**The Ontario Securities Commission**

# OSC Bulletin

October 29, 2010

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

**The Ontario Securities Commission**
Cadillac Fairview Tower
Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

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# Notices / News Releases

## 1.1 Notices

### 1.1.1 Current Proceedings Before The Ontario Securities Commission

**October 29, 2010**

**CURRENT PROCEEDINGS**

**BEFORE**

**ONTARIO SECURITIES COMMISSION**

- - - - - - - - - - - - - - - - - - - - - - - -

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| Patrick J. LeSage | — | PJL |
| Carol S. Perry | — | CSP |
| Charles Wesley Moore (Wes) Scott | — | CWMS |

**SCHEDULED OSC HEARINGS**

| | |
|---|---|
| November 1, 2010 | **Coventree Inc., Geoffrey Cornish and Dean Tai** |
| 9:30 a.m. | s. 127 |
| November 2-3, December 1-3 and December 8-17, 2010 | J. Waechter in attendance for Staff<br>Panel: JEAT/MGC/PLK |
| 10:00 a.m. | |
| November 4, 2010 | **Lehman Cohort Global Group Inc., Anton Schnedl, Richard Unzer, Alexander Grundmann and Henry Hehlsinger** |
| 11:00 a.m. | s. 127<br>H. Craig in attendance for Staff<br>Panel: JEAT/CSP/SA |
| November 5, 2010 | **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** |
| 10:00 a.m. | s. 127<br>M. Boswell in attendance for Staff<br>Panel: PLK/SA |

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|---|---|
| November 8, 2010<br><br>10:00 a.m. | **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**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: MGC |
| November 8, 2010<br><br>10:00 a.m. | **Global Energy Group, Ltd. and New Gold Limited Partnerships**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: MGC |
| November 12, 2010<br><br>10:00 a.m. | **Imagin Diagnostic Centres Inc., Patrick J. Rooney, Cynthia Jordan, Allan McCaffrey, Michael Shumacher, Christopher Smith, Melvyn Harris and Michael Zelyony**<br><br>s. 127 and 127.1<br><br>J. Feasby in attendance for Staff<br><br>Panel: MGC/MCH |
| November 15-17, November 24 – December 2, 2010<br><br>10:00 a.m. | **Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)**<br><br>s. 127 and 127.1<br><br>D. Ferris in attendance for Staff<br><br>Panel: TBA |
| November 18, 2010<br><br>10:00 a.m. | **QuantFX Asset Management Inc., Vadim Tsatskin, Lucien Shtromvaser and Rostislav Zemlinsky**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| November 22, 2010<br><br>10:00 a.m. | **Georges Benarroch, Linda Kent, Marjorie Ann Glover and Credifinance Securities Limited**<br><br>s. 21.7<br><br>A. Heydon in attendance for Staff<br><br>Panel: JDC/CSP |
| November 23, 2010<br><br>2:30 p.m. | **Majestic Supply Co. Inc., Suncastle Developments Corporation, Herbert Adams, Steve Bishop, Mary Kricfalusi, Kevin Loman and CBK Enterprises Inc.**<br><br>s. 37, 127 and 127.1<br><br>D. Ferris in attendance for Staff<br><br>Panel: TBA |
| November 29, 2010<br><br>9:30 a.m. | **Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiaints Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group**<br><br>s. 127 and 127.1<br><br>H. Craig in attendance for Staff<br><br>Panel: MGC |
| November 29, 2010<br><br>10:00 a.m. | **Paladin Capital Markets Inc., John David Culp and Claudio Fernando Maya**<br><br>s. 127<br><br>C. Price in attendance for Staff<br><br>Panel: JEAT |
| November 29, 2010<br><br>10:00 a.m. | **Abel Da Silva**<br><br>s. 127<br><br>M. Boswell in attendance for Staff<br><br>Panel: JDC |

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| November 30, 2010<br><br>2:30 p.m. | **Locate Technologies Inc., Tubtron Controls Corp., Bradley Corporate Services Ltd., 706166 Alberta Ltd., Lorne Drever, Harry Niles, Michael Cody and Donald Nason**<br><br>s. 127<br><br>A. Heydon in attendance for Staff<br><br>Panel: JDC |
| December 2, 2010<br><br>9:30 a.m. | **Richvale Resource Corp., Marvin Winick, Howard Blumenfeld, Pasquale Schiavone, and Shafi Khan**<br><br>s. 127(7) and 127(8)<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| December 7-8, 2010<br><br>2:00 p.m. | **Mega–C Power Corporation, Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited**<br><br>s. 127<br><br>M. Britton/J.Feasby in attendance for Staff<br><br>Panel: JDC/KJK |
| December 9-10, 2010<br><br>10:00 a.m. | **Sextant Capital Management Inc., Sextant Capital GP Inc., Otto Spork, Robert Levack and Natalie Spork**<br><br>s. 127<br><br>T. Center in attendance for Staff<br><br>Panel: JDC/CSP |
| December 15-16, 2010<br><br>10:00 a.m. | **Questrade Inc.**<br><br>s. 21.7<br><br>A. Heydon in attendance for Staff<br><br>Panel: JDC/CSP |
| January 7, 2011<br><br>2:30 p.m. | **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**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| January 10, January 12-21, 2011<br><br>10:00 a.m. | **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**<br><br>s. 127 and 127.1<br><br>H. Daley in attendance for Staff<br><br>Panel: TBA |
| January 10, January 12-21, January 26-February 1, 2011<br><br>10:00 a.m. | **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**<br><br>s. 127<br><br>A. Perschy/C. Rossi in attendance for Staff<br><br>Panel: TBA |
| January 17-21, 2011<br><br>10:00 a.m. | **Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |

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|---|---|
| January 25, 2011<br><br>2:00 p.m. | **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**<br><br>s. 127<br><br>P. Foy in attendance for Staff<br><br>Panel: TBA |
| January 26, 2011<br><br>10:00 a.m. | **Rezwealth Financial Services Inc., Pamela Ramoutar, Chris Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc. and Sylvan Blackett**<br><br>s. 127(1) and (5)<br><br>A. Heydon in attendance for Staff<br><br>Panel: CSP |
| January 31 – February 7, February 9-18, February 23, 2011<br><br>10:00 a.m. | **Anthony Ianno and Saverio Manzo**<br><br>s. 127 and 127.1<br><br>A. Clark in attendance for Staff<br><br>Panel: TBA |
| January 31, February 1-7, February 9-11, 2011<br><br>10:00 a.m. | **Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk**<br><br>s. 37, 127 and 127.1<br><br>C. Price in attendance for Staff<br><br>Panel: TBA |
| February 8, 2011<br><br>2:30 p.m. | **Ameron Oil and Gas Ltd. and MX-IV, Ltd.**<br><br>s. 127<br><br>M. Boswell in attendance for Staff<br><br>Panel: TBA |
| February 11, 2011<br><br>10:00 a.m. | **Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman**<br><br>s. 127(7) and 127(8)<br><br>M. Boswell in attendance for Staff<br><br>Panel: TBA |
| February 14-18, February 23-28, March 7, March 9-11, March 28-31, 2011<br><br>10:00 a.m. | **Agoracom Investor Relations Corp., Agora International Enterprises Corp., George Tsiolis and Apostolis Kondakos (a.k.a. Paul Kondakos)**<br><br>s. 127<br><br>T. Center in attendance for Staff<br><br>Panel: TBA |
| February 14-18, February 23 – March 1, 2011<br><br>10:00 a.m. | **Nelson Financial Group Ltd., Nelson Investment Group Ltd., Marc D. Boutet, Stephanie Lockman Sobol, Paul Manuel Torres, H.W. Peter Knoll**<br><br>s. 127<br><br>P. Foy in attendance for Staff<br><br>Panel: TBA |
| February 25, 2011<br><br>10:00 a.m. | **Hillcorp International Services, Hillcorp Wealth Management, Suncorp Holdings, 1621852 Ontario Limited, Steven John Hill, and Danny De Melo**<br><br>s. 127<br><br>A. Clark in attendance for Staff<br><br>Panel: TBA |
| March 1-7, March 9-11, March 21 and March 23-31, 2011<br><br>10:00 a.m. | **Paul Donald**<br><br>s. 127<br><br>C. Price in attendance for Staff<br><br>Panel: TBA |

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| March 7, 2011<br><br>10:00 a.m. | **Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| March 21 and March 23-31, 2011<br><br>May 2 and May 4-16, 2011<br><br>10:00 a.m. | **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**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| March 30, 2011<br><br>10:00 a.m. | **Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang**<br><br>s. 127 and 127.1<br><br>M. Britton in attendance for Staff<br><br>Panel: TBA |
| April 4 and April 6-7, 2011<br><br>April 11-18 and April 20, 2011<br><br>10:00 a.m. | **Uranium308 Resources Inc., Michael Friedman, George Schwartz, Peter Robinson, and Shafi Khan**<br><br>s. 127<br><br>M. Boswell in attendance for Staff<br><br>Panel: TBA |
| April 4 and April 6-15, 2011<br><br>10:00 a.m. | **New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd., L. Jeffrey Pogachar, Paola Lombardi and Alan S. Price**<br><br>s. 127<br><br>M. Britton in attendance for Staff<br><br>Panel: TBA |
| April 5, 2011<br><br>2:30 p.m. | **Lehman Brothers & Associates Corp., Greg Marks, Kent Emerson Lounds and Gregory William Higgins**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| April 11-18, April 20-21 and April 26-29, 2011<br><br>10:00 a.m. | **Axcess Automation LLC, Axcess Fund Management, LLC, Axcess Fund, L.P., Gordon Alan Driver, David Rutledge, 6845941 Canada Inc. carrying on business as Anesis Investments, Steven M. Taylor, Berkshire Management Services Inc. carrying on business as International Communication Strategies, 1303066 Ontario Ltd. carrying on business as ACG Graphic Communications, Montecassino Management Corporation, Reynold Mainse, World Class Communications Inc. and Ronald Mainse**<br><br>s. 127<br><br>Y. Chisholm in attendance for Staff<br><br>Panel: JDC |
| June 6-8, 2011<br><br>10:00 a.m. | **Lehman Brothers & Associates Corp., Greg Marks, Kent Emerson Lounds and Gregory William Higgins**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| September 12-19 and September 21-30, 2011<br><br>10:00 a.m. | **FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun**<br><br>s. 127<br><br>C. Price in attendance for Staff<br><br>Panel: TBA |
| TBA | **Yama Abdullah Yaqeen**<br><br>s. 8(2)<br><br>J. Superina in attendance for Staff<br><br>Panel: TBA |

