (collectively, the "**Subject Shares**") of its common shares (the "**Common Shares**") in one or more trades from The Toronto-Dominion Bank (the "**Selling Shareholder**");

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

**AND UPON** the Issuer (and the Selling Shareholder in respect of paragraphs 5, 6, 7, 8, 11, and 22 as they relate to the Selling Shareholder) having represented to the Commission that:

1. The Issuer is a corporation governed by the *Canada Business Corporations Act*.
2. The head office and registered office of the Issuer are at 935 de La Gauchetière Street West, Montréal, Quebec H3B 2M9.
3. The Issuer is a reporting issuer in each of the provinces and territories of Canada and the Common Shares of the Issuer are listed for trading on the Toronto Stock Exchange ("**TSX**") and the New York Stock Exchange under the symbol "CNR" and "CNI", respectively. The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.
4. The authorized common share capital of the Issuer consists of an unlimited number of Common Shares, of which approximately 465,405,376 were issued and outstanding as of July 5, 2010.
5. The corporate headquarters of the Selling Shareholder are located in the Province of Ontario.
6. The Selling Shareholder does not directly or indirectly own more than 5% of the issued and outstanding Common Shares.
7. The Selling Shareholder is the beneficial owner of at least 2,000,000 Common Shares. The Subject Shares were not acquired by the Selling Shareholder in anticipation of resale to the Issuer pursuant to private agreements under an issuer bid exemption order issued by a securities regulatory authority ("**Off-Exchange Block Purchases**").
8. The Selling Shareholder is at arm's length to the Issuer and is not an "insider" of the Issuer or "associate" of an "insider" of the Issuer, or an "associate" or "affiliate" of the Issuer, as such terms are defined in the Act. The Selling Shareholder is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus and Registration Exemptions*.
9. On January 26, 2010, the Issuer announced a normal course issuer bid (as amended from time to time, the "**Normal Course Issuer Bid**") for up to 15,000,000 Common Shares through the facilities of the TSX in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "**TSX NCIB Rules**").
10. As of July 5, 2010, 7,700,000 Common Shares have been purchased under the Issuer's Normal Course Issuer Bid, including 3,000,000 Common Shares which were purchased pursuant to Off-Exchange Block Purchases. Assuming the completion of the purchase of the Subject Shares, the Issuer will have purchased under the Normal Course Issuer Bid an aggregate of 5,000,000 Common Shares pursuant to Off-Exchange Block Purchases, representing one-third of the 15,000,000 Common Shares authorized to be purchased under such Normal Course Issuer Bid.
11. The Issuer and the Selling Shareholder intend to enter into one or more agreements of purchase and sale (each, an "**Agreement**") pursuant to which the Issuer will agree to acquire the Subject Shares from the Selling Shareholder by one or more purchases each occurring before the end of September, 2010 (each such purchase, a "**Proposed Purchase**") for a purchase price (the "**Purchase Price**") that will be negotiated at arm's length between the Issuer and the Selling Shareholder. The Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Issuer's Common Shares at the time of each Proposed Purchase.
12. The Subject Shares acquired under each Proposed Purchase will constitute a "block" as that term is defined in section 628 of the TSX NCIB Rules.
13. The purchase of the Subject Shares by the Issuer pursuant to each Agreement will constitute an "issuer bid" for purposes of the Act, to which the applicable Issuer Bid Requirements would apply.
14. Because the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Issuer's Common Shares at the time of each Proposed Purchase, each Proposed Purchase cannot be made through the TSX trading system and, therefore, will not occur "through the facilities" of the TSX. As a result, the Issuer will be unable to acquire the Subject Shares from the Selling Shareholder in reliance upon the exemption from the Issuer Bid Requirements that is available pursuant to section 101.2(1) of the Act.
15. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Issuer's Common Shares at the time of each Proposed Purchase, the Issuer could otherwise acquire the Subject Shares as a "block purchase" (a "**Block Purchase**") in accordance with the block purchase exception in section 629(1)7 of the TSX NCIB Rules and the exemption from the Issuer Bid Requirements that is available pursuant to section 101.2(1) of the Act. The notice of intention to make a normal course issuer bid filed with the TSX by the Issuer contemplates that purchases under the bid may be made by such other means as may be permitted by the TSX, including by Off-Exchange Block Purchases.

- |   |   |
|---|---|
| 16. For each Proposed Purchase, the Issuer will be able to acquire the Subject Shares from the Selling Shareholder without the Issuer being subject to the dealer registration requirements of the Act.   |   |
| 17. The Issuer is of the view that it will be able to purchase the Subject Shares at a lower price than the price at which it would be able to purchase the Shares under the Bid through the facilities of the TSX and the Issuer is of the view that this is an appropriate use of the Issuer's funds.   | (c) the Purchase Price is not higher than the last "independent trade" (as that term is used in paragraph 629(l)1 of the TSX NCIB Rules) of a board lot of Common Shares immediately prior to the execution of each Proposed Purchase;  |
| 18. The purchase of the Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's securityholders and it will not materially affect the control of the Issuer. The Proposed Purchases will be carried out with a minimum of cost to the Issuer.  | (d) the Issuer will otherwise acquire any additional Common Shares pursuant to the Normal Course Issuer Bid and in accordance with the TSX NCIB Rules, including by means of open market transactions and by other means as may be permitted by the TSX, including Off-Exchange Block Purchases;  |
| 19. To the best of the Issuer's knowledge, as of the date of this application, the "public float" for the Common Shares represented more than 99% of all issued and outstanding Common Shares for purposes of the TSX NCIB Rules.   | (e) immediately following each Proposed Purchase of the Subject Shares from the Selling Shareholder, the Issuer will report the purchase of the Subject Shares to the TSX;  |
| 20. The market for the Common Shares is a "liquid market" within the meaning of section 1.2 of Multilateral Instrument 61-101 <i>Protection of Minority Security Holders in Special Transactions</i> .  | (f) at the time that each Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor the Selling Shareholder will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed; |
| 21. Other than the Purchase Price, no additional fee or other consideration will be paid in connection with the Proposed Purchases.   | (g) the Issuer will issue a press release in connection with the Proposed Purchases; and  |
| 22. At the time that each Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor the Selling Shareholder will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed. | (h) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, more than one-third of the maximum number of Common Shares the Issuer can purchase under the Normal Course Issuer Bid.  |

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

**IT IS ORDERED** pursuant to clause 104(2)(c) of the Act that the Issuer be exempt from the Issuer Bid Requirements in connection with each Proposed Purchase, provided that:

- (a) the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit that is imposed upon the Issuer's Normal Course Issuer Bid in accordance with the TSX NCIB Rules;
- (b) the Issuer will refrain from conducting a Block Purchase in accordance with the

**DATED** at Toronto this 27th day of July, 2010.

"James Turner"  
Commissioner  
Ontario Securities Commission

"Paulette L. Kennedy"  
Commissioner  
Ontario Securities Commission



## Chapter 3

# Reasons: Decisions, Orders and Rulings

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### 3.1 OSC Decisions, Orders and Rulings

#### 3.1.1 Lehman Cohort Global Group Inc. et al.

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

AND

IN THE MATTER OF  
LEHMAN COHORT GLOBAL GROUP INC.,  
ANTON SCHNEDL, RICHARD UNZER,  
ALEXANDER GRUNDMANN AND  
HENRY HEHLSINGER

#### REASONS AND DECISION

**Hearing:** January 25 and 26, 2010

**Decision:** July 28, 2010

**Panel:** James E. A. Turner – Vice-Chair and Chair of the Panel  
Carol S. Perry – Commissioner  
Sinan O. Akdeniz – Commissioner

**Counsel:** Hugh Craig – For Staff of the Ontario Securities Commission

No one appeared for any of the Respondents.

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REASONS AND DECISION

I. OVERVIEW

[1] This was a hearing before the Ontario Securities Commission (the “**Commission**”) to consider whether Lehman Cohort Global Group Inc. (“**Lehman**”), Anton Schnedl (“**Schnedl**”), Richard Unzer (“**Unzer**”), Alexander Grundmann (“**Grundmann**”) and Heinrich “Henry” Hehlsinger (“**Hehlsinger**”) (collectively referred to as the “**Respondents**”) breached sections 25(1)(a) and 126.1(b) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”) and acted contrary to the public interest.

[2] A temporary cease trade order was issued in this matter on May 20, 2009 and a Notice of Hearing and Statement of Allegations were issued on August 14, 2009. Three Commission orders (dated June 4, 2009, July 21, 2009 and August 19, 2009) were issued that extended the temporary cease trade order until the completion of the hearing on the merits. A hearing on the merits was held on January 25 and 26, 2010.

[3] It is alleged by Staff of the Commission (“**Staff**”) in the Statement of Allegations that the Respondents solicited European investors to invest in a fraudulent investment scheme offered by Lehman. By doing so, it is alleged that the Respondents breached Ontario securities law by:

- (a) trading in securities without registration or an exemption from registration contrary to subsection 25(1) of the Act. Specifically, those breaches include:
  - (1) soliciting investors to purchase oil futures, a security within the meaning of clause (p) of the definition of “security” in subsection 1(1) of the Act;
  - (2) soliciting investors to purchase foreign treasury bonds, a security within the meaning of clause (e) of the definition of “security” in subsection 1(1) of the Act; and
- (b) engaging in acts of fraud, contrary to section 126.1 of the Act.

It is also alleged that the Respondents’ conduct was contrary to the public interest.

[4] On January 25 and 26, 2010, we heard evidence and submissions on the merits in this matter. None of the Respondents was present or represented by legal counsel. Five witnesses were called to testify: a husband and wife who are residents of Austria (the “**Austrian Investors**”) whose testimony was given by video conference, Gale Solnik, the sole director of Lehman and a former employee of a Toronto law firm that advised Schnedl in connection with the incorporation of Lehman (the “**Canadian Director**”), and two Staff investigators, Donald Panchuk and Joanne Ramirez. Staff submitted to us a hearing brief and seven evidence summaries based on the hearing brief. The Austrian Investors retained a private investigator to investigate Lehman and Schnedl and that investigator travelled to Toronto and Hong Kong in connection with the investigation. Some of the testimony of the Austrian Investors was based on the report of the private investigator.

[5] These are our reasons and decision in this matter.

II. THE RESPONDENTS

[6] Lehman was incorporated under the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B.16 on August 16, 2007. The address of Lehman’s registered office and address for service is 100 Upper Madison Avenue, Suite 1907, Toronto, Ontario. That is the address of the law firm that formerly employed the Canadian Director.

[7] Lehman has an Internet Web site at <http://www.lehmangroup.net> (the "**Lehman Web site**"). The Lehman Web site describes the investment services Lehman provides and refers to its office locations in Toronto, Los Angeles and the Commonwealth of Dominica.

[8] The Lehman Web site identifies Lehman's head office as being located at 100 King Street West, 37th Floor, Toronto, Ontario. Staff submitted evidence showing that Lehman's head office is a business services centre that provides "virtual offices" to customers (see paragraphs 53 and 54 of these reasons). We will refer to Lehman's head office in these reasons as the "**Toronto Virtual Office**".

[9] Through the Lehman Web site, Lehman purports to offer capital markets and investment advisory services, wealth management, investment management and related products and services on a global basis, including securities origination, brokerage, and dealer and related activities in equities, futures, fixed income, mutual funds, commodities, swaps, currencies, options, and other derivatives.

[10] Evidence was submitted that also referred to "Lehman Advocate & Co." and "Lehman Limited". It is not clear whether these are mistaken references to Lehman, whether they are separate entities or whether, in fact, they exist.

[11] Schnedl arranged for the incorporation of Lehman and is Lehman's President, Treasurer and Secretary and appears to be Lehman's only shareholder. Schnedl signed an indemnity in favour of the Canadian Director for acting as a director of Lehman. The Austrian Investors testified that, based on the investigation report referred to in paragraph 4 of these reasons, they believe that Schnedl and Unzer were "in charge" of Lehman.

[12] Schnedl opened bank accounts in Toronto on behalf of Lehman and is the sole signing officer for those accounts. Schnedl also signed the services agreement for the Toronto Virtual Office and he is listed as the administrative contact for the Lehman Web site with an address in Spain. Schnedl appears to reside in Spain.

[13] There is evidence that Unzer and Grundmann held themselves out as representatives of Lehman.

[14] Hehlsinger also appears to be a representative of Lehman. One of the Austrian Investors testified that Hehlsinger informed her that he was really Schnedl and that "Hehlsinger" is an alias used by him. For purposes of these reasons, we will treat Hehlsinger as being the same person as Schnedl.

[15] None of the Respondents is, or has ever been, registered in any capacity with the Commission.

[16] None of the individual Respondents appears to reside in Canada. Based on the evidence submitted to us, none of them, other than Schnedl, appears to have ever been in Ontario in connection with the conduct that is the subject matter of this proceeding. Schnedl came to Toronto in 2007 to arrange the incorporation of Lehman, to establish the Toronto Virtual Office and to open the Lehman Toronto bank accounts.

### III. PRELIMINARY ISSUES

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

[17] As noted above, none of the Respondents appeared or was represented at the hearing on the merits. 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. That section provides as follows:

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.

[18] We note the following passage from *Administrative Law in Canada*:

Where a party who has been given proper notice fails to respond or attend, the tribunal may proceed in the party's absence and the party is not entitled to further notice. All that the tribunal need establish, before proceeding in the absence of the party, is that the party was given notice of the date and place of the hearing. The tribunal need not investigate the reasons for the party's absence.

(Sara Blake, *Administrative Law in Canada*, 4th ed. (Markham, Ont.: LexisNexis Butterworths, 2006) at p. 35)

[19] Staff submitted evidence in the form of an Affidavit of Service dated January 25, 2010 of Kathleen McMillan, an employee of the Commission, to establish that Staff took reasonable steps to give the Respondents notice of this proceeding

and to serve the Respondents with the order dated August 19, 2009 setting this proceeding down for a hearing on January 25, 2010. Staff received no response from the Respondents using the known e-mail addresses for them and documents sent to the Toronto Virtual Office were returned to Staff. One of the Austrian Investors testified that Schnedl stated in a telephone conversation that he was aware of this proceeding.

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

**B. The Use of Hearsay Evidence**

[21] A significant portion of the evidence relied on by Staff in this proceeding is hearsay evidence.

[22] Subsection 15(1) of the SPPA provides as follows:

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.

[23] 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)

[24] Although hearsay evidence is admissible under the SPPA, the weight to be given to that 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).

[25] There was documentary evidence introduced by Staff that corroborated or was consistent with the hearsay evidence given by the Austrian Investors and the Staff investigators. That documentary evidence included copies of e-mails and faxes that appear to have been sent by investors to the Respondents, account statements made available to investors, bank records and evidence of wire transfers of funds and legal documents to which Lehman appeared to be a party. The totality of the evidence presented in this matter is corroborative and consistent.

[26] One of the concerns with respect to the introduction of hearsay evidence is that it may infringe on the rights of a party to cross-examine a witness or to introduce contradictory evidence. This engages the requirement for procedural fairness. In this case, none of the Respondents appeared, was represented or present to object to the use of the hearsay evidence, to cross-examine on it or to introduce contradictory evidence of their own. As a result, the Respondents have waived their right to do so. In this respect, it was stated in *Violette v. New Brunswick Dental Society*, [2004] 267 N.B.R. (2d) 205 (C.A.) at paragraph 80 that:

[...] 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.

While that case did not involve an unrepresented respondent, in our view, the same principle applies here.

[27] Accordingly, we concluded that we would admit the hearsay evidence tendered by Staff, subject to our consideration of the weight to be given that evidence.

### C. The Appropriate Standard of Proof

[28] We must also consider the appropriate standard of proof applicable in a Commission proceeding.

[29] In *F.H. v. McDougall*, [2008] 3 S.C.R. 41, the Supreme Court of Canada stated 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.

At paragraph 46, the Court stated that:

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

[30] Accordingly, we will decide this matter on the balance of probabilities. In doing so, we must be satisfied that there is sufficient clear, convincing and cogent evidence to support our findings. While a significant portion of the evidence before us is hearsay evidence, that evidence is corroborated by and consistent with the other evidence submitted to us. Overall, we believe that the evidence before us is clear, convincing and cogent and provides a sufficient basis for our conclusions set out below. We are satisfied that the acts, events and conduct described in these reasons are more likely than not to have occurred.

## IV. ISSUES AND EVIDENCE

### A. Issues

[31] The issues we must decide in this matter are:

- (a) Did the Respondents trade in securities in breach of subsection 25(1)(a) of the Act?
- (b) Did the Respondents breach section 126.1(b) of the Act?
- (c) Did the Respondents act in a manner that was contrary to the public interest?

### B. Investors

[32] The only investors Staff called as witnesses were the Austrian Investors. The Staff investigators stated, however, that they were aware of other investors solicited with respect to the investment scheme and Staff introduced some evidence of the investments made by those other investors. To protect the privacy of the investors, we will not use their names in these reasons.

### C. The Investment Scheme

[33] This proceeding involves an investment scheme that was offered by Lehman to potential investors through telephone solicitations. Individuals were contacted by telephone by representatives of Lehman. It appears that the phone calls were "cold" calls made to individuals who had no prior knowledge of or relationship with Lehman. During the telephone conversations, representatives of Lehman would propose investments in oil futures and/or foreign treasury bonds.

[34] If an investor agreed to invest, he or she would fill out an application form and Lehman would purport to open a managed account for the investor. The actual trading and the form of the investments to be purchased on behalf of investors were to be at the sole discretion of Lehman. Investors were told, however, that the investments would be made in oil futures and/or foreign treasury bonds.

[35] The Austrian Investors were solicited by telephone by Schnedl, Unzer and Grundmann to invest in the scheme. After they had done so, and after they had purportedly lost all of their investment, they were harassed by Schnedl in sometimes abusive telephone calls. All of the communications with the Austrian Investors were in the German language.

[36] In order to fund their investments, investors were given international wire instructions for Lehman's Toronto bank accounts. Lehman had three bank accounts at TD Canada Trust in Toronto, one denominated in each of Canadian dollars (the "**Lehman CAD account**"), U.S. dollars (the "**Lehman USD account**") and Euros (the "**Lehman Euro account**"). The accounts were opened by Schnedl on behalf of Lehman on November 13, 2007. Schnedl had sole signing authority and control over each of the bank accounts, although the account opening documentation for the Lehman Euro account could not be produced by the bank.

[37] The Staff investigators testified that the Austrian Investors, and other individuals who appeared to be investors participating in the investment scheme, wired funds as follows:

- (a) Investor 1 wired (from a bank account in Germany) an amount in Euros that was credited as \$9,496 to the Lehman CAD account;
- (b) Investor 2 wired (from a bank account in Germany) an amount in Euros that was credited as \$6,418 to the Lehman CAD account;
- (c) Investor 3 wired (from a bank account in Germany) US \$2,561 to the Lehman USD account; Investor 3 also wired an additional US \$966 to the Lehman USD account from the same bank account in Germany;
- (d) Investor 4 wired (from a bank account in Germany) US \$84,990 to the Lehman USD account; Investor 4 also wired an additional €4,993 to the Lehman Euro account from the same bank account in Germany;
- (e) Investor 5 wired (from a bank account in Italy) US \$4,961 to the Lehman USD account;
- (f) Investor 6 wired (from a bank account in Germany) €24,993 to the Lehman Euro account;
- (g) Investor 7 wired (from a bank account in Switzerland) €4,983 to the Lehman Euro account;
- (h) Investor 8 wired (from a bank account in Germany) €5,393 to the Lehman Euro account;
- (i) Investor 9 wired (from a bank account in Germany) €4,266 to the Lehman Euro account;
- (j) Investor 10 wired (from a bank account in Germany) €4,993 to the Lehman Euro account; and
- (k) The Austrian Investors wired (from a bank account in Austria) €10,543 to the Lehman Euro account and subsequently sent additional wires in the amounts of €149,592, €25,923 and €34,903 from the same bank account in Austria.