TBA

**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell**

s. 127

J. Waechter in attendance for Staff

Panel: TBA

TBA

**Frank Dunn, Douglas Beatty, Michael Gollogly**

s. 127

K. Daniels in attendance for Staff

Panel: TBA

TBA

**Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling**

s. 127(1) and 127.1

J. Superina, A. Clark in attendance for Staff

Panel: TBA

TBA

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

s. 127 and 127(1)

D. Ferris in attendance for Staff

Panel: TBA

TBA

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

s. 127(1) and 127(5)

M. Boswell in attendance for Staff

Panel: TBA

TBA

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

s. 127

C. Johnson in attendance for Staff

Panel: TBA

TBA

**Borealis International Inc., Synergy Group (2000) Inc., Integrated Business Concepts Inc., Canavista Corporate Services Inc., Canavista Financial Center Inc., Shane Smith, Andrew Lloyd, Paul Lloyd, Vince Villanti, Larry Haliday, Jean Breau, Joy Statham, David Prentice, Len Zielke, John Stephan, Ray Murphy, Alexander Poole, Derek Grigor and Earl Switenky**

s. 127 and 127.1

Y. Chisholm in attendance for Staff

Panel: TBA

TBA

**Innovative Gifting Inc., Terence Lushington, Z2A Corp., and Christine Hewitt**

s. 127

M. Boswell in attendance for Staff

Panel: TBA

TBA

**Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmoney, Harmoney Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale**

s. 127

H. Craig in attendance for Staff

Panel: TBA

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

**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

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

s. 127

H. Craig in attendance for Staff

Panel: JEAT/CSP/SA

TBA

**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**

s. 37, 127 and 127.1

H. Craig in attendance for Staff

Panel: TBA

TBA

**TBS New Media Ltd., TBS New Media PLC, CNF Food Corp., CNF Candy Corp., Ari Jonathan Firestone and Mark Green**

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

**Sulja Bros. Building Supplies, Ltd., Petar Vucicevich, Kore International Management Inc., Andrew Devries, Steven Sulja, Pranab Shah, Tracey Banumas and Sam Sulja**

s. 127 and 127.1

J. Feasby in attendance for Staff

Panel: PJL/SA

TBA

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

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

**Howard Jeffrey Miller and Man Kin Cheng (a.k.a. Francis Cheng)**

s. 127

T. Center in attendance for Staff

Panel: TBA

TBA

**Shaun Gerard McErlean, Securus Capital Inc., and Acquiesce Investments**

s. 127

M. Britton in attendance for Staff

Panel: TBA

**ADJOURNED SINE DIE**

**Global Privacy Management Trust and Robert Cranston**

**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**

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

### 1.1.2 OSC Staff Notice 51-333 – Environmental Reporting Guidance – October 27, 2010

OSC Staff Notice 51-333 – *Environmental Reporting Guidance – October 27, 2010* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

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Canadian Securities Administrators

Autorités canadiennes en valeurs mobilières

# CSA STAFF NOTICE 51-333
# ENVIRONMENTAL REPORTING GUIDANCE
## October 27, 2010

## CONTENTS

# 1. INTRODUCTION

The purpose of this notice is to provide guidance to reporting issuers (other than investment funds) on existing continuous disclosure (CD) requirements relating to environmental matters under securities legislation.

This notice clarifies existing disclosure requirements relating to environmental matters and does not create any new legal requirements or modify existing ones. It is intended to assist issuers in: (1) determining what information about environmental matters needs to be disclosed, and (2) enhancing or supplementing their disclosure regarding environmental matters, as necessary.

Environmental matters include a broad range of issues, including issues related to air, land, water and waste. This notice applies to all issuers but may be more relevant to certain issuers given their particular circumstances.

## 1.1 Developments in the marketplace

The issuance of this notice has been motivated by three key developments: the impact of environmental matters on issuers, the changing regulatory landscape and increasing investor interest in environmental matters.

**Impact of environmental matters on issuers**

Issuers are increasingly recognizing the current and potential effects on their performance and operations, both positive and negative, that are associated with environmental matters. For example, environmental matters can impact an issuer by:

- interrupting operations (including supply and distribution chains, personnel and physical assets)
- resulting in material unplanned costs, such as costs to address an environmental accident
- affecting the issuer's license to operate
- affecting capital expenditure decisions and the viability of projects
- changing consumer preferences
- affecting the issuer's reputation
- altering access to and the cost of capital
- affecting the affordability and availability of insurance, and
- providing new business opportunities.

**Changing regulatory landscape**

The environmental regulatory landscape is constantly changing. Issuers need to regularly assess their disclosure obligations in light of ongoing environmental regulatory developments domestically and abroad, to the extent they may affect an issuer's operations, assets, supply chain or markets.

**Investor interest in environmental matters**

A number of investors are increasingly interested in how environmental matters affect issuers and have been requesting information about these matters from issuers through a number of avenues, such as shareholder resolutions and the issuance of surveys.

**Investor concerns regarding inadequate environmental disclosure**

Investors and other stakeholders consulted during the Ontario Securities Commission's 2009 corporate sustainability reporting initiative expressed concerns regarding the adequacy of disclosure about environmental matters. In particular, they think that, in some cases:

- material information regarding environmental matters is found in voluntary reports and not in securities regulatory filings
- the information provided is not necessarily complete, reliable or comparable among issuers, and is boilerplate disclosure that does not provide meaningful information to investors
- if the information is not included in securities regulatory filings, it is not necessarily provided in a timely manner as the prescribed timelines for CD documents under securities legislation do not apply to voluntary reporting, and
- the information is not integrated into financial reporting.

## 2. ENVIRONMENTAL INFORMATION REQUIRED TO BE DISCLOSED

National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) contains a number of disclosure requirements relating to environmental matters. In addition, National Instrument 58-101 *Disclosure of Corporate Governance Practices* (NI 58-101) and National Instrument 52-110 *Audit Committees* (NI 52-110) contain relevant disclosure requirements.

These disclosure requirements can be considered in the following groups:

- risks and related matters
- risk oversight and management
- forward-looking information (FLI) requirements, and
- impact of adoption of International Financial Reporting Standards (IFRS) on disclosure provided under NI 51-102.

To help issuers comply with these disclosure requirements, we have provided guidance below and included examples of disclosure in the Appendix.

### 2.1 Material information

In considering whether information is required to be disclosed, the determining factor is materiality. As provided in Part 1(e) of Form 51-102F1 *Management's Discussion & Analysis* (Form 51-102F1) and Part 1(d) of Form 51-102F2 *Annual Information Form* (Form 51-102F2), only material information needs to be included in CD documents.

**Test for materiality for CD documents**

The test for materiality is objective. Information relating to environmental matters is likely material if a reasonable investor's decision whether or not to buy, sell or hold securities of the issuer would likely be influenced or changed if the information was omitted or misstated. See Part 1(f) of Form 51-102F1 and Part 1(e) of Form 51-102F2.

As noted in Form 51-102F1 and Form 51-102F2, this concept of materiality is consistent with the financial reporting notion of materiality contained in the Canadian Institute of Chartered Accountants (CICA) Handbook.

**Materiality determinations**

***Process for assessing material information***

A TSX-listed issuer[1] is required to establish and maintain disclosure controls and procedures under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109). These controls and procedures include those that are designed to ensure that information required to be disclosed by an issuer in its annual filings, interim filings or other reports filed or submitted under securities legislation is accumulated and communicated to the issuer's management, including its certifying officers, as appropriate to allow timely decisions regarding required disclosure.

While materiality determinations may limit what is actually disclosed by the issuer, they should not limit the information that management considers in making its determinations.

***Considerations for determining materiality***

The key question for an issuer is whether a particular environmental matter under consideration is material and requires disclosure.

We have been advised that some issuers in the past have found determining materiality in the environmental context to be challenging. To assist issuers, we have set out below some guiding principles to consider when making materiality determinations regarding environmental matters. We note that the guiding principles may assist issuers in making materiality determinations in other contexts.

Some of the guiding principles are derived from National Policy 51-201 *Disclosure Standards* (NP 51-201), which came into force on July 12, 2002. In addition, the guiding principles are derived from decisions of the Canadian securities regulatory authorities rendered after NP 51-201 came into force, such as the Ontario Securities Commission's decision, *Re YBM Magnex International Inc* (2003), 26 OSCB 5285 (the YBM decision). We also reviewed discussions of materiality in the environmental context in sources such as:

- the CICA publication, *Executive Briefing – Climate Change and Related Disclosures* (March 2008)
- the CICA publication, *Building A Better MD&A: Climate Change Disclosures* (November 2008)
- the CICA publication, *Climate Change Briefing* (July 2009)
- the CICA publication, *Environmental, Social and Governance (ESG) Issues in Institutional Investor Decision Making* (August 2010)
- the May 2009 exposure draft of the Climate Disclosure Standards Board Reporting Framework, and
- the U.S. Securities and Exchange Commission's guidance, *Commission Guidance Regarding Disclosure Related to Climate Change* (effective February 2, 2010).

[1] References to TSX-listed issuers in this notice include references to all reporting issuers that are not venture issuers (as defined in NI 51-102).

The guiding principles below are not an exhaustive list of the factors to be considered when making materiality determinations. They are intended as a general guide, and are not meant as legal or other advice on whether a particular environmental matter is material for a particular issuer. Issuers should refer to securities legislation and NP 51-201, and as noted in Part 1(e) of Form 51-102F1 and Part 1(d) of Form 51-102F2, should exercise their judgement when determining whether information is material.

- **No bright-line test** - There is no uniform quantitative threshold at which a particular type of information becomes material. The materiality of certain information may vary between industries and even between issuers within an industry according to their particular circumstances. An event that is "significant" or "major" for a smaller issuer may not be material to a larger issuer. In our view, issuers should consider both quantitative and qualitative factors in determining materiality.[2]

- **Context -** Materiality depends on the nature and amount of the item judged in the particular circumstances of its omission or misstatement. Some facts are material on their own. When one or more facts do not appear to be material on their own, materiality must be considered in light of all the facts available. An issuer should not "lose sight of the forest for the trees" by assessing the materiality of individual facts piecemeal.[3]

- **Timing -** Determining whether information is material is a dynamic process that depends on the prevailing relevant conditions at the time of reporting. In assessing materiality, an issuer should consider whether the impact of an environmental matter might reasonably be expected to grow over time, in which case early disclosure of the matter might be important to reasonable investors. This would be particularly relevant where the issuer is in an industry with a longer operation or investment cycle or where new technologies are going to be required.[4]

- **Trends, demands, commitments, events and uncertainties -** Generally, the time horizon of a known trend, demand, commitment, event or uncertainty may be relevant to an issuer's assessment of materiality. As with other types of disclosure, materiality in cases of a known environmental trend, demand, commitment, event or uncertainty turns on an analysis of:
  - the probability that the trend, demand, commitment, event or uncertainty will occur, and
  - the anticipated magnitude of its effect.[5]

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[2] This guiding principle has been derived from sources such as subsection 4.2(1) of NP 51-201, OSC Staff Notice 51-716 *Environmental Reporting* (February 27, 2008) and Form 41-101F1 *Information Required in a Prospectus*, General Instruction 3.