All of these amounts are net of banking fees and rounded down.

[38] Lehman prepared client account statements that purported to show for each client all account activity and account balances. The statements were made available to clients on a password-protected section of the Lehman Web site. It appears that the account statements were a sham and did not reflect actual investments or returns.

[39] The Austrian Investors testified that their account statements initially showed significant profits but, beginning in July 2008, the account began to show losses. As of August 2, 2008, the account statements showed that the Austrian Investors had lost all of their invested money and owed Lehman US \$11,198. At that time, Schnedl (using the Hehlsinger alias) contacted the Austrian Investors and suggested that if they sent the money "owed," their losses could be recouped.

[40] No trade confirmations were ever sent to investors. Notwithstanding the investments shown in the client accounts, it appears that no oil futures, treasury bonds or any other securities were ever purchased by Lehman on behalf of investors.

[41] Evidence was presented to us showing wire transfers from Lehman's Toronto bank accounts to bank accounts in Schnedl's name at Spanish banks. Amounts of \$8,265, US \$37,757, and €251,654 were transferred from the Lehman accounts to those accounts at banks in the Province of Málaga, Spain. The Austrian Investors testified that they believe that Schnedl resides there.

[42] In a number of cases, wire transfers to Schnedl's personal bank accounts were made within days of the receipt of wire transfers by investors to Lehman's bank accounts. A number of the amounts transferred to Schnedl's personal bank accounts were very close to the amounts wired by investors to Lehman. For example, Lehman received €24,993 from Investor 6 on December 12, 2007 and Schnedl transferred €24,920 to one of his personal bank accounts on December 18, 2007. In another case, Lehman received €4,266 from Investor 9 on February 12, 2008 and Schnedl transferred €4,180 to one of his personal bank accounts on February 20, 2008.

[43] Two transfers in the amounts of US \$10,039 and €20,000 were made from Lehman's bank accounts to an Emilie Tunzer in Vienna, Austria. The Austrian Investors believe that Emilie Tunzer is Schnedl's mother.

[44] Based on the evidence, we conclude that Schnedl was the ultimate recipient or beneficiary of a substantial portion of the funds wired by investors to Lehman.

[45] It appears that no money was ever returned to investors. The Austrian Investors made a total investment of approximately €221,000 and have made repeated demands for the return of their funds but have received no response. The Austrian Investors testified that they have been left almost destitute as a result.

[46] Staff submitted a copy of the Austrian Investors' managed account application, which contains a choice of law clause stating that the agreement is governed by the laws of Toronto, Canada. The clause reads as follows (translated from the German):

This contract, the associated rights and obligations of the parties, and any legal and administrative act or procedure directly or indirectly related to the transactions considered hereunder, whether initiated and/or caused by the Client or Lehman, shall be governed, interpreted and asserted in reference to the laws of Toronto, Canada.

One can certainly argue that, by including that provision in the application, Lehman made itself subject to the jurisdiction of Ontario law.

[47] It was not submitted by Staff, nor was there any evidence before us, that indicated that the Canadian Director was ever personally involved in the investment scheme.

#### **D. The MediTerra Investment Scheme**

[48] In a letter dated August 24, 2009, provided to Staff by the Swiss Financial Market Supervisory Authority ("FINMA"), Investor 7 stated that in April 2007 he invested CHF 20,000 with "MediTerra Investments Inc." ("**MediTerra**") in Germany. Shortly after making that investment, he received a call from Unzer, who claimed to be the chairman of MediTerra. Unzer solicited a subscription for securities of MediTerra.

[49] The material provided to Staff by FINMA included a copy of a subscription agreement purported to have been signed by Investor 7 on December 3, 2007 for the purchase of 5,000 Class A common shares of MediTerra, with a value of €1 each. MediTerra's office was shown on the subscription agreement to be 391 N.W. 179th Avenue, Aloha, Oregon 97006, USA. Investor 7 wired €4,983 to the Lehman Euro account to pay for his investment in MediTerra. The agreement entered into by Investor 7 was stated to be between Investor 7 and "Lehman Advocate & Co.," which showed its Head Office as 100 King Street West, 37th Floor, Toronto, Ontario, (the address of the Toronto Virtual Office).

[50] Unzer represented to Investor 7 that "Leman Advocats" in Toronto was the trustee of MediTerra. Investor 7 had never previously heard of Lehman, "Leman Advocats," or "Lehman Advocate & Co.". Investor 7 stated in the letter that "[it] was always a mystery to me why I suddenly was in contact with a company [called] Leman Advocats. I was told that Leman represented the interests of MediTerra."

[51] Investor 7 also stated in the letter that shortly after submitting the subscription agreement, Unzer called him and solicited a further investment in MediTerra, claiming that it would be a good time to invest since MediTerra would soon be listed on a stock exchange. Investor 7 declined to invest more funds as he wanted to wait for the listing of the shares on the exchange to ensure that "everything was going smoothly" before increasing his investment. Shortly afterwards, Unzer again called Investor 7 explaining that difficulties had arisen in the share subscription and that the shares could not be issued. Investor 7 then asked for his money back. In response, Unzer solicited Investor 7 to invest in other different investments. Investor 7 declined, and as of the date of the letter, he had not heard from Unzer or Lehman or received his money back.

[52] The MediTerra investment scheme is connected to Lehman through the use of the Lehman Euro account, the Toronto Virtual Office, Lehman's logo on the subscription form and the involvement of Unzer.

#### **E. The Toronto Virtual Office**

[53] The Austrian Investors understood that Lehman was carrying on business in Toronto and they thought they were dealing with a company and individuals located in Canada. The Toronto Virtual Office appears to have been established for the sole purpose of misleading investors into believing that was the case.

[54] The Toronto Virtual Office provided Lehman with a telephone answering service, a mailing address and, if requested, conference facilities for meetings. A person calling a representative of Lehman would call the telephone number of the Toronto Virtual Office, which would be answered using Lehman's name, and a message could be left. The Austrian Investors would fax documents and correspondence to Lehman at the address of the Toronto Virtual Office. Those documents would then be forwarded to Lehman. The various documents prepared by Lehman and sent to investors identified Lehman using the Toronto Virtual Office address or referred to Lehman in Toronto. It was not apparent to investors that they were dealing with a virtual office.

[55] The Toronto Virtual Office was arranged by Schnedl who paid the service fees for the office by wire transfers from the Lehman CAD account and Lehman USD account.

[56] There was evidence that Lehman also has virtual offices or mail drops in Los Angeles, California and the Commonwealth of Dominica.

## V. ANALYSIS

### A. Did the Respondents Breach Subsection 25(1)(a) of the Act?

#### i. The Applicable Law

[57] As of the date of the conduct that is the subject matter of this proceeding, subsection 25(1)(a)<sup>1</sup> of the Act provided as follows:

**Registration for trading** – No person or company shall,

- (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer...

and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[58] Subsection 1(1) of the Act defines a “trade” as including:

- (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.

[59] We must determine whether the Respondents traded in securities for purposes of subsection 25(1)(a) of the Act. The only real issue is whether the Respondents traded in a security in Ontario. It is sufficient for that purpose if a person engages in Ontario in any acts in furtherance of a trade in a security.

[60] In *Gregory & Co.*, the Supreme Court of Canada concluded that the accused was subject to the securities law of Quebec, noting several factors that indicated a nexus to Quebec: the address and telephone number of the Montreal office were provided in the bulletin distributed to customers (and customers were invited to contact that office), purchasers of securities were solicited by telephone from the head office in Montreal, customers mailed their payments to that office and a bank account was maintained in Montreal (*Gregory & Co. v. Quebec (Securities Commission)*, [1961] S.C.R. 584 (“**Gregory**”) at 589-590).

[61] In *Re Allen* (2005), 28 O.S.C.B. 8541 (“**Allen**”), the Commission concluded that sales of securities were made to investors primarily in Alberta but that a “substantial portion of the activities surrounding the sales took place in Ontario.” The connecting factors to Ontario included that the issuer and its offices and operations were located in Ontario; the promotional materials and telephone calls originated in Ontario; and the cheques in payment for the securities were sent to Ontario. The Commission cited *Gregory* and held that 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” (*Allen*, *supra*, at paras. 20-21).

[62] In *Re Lett* (2004), 27 O.S.C.B. 3215 (“**Lett**”), the Commission found that the respondents acted in furtherance of trades in securities and that those acts occurred in Ontario, although the trades were not made to investors in Ontario. The Commission stated that:

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<sup>1</sup> In September 2009, subsection 25(1)(a) of the Act was repealed and replaced by the current subsection, which contains a similar prohibition.



[t]he 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.

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

[63] The Commission also held in *Lett* that an act in furtherance of a trade is itself a trade for purposes of the Act. Accordingly, if an act in furtherance of a trade in a security occurs in Ontario, even if the actual trade occurs outside Ontario, that act constitutes trading in securities in Ontario for purposes of the Act (*Lett, supra*, at para. 69).