[3] This guiding principle has been derived from sources such as paragraphs 94 and 101 of the YBM decision.

[4] This guiding principle has been derived from sources such as the CICA publication, *Building A Better MD&A: Climate Change Disclosures* (November 2008) and the May 2009 exposure draft of the Climate Disclosure Standards Board Reporting Framework.

[5] This guiding principle has been derived from sources such as paragraph 92 of the YBM decision and item 1.2 of Form 51-102F1.

- **Err on side of materiality -** If there is any doubt about whether particular information is material, we encourage issuers to err on the side of materiality and disclose the information.[6]

## 2.2 Environmental risks and related matters

There are five key disclosure requirements in NI 51-102 that relate to environmental matters:

- environmental risks
- trends and uncertainties
- environmental liabilities
- asset retirement obligations, and
- financial and operational effects of environmental protection requirements.

Disclosure about these matters, if material, is important as each provides insight into an issuer's risk profile.

### Environmental risks

Item 5.2 of Form 51-102F2 requires an issuer to disclose risk factors relating to the issuer and its business. The annual information form (AIF) should provide insight into what the issuer believes are the risks relating to the issuer and its business so that investors can assess the effect of these risks on the issuer's operations and/or financial performance. This includes environmental risks and any other matters that would be most likely to influence an investor's decision to purchase the issuer's securities.

**Comments**

An issuer should assess whether, due to the nature of its operations, it needs to address environmental risks in its CD documents. All relevant environmental risks should be considered in deciding what to disclose. Generally, risks that may impact an issuer's business and operations can be divided into five categories: litigation, physical, regulatory, reputation and business model.

As with any other type of disclosure, material risks should be disclosed in a meaningful way, avoiding boilerplate disclosure. An issuer needs to disclose both the risk and the factual basis for it. The issuer should consider the following questions when identifying the material risks it faces.

[6] This guiding principle has been derived from sources such as subsection 4.2(2) of NP 51-201.

| Type of risk | Questions for issuers to consider |
|---|---|
| **Litigation risks** | • Is the issuer a party to any environmental litigation? What is the anticipated liability exposure under those claims? What is the likelihood of those claims succeeding?<br><br>• Are there any such legal proceedings known to be contemplated? |
| **Physical risks** | • How is the issuer likely to be affected by physical risks of environmental matters, such as the impacts of industrial contamination, changing weather patterns and water availability?<br><br>• Impacts could include:<br>o property damage<br>o health and safety issues for employees and to members of the public<br>o disruptions to operations, including manufacturing operations or the transport of manufactured products<br>o disruptions to operations of major customers or suppliers<br>o increased insurance claims and liabilities for insurance and reinsurance issuers, and<br>o increased insurance premiums and deductibles, or a decrease in the availability or loss of coverage.<br><br>• What risk management, adaptation and mitigation strategies has the issuer adopted, or is the issuer planning to adopt in the near future? What are the expected costs of those strategies? |
| **Regulatory risks** | • What are the actual and expected impacts of current and likely environmental regulation on the issuer's business and strategy? Regulations may include environmental permits, reporting requirements, carbon pricing systems, carbon limits and trading systems, energy efficiency standards and building codes. They can include both applicable domestic and foreign requirements. The issuer should consider specific risks it faces as a result of environmental legislation or regulation, and avoid generic risk factor disclosure. Where the exact limits or targets are uncertain, an assumption of ranges may be used to determine how certain requirements might reasonably be expected to affect an issuer.<br><br>• What are the applicable and anticipated environmental regulatory requirements? Is the issuer currently in material compliance with those |

| Type of risk | Questions for issuers to consider |
|---|---|
| | requirements? What are the current and anticipated future costs of compliance (and can these costs be broken down by category such as the rehabilitation of contaminated sites or the disposal of hazardous materials)? Where quantification of a risk or cost is uncertain, the disclosure of the factual basis for the risk will help investors in understanding it. |
| **Reputational risks** | • How is the issuer addressing environmental matters? How an issuer addresses environmental matters can have a positive or negative impact on core intangible assets such as brand value, consumer confidence, employee loyalty, ability to attract financial capital and obtaining regulatory approval of projects.<br><br>• What is the impact on the issuer's results and operations arising from its interaction on environmental matters with local communities and other parties affected by the issuer's operations? An issuer's relationship with local communities can affect an issuer's ability to operate and the costs of doing so. |
| **Risks relating to business model** | • Have legal, technological, political and scientific developments regarding environmental matters created new material opportunities or risks for the issuer? For example, possible indirect consequences or opportunities may include:<br>o changes to production practices<br>o changes due to emerging technologies<br>o decreased demand for goods that have a negative impact on the environment or fail to meet customer standards<br>o increased demand for goods that have less of an impact on the environment than competing products<br>o changes to tax incentives and subsidies<br>o increased competition to develop innovative products<br>o increased demand for generation and transmission of energy from alternative energy sources, and<br>o decreased demand for services related to carbon-based energy sources, such as drilling services or equipment maintenance services. |

## Trends and uncertainties

As provided in Part 1(a) of Form 51-102F1, MD&A is a narrative explanation, through the eyes of management, of how an issuer performed during the period covered by the financial statements, and of the issuer's financial condition and future prospects. MD&A should, among other things, discuss: (i) material information that may not be fully reflected in the financial statements, such as contingent liabilities or other contractual obligations,

and (ii) important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in the future.

Item 1.4(g) of Form 51-102F1 requires the issuer to discuss its analysis of its operations for the most recently completed financial year, including commitments, events, risks or uncertainties that it reasonably believes will materially affect the issuer's future performance.

**Comments**

An issuer should examine to what extent trends and uncertainties regarding environmental matters materially impact its financial performance and future prospects. Disclosure decisions concerning these trends and uncertainties should generally involve:

- consideration of financial, operational and other information known to the issuer
- identification of known trends and uncertainties, and
- an assessment of whether these trends and uncertainties will have, or are reasonably likely to have, a material impact on the issuer's liquidity, capital resources or results of operations.

There is no specified future time period that must be considered in assessing the impact of a known trend or uncertainty that is reasonably likely to occur. The necessary time period will depend on an issuer's particular circumstances and the particular trend or uncertainty under consideration. Furthermore, the time horizon of a known trend or uncertainty may be relevant to an issuer's assessment of its materiality and whether or not the impact is reasonably likely.

An issuer should disclose:

- what has been, and is reasonably likely to be, the impact of environmental trends or uncertainties on revenues, expenditures and cash flows, and
- the impact environmental trends or uncertainties have on its financial condition and liquidity, if any.

| **Examples of how revenues and expenses may be impacted by environmental matters** | |
|---|---|
| **Revenues** | • changes in consumer preference or demand for goods and services due, in whole or in part, to environmental matters or trends<br>• changes in supply chain requirements related to environmental matters<br>• new rules requiring design changes to products<br>• the sale of, or royalties on, innovative technologies<br>• delayed or denied regulatory environmental approvals<br>• the availability and price of emissions credits or offsets |

| Examples of how revenues and expenses may be impacted by environmental matters | |
|---|---|
| **Expenses** | • the need to retrofit existing facilities to address physical, health and safety, or regulatory constraints<br>• research and development activities related to more environmentally efficient operations and processes<br>• purchase and implementation of new information systems to measure and record natural resource impacts (including, for example, greenhouse gas emissions and water and energy usage)<br>• increased or new insurance coverage or premiums<br>• purchases of allowances or offsets to meet regulatory emissions requirements<br>• penalties for failure to meet government-mandated reduction targets<br>• repairing or rebuilding facilities impacted by adverse weather events<br>• investments in productive capacity that embody new "green" or more energy-efficient technologies<br>• investments in projects to generate offsets<br>• financing costs related to expenditures |

## Environmental liabilities

An environmental liability can include a legal obligation to make a future expenditure due to the past or ongoing manufacture; use, release or threatened release of a particular substance, or other activities that adversely impact the environment.

Similarly, a potential environmental liability can include a potential legal obligation to make a future expenditure due to the ongoing or future manufacture; use, release or threatened release of a particular substance, or other activities that adversely impact the environment. An obligation is potential when it depends on future events or when a law or regulation creating the liability is not yet in force. With a potential environmental liability, an issuer may have the opportunity to prevent the liability from occurring by altering its own practices or adopting new practices to avoid or reduce the adverse effect on the environment.

**Examples of environmental liabilities**

- compliance obligations related to laws and regulations or other binding requirements that apply to the manufacture, use, disposal and release of substances, and other activities that may adversely affect the environment
- existing and future site remediation obligations
- obligations to pay civil, administrative and criminal fines and penalties for statutory or regulatory non-compliance
- obligations to compensate private parties for personal injury, property damage and economic loss
- obligations to pay punitive or special damages, or make or maintain specific reserves for those damages
- obligations to pay for natural resource damages

**Comments**

There are two broad categories of environmental liabilities that are to be considered for disclosure: those that are reflected in the issuer's financial statements and those that are not.

***Estimates reflected in financial statements***

Where measurement of an environmental liability involves a critical accounting estimate (as defined in Form 51-102F1), certain disclosure is required. Specifically, item 1.12 of Form 51-102F1 requires management of TSX-listed issuers to include an analysis of critical accounting estimates in their MD&A.

We are of the view that in order for a TSX-listed issuer to meet the requirements of item 1.12 of Form 51-102F1, the issuer should quantify the accounting estimate where quantitative information is reasonably available and would provide material information to investors. Quantitative disclosure could include matters such as the amount claimed by a plaintiff, if publicly disclosed. It should also identify and explain that the estimate was highly uncertain at the time it was made and provide a detailed discussion of the estimate, which may include a sensitivity analysis or disclosure of the upper and lower ends of the range of estimates from which the recorded estimate was selected.