[64] In *Re Sunwide Finance Inc.* (2009), 32 O.S.C.B. 4671 ("**Sunwide**"), the Commission exercised its public interest jurisdiction with respect to certain respondents where the only connection to Ontario was the use of a virtual office in Toronto. Sunwide involved an investment scheme designed to lure European investors into wiring money to banks in New York, Hong Kong and Panama. Sunwide was not incorporated under the laws of Ontario, investors did not send their money to Ontario banks and there was no evidence that any of the respondents had been physically in Ontario. The Commission found that the virtual office in Toronto was established for the sole purpose of misleading investors into believing that they were dealing with persons located in Canada. The virtual office provided phone answering services and a mailing address and was used in correspondence with investors to give them the impression they were dealing with a legitimate company in Ontario (*Sunwide, supra*, at paras. 38-42).

[65] In *Re XI Biofuels Inc. et al* (2010), 33 O.S.C.B. 3077, the Commission found that the respondents traded in securities in Ontario where investors were made to believe that they were investing in an Ontario company and investor funds were deposited into a bank account in Ontario (and were almost immediately transferred offshore).

[66] It is not necessary for there to be a completed trade in order for a person to be trading in a security for purposes of the Act (see *Re First Federal Capital (Canada) Corp.* (2004), 27 O.S.C.B. 1603 ("**First Federal**") at paras. 46 and 51 and *Sunwide, supra*, at para. 45). For a particular act to be an act in furtherance of a trade, however, there must be sufficient proximity between the act and an actual or potential trade (see *Re Costello* (2003), 26 O.S.C.B. 1617 at para. 47; *First Federal, supra*, at para. 49; and *Sunwide, supra*, at para. 45).

## ii. Analysis

[67] In this case, the Respondents were soliciting and Lehman was purporting to enter into transactions that would have constituted trading in securities for purposes of the Act if they had occurred in Ontario. In analysing the investment scheme from a securities law perspective we recognize that the scheme was a sham and that the Respondents never intended to complete the issue of a security as represented to investors. That does not mean, however, that no trading in a security occurred in Ontario for purposes of the Act.

[68] The acts in furtherance of the investment scheme that occurred in Ontario include the incorporation of Lehman in Ontario for the purpose of carrying out the investment scheme and the establishment of the Toronto Virtual Office and use of that office in dealing with investors. The establishment and use of the Toronto Virtual Office was an integral part of the investment scheme intended to mislead investors into believing they were dealing with a company and individuals located in Ontario. In our view, the establishment and use of the Toronto Virtual Office in this manner had sufficient proximity to the purported trades in securities with investors so as to constitute acts in furtherance of trades in securities that occurred in Ontario. The Commission came to a similar conclusion in *Sunwide*. We note that Lehman's head office was shown as the address of the Toronto Virtual Office and that its registered office was shown as the Toronto address of the law firm that incorporated Lehman.

[69] In addition, and perhaps most important, Lehman established bank accounts in Toronto to which investors wired funds in making their investments. Accordingly, investors completed their investments and the purported trades in securities by wiring funds to Toronto bank accounts and Lehman received those investor funds in Toronto.

[70] It is also clear that Lehman through its representatives solicited investors to purchase oil futures and foreign treasury bonds, both securities for purposes of the Act.

## iii. Conclusions as to Subsection 25(1)(a) of the Act

### **Lehman**

[71] In the circumstances, we have concluded that Lehman engaged in acts in furtherance of trades in securities in Ontario within the meaning of the Act. There is evidence that Lehman:

- (a) used the Lehman Web site to advertise its services in furtherance of trading in securities; that Web site referred to Lehman's Toronto Virtual Office address;
- (b) established and paid for the services of the Toronto Virtual Office;
- (c) communicated with investors using the Toronto Virtual Office;
- (d) established Toronto bank accounts that received funds from investors;
- (e) solicited trades in securities by telephone through its representatives (although those representatives probably were not in Ontario and those calls probably were not made from Ontario);
- (f) entered into account agreements with investors governed by "the laws of Toronto, Canada," and
- (g) used the Lehman Web site to disseminate false account information to investors.

[72] Accordingly, we find that Lehman traded in securities in Ontario within the meaning of the Act. Lehman was not registered in any capacity with the Commission. The onus is on Lehman to prove that an exemption from registration was available. No evidence was submitted to us indicating that any such registration exemption was available. Lehman therefore contravened subsection 25(1)(a) of the Act.

**Schnedl**

[73] Based on the information and circumstances referred to in paragraphs 11 and 12 of these reasons, we have concluded that Schnedl was a directing mind of Lehman. There is evidence that Schnedl engaged in acts in furtherance of trades in securities in Ontario in that he:

- (a) came to Toronto and caused Lehman to be incorporated under the laws of Ontario for purposes of carrying out the investment scheme;
- (b) established the Toronto Virtual Office, signed on behalf of Lehman the services agreement establishing that office and paid for those services on behalf of Lehman;
- (c) established the Toronto bank accounts used by Lehman to receive investor funds and was sole signing officer on those accounts;
- (d) solicited the Austrian Investors by telephone, as a representative of Lehman, to participate in the investment scheme (although those calls were probably not made from Ontario);
- (e) acted as the administrative and technical contact for the Lehman Web site used to advertise and solicit trades and to disseminate false account information to investors; and
- (f) caused funds to be wired from Lehman's Toronto bank accounts to his personal bank accounts in Spain.

Some of those acts in furtherance of trades were engaged in by Schnedl using the Hehlsinger alias.

[74] Accordingly, we find that Schnedl traded in securities in Ontario within the meaning of the Act. Schnedl was not registered in any capacity with the Commission. The onus is on Schnedl to prove that an exemption from registration was available. No evidence was submitted to us indicating that any such registration exemption was available. Schnedl therefore contravened subsection 25(1)(a) of the Act.

**Unzer**

[75] Unzer participated in the investment scheme as a representative of Lehman by soliciting investors by telephone to invest in that scheme.

[76] Unzer called the Austrian Investors on numerous occasions to solicit investments in treasury bonds. The phone calls led to the Austrian Investors investing in April and May, 2008. Communications with Unzer included faxes to him at the Toronto Virtual Office.

[77] There is no evidence that Unzer was ever in Ontario or that he telephoned the Austrian Investors from Ontario. There is evidence, however, that he made use of the Toronto Virtual Office in his communications with investors and that he directed investors to make payments to Lehman's Toronto bank accounts. The acts in furtherance of trades carried out by Unzer may

have occurred outside Ontario, but those acts in furtherance related to trading in securities that occurred in Ontario for purposes of the Act (see our conclusions in paragraphs 72 and 74 of these reasons). Accordingly, we find that Unzer traded in securities within the meaning of the Act. Unzer was not registered in any capacity with the Commission. The onus is on Unzer to prove that an exemption from registration was available. No evidence was submitted to us indicating that any such registration exemption was available. Unzer therefore contravened subsection 25(1)(a) of the Act.

### **Grundmann**

[78] Grundmann participated in the investment scheme as a representative of Lehman by soliciting investors by telephone to invest in that scheme.

[79] Grundmann first starting calling the Austrian Investors in February 2008. He proposed that the Austrian Investors invest in oil futures because the price of oil was increasing rapidly at the time and because a “5% stop loss” would minimize the risk of such an investment. Grundmann told the Austrian Investors that it would be easy to make up their unrelated prior losses in the stock market by investing in oil futures. The Austrian Investors purported to invest in oil futures with Grundmann in February and May, 2008. Grundmann gave the Austrian Investors international wire instructions and bank account information for the Lehman Toronto bank accounts, a Lehman account application, and a user ID and password for the password-protected section of the Lehman Web site where the Austrian Investors could access their account statements. Communications with Grundmann included faxes to him at the Toronto Virtual Office.

[80] There is no evidence that Grundmann was ever in Ontario or that he telephoned the Austrian Investors from Ontario. There is evidence, however, that he made use of the Toronto Virtual Office in his communications with investors and that he directed the Austrian Investors to make payments to Lehman’s Toronto bank accounts. The acts in furtherance of trades carried out by Grundmann may have occurred outside Ontario, but those acts in furtherance related to trading in securities that occurred in Ontario for purposes of the Act (see our conclusions in paragraphs 72 and 74 of these reasons). Accordingly, we find that Grundmann traded in securities within the meaning of the Act. Grundmann was not registered in any capacity with the Commission. The onus is on Grundmann to prove that an exemption from registration was available. No evidence was submitted to us indicating that any such registration exemption was available. Grundmann therefore contravened subsection 25(1)(a) of the Act.

## **B. Did the Respondents Breach Section 126.1(b) of the Act?**

### **i. Section 126.1(b) of the Act**

[81] Section 126.1(b) of the Act provides as follows:

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.

### **ii. Staff submissions**

[82] Staff has alleged that the Respondents engaged or participated in a course of conduct relating to securities that the Respondents knew or reasonably ought to have known perpetrated a fraud on the investors who invested in the investment scheme within the meaning of section 126.1(b) of the Act.

[83] Staff submitted that the evidence of fraudulent conduct by the Respondents meets the legal test for fraud. In particular, Staff submitted that the following evidence supports the conclusion that a fraud occurred here:

- (a) the communications by Schnedl, Unzer and Grundmann with the Austrian Investors including the deceitful and false statements made in those communications with respect to the investment scheme;
- (b) the wire transfer by investors of funds to the Lehman bank accounts in response to the representations made;
- (c) the fact that a substantial portion of investor funds, including a portion of the funds forwarded by the Austrian Investors, were transferred from the Lehman Toronto bank accounts to accounts in Spain in the name of Schnedl;

- (d) that €20,000 and US \$10,039 were wired from the Lehman Euro account and Lehman USD account, respectively, to Emilie Tunzer, a person who the Austrian Investors believe is the mother of Schnedl;
- (e) the Respondents created and distributed through the Lehman Web site account statements reflecting what appear to be fictitious trades in oil futures and fictitious investment returns;
- (f) that the initial purchases of securities purportedly made by Lehman for the Austrian Investors and shown in the account statements were made on March 28, 2008 and March 31, 2008, both dates that are prior to the Austrian Investors' funds being credited to the Lehman Euro account;
- (g) the Austrian Investors requested trade confirmations from Lehman, but their requests have never been responded to;
- (h) there is no evidence (other than the account statements) that investor funds were ever used to invest in oil futures, foreign treasury bonds or other securities; and
- (i) requests by the Austrian Investors for withdrawal of funds from their client accounts and for the return of their money have been ignored.

[84] The Austrian Investors' account statements showed an initial profit of \$50,735 in one month, followed by the purported complete loss of all the funds. The Austrian Investors were then told that they owed Lehman US \$11,198. Staff submits that those circumstances have attributes consistent with a potential fraud.

### iii. Analysis

[85] We have concluded above that the Respondents engaged in acts in furtherance of trades in securities in Ontario. Given the nature of those acts, we find that each of the Respondents engaged or participated in an act, practice or course of conduct relating to securities within the meaning of section 126.1(b) of the Act. We will now address whether those acts and the course of conduct perpetrated a fraud for purposes of section 126.1(b).

#### a. Fraud

[86] 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 ABASC 79 at para. 308, citing D. Johnston & K. D. Rockwell, *Canadian Securities Regulation*, 4th ed., Markham: LexisNexis, 2007 at 420) ("**Capital Alternatives**").

[87] The term fraud is not defined in the Act. Section 126.1(b) was a relatively recent addition to the Act and there has been only one decision of the Commission that has addressed the application of that section (see *Al-Tar Energy Corp. et al* (2010), 33 O.S.C.B. 5535 ("**Al-Tar**"). We can, however, also draw guidance in interpreting section 126.1(b) from the criminal law and decisions of other securities commissions in Canada.

[88] The Supreme Court of Canada discussed the elements necessary to establish fraud in *R. v. Théroux*, [1993] 2 S.C.R. 5 ("**Théroux**"). Justice McLachlin (as she then was) stated that fraud will be established upon proof of a dishonest act, proof of deprivation caused by the dishonest act and proof of the mental element required (*mens rea*).

[89] The first element, the dishonest act, is established by proof of deceit, falsehood or other fraudulent means. As to deceit and falsehood, the Court stated that "all that need be determined is whether the accused, as a matter of fact, represented that a situation was of a certain character, when, in reality, it was not" (*Théroux, supra*, at para. 18).

[90] As to "other fraudulent means," the Supreme Court of Canada held that the issue is "determined objectively, by reference to what a reasonable person would consider to be a dishonest act" (*Théroux, supra*, at paras. 17 and 18). The concept is intended to encompass all other means, other than deceit or falsehood, which can be properly characterized as dishonest. "Other fraudulent means" include the non-disclosure of important facts, the unauthorized diversion of funds and the unauthorized arrogation of funds or property (*Théroux, supra*, at para. 18).

[91] The second element of fraud, deprivation, is established by proof of detriment, prejudice or risk of prejudice to the economic interests of the victim caused by the dishonest act (*Théroux, supra*, at paras. 16 and 27). In establishing deprivation, it is not necessary to prove that an accused ultimately profited or received an economic benefit or gain from the conduct or that actual deprivation occurred (*Théroux, supra*, at para. 19).

[92] In order to establish fraud, there must also be proof of the necessary mental element (*mens rea*) on the part of the accused. The necessary mental element for establishing fraud was also discussed by the Supreme Court of Canada in *Théroux*. The Court held that the mental element required 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 of knowledge that the victim's pecuniary interests are put at risk).

(*Théroux*, *supra*, at para. 27.)

[93] The Court in *Théroux* observed that subjective intention may be inferred from the acts themselves (*Théroux*, *supra*, at para. 23) and that it is not necessary to show precisely what was in the mind of the accused at the time of the fraudulent acts. The Court stated in *Théroux* that:

[t]he accused must have subjective awareness, at the very least, that his or her conduct will put the property or economic expectations of others at risk. As noted above, this does not mean that the Crown must provide the trier of fact with a mental snapshot proving exactly what was in the accused's mind at the moment the dishonest act was committed. In certain cases, the inference of subjective knowledge of the risk may be drawn from the facts as the accused believed them to be... [W]here the accused tells a lie knowing others will act on it and thereby puts their property at risk, the inference of subjective knowledge that the property of another would be put at risk is clear.

(*Théroux*, *supra*, at para. 29.)

[94] The Alberta Court of Appeal has held that one can draw an inference as to the requisite mental element for fraud from the totality of the evidence (*Alberta (Securities Commission) v. Brost*, 2008 ABCA 326 ("**Brost C.A.**") at para. 48).

[95] The operative language of section 126.1(b) of the Act is identical to the language of section 57(b) of the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418, as amended (the "**BC Act**"). The British Columbia Court of Appeal addressed the application of section 57(b) of 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).) The Court in *Anderson* applied the legal test for fraud established in *Théroux*.

[96] In interpreting section 57(b) of the BC Act, the British Columbia Court of Appeal stated in *Anderson* that:

... s. 57(b) 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]

(*Anderson*, *supra*, at para. 26.)

[97] The Court in *Anderson* also stated that:

[f]raud 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.

(*Anderson*, *supra*, at para. 29.)

[98] The legal test for fraud applied by the Court in *Anderson* was adopted in *Capital Alternatives*, which was affirmed in *Brost C.A.*

[99] In order for a corporation to commit fraud under section 126.1(b) of the Act, it is sufficient to show that the directing mind of the corporation knew that a fraud was being perpetrated.

[100] Our interpretation of section 126.1(b) of the Act discussed below is consistent with the foregoing decisions including the conclusions of the Commission in *Al-Tar*.

**b. Lehman and Schnedl Committed Fraud**

[101] Lehman committed dishonest acts by making numerous deceitful and false statements to investors including, in particular, that their funds would be invested in oil futures and/or foreign treasury bonds. We have no evidence that the investors' funds were ever used for that purpose. It also appears that the Austrian Investors' account statements falsely showed fictitious investments and purported investment returns. There is no doubt based on the evidence that Lehman committed acts of deceit and falsehood through its representations in soliciting investors to invest in the scheme. The Supreme Court of Canada has stated that "other fraudulent means" include the non-disclosure of important facts, the unauthorized diversion of funds and the arrogation of funds or property. Lehman and Schnedl did each of those things.

[102] As noted above, we found that Schnedl was a directing mind of Lehman and participated personally in the fraudulent activity.

[103] The second element required to establish fraud is deprivation caused by the dishonest acts. In this case, as a result of the deceitful and false statements made by Lehman, investors wired substantial amounts of money to Lehman bank accounts in Toronto. A substantial portion of those funds were misappropriated by Schnedl for his personal benefit. The Austrian Investors have demanded the repayment of the amounts they wired to Lehman and have received no response. Accordingly, the Austrian Investors have been deprived of those funds as a result of the dishonest acts of Lehman and Schnedl. The second element of fraud, deprivation, is therefore established against Lehman and Schnedl.

[104] Finally, in order to commit fraud, a person must have the necessary mental element (*mens rea*). As discussed in *Théroux*, the person must have subjective knowledge of the prohibited conduct and that a consequence of that conduct will be the deprivation of another. Based on our conclusions in paragraphs 101 to 103, 123 and 125 of these reasons, we find that Lehman and Schnedl *knowingly* committed fraud by depriving the Austrian Investors of the funds that they were induced by deceit to forward to Lehman.

[105] Accordingly, we find that Lehman and Schnedl *knowingly* perpetrated a fraud and, subject to the discussion below, contravened section 126.1(b) of the Act.

**c. Was the Fraud Committed in Ontario?**

[106] In order for a person to contravene section 126.1(b) of the Act, a fraud must have been perpetrated. The section does not expressly address whether it applies to any fraud or only to a fraud that occurs in Ontario. In our view, the section should be interpreted broadly to apply to any fraud. If a person has engaged or participated in "any act, practice or course of conduct relating to securities" that occurs in Ontario and that conduct perpetrates a fraud, wherever that fraud may have occurred, there is a public interest in not permitting that conduct in Ontario. This conclusion is particularly important because of the interjurisdictional nature of many securities frauds. This interpretation of section 126.1(b) is consistent with the legislative history of section 57(b) of the BC Act. A previous iteration of section 57(b) expressly applied to a fraud that occurred outside British Columbia (see paragraph 22 of *Anderson, supra*, for the earlier provision). Accordingly, in our view, section 126.1(b) is engaged where there is any act, practice or course of conduct relating to securities that occurs in Ontario and a fraud is perpetrated; it is not necessary that the fraud occur in Ontario.

[107] In any event, we believe that in this case the fraud perpetrated by Lehman and Schnedl occurred in Ontario because of the real and substantial link between the fraud and Ontario.

[108] The Supreme Court of Canada discussed in *Regina v. Libman*, [1985] 2 S.C.R. 178 ("*Libman*") the jurisdiction to prosecute a fraud under the *Criminal Code of Canada*, R.S.C. 1985, c. C-46 (the "*Code*") where the elements of the offence were carried out in more than one jurisdiction. The Court held that for an offence to be subject to its jurisdiction "a real and substantial link" must exist between the offence and Canada (*Libman, supra*, at para. 74).

[109] The accused in *Libman* was committed to stand trial on seven counts of fraud under the *Code*, and one count of conspiracy to commit fraud, for a fraudulent telephone sales solicitation scheme (i.e., a "boiler room operation") that operated out of Toronto. That fraud involved selling shares to United States residents who were directed to send their subscription monies to Central America. Some of the proceeds, however, were ultimately wired to the accused in Toronto (*Libman, supra*, at paras. 3-5).