***Potential environmental liabilities not reflected in financial statements***

Part 1(a) of Form 51-102F1 states that an issuer's MD&A should discuss:

- material information that may not be fully reflected in the issuer's financial statements, and
- important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in the future.

An issuer may have potential environmental liabilities that are not reflected in the financial statements because their long-term or contingent nature can make them particularly difficult to quantify. In addition, an issuer may have several potential environmental liabilities that have not been recognized because they are not individually

material, but it is possible that together they may indicate an underlying risk or trend that could be material to the issuer over the long-term.

We are of the view that a discussion of material potential environmental liabilities should be included in an issuer's CD documents whether or not the liability has been accrued in the financial statements or has been disclosed in the notes to the financial statements. The objective of this disclosure is to help investors understand the nature of potential liabilities, their likely timing and magnitude, and their probability of occurring.

## Asset retirement obligations

An issuer is required to include certain disclosure about asset retirement obligations (AROs) in its financial statements, if applicable.

Item 1.2 of Form 51-102F1 requires an analysis of an issuer's financial condition, results of operations and cash flows, which includes a discussion of commitments, events or uncertainties that are reasonably likely to have an effect on the issuer's business. Item 1.6 of Form 51-102F1, and the corresponding instructions for this item, require TSX-listed issuers to provide a summary, in a table, of contractual obligations for the issuer's balance sheet conditions or income or cash flow, including payments due for each of the next five years and thereafter. Other long-term obligations must be disclosed in the table. In addition, as noted above, item 1.12 of Form 51-102F1 requires an analysis of critical accounting estimates for TSX-listed issuers.

**Comments**

Assets are considered retired if they are sold, abandoned, recycled or disposed of, but do not include assets temporarily removed from service. An ARO is a requirement to perform certain procedures, rather than a promise to pay cash. Legal obligations resulting from the retirement of an asset could include:

- government actions, such as laws or regulations
- written or oral agreements between entities, and
- a promise to a third party that imposes a reasonable expectation of performance.

We are of the view that if an ARO is material to an issuer, in addition to providing the required financial statement disclosure, the issuer should provide supplemental disclosure in its MD&A. Specifically, an issuer should include in its MD&A a comprehensive discussion of commitments, events or uncertainties, including AROs, that are reasonably likely to have an effect on the issuer's business. AROs are generally incurred over more than one reporting period, and information should be provided for all periods that may be materially impacted.

A discussion of AROs should indicate the associated asset to be reclaimed or restored. If environmental remediation costs are applicable, material, and information about these costs is reasonably available, that information should be disclosed. This discussion should set out the costs of compliance with environmental

legislation, including:

- the costs associated with the disposal of hazardous materials, and
- the costs associated with the implementation of reclamation technologies.

The discussion should also set out the current and estimated future impact of those costs on the issuer's financial results.

Issuers should recognize that laws differ from one jurisdiction to another, and evolve from time to time within jurisdictions. Issuers should be aware that a new law or regulation could give rise to a new ARO as a result of its past activities.

An issuer should also evaluate whether AROs are material long-term obligations. If so, we are of the view that TSX-listed issuers should include these AROs in the summary contractual obligations table in their MD&A as required under item 1.6 of Form 51-102F1. The payments due for each of the next five years and thereafter in respect of these AROs would need to be quantified in the table.

We are of the view that in most cases AROs are critical accounting estimates, and TSX-listed issuers should include an analysis of these estimates in their MD&A as required by item 1.12 of Form 51-102F1.

## Financial and operational effects of environmental protection requirements

Item 5.1(1)(k) of Form 51-102F2 requires an issuer to disclose the financial and operational effects of environmental protection requirements on the issuer's capital expenditures, earnings and competitive position in the current financial year and the expected effect in future years.

**Comments**

In discussing the financial and operational effects of environmental protection requirements, an issuer should disclose the costs associated with these requirements. This discussion should include:

- a quantification of the costs, where this information is reasonably available and would provide material information to investors
- anticipated trends in respect of these costs, and
- the potential impact of these costs on the issuer's financial and operational results.

For example, with respect to existing provisions relating to new or current environmental laws and regulations, an issuer should disclose material estimated capital expenditures for environmental control facilities for the remainder of the issuer's current fiscal year and its succeeding fiscal year and for such future periods as the issuer may deem material.

## 2.3 Risk oversight and management

Investors have indicated that they would like information to assess whether directors are appropriately focusing on risk management, including environmental risk management. There is no single model for risk oversight and management and the structures and practices that are most appropriate will vary among issuers.

Two key sets of disclosure requirements provide insight into an issuer's oversight and management of environmental risks: environmental policies implemented by the issuer and board governance.

### Environmental policies fundamental to operations

If an issuer has implemented environmental policies that are fundamental to its operations, item 5.1(4) of Form 51-102F2 requires the issuer to describe these policies and the steps it has taken to implement them.

**Comments**

In our view, the term "policy" should be broadly construed. It may include policies for sustainable development, community relations, the use and disposal of toxic or otherwise hazardous materials, prevention of spills, recycling, conservation of water and the reduction of greenhouse gas emissions.

When discussing environmental policies fundamental to its operations, an issuer should evaluate and describe the impact or potential impact these policies may have on its operations. This discussion may include a quantification of the costs associated with these policies, where quantitative information is reasonably available and would provide meaningful information to investors.

The issuer should also explain the purpose of these environmental policies, including the risks the policies are designed to address. This may include a discussion of the policy's effectiveness in meeting that purpose, as well as how the issuer is monitoring and updating the policy.

Environmental policies can be a tool used by issuers to manage risks associated with environmental matters. As noted above, an issuer is required to disclose its environmental risks and disclosure of environmental policies can explain how the issuer is managing those risks. This information may be of interest to investors, who may want to assess whether the risk management strategies employed by the issuer are adequate and appropriate for the types of risk in question and the issuer's risk tolerance.

## Board mandate and committees

Understanding how the board manages risk, including environmental risk, is useful for investors.

### Board mandate

Section 3.4 of National Policy 58-201 *Corporate Governance Guidelines* states that the board should adopt a written mandate in which it explicitly acknowledges responsibility for, among other things:

- adopting a strategic planning process and approving, on at least an annual basis, a strategic plan which takes into account, among other things, the opportunities and risks of the business, and
- identifying the principal risks of the issuer's business and ensuring the implementation of appropriate systems to manage those risks.

Item 2 of Form 58-101F1 *Corporate Governance Disclosure* (Form 58-101F1) requires TSX-listed issuers to disclose the text of the board's written mandate, or if the board does not have a written mandate, to describe how the board delineates its role and responsibilities.

### Board committees

There are two relevant disclosure requirements relating to board standing committees and audit committees.

| Board structure | Related disclosure requirement |
|---|---|
| **Board standing committees** | Item 8 of Form 58-101F1 requires TSX-listed issuers to disclose if their boards have standing committees other than the audit, compensation and nominating committees, and if so, to identify the committees and describe their function. These committees may include environmental or health and safety board committees. The mandate of those committees may include responsibility for environmental risk management. |
| **Audit committees** | Item 1 of Form 52-110F1 *Audit Committee Information Required in an AIF* and Form 52-110F2 *Disclosure by Venture Issuers* requires issuers to disclose the text of the audit committee's charter in the AIF. The audit committee may have responsibility for risk management, including environmental risk management. |

### Comments

Disclosure regarding oversight and management of environmental risks should indicate:

- the board's responsibility for oversight and management of risks, including environmental risks, if applicable, and
- any board and management-level committee to which responsibility for oversight and management of risks, including environmental risks, has been delegated.

The disclosure should provide insight into:

- the development and periodic review of the issuer's risk profile
- the integration of risk oversight and management into the issuer's strategic plan
- the identification of significant elements of risk management, including policies and procedures to manage risk, and
- the board's assessment of the effectiveness of risk management policies and procedures, where applicable.

## 2.4 Impact of adoption of IFRS

Most Canadian publicly accountable enterprises, which include reporting issuers, will be required to use IFRS as issued by the IASB for financial years beginning on or after January 1, 2011 (the changeover).

The changeover to IFRS from existing Canadian GAAP may have a significant impact on financial reporting and other business activities of reporting issuers. IFRS contain some important differences from Canadian GAAP for recognition and measurement of provisions, including environmental provisions. Under IFRS, issuers may be required to accrue more environmental liabilities, at higher amounts, and provide more disclosure regarding these liabilities.

**Key differences under IFRS (as of the date of this notice)**

- **When a provision exists**. A liability exists under Canadian GAAP if there is a legal, equitable or constructive obligation arising as a result of a transaction or event. Under Canadian GAAP, an equitable obligation is a duty based on ethical or moral considerations, and a constructive obligation is one that can be inferred from the facts in a particular situation. Under IFRS, a provision is recorded if there is a present (legal or constructive) obligation as a result of a past event. A constructive obligation arises when an entity creates a valid expectation to other parties that it will discharge certain responsibilities based on an established pattern of past practice, published policies, or has indicated to other parties that it will accept certain responsibilities. Since IFRS provide a more precise definition and specific examples of a constructive obligation, a provision may be recognized at a different point in time depending on past practice of determining when an equitable or contractual obligation exists under Canadian GAAP.

- **Recognition threshold**. Under Canadian GAAP, a contingent liability is recognized when it is likely that a future event will confirm a liability has been incurred and the amount of the loss can be reasonably estimated. Under IFRS, a provision is recognized when there is a present obligation, it is more likely than not that an outflow of resources will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation. This could potentially lead to situations where a provision may be recognized under IFRS, but was not previously recognized under Canadian GAAP.

- **Amount to be accrued**. When measuring provisions, Canadian GAAP allows issuers to accrue provisions at the low end of the range of estimates when no outcome is more likely than the others. Under IFRS, the mid-point of the range is used to measure the provision when each outcome in a range is as likely as any other. This could potentially lead to provisions being accrued at higher amounts under IFRS.

- **Note disclosure requirement**. IFRS disclosure requirements of provisions and contingent liabilities will be significant compared to current Canadian GAAP disclosure requirements. Under IFRS, issuers will be required to disclose a provision continuity schedule for each class of provision, disclosing the beginning and ending carrying amounts, additional provisions made in the period, amounts used in the period, unused amounts reversed during the period and changes resulting from the passage of time and any revisions to the discount rate. Issuers will also have to disclose a description of the nature of the obligation, the expected timing of any resulting outflows of economic benefits and an indication of the uncertainties about the amount or timing of those outflows and where necessary, they will have to disclose the major assumptions made concerning future events.

## 2.5 Forward-looking information requirements

Forward-looking information (FLI) is defined in securities legislation to include disclosure regarding possible events, conditions or results of operations that is based on assumptions about future economic conditions and courses of action. It includes future oriented financial information (FOFI) with respect to prospective results of operations, financial position or cash flows that is presented either as a forecast or a projection.

There are disclosure requirements regarding FLI in Part 4A and regarding FOFI and financial outlooks in Part 4B of NI 51-102. These requirements apply to CD documents (subject to certain exceptions as set out in NI 51-102), voluntary reports and websites, but do not apply to oral statements.

**Comments**

Some issuers disclose goals or targets regarding environmental matters in their CD documents, in voluntary reports or on their websites. Examples include:

- The issuer plans to reduce its greenhouse gas emissions by X by 20XX.
- The issuer's goal is to reduce its water usage by x% by 20XX. This reduction may lead to an increase in expenses by $X in the short-term as alternative production methods are developed.

These disclosed targets or goals may or may not be labelled as a "target", "goal", "forecast" or "projection".

In considering whether these disclosed goals and targets can be FLI, the issuer should make the following assessments:

- Is the target or goal "possible" to achieve based on assumptions about future economic conditions and courses of actions?
- If yes, is the target or goal material information?

If the target or goal is material information, the document containing the target or goal must comply with the FLI requirements in Part 4A of NI 51-102. If the disclosed target or goal also is FOFI or a financial outlook, the document must comply with the FOFI requirements in Part 4B of NI 51-102.

Additional guidance regarding these requirements is set out in CSA Staff Notice 51-330 *Guidance Regarding the Application of Forward-Looking Information Requirements under NI 51-102 Continuous Disclosure Obligations*. Issuers and their directors and officers also should refer to policies and other statements regarding defence for misrepresentations in FLI, such as OSC Policy 51-604 *Defence for Misrepresentations in Forward-Looking Information*.

**Impact of adoption of IFRS**

Where these goals and targets are FOFI or financial outlooks, they must be based on the accounting policies that the issuer expects to use to prepare its historical financial statements for the period covered by the FOFI or

the financial outlooks. In light of the changeover to IFRS, where an issuer provides FOFI or financial outlooks for periods that extend into 2011 and beyond, the impact of the conversion to IFRS should be considered.

# 3. GOVERNANCE STRUCTURES AROUND ENVIRONMENTAL DISCLOSURE

## 3.1 Review, approval and certification of disclosure

An issuer's environmental disclosure in CD documents is subject to three levels of oversight: review by the audit committee, approval by the board of directors and certification by the CEO and CFO.

| Persons responsible | Oversight function |
|---|---|
| **Audit committee review** | Under NI 52-110, an audit committee is required to review an issuer's financial statements and MD&A before the issuer publicly discloses this information. |
| **Board approval** | Under NI 51-102, the board must approve the annual and interim financial statements and MD&A. The board may delegate approval of interim financial statements and MD&A to its audit committee. |
| **CEO and CFO certification** | NI 52-109 requires certifying officers to certify, among other things, that the issuer's financial statements and the other financial information included in the issuer's MD&A and AIF, if applicable, fairly present, in all material respects, the issuer's financial condition, results of operations and cash flows. |

**Comments**

In our view, meaningful discussion of material environmental matters, where applicable, in an issuer's MD&A and AIF is important to achieve fair presentation of the issuer's financial condition in all material respects and for CEOs and CFOs to be able to certify that the issuer's filings do not contain any misrepresentations.

In fulfilling their oversight functions relating to environmental disclosure, audit committees, boards and certifying officers should consider:

- what environmental matters are reasonably likely to impact the issuer's business and operations in the foreseeable future
- what are the magnitude, sources and nature of the issuer's current and anticipated environmental risks and liabilities
- what has been, and is likely to be, the impact of environmental matters on revenues, expenditures and cash flows
- what impact, if any, could environmental matters have on the issuer's financial condition and liquidity, and
- what assessment has management made regarding the materiality to investors about the information on environmental matters, and are the disclosures made in the financial statements, MD&A and AIF consistent with this assessment.

## 3.2 Controls and procedures

To support the review, approval and certification process, an issuer must have adequate controls and procedures in place to provide rigour around its disclosure of environmental matters. Both the audit committee and certifying officers have responsibilities in establishing these underlying controls and procedures.

| Persons responsible | Controls and procedures |
|---|---|
| **Audit committee responsibilities** | Under NI 52-110, the audit committee must be satisfied that adequate procedures are in place for the review of the issuer's public disclosure of financial information extracted or derived from the issuer's financial statements (other than the issuer's financial statements, MD&A and annual and interim earnings press releases), and must periodically assess the adequacy of those procedures. |
| **Disclosure controls and procedures** | Under NI 52-109, certifying officers of TSX-listed issuers must certify that they are responsible for establishing and maintaining:<br>• disclosure controls and procedures, and<br>• internal control over financial reporting.<br><br>In addition, certifying officers of TSX-listed issuers must certify that they have:<br>• subject to disclosed limitations, designed these controls and procedures, or caused them to be designed, and<br>• evaluated their effectiveness, or caused them to be evaluated under their supervision. |

**Comments**

Directors and certifying officers need to know that management has implemented systems, procedures and controls to gather reliable and timely environmental information for both management analysis and decision-making purposes and disclosure to investors, regulators and other stakeholders. Consideration should also be given to whether the information about environmental matters is subject to the same governance processes and controls and procedures as financial reporting.

The establishment of appropriate data collection and reporting systems, and related controls and procedures, requires a decision on the part of management and dedication of appropriate resources. Some issuers have invested significantly in establishing reliable measurement and reporting systems related to environmental information, but as yet many have not. The reliability of these systems and controls is a necessary underpinning for securities regulatory filings, including CEO and CFO certifications under NI 52-109.

## 3.3 Integration of financial and voluntary reporting

Some issuers choose to provide information regarding environmental matters in voluntary reports[7], in responses to surveys[8] and on their websites. Voluntary reporting can provide important information to investors outside of issuers' CD documents.

**Completeness of CD documents**

Issuers should be aware that some of the information they may be reporting pursuant to these voluntary mechanisms also may be required to be disclosed in their CD documents if that information is material under securities legislation. It is not sufficient for issuers to discuss material environmental matters required by securities legislation solely on their website, or in voluntary reports and responses to surveys.

**Reliability of voluntary reporting**

Issuers should ensure that their websites, voluntary reports and responses to surveys do not contain any misrepresentations. While these documents and other written communications are not required to be filed with the securities regulatory authorities, they may be subject to the provisions under securities legislation regarding FLI and civil liability for secondary market disclosure. In addition, issuers should ensure that the disclosure in these documents and on their websites is consistent with the disclosure in their CD documents.

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[7] Voluntary reports can be prepared in accordance with a number of sustainability reporting frameworks, such as the framework developed by the Global Reporting Initiative (GRI). The GRI framework sets out the principles and indicators that issuers can use to measure and report their economic, environmental and social performance.

[8] One example of a survey is the questionnaire requesting carbon and climate change information circulated by the Carbon Disclosure Project (CDP) to large issuers. CDP is an investor coalition that includes 534 signatory investors with assets under management of US$64 trillion. CDP's request for information covers management's views on the risks and opportunities related to climate change, greenhouse gas emissions accounting, management's strategy to reduce emissions/minimize risk and capitalize on opportunity, and corporate governance with regard to climate change.

**Guidance for board and management on voluntary reports**

Boards should ask questions such as:

- What assessment has management made of the materiality to investors of information about environmental matters? Are disclosures made in CD documents consistent with this assessment?
- Is the material information in voluntary reports also disclosed on a timely basis in securities regulatory filings?
- How has management ensured that information reported on corporate websites or in voluntary reports is consistent with that provided in their CD documents?
- Does any FLI in the voluntary reports comply with FLI requirements under securities legislation?

## 4. CONCLUSION

Issuers should consider the guidance in this notice when preparing their CD documents to ensure that their disclosure of environmental matters complies with securities legislation and provides investors with meaningful information for making investment decisions. We will continue to monitor disclosure of environmental matters as part of our ongoing CD review program.

Questions regarding this notice may be referred to:


**Jo-Anne Matear**
Assistant Manager, Corporate Finance
Ontario Securities Commission
Tel: 416-593-2323
Email: jmatear@osc.gov.on.ca

**Christine Krikorian**
Accountant, Corporate Finance
Ontario Securities Commission
Tel: 416-593-2313
Email: ckrikorian@osc.gov.on.ca

**Cheryl McGillivray**
Manager, Corporate Finance
Alberta Securities Commission
Tel: 403-297-3307
Email: Cheryl.McGillivray@asc.ca

**Alida Gualtieri**
Manager, Continuous Disclosure
Chef du service de l'information continue
Direction des fonds d'investissement et de l'information continue
Autorités des marchés financiers
Tel: 514-395-0337 ext. 4401
Email: Alida.Gualtieri@lautorite.qc.ca

**Bob Bouchard**
Director, Corporate Finance
Manitoba Securities Commission
Tel: 204-945-2555
Email: bbouchard@gov.mb.ca

**Daphne Wong**
Analyst, Office of Domestic and International Affairs
Ontario Securities Commission
Tel: 416-593-8125
Email: dwong@osc.gov.on.ca

**Allan Lim**
Manager, Corporate Finance Division
British Columbia Securities Commission
Tel: 604-899-6780
Email: alim@bcsc.bc.ca

**Anne Marie Landry**
Securities Analyst
Alberta Securities Commission
Tel: 403-297-7907
Email: AnneMarie.Landry@asc.ca

**Wendy Morgan**
Legal Counsel / Conseillère juridique
New Brunswick Securities Commission/
Commission des valeurs mobilières du Nouveau-Brunswick
Tel: 506-643-7202
Email: Wendy.Morgan@gnb.ca

# APPENDIX – EXAMPLES OF ENTITY-SPECIFIC DISCLOSURE

## Introduction

To assist issuers in meeting the existing disclosure requirements relating to environmental matters, we have provided some examples of entity-specific disclosure. The examples are for illustration purposes only and are based on assumed facts. They should not be viewed as an exhaustive list of environmental matters required to be disclosed, nor are they applicable to all issuers or comprehensive in all cases. The examples assume that the information disclosed is material in the particular case.

Issuers are reminded that their disclosure should be tailored to their particular circumstances, and that their CD documents must comply with all applicable disclosure requirements.