[110] Writing for the Supreme Court of Canada, La Forest J. held that there were "ample links" to Toronto sufficient to ground jurisdiction and stated, "... the preparatory activities to perpetrate the fraudulent scheme were in themselves sufficient to warrant a holding that the offence took place in Canada" (*Libman, supra*, at paras. 72-76).

[111] Further, the fact that the person affected by the fraudulent activity may reside outside of Canada does not limit the court's jurisdiction over the fraudulent conduct (*Libman, supra*, at paras. 57 and 58).

[112] Recently, the Ontario Court of Appeal followed the Libman analysis in *R. v. Stucky*, 2009 ONCA 151 ("**Stucky**") in finding that the meaning of "the public" in a section of the *Competition Act*, R.S.C. 1985, c. C-34 was not restricted to the Canadian public where there was a real and substantial link or connection between the offence and Canada. The Court also stated in *Stucky* that "[...] the 'real and substantial link' or connection test articulated in *Libman* has been applied outside the *Criminal Code* context and is part of our general law concerning jurisdiction" (*Stucky*, *supra*, at para. 33).

[113] We note that the Ontario Superior Court of Justice in *R v. Drakes*, [2005] O.J. No. 2863 (Sup. Ct.) ("**Drakes**") did not find a "real and substantial link" where the evidence did not show any connection between the fraud and Canada other than funds being sent to bank accounts in Canada. In that case, Epstein J. applied the "real and substantial link" test to a fraudulent letter scheme involving the transfer of monies from Antigua to bank accounts in Canada. In considering *Libman*, Epstein J. stated:

... [t]he fact that there is evidence that the money ultimately found its way to Canada is a relevant consideration in determining whether there was a real and substantial link between the offence and Canada.

However, this finding does not, by itself, lead to a conclusion that there is a 'substantial link' between the alleged fraud and Canada. What remains to be determined is whether the delivery of the funds was an "integral" part of a scheme initiated in Canada.

(*Drakes*, *supra*, at paras. 56-57).

**d. Staff Submissions**

[114] Staff submitted that Lehman is a corporation incorporated under the laws of Ontario. Given the illegal acts of Lehman and Schnedl and the public interest mandate of the Commission, Staff submitted that this fact alone should be enough to give the Commission jurisdiction over the Respondents for purposes of section 126.1(b) of the Act. That fact is reinforced by the fact that Schnedl came to Toronto for the express purpose of incorporating Lehman.

[115] Staff also pointed to the fact that Lehman opened bank accounts in Ontario, that Lehman established the Toronto Virtual Office and used that office as part of the fraudulent scheme, that telephone numbers with the Toronto area code were given to investors, and that the Lehman Web site and the administrative forms used by Lehman referred to the Toronto Virtual Office.

**e. Real and Substantial Link to Ontario**

[116] In our view, there is a real and substantial link between the fraud committed by Lehman and Schnedl and Ontario, even though the fraud was not planned or initiated by persons in Ontario. We were particularly influenced in coming to this conclusion by the fact that Lehman was incorporated in Ontario, Lehman was held out as carrying on business in and from Ontario, the Virtual Office was located in Ontario and was used in carrying out the investment scheme, and investor funds were wired to Lehman bank accounts established in Toronto. These elements of the investment scheme were an integral part of the fraud. We also find that the incorporation of Lehman, the establishment of the Toronto Virtual Office and the opening of the bank accounts were preparatory activities to perpetrate the fraudulent scheme (see paragraph 110 of these reasons). Accordingly, we find that Lehman and Schnedl knowingly perpetrated a fraud in Ontario for purposes of section 126.1(b) of the Act.

[117] Based on our conclusions in paragraphs 85 and 116 of these reasons, we find that Lehman and Schnedl engaged or participated in an act, practice or course of conduct relating to securities that they knew perpetrated a fraud. Accordingly, Lehman and Schnedl contravened section 126.1(b) of the Act.

**f. Knowledge of the Fraud by Unzer and Grundmann**

[118] Section 126.1 of the Act applies by its terms to persons that knew or who "reasonably ought to [have] known" that a fraud was being perpetrated by others. We have no evidence that Unzer or Grundmann had subjective knowledge (i.e., knew) that a fraud was being perpetrated. Accordingly, in order for us to find that they contravened section 126.1(b), we must conclude that they *reasonably ought to have known* that a fraud was being committed by Lehman and Schnedl. Those words impose an objective test.

[119] As noted above, the operative language of section 126.1(b) of the Act is identical to section 57(b) of the BC Act. The British Columbia Court of Appeal found in *Anderson* at paragraph 24 that:

[Section 57] creates a statutory prohibition which may extend to persons who ought to be aware of the fraud even though they may not be participants in it ... 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.

[120] The British Columbia Court of Appeal in *Anderson* also held that while the fraud provision extends to those who “ought to know that fraud is being perpetrated by others,” it “does not eliminate ... proof of subjective knowledge of the facts constituting the dishonest act, by someone involved in the transaction” (*Anderson, supra*, at para. 26).

[121] We have concluded above that Lehman and Schnedl knowingly perpetrated a fraud for purposes of section 126.1(b) of the Act. We heard evidence that Unzer and Grundmann participated in the fraud by contacting the Austrian Investors to sell the investment scheme to them on behalf of Lehman and that they made use of the Toronto Virtual Office in doing so. We do not have any evidence, however, that Unzer or Grundmann knew or reasonably ought to have known that the investment scheme was a fraud, that the investor account statements were a sham, or that investor funds were being diverted to and misappropriated by Schnedl. While we can speculate that Unzer and Grundmann probably did know that the investment scheme was a fraud, that is not enough.

[122] In our view, we have insufficient evidence to determine whether Unzer and Grundmann knew or reasonably ought to have known that Lehman and Schnedl were perpetrating a fraud. Accordingly, we dismiss the allegations against Unzer and Grundmann that they contravened section 126.1(b) of the Act.

**iv. Conclusions as to Section 126.1(b) of the Act**

***Lehman***

[123] Based on the evidence, we have concluded that Lehman, among other things:

- (a) promoted a fraudulent investment scheme and sold that scheme to investors in Europe;
- (b) made deceitful and false statements to the Austrian Investors about the investment scheme through its representatives;
- (c) used the Lehman Web site to make available to the Austrian Investors and other investors fictitious account statements showing investments that were never made by Lehman;
- (d) established and used bank accounts in Toronto to receive investor funds in connection with the investment scheme;
- (e) established the Toronto Virtual Office and used it to mislead investors in connection with the investment scheme; and
- (f) misappropriated investors' funds.

[124] Accordingly, we concluded that Lehman knowingly perpetrated a fraud and contravened section 126.1(b) of the Act.

***Schnedl***

[125] Based on the evidence, we have concluded that Schnedl, among other things:

- (a) caused the incorporation of Lehman in Ontario for purposes of carrying out the investment scheme and was a directing mind of Lehman;
- (b) promoted a fraudulent investment scheme and sold that scheme to investors in Europe;
- (c) made deceitful and false statements to the Austrian Investors about the investment scheme;
- (d) arranged for the maintenance of the Lehman Web site and used it to make available to the Austrian Investors and other investors fictitious account statements showing investments that were never made by Lehman;
- (e) established Lehman's Toronto bank accounts, acted as sole signing authority for those accounts and used them to receive investor funds in connection with the investment scheme;
- (f) established the Toronto Virtual Office on behalf of Lehman and used it to mislead investors in connection with the investment scheme; and
- (g) misappropriated investors' funds.



[126] Accordingly, we concluded that Schnedl knowingly perpetrated a fraud and contravened section 126.1(b) of the Act.

**Unzer and Grundmann**

[127] We have concluded that there is insufficient evidence that Unzer or Grundmann knew or reasonably ought to have known that Lehman and Schnedl were perpetrating a fraud. We therefore dismissed the allegations that Unzer and Grundmann contravened section 126.1(b) of the Act.

**C. Was the Conduct of the Respondents Contrary to the Public Interest?**

**i. The Applicable Law**

[128] Under section 1.1 of the Act, the Commission's mandate is:

- (a) to provide protection to investors from unfair, improper or fraudulent practices; and
- (b) to foster fair and efficient capital markets and confidence in those capital markets.

[129] Subsection 127(1) of the Act permits the Commission to make a wide range of orders sanctioning conduct if it concludes that doing so is in the public interest. The Commission's public interest jurisdiction permits it to take action to prevent future harm to Ontario investors and Ontario capital markets and to deter others from conduct giving rise to such harm.

**ii. Analysis and Conclusion**

[130] We have a public interest in ensuring that Ontario capital markets are not used to perpetrate a fraud and to misappropriate investor funds, wherever those investors may be located. It appears clear that the sole reason Lehman was incorporated in Ontario, the Toronto Virtual Office was established, and bank accounts were opened in Toronto was to mislead investors located outside Canada into believing that they were dealing with a reputable company and individuals resident and carrying on business in Ontario. That behaviour undermines the integrity of Ontario capital markets and their reputation in the rest of the world for fairness and integrity. The Commission came to a similar conclusion in *Sunwide* (*Sunwide*, *supra*, at para. 75).

[131] Accordingly, in our view, each of Lehman, Schnedl, Unzer and Grundmann, by making use of the Toronto Virtual Office and the Lehman Toronto bank accounts in connection with the investment scheme, has acted contrary to the public interest within the meaning of the Act. We have also concluded that each of Lehman, Schnedl, Unzer and Grundmann has acted contrary to the public interest as a result of our findings in paragraphs 72, 74, 77, 80 and 117 of these reasons (to the extent that any such finding applies to a particular Respondent).