The examples of entity-specific disclosure are set out under the following headings:

- environmental risks
- trends and uncertainties
- environmental liabilities
- asset retirement obligations
- financial and operational effects of environmental protection requirements
- environmental policies fundamental to operations, and
- board mandate and committees.

### Forward-looking information

Some of the examples below contain forward-looking information, future oriented financial information and financial outlooks. Refer to section 2.5 of the notice and CSA Staff Notice 51-330 *Guidance Regarding the Application of Forward-Looking Information Requirements under NI 51-102 Continuous Disclosure Obligations* for guidance on the applicable disclosure requirements.

## Environmental risks

**Example 1 – Litigation risk**

The company is currently subject to litigation regarding environmental matters, and may be involved in disputes regarding environmental matters which may result in litigation. The results of litigation cannot be predicted. If the company is not able to resolve the litigation and disputes favourably, there may be a material adverse impact on its financial condition, cash flows and results of operations.

Below is a summary of potentially material environmental litigation to which the company is a party.

**[Insert name of advanced civil litigation matter]**

As noted below, the company has recorded a provision in respect of [insert name of advanced litigation]. Please see the discussion under x for more information [see Example 1 for Environmental Liabilities].

**[Insert name of early stage civil litigation matter]**
The company has been named as a defendant in an action filed in Province X, where the plaintiffs have alleged that the company's operations have contaminated the local water supply, resulting in health and economic damages to local fisheries. The statement of claim seeks damages in the amount of $x and punitive damages in the amount of $x. The company filed a statement of defence on x, 20xx. It believes this action lacks legal or factual merit and intends to vigorously defend this action. No amounts have been accrued in the financial statements for any potential loss under this action.

No trial date has been set at this time. While the company believes the action is without merit, an adverse outcome could result in payment of significant damages or penalties and significant capital expenditures which cannot be determined at this time. Defence costs associated with the action could also be significant, and may not be completely covered by the company's insurance. These payments or expenditures could significantly affect the company's financial condition, cash flows and results of operations.

**[Insert name of regulatory proceeding]**
On x, 20xx, the government in Province X charged the company under Act X, which includes the following prohibition: X. The charge was laid under section x of Act X. The Crown alleged that the company's operations damaged the environmental habitat of wildlife.

The trial commenced on x and is ongoing. The company has pleaded not guilty and plans to continue to vigorously defend the action over the course of the trial, which is scheduled to conclude in x, 20xx. At this stage, the company continues to believe that it is not in violation of the requirements of Act X.

The charges brought could have significant consequences for the company because it questions the legality of certain aspects of the company's operations, and may expose the company to civil lawsuits and uncertainty regarding its operations.

At this stage, the likelihood of a guilty verdict and the materiality of a conviction are not reasonably determinable. As a result, no amounts have been accrued in the company's financial statements in respect of this action. If the company is found guilty, the penalties range from $x to $x under Act X.

Except as noted above, the issuer is not aware of any environmental litigation outstanding, threatened or pending against it as of the date hereof that would be material to its financial condition, cash flows and results of operations.

**Example 2 – Physical risk**

The company's supply chain is based on agricultural commodities produced in Countries X, Y and Z. In particular, product X is a key component of the company's business. Sales of product X represent x% of the company's total revenues in its most recently completed financial year. Forty-five percent of the company's supply of product X is grown in Country X.

Country X is highly susceptible to hurricanes and other extreme weather events. In x of the last x years, Country X has experienced hurricanes that have resulted in significant damages to its crops of product x.

Extreme weather events, such as hurricanes, can impact the overall availability and quality of product X. This in turn may impact:

- the company's ability to buy sufficient quantities of product X, or
- the price the company pays for product X.

Any interruptions to the company's supply of product X or changes in the price that the company pays for product X could lower the company's revenues, increase its operating costs and impact its overall financial results. For example, the company currently estimates that a 1% increase in the price of product X will lead to an increase in the company's costs by $x. During 20xx, the company's costs associated with product X increased by x% in the x months following Hurricane X in Country X. This led to a corresponding decrease in the company's revenues, as it was not able to fully recover the increase in its costs through higher sales revenues.

**Example 3 – Regulatory risk**

The company is subject to a variety of environmental and land use laws and regulations in Provinces X and Y, as well as the laws and regulations of the Canadian federal government. These laws and regulations mandate, among other things:

- the maintenance of air and water quality standards
- land reclamation
- regulation of greenhouse gas (GHG) emissions, and
- energy efficiency standards.

The laws and regulations require the company to obtain various environmental registrations, licenses, permits, inspections and other approvals in order to operate. They impose certain standards and controls on the company's activities.

The company operates x number of manufacturing facilities in Provinces X and Y. X per cent of these facilities emit more than 25,000 tonnes of carbon, and x% of these facilities emit more than 50,000 tonnes of carbon. The following is a discussion of GHG regulation that has, or the company anticipates will have, a significant impact on its operations.

**Current regulation in Province X**

In Province X, the government has announced Act X, which imposes GHG emissions limits on facilities emitting greater than x tonnes of carbon dioxide equivalent per year. Act X calls for emission reductions of x% beginning in 20xx. The company must file compliance reports that describe the actions the company took during the year to meet its emissions target for the year. To date, the company is in compliance with all GHG emission reductions required under Act X and compliance with these requirements has not had a material effect on the company's financial condition, cash flows and results of operations. The company anticipates that the future costs associated with compliance with Act X to be incurred through 20xx will be in the range of $x to $x, which includes $x spent to date. In planning its activities, the company has assumed a carbon price of $x, and has conducted scenario analysis based on carbon prices within the range of $x to $x.

**Future regulation contemplated**

In addition to the requirements of Act X, the company's facilities and operations will be subject to future changes to environmental legislation at the provincial and federal levels. The company expects the imposition of additional regulations, including X legislation for air pollution and further GHG regulations. The following discussion is a summary of anticipated future developments to environmental legislation that are expected to have a significant impact on the company.

In 20xx, Province Y joined the X Climate Initiative, committing to implement a GHG emissions or cap-and-trade regime by 20xx. In 20xx, Regulation Y was enacted under the Environmental Act Y in Province Y. Regulation Y requires facilities that emit x tonnes of carbon dioxide equivalent or more per year to monitor, measure and report emissions on an annual basis. The purpose of Regulation Y is to support the implementation in Province Y of a cap-and-trade system for emissions trading. Province Y will continue to work with the Canadian federal government and other members of the X Climate Initiative to harmonize emissions reporting requirements. In the event that Province Y establishes a cap-and-trade system, the company may need to purchase GHG allowances via auction to offset the amount of GHG they will emit into the atmosphere. The company currently does not believe that its operations will be adversely affected by Regulation Y.

The company is currently developing and implementing GHG emissions reduction programs to both reduce GHG emissions and generate GHG emissions reduction credits or offsets for use by the company. The company is committed to reducing GHG emissions within a range of x% to x% from 20xx to 20xx.[1] There is no guarantee that the company will be successful in developing and implementing these programs, and it is too early to predict the exact costs of compliance.

There is uncertainty around the impact of environmental laws and regulations, including those currently in force and proposed laws and regulations. It is not possible to predict the outcome and nature of certain of these requirements on the company and its business at the current time. However, failure to comply with current and proposed regulations can have a material adverse impact on the company's business and results of operations by substantially increasing its capital expenditures and compliance costs, its ability to meet its financial obligations, including debt payments and the payment of dividends. It may also lead to the modification or cancellation of operating licenses and permits, penalties and other corrective actions.

[1] This target constitutes forward-looking information. See the introduction above for guidance on the applicable disclosure requirements.

**Example 4 – Regulatory risk**

The company manufactures chemical x at Facility X in Country X. Chemical x is used in the production of chemical y, which is manufactured at the company's Facility Y in Country Y. The company plans to expand its production of chemical y, which requires an increase in the production of chemical x and an expansion to Facility X and Facility Y. Pending regulatory approval, the company expects the expansions to Facility X and Facility Y to become operational in 20xx. The increased production of chemical y is expected to generate earnings before interest, taxes, depreciation and amortization of approximately $x to $x in the first fiscal year that the expansions to Facility X and Facility Y become operational.

The company has filed the necessary regulatory applications in Countries X and Y for approval to construct and operate the expansions to Facility X and Facility Y. In January 20xx, the company was granted approval from Authority X in Country X to construct and operate the expansion to Facility X. The company expects a decision on its application for the necessary permits from Authority Y in Country Y regarding the expansion of Facility Y in the next x months.

There is a significant risk that regulatory approval for the extension of Facility Y will not be granted or will be significantly delayed by Authority Y in Country Y. In recent months, environmental groups and prominent politicians in Country Y have publicly opposed the expansion of Facility Y due to its location beside public water sources and have called on Authority Y and the government of Country Y to re-examine the potential impact of chemical production on the environment generally. A

number of environmental, public health and indigenous activists, as well as landowners whose property are located adjacent to the water sources, have organized large protests outside government offices in Country Y. If regulatory approval for the expansion of Facility Y is not granted by Authority Y, the company will not be able to increase the total commercial capacity of Facility Y or recover the capital cost of the extensions to Facility X and Facility Y ($x has been spent to date), which could have a material adverse impact on the financial results of the company.

**Example 5 – Reputational risk**

The company faces strong competition in the retail industry. The industry is driven primarily by consumer demand, which is impacted by matters such as economic trends, changing demographics and environmental awareness. A recent consumer trend that is dominating the industry is an increasing demand that retailers source products in a way that demonstrates care for the environment, and otherwise follow environmentally responsible business practices.

The company endeavours to be environmentally responsible and recognizes that the competitive pressures for economic growth and cost efficiency must be integrated with sound sustainability management, including environmental stewardship. The company has adopted sourcing and other business practices to address the environmental concerns of its customers. Despite these efforts, evolving customer concerns could negatively affect the company's reputation and financial performance.

The company's brand image is driven by the development and delivery of high quality products while maintaining the highest level of environmental responsibility. Claims of environmentally irresponsible practices could harm the reputation of the company.

The company establishes and monitors compliance with operating guidelines both internally and for the company's independent suppliers. These guidelines require environmentally responsible business practices, including x, x and x. Although the company requires its suppliers to certify compliance with these guidelines and periodically requests documentation in support of the certificates, there is no guarantee that these suppliers will not take actions that hurt the company's reputation, as they are independent third parties that the company does not control. However, if there is a lack of apparent compliance, it may lead the company to search for alternative suppliers. This may have an adverse effect on the company's financial results, by increasing costs, potentially causing shortages in products, delays in delivery or other disruptions in operations.