**VI. CONCLUSION**

[132] For the reasons discussed above, we have concluded that:

- (a) each of Lehman, Schnedl, Unzer and Grundmann contravened subsection 25(1)(a) of the Act;
- (b) each of Lehman and Schnedl knowingly perpetrated a fraud and contravened section 126.1(b) of the Act; and
- (c) each of Lehman, Schnedl, Unzer and Grundmann acted contrary to the public interest.

[133] As noted above, it appears from the testimony of the Austrian Investors that "Hehlsinger" is an alias used by Schnedl. Accordingly, each of our findings in these reasons that relate to Schnedl also apply to Schnedl using the Hehlsinger alias.

[134] Staff should contact the Office of the Secretary to the Commission to schedule a hearing to determine the appropriate sanctions, and any cost order, to be imposed in light of our findings.

Dated at Toronto this 28th day of July, 2010.

"James E. A. Turner"

"Carol S. Perry"

"Sinan O. Akdeniz"

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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
4504020 Canada Inc.	21 July 10	03 Aug 10	03 Aug 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

THERE ARE NO ITEMS FOR THIS WEEK.

### 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		

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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 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

AltaLink, L.P.

Principal Regulator - Alberta

**Type and Date:**

Preliminary Base Shelf Prospectus dated July 30, 2010

NP 11-202 Receipt dated July 30, 2010

**Offering Price and Description:**

\$1,300,000,000.00 - Medium-Term Notes (secured) Rates on Application

**Underwriter(s) or Distributor(s):**

Scotia Capital Inc.

BNP Paribas (Canada) Securities Inc.

Casgrain & Company Limited

CIBC World Markets Inc.

National Bank Financial Inc.

RBC Dominion Securities Inc.

Scotia Capital Inc.

TD Securities Inc.

**Promoter(s):**

-

**Project #1612830**

---

**Issuer Name:**

Artis Real Estate Investment Trust

Principal Regulator - Manitoba

**Type and Date:**

Preliminary Base Shelf Prospectus dated July 27, 2010

NP 11-202 Receipt dated July 28, 2010

**Offering Price and Description:**

\$750,000,000.00:

Units

Preferred Units

Debt Securities

Warrants

Subscription Receipts

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #1610245**

---

**Issuer Name:**

Bastion Resources Ltd.

Principal Regulator - British Columbia

**Type and Date:**

Preliminary Long Form Prospectus dated July 28, 2010

NP 11-202 Receipt dated July 28, 2010

**Offering Price and Description:**

\$600,000.00 - 3,000,000 SHARES AT A PRICE OF \$0.20 PER SHARE

**Underwriter(s) or Distributor(s):**

Wolverton Securities Ltd.

**Promoter(s):**

Grant Kemp

**Project #1610904**

---

**Issuer Name:**

Brookfield Office Properties Canada

Principal Regulator - Ontario

**Type and Date:**

Preliminary Base Shelf Prospectus dated July 28, 2010

NP 11-202 Receipt dated July 29, 2010

**Offering Price and Description:**

\$750,000,000.00:

Trust Units

Debt Securities

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #1611085**

---

**Issuer Name:**

Caza Gold Corp.

Principal Regulator - British Columbia

**Type and Date:**

Preliminary Long Form Prospectus dated July 30, 2010

NP 11-202 Receipt dated July 30, 2010

**Offering Price and Description:**

\$2,800,000.00 - 8,000,000 Units Price: \$0.35 per Unit

**Underwriter(s) or Distributor(s):**

Canaccord Genuity Corp.

**Promoter(s):**

Bradford J. Cooke

**Project #1612715**

**Issuer Name:**

Deutsche Bank Aktiengesellschaft  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Base Shelf Prospectus dated July 30, 2010  
NP 11-202 Receipt dated July 30, 2010

**Offering Price and Description:**

\$2,000,000,000.00: Notes (Structured Notes)

**Underwriter(s) or Distributor(s):**

DEUTSCHE BANK SECURITIES LIMITED

**Promoter(s):**

-

**Project #**1612680

**Issuer Name:**

Gatorz Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated July 30, 2010  
NP 11-202 Receipt dated August 3, 2010

**Offering Price and Description:**

\$ \* - \* Common Shares Price: \$ \* per Common Share

**Underwriter(s) or Distributor(s):**

Octagon Capital Corporation

**Promoter(s):**

-

**Project #**1613155

---

**Issuer Name:**

Discovery 2010 Flow-Through Limited Partnership  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Long Form Prospectus dated July 26, 2010  
NP 11-202 Receipt dated July 28, 2010

**Offering Price and Description:**

\$5,000,000.00 to \$50,000,000.00 - 200,000 to 2,000,000

Units PRICE: \$25.00 PER UNIT MINIMUM

SUBSCRIPTION: \$2,500 (100 Units)

**Underwriter(s) or Distributor(s):**

RBC Dominion Securities Inc.

CIBC World Markets Inc.

BMO Nesbitt Burns Inc.

National Bank Financial Inc.

Scotia Capital Inc.

TD Securities Inc.

Dundee Securities Corporation

Manulife Securities Incorporated

Canaccord Genuity Corp.

HSBC Securities (Canada) Inc.

Middlefield Capital Corporation

Macquarie Capital Markets Canada Inc.

GMP Securities L.P.

Wellington West Capital Markets Inc.

Raymond James Ltd.

Desjardins Securities Inc.

**Promoter(s):**

Middlefield Limited

**Project #**1610404

---

**Issuer Name:**

Gemoscan Canada, Inc.

**Type and Date:**

Preliminary Long Form Prospectus dated July 29, 2010  
Receipted on July 30, 2010

**Offering Price and Description:**

13,000,000 Class A Shares

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Brian Kalish

**Project #**1611980

---

**Issuer Name:**

Innovente Inc.

Principal Regulator - Quebec

**Type and Date:**

Amendment #1 dated July 28, 2010 to Preliminary Long  
Form Prospectus dated June 7, 2010

NP 11-202 Receipt dated July 28, 2010

**Offering Price and Description:**

\$6,000,000.00 to \$12,000,000.00 - \* Units Price: \$ \* per  
Unit

**Underwriter(s) or Distributor(s):**

Industrial Alliance Securities Inc.

M Partners Inc.

**Promoter(s):**

Richard Painchaud

**Project #**1594572

---

**Issuer Name:**

Focused Capital Corp.

Principal Regulator - Ontario

**Type and Date:**

Preliminary CPC Prospectus dated August 3, 2010

NP 11-202 Receipt dated August 3, 2010

**Offering Price and Description:**

\$250,000.00 - 1,250,000 Common Shares Price: \$0.20 per  
Common Share

**Underwriter(s) or Distributor(s):**

Dundee Securities Corporation

**Promoter(s):**

Mark Goodman

**Project #**1613490



**Issuer Name:**

InnVest Real Estate Investment Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated July 28, 2010  
NP 11-202 Receipt dated July 28, 2010

**Offering Price and Description:**

\$75,000,000.00 - 6.00% Convertible Unsecured  
Subordinated Debentures Price: \$1,000.00 per Debenture

**Underwriter(s) or Distributor(s):**

CIBC World Markets Inc.  
Scotia Capital Inc.  
TD Securities Inc.  
RBC Dominion Securities Inc.  
Canaccord Genuity Corp.

**Promoter(s):**

-

**Project #1610713**

**Issuer Name:**

Sterling Resources Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated July 28, 2010  
NP 11-202 Receipt dated July 28, 2010

**Offering Price and Description:**

\$40,004,500.00 - 21,055,000 Common Shares Price: \$1.90  
per Common Shares

**Underwriter(s) or Distributor(s):**

Wellington West Capital Markets Inc.  
Canaccord Genuity Corp.  
RBC Dominion Securities Inc.  
Stifel Nicolaus Canada Inc.  
Maison Placements Canada Inc.

**Promoter(s):**

-

**Project #1610785**

---

**Issuer Name:**

Ozcapital Ventures Inc.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary CPC Prospectus dated July 29, 2010  
NP 11-202 Receipt dated August 3, 2010

**Offering Price and Description:**

Minimum Offering: \$200,000.00 or 2,000,000 Common  
Shares; Maximum Offering: \$600,000.00 or 6,000,000  
Common Shares Price: \$0.10 per Common Share

**Underwriter(s) or Distributor(s):**

Leede Financial Markets Inc.

**Promoter(s):**

Douglas Walker

**Project #1612808**

---

**Issuer Name:**

Twoco Petroleums Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated July 29, 2010  
NP 11-202 Receipt dated July 29, 2010

**Offering Price and Description:**

\$3,000,000.00 (Minimum Offering); \$6,000,000.00  
(Maximum Offering) up to \$2,000,000.00 up to 8,695,650  
Units and up to \$4,000,000.00 up to 16,000,000 Flow-  
Through Units Price: \$0.23 per Unit and \$0.25 per Flow-  
Through Unit

**Underwriter(s) or Distributor(s):**

Macquarie Private Wealth Inc.

**Promoter(s):**

-

**Project #1611912**

---

**Issuer Name:**

SILVERCORP METALS INC.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Base Shelf Prospectus dated July 30, 2010  
NP 11-202 Receipt dated July 30, 2010

**Offering Price and Description:**

US\$120,000,000.00:

Debt Securities  
Common Shares  
Warrants to Purchase Common Shares  
Warrants to Purchase Debt Securities  
Subscription Receipts

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #1612794**

---

**Issuer Name:**

BMO Harris Growth Opportunities Portfolio  
Principal Regulator - Ontario

**Type and Date:**

Amendment #2 dated July 28, 2010 to the Simplified  
Prospectus and Annual Information Form dated November  
4, 2009

NP 11-202 Receipt dated July 29, 2010

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

BMO Investments Inc.

**Promoter(s):**

BMO Harris Investment Management Inc.