Adverse publicity resulting from actual or perceived violations of environmental laws and regulations, from business practices considered environmentally irresponsible, or from damage to the environmental reputation of the company's suppliers, may weaken the value of the company's brand image, negatively impact customer attitudes and decrease demand for the company's products. This may lead to a decrease in results of operations and the company's share price. These impacts may occur even if the allegations are not directed against the company or are not valid, and even if the company is not found liable. Other companies in the industry have encountered these issues, resulting in reduced demand for, or boycotts of, their products.

**Example 6 – Risks relating to business model**

Wind energy products are at an early stage of market acceptance and have been developed through technologies that may not be proven or whose commercial application is limited. The company's products may not gain sufficient commercial acceptance or success for the company's business plan to succeed. The alternative power market is also highly competitive and characterized by rapidly evolving technology and changes in pricing strategy. If the company fails to continually improve and refine its technology, the company's products could become uncompetitive or obsolete. There is also the risk that the company's competitors could attempt to reverse engineer or copy the company's product, which could draw business away from the company.

The company's business is dependant on the availability of government subsidies and incentives to support the development of the wind energy market. The cost of wind, solar and other alternative power currently exceeds retail electric rates in many jurisdictions. As a result, governments in Countries X, Y and Z have provided subsidies and incentives in the form of rebates, tax credits and other incentives to end-users, distributors, system integrators and manufacturers of alternative power products to promote the use of renewable energy sources. There is significant uncertainty about the extent to which such favourable government subsidies and incentives will be available to the company in the future. The reduction, expiration or elimination of these government subsidies and incentives could result in lower revenues and greater expenses for the company, which could have a material adverse effect on the company's business.

The company's electricity generation levels are directly dependent on wind intensity and duration, both of which vary relative to facility location and time of year. Due to climate change, wind regimes may change within regions where turbines are located, which in the longer term could affect changes in electricity generation capacity. This may lead to volatility in production levels and profitability.

Demand for wind energy technology may be affected by the following factors:

- the performance, reliability and cost-effectiveness of wind energy technology compared to conventional energy sources and products
- the success of other renewable energy generation technologies (e.g. geothermal and solar)
- fluctuations in capital expenditures by utilities and independent power producers
- the development of new and profitable applications requiring the remote electric power provided by wind energy systems, and
- overall growth in the renewable energy market.

## Trends and uncertainties

**Example**

The company is unable to predict market conditions and the fares the company may be able to charge… Factors that may reduce demand for air travel include concerns about the environmental impacts of air travel and a growing movement towards "green" travel initiatives where consumers reduce their air travel.

The company operates in various jurisdictions where there are legislative initiatives relating to greenhouse gas (GHG) emissions being considered or adopted. Jurisdictions that have proposed to regulate GHG emissions include Countries X, Y and Z. Although these jurisdictions have not yet published details of their proposed regulations or their compliance

mechanisms, the company will likely face increased capital and operating costs to comply with these regulations and these costs could be material. Notwithstanding the current regulatory uncertainty in these jurisdictions, the company has assumed a carbon price of $x, and has conducted scenario analysis based on carbon prices within the range of $x to $x. The company has incorporated a range of potential carbon prices and regulatory outcomes into future capital planning.

While there is no GHG emissions legislation in place in Country X, the company is a signatory to a voluntary agreement with the government of Country X to reduce GHG emissions. Under the voluntary agreement, the company is committed to a fuel efficiency improvement target of x% from 19xx levels by 20xx. The company has surpassed this fuel efficiency target and in 20xx, set its own new target to improve the fuel efficiency of its fleet operations by a further x% from 20xx to 20xx.[1] In 20xx, this program reduced emission by x tonnes compared to what the company would have otherwise consumed.

[1] This target constitutes forward-looking information. See the introduction above for guidance on the applicable disclosure requirements.

## Environmental liabilities

**Example 1 – Environmental estimates reflected in financial statements**

The company is subject to environmental laws and regulations that affect aspects of the company's past, present and future operations, including air emissions, water quality, wastewater discharges and the generation, transport and disposal of waste and hazardous substances. The company's activities have the potential to impair natural habitat, damage plant and wildlife, or cause contamination to land or water that may require remediation under applicable laws and regulations. These laws and regulations require the company to obtain and comply with a variety of environmental registrations, licenses, permits and other approvals. Both public officials and private individuals may seek to enforce environmental laws and regulations against the company.

Environmental liabilities are recorded when it is considered likely that a liability has been incurred at the date of the financial statements and the amount of the liability can be reasonably estimated. As at December 31, 20xx, the company had a provision of $x million for environmental, remedial and similar obligations. The primary component of this provision was an amount for a legal action brought in Country X against the company and other defendants for damage to the environment. The plaintiffs, who are residents of lands surrounding one of the company's former facilities, are seeking damages of $x million for wrongful death claims and to fund environmental remediation of the alleged environmental harm.

An expert appointed by the court in Country X to assess and determine the cause of the environmental damage released a report recommending that the court assess damages of $x million against the company. The court is expected to render a judgment within the next x months. The company intends to vigorously defend any attempted imposition of liability.

In estimating the amount to be included in the provision for the legal action in Country X, the company conducted an assessment of the possible outcomes and range of loss, based on considerations such as the company's past experiences with environmental lawsuits and the recommendations of legal counsel. The estimate is based on the following assumptions:

- the court will find against the issuer
- the court will award damages of x% of the total amount claimed
- the court will not award punitive damages, and
- the proportionate liability of the company is x% of the claim.

The company also estimated the costs of remediation based on an assessment of the existing remediation technology available. However, although the company expects to incur a liability of $x million (as reflected in the line item "environmental, remedial and similar obligations" in the 20xx financial statements), the actual liability remains highly uncertain and can vary from the company's estimate due to factors such as:

- differing interpretations of laws, opinions on culpability and assessments on the amount of damages
- the length and outcome of the appeal process (in the event of an adverse judgment)
- the unknown timing and extent of the remediation and other corrective actions that may be required, and
- the determination of the company's liability in proportion to other responsible parties and the extent to which such costs are recoverable from third parties.

The estimated liability will be regularly adjusted as the case proceeds. As a result of recommendations from legal counsel, the estimated amount of the liability has increased by $x million since the last financial statements were issued.

**Example 2 – Potential environmental liabilities not reflected in financial statements**

The company may be subject to remedial environmental and litigation costs resulting from potential unknown and unforeseeable environmental impacts arising from the company's operations. While these costs have not been material to the company in the past, there is no guarantee that this will continue to be the case in the future as the company carries on with the development of the complex technologies necessary to differentiate the company from its competitors and meet market demand.

Given the nature of the company's business, there are inherent risks of oil spills occurring at the company's drilling sites. Large spills of oil and oil products can result in significant clean-up costs. Oil spills can occur from operational issues, such as operational failure, accidents and deterioration and malfunctioning of equipment. In certain countries where the company operates, oil spills can also occur as a result of sabotage and damage to the pipelines. If the company experiences operational spills, this may impact the company's ability to maintain its licence to operate and may harm its reputation. In 20xx, the number of spills "increased/decreased" by x%, totalling a volume of x tonnes (compared to x spills totaling x tonnes in the previous year of 20xx).

Although unlikely and not estimable or quantifiable at this time, if an oil spill occurred at the company's offshore drilling rig X, potential impacts could include employee injuries and loss of life, harm to the surrounding environment and wildlife, and disruption or cessation of the company's activities. These may lead to significant potential environmental liabilities, such as clean-up and litigation costs, which may materially affect the company's financial condition, cash flows and results of operations. Depending on the cause and severity of the oil spill, the company's reputation may also be adversely affected, which could limit the company's ability to obtain permits and affect its future operations.

To prevent and/or mitigate potential environmental liabilities from occurring, the company has policies and procedures designed to prevent and contain oil spills. The company works to minimize spills through a program of well designed facilities that are safely operated, effective operations integrity management, continuous employee training, regular upgrades to facilities and equipment and implementation of a comprehensive inspection and surveillance system. The company also has a rigorously tested oil spill emergency response capability. The company plans, prepares and practices its emergency response to help effectively mitigate the environmental, operational and financial consequences of an oil spill.

## Asset retirement obligations

**Example**

Asset retirement obligations (AROs) result from the acquisition, development, construction and ordinary operation of mining property, plant and equipment, and from environmental regulations set by regulatory authorities. AROs include costs related to tailings pond, tailings dam, heaps and heap leach pad reclamation and/or closure (i.e. ongoing monitoring of ground water quality; tailings dam and/or leach pad integrity; heap washing; closing of portals, shafts and tunnels, recontouring, revegetation etc.), and removal and/or demolition of mine and processing equipment (i.e. crushers, conveyors, mills, flotation tanks etc.), buildings and other infrastructure.

The company estimates the fair value of AROs to range between $x million and $x million. As at December 31, 20xx, the company recognized a liability of $x million for AROs. The fair value of AROs are estimated using a present value technique and is based on existing laws, contracts or other policies and current technology and conditions. The estimates or assumptions required to calculate the fair value of AROs include, among other items, abandonment and reclamation amounts, inflation rates, credit-adjusted risk free rates and timing of retirement of assets. The following significant assumptions were made for the purpose of estimating AROs:

| Assumption | 20xx | 20xx* |
|---|---|---|
| Undiscounted abandonment costs ($$$) | x | x |
| Credit adjusted risk free rate | x | x |
| Inflation rate | x | x |
| Average years to reclamation | x | x |

* Year-on-year comparison

AROs are considered critical accounting estimates for the company. There are significant uncertainties related to AROs and the impact on the financial statements could be material. The eventual timing of and costs for these AROs could differ from current estimates. The main factors that can cause expected cash flows to change are:

- changes to laws and legislation
- construction of new facilities
- changes in the quality of water that affect the extent of water treatment required
- change in the reserve estimate and the resulting amendment to the life of the mine, and
- changes in technology.

In general, as the life of a mine ends, the expected cash flows become more reliable but the estimate of an ARO at the beginning of the mine life, is primarily more subjective. Any future changes to the estimated or actual costs for reclamation and mine closure and for removal and/or demolition of mine and processing equipment, buildings and other infrastructure, could have a material and adverse effect on the company's future operating results.