**Project #1482706**

---

**Issuer Name:**

Brookfield Office Properties Canada  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Non-Offering Prospectus dated July 27, 2010

NP 11-202 Receipt dated July 28, 2010

**Offering Price and Description:**

--

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #1603896**

---

**Issuer Name:**

Claymore Broad Emerging Markets ETF  
Claymore Global Infrastructure ETF  
Claymore Global Real Estate ETF  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated July 27, 2010

NP 11-202 Receipt dated July 30, 2010

**Offering Price and Description:**

Common Units and Advisor Class Units @ Net Asset Value

**Underwriter(s) or Distributor(s):**

Claymore Investments, Inc.

**Promoter(s):**

-

**Project #1600364**

---

**Issuer Name:**

Essex Angel Capital Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final CPC Prospectus dated July 28, 2010

NP 11-202 Receipt dated July 30, 2010

**Offering Price and Description:**

Maximum Offering: \$1,830,000.00 or 18,300,000 Common

Shares Minimum Offering: \$500,000.00 or 5,000,000

Common Shares Price: \$0.10 per Common Share

**Underwriter(s) or Distributor(s):**

PI Financial Corp.

**Promoter(s):**

Mark B. Meldrum

Paul A. Maasland

Michael L. Labiak

Richard J. Galdi

**Project #1597994**

**Issuer Name:**

Futures Index Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated July 30, 2010

NP 11-202 Receipt dated August 3, 2010

**Offering Price and Description:**

Class O, I, P, F and R Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #1602530**

---

**Issuer Name:**

Great-West Lifeco Inc.  
Principal Regulator - Manitoba

**Type and Date:**

Amended and Restated Shelf Prospectus dated July 23, 2010 (the amended prospectus) amending and restating the Shelf Prospectus dated May 12, 2009

NP 11-202 Receipt dated July 28, 2010

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #1417310**

---

**Issuer Name:**

Horizons AlphaPro S&P/TSX 60 Equal Weight Index ETF  
Horizons AlphaPro Global Dividend ETF  
Horizons AlphaPro Balanced ETF  
Horizons AlphaPro Corporate Bond ETF  
Principal Regulator - Ontario

**Type and Date:**

Amended and Restated Long Form Prospectus dated July 21, 2010 (the amended prospectus), amending and restating the Long Form Prospectus dated July 9, 2010.

NP 11-202 Receipt dated July 28, 2010

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

AlphaPro Management Inc.

**Project #1510928/1594976**

**Issuer Name:**

Lakeview Disciplined Leadership Canadian Equity Fund  
Lakeview Disciplined Leadership High Income Fund  
Lakeview Disciplined Leadership U.S. Equity Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated July 23, 2010  
NP 11-202 Receipt dated July 28, 2010

**Offering Price and Description:**

Class A, F and I units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

CI Investments Inc.

**Project #1597805**

**Issuer Name:**

LNG Energy Ltd.  
Principal Regulator - British Columbia

**Type and Date:**

Final Short Form Prospectus dated July 28, 2010  
NP 11-202 Receipt dated July 28, 2010

**Offering Price and Description:**

\$20,100,850.00 - 80,403,400 Common Shares to be issued upon exercise of 80,403,400 previously issued Special Warrants at a price of \$0.25 per Special Warrant

**Underwriter(s) or Distributor(s):**

Paradigm Capital Inc.  
GMP Securities L.P.

**Promoter(s):**

-

**Project #1604889**

**Issuer Name:**

Mandalay Resources Corporation  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated July 27, 2010  
NP 11-202 Receipt dated July 29, 2010

**Offering Price and Description:**

Up to \$23,000,000.00 - Up to 82,142,857 Subscription Receipts Price: \$0.28 per Subscription Receipt

**Underwriter(s) or Distributor(s):**

GMP Securities L.P.  
BMO Nesbitt Burns Inc.

**Promoter(s):**

-

**Project #1585632**

**Issuer Name:**

Matrix Canadian Bond Fund (formerly Mavrix Strategic Bond Fund)  
Matrix Dividend & Income Fund (formerly Mavrix Dividend & Income Fund)  
Matrix Monthly Pay Fund (formerly Mavrix Balanced Monthly Pay Fund)  
Matrix International Income Balanced Fund  
Matrix International Balanced Fund  
Matrix International Equity Fund (formerly Mavrix Global Fund)

Matrix Sierra Equity Fund (formerly Mavrix Sierra Equity Fund)

Matrix Small Companies Fund (formerly Mavrix Small Companies Fund)

Matrix Explorer Fund (formerly Mavrix Explorer Fund)

Matrix Canadian Growth Fund (formerly Mavrix Canadian Growth Fund)

Matrix North American Growth Fund (formerly Mavrix North American Growth Fund)

Matrix Asia Pacific Fund (formerly Mavrix Asia Pacific Fund)

(Class A, F, I and O Units)

Matrix North American Equity Fund (formerly SEAMARK North American Equity Fund)

(Class A, F, B and G Units)

Matrix Conservative Dividend & Income Fund (formerly SEAMARK Dividend & Income Fund)

Matrix Canadian Equity Fund (formerly SEAMARK Canadian Equity Fund)

Matrix Tax Deferred Income Fund (formerly Mavrix Tax Deferred Income Fund)

(Class A and F Units)

Matrix Money Market Fund (formerly Mavrix Money Market Fund)

(Class A and H Units)

Matrix Corporate Class Funds Ltd. - Matrix Canadian Balanced Fund (formerly Mavrix

Multi Series Fund Ltd. - Canadian Equity Series)

Matrix Corporate Class Funds Ltd. - Matrix U.S. Equity Fund

Matrix Corporate Class Funds Ltd. - Matrix Explorer Fund (formerly Mavrix Multi Series

Fund Ltd. - Explorer Series)

(Series A and F Shares)

Matrix Corporate Class Funds Ltd. - Diversified Income Fund (formerly Mavrix Multi Series

Fund Ltd. - Income Series)

(Series A, T and F Shares)

Matrix Corporate Class Funds Ltd. - Matrix Short Term Income Fund (formerly Mavrix Multi

Series Fund Ltd. - Short Term Income Series)

(Series A Shares)

Principal Regulator - British Columbia

**Type and Date:**

Final Simplified Prospectuses dated July 22, 2010

NP 11-202 Receipt dated July 29, 2010

**Offering Price and Description:**

Class A, B, F, G, H, I, O, T Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Matrix Funds Management

**Project #1596889**

**Issuer Name:**

Nordea International Equity Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus dated July 29, 2010  
NP 11-202 Receipt dated July 29, 2010

**Offering Price and Description:**

Class O Units, Class I Units and Class P Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #**1602534

---

**Issuer Name:**

Sabina Gold & Silver Corp.  
Principal Regulator - British Columbia

**Type and Date:**

Final Short Form Prospectus dated July 28, 2010  
NP 11-202 Receipt dated July 28, 2010

**Offering Price and Description:**

\$22,410,000.00 - 8,300,000 Common Shares PRICE:  
\$2.70 per Offered Share

**Underwriter(s) or Distributor(s):**

Dundee Securities Corporation  
Paradigm Capital Inc.  
Desjardins Securities Inc.  
BMO Nesbitt Burns Inc.  
RBC Dominion Securities Inc.

**Promoter(s):**

-

**Project #**1607615

**Issuer Name:**

Series A, Series F and Series I securities of:  
SENTRY CANADIAN INCOME CLASS (class of shares of Sentry Select Corporate Class Ltd.)  
SENTRY CANADIAN INCOME FUND  
SENTRY CANADIAN RESOURCE CLASS (class of shares of Sentry Select Corporate Class Ltd.)  
SENTRY CONSERVATIVE INCOME FUND  
SENTRY DIVERSIFIED INCOME FUND  
SENTRY DIVERSIFIED TOTAL RETURN FUND  
SENTRY ENERGY GROWTH AND INCOME FUND  
SENTRY GROWTH AND INCOME FUND  
SENTRY INFRASTRUCTURE FUND  
SENTRY MINING OPPORTUNITIES CLASS (class of shares of Sentry Select Corporate Class Ltd.)  
SENTRY MONEY MARKET CLASS (class of shares of Sentry Select Corporate Class Ltd.)  
SENTRY MONEY MARKET FUND  
SENTRY PRECIOUS METALS GROWTH CLASS (class of shares of Sentry Select Corporate Class Ltd.)  
SENTRY PRECIOUS METALS GROWTH FUND  
SENTRY REIT FUND  
SENTRY SMALL CAP INCOME FUND  
SENTRY TACTICAL BOND CAPITAL YIELD CLASS (class of shares of Sentry Select Corporate Class Ltd.)  
SENTRY TACTICAL BOND FUND  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated July 27, 2010 to the Simplified Prospectuses and Annual Information Form dated May 28, 2010  
NP 11-202 Receipt dated July 29, 2010

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

Sentry Select Capital Inc.

**Promoter(s):**

Sentry Select Capital Inc.

**Project #**1573012

---

**Issuer Name:**

UBS (Canada) Global Allocation Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated July 9, 2010 to the Simplified Prospectus and Annual Information Form dated May 20, 2010  
NP 11-202 Receipt dated August 3, 2010

**Offering Price and Description:**

Series D Units @ net asset value

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

UBS Global Asset Management (Canada) Inc.

**Project #**1564577

## Chapter 12

# Registrations

### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender of Registration	Resource Capital Partners Inc.	Exempt Market Dealer	July 27, 2010
Suspended under section 28 of the <i>Securities Act</i>	O.P.M. Ventures Inc.	Exempt Market Dealer	July 27, 2010
Change of Category	Stanton Asset Management Inc.	From: Portfolio Manager  To: Portfolio Manager Exempt Market Dealer	August 3, 2010
Reinstatement	Veracap Corporate Finance Limited	Exempt Market Dealer	August 3, 2010

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