The company does not strictly reserve cash or assets for the purpose of settling AROs. As a result, at the time of closure and restoration of the mine sites, the company will have a significant cash outlay that may affect its ability to satisfy its debt

and other contractual obligations. The costs associated with the AROs may be significant and the company may not have sufficient or available resources to fund the costs. If the company is unable to make these payments, regulatory authorities may take further corrective action with respect to these obligations, including issuing clean-up orders and laying charges. Currently the company has secured its obligations under its AROs and obtained letters of credit.

The following is a breakdown of the ARO by category:

| **Category** | **20xx** | **20xx*** |
|---|---|---|
| Open Mines | x | x |
| Closed Mines | x | x |
| Development Projects | x | x |
| **Total AROs** | x | x |

* Year-on-year comparison

The following is a breakdown of ARO by significant mine/property:

| **Mine** | **20xx** | **20xx*** |
|---|---|---|
| Mine 1 | x | x |
| Mine 2 | x | x |
| Mine 3 | x | x |
| Other** | x | x |
| **Total AROs** | x | x |

* Year-on-year comparison

** Aggregate of remaining mines determined to be insignificant on an individual basis

*Summary Contractual Obligations Table*

Provide asset retirement obligations for the current year and the following 5 years and thereafter.

| | **2010** | **2011** | **2012** | **2013** | **2014** | **thereafter** | **Total** |
|---|---|---|---|---|---|---|---|
| **AROs** | x | x | x | x | x | x | x |

AROs – Amounts presented in the table represent the undiscounted future payments for the expected cost of asset retirement obligations.

## Financial and operational effects of environmental protection requirements

**Example 1**

In Country X where the company operates, the company is currently obligated to comply with environmental protection Regulation X relating to water pollution and conservation. To comply with Regulation X, the company began construction of a new water treatment plant in 20xx to collect and treat contaminated water from its facilities in Country X. In 20xx, the company's aggregate expenditures (both capital and operating) to construct and maintain the new water treatment plant were $x million, compared to $x million in 20xx. The company estimates that total environmental expenditures in Country X

for the next year will be approximately $x million in capital expenditures and $x in operating expenditures. If environmental protection regulations relating to water pollution and conservation in Country X change, or the enforcement of Regulation X becomes more rigorous, the company may be required to incur additional, significant capital and operating expenditures to comply, which could have a material adverse effect on the company's financial condition and competitive position.

**Example 2**

In Province X where the company has x facilities, contaminated sites legislation came into effect in 20xx. The legislation specifies the circumstances in which a "site profile" must be prepared in respect of any property that has been used for certain industrial or commercial purposes. A particular site is determined to be a "contaminated site" if concentrations of certain substances in soil and groundwater exceed prescribed levels. If a site is determined to be contaminated, remediation will normally be required under government supervision. The company is not aware of any of its sites being considered contaminated under the legislation, and compliance with the legislation has not resulted in any material costs to the company in 20xx. However, there is no guarantee that material costs will not be incurred in the future due to the discovery of unknown conditions or changes in enforcement policies.

## Environmental policies fundamental to operations

**Example**

The company established an environmental policy (the Policy) in 20xx. The Policy is updated periodically and was last updated in 20xx. The Policy affirms the company's commitment to environmental protection, which the company believes is an integral part of doing business and needs to be managed systemically under a continuous improvement process. The Policy contains principles which range from exercising due diligence to meet or exceed requirements under applicable environmental legislation, to preventing pollution and promoting initiatives that minimize resource use and waste generation. The company has instructed its subsidiaries to support these principles, and has established a management-level committee, Committee X, to oversee the implementation of the Policy.

In 20xx, the company spent $x million on environmental policy compliance (x% of this was expensed and x% was for capital expenditures). For the next fiscal year, the company has budgeted $x million (x% for expenses and x% for capital expenditures) to seek to ensure that the Policy is applied properly and its environmental risks are minimized.

Consistent with the Policy, the company regularly procures, installs and operates pollution control devices, including wastewater treatment plants, groundwater monitoring devices and air strippers or separators.

The company monitors its operations to seek to ensure that it complies with all applicable environmental requirements and standards, and takes action to prevent and correct problems if needed. The company has had an environmental management system in place since 20xx that:

- provides early warning of potential problems
- identifies management and cost-saving opportunities
- establishes a course of action, and
- ensures ongoing improvement through regular monitoring and reporting.

The company also analyzes changes to environmental laws and regulations on a regular basis. In 20xx, the company

obtained the ISO 140001 certification for its environmental management system.

## Board mandate and committees

**Example**

The Audit Committee's responsibilities include approving a formalized and integrated enterprise risk management process that is developed by senior management and, as appropriate, the company's X Committee (e.g. Environmental, Health and Safety Committee), to monitor, manage and report risks and opportunities, including those relating to environmental matters, litigation and regulation. At least semi-annually, the Audit Committee is responsible for obtaining from senior management and, as appropriate, the X Committee, a report specifying the management of the company's principal risks, including compliance with the company's enterprise risk management policy and other policies used to manage risks.

The purpose of the X Committee is to:

- review the company's environmental, health, safety and sustainable development (EHSSD) policies and programs
- assess the performance and effectiveness of the company's EHSSD policies and programs
- monitor current and future regulatory issues relating to EHSSD matters
- review quarterly management stewardship reports
- examine the findings of significant external and internal EHSSD investigations, assessments, reviews and audits
- review the company's public sustainability report, which includes reporting on the company's EHSSD progress, plans and performance objectives, and
- make recommendations, where appropriate, on significant matters relating to EHSSD matters to the Board.

The X Committee holds regular *in camera* sessions where it meets in the absence of management.

### 1.1.3 OSC Staff Notice 81-711 – Closed-End Investment Fund Conversions to Open-End Mutual Funds

**OSC STAFF NOTICE 81-711**

**CLOSED-END INVESTMENT FUND CONVERSIONS TO OPEN-END MUTUAL FUNDS**

**Purpose**

This notice sets out the views of staff of the Ontario Securities Commission (OSC staff) on the regulatory issues related to the conversion of closed-end funds into mutual funds, and the types of comments OSC staff will generally raise in the course of a review of a built-in conversion feature or a conversion.

**Background**

Closed-end funds differ from mutual funds in several key ways.

Mutual funds are typically in continuous distribution, which means that they issue an unlimited number of units or shares from treasury. These funds provide a regular redemption feature, typically daily, at the fund's net asset value (NAV). Mutual funds are regulated by National Instrument 81-102 *Mutual Funds* (NI 81-102), which prescribes product requirements including rules related to investment restrictions, borrowing, organizational costs, incentive fees, conflicts of interest, purchases and redemptions and sales communications.

By contrast, closed-end funds are not in continuous distribution. Rather, they issue a finite number of units or shares from treasury on an initial public offering (or IPO) which may be followed by subsequent offerings. Following issuance, these units or shares are typically traded on a stock exchange, often at a discount to NAV. Closed-end funds may offer an annual redemption at NAV. These funds are not subject to NI 81-102 and often engage in investment strategies, such as borrowing, beyond the limits prescribed for mutual funds.

The differences in structure and features of closed-end funds and mutual funds and in the regulatory regimes that govern them give rise to a number of regulatory issues when a conversion of a closed-end fund into a mutual fund is contemplated or occurs.

**Types of closed-end fund conversions**

Recently, OSC staff have seen a number of closed-end funds that intend to convert to a mutual fund, often within less than two years of their initial offering. A key objective of conversion is to provide investors in the closed-end fund with enhanced liquidity through a more frequent redemption feature at NAV.

To date, OSC staff have seen a variety of ways a closed-end fund may convert to a mutual fund. The following are among the more common approaches to conversion:

- *Built-in conversion features* – The closed-end fund is structured with an automatic conversion feature that typically will be triggered in one of two ways: (1) as at or before a specified date, usually within two years of the fund's initial offering; or (2) after a specified date, if the fund trades at a certain discount (often 2%) to NAV for more than a set period of time (often 10 days);

- *Securityholder approvals* – At some point after the initial distribution, the fund manager seeks securityholder approval to convert or merge the closed-end fund into a mutual fund; or

- *Mergers* – The closed-end fund is merged with a mutual fund at some point after the initial distribution of the closed-end fund. These mergers are often in accordance with 'permitted merger' provisions of the closed-end fund's declaration of trust. Under these provisions, the requirement for securityholder approval is typically not triggered provided certain conditions are met, such as the merging funds having consistent investment objectives and strategies.

**Regulatory issues**

To date, OSC staff have reviewed built-in conversion features and conversions as part of our prospectus reviews and in the context of applications for exemptive relief, pre-filings and inquiries. OSC staff have identified a number of key regulatory issues for consideration in the context of a conversion-related review. In the course of such review, the issuer may be asked for submissions to assist staff in determining whether these regulatory issues have been appropriately addressed.

**1. The conversion process**

*Transparency*

OSC staff expect that the key aspects of the conversion process will be clearly disclosed to investors. Disclosure should include a description of the event or events that will trigger the conversion, the expected timing and steps of the conversion, what approvals, if any, will be required to effect the conversion, any expected periods of illiquidity, who will bear the cost of the conversion, what class or series of units or shares investors will hold after the conversion and the investor's ability to redeem after the conversion.

For closed-end funds with a built-in conversion feature, disclosure regarding the conversion should be made prominently in the fund's initial prospectus.

Where closed-end funds do not contain a built-in feature, but it is contemplated that the closed-end fund may convert to a mutual fund within a foreseeable period of time following initial distribution, OSC staff will generally expect disclosure regarding the possible conversion, as well as key aspects of the contemplated conversion process, to be provided in the initial prospectus.

Where closed-end funds do not contain a built-in feature and the decision to convert is made only after the initial distribution of the closed-end fund, OSC staff expect that this decision will trigger the material change reporting requirements. If the fund manager is seeking securityholder approval for the conversion, OSC staff expect appropriate disclosure regarding the conversion to be in the circular sent to investors in connection with the approval.

*Notice to investors*

OSC staff expect that investors will be provided with sufficient written notice prior to the conversion of the closed-end fund. For closed-end funds with a built-in conversion feature, our view is that the fund's initial prospectus should disclose that prior written notice of the conversion will be provided to investors and the length of the notice period. In instances where securityholder approval is not being sought, OSC staff would generally consider at least 60 days prior written notice to be appropriate. Where securityholder approval is being sought for the conversion, securities legislation sets out the notice requirements for a meeting of securityholders.

*Redemption right and periods of no liquidity*

Typically, a closed-end fund will cease trading on the exchange and may temporarily suspend redemptions prior to and immediately following conversion to a mutual fund. OSC staff expect that investors will be provided with a redemption right prior to such suspension and conversion. We further expect that the conversion will be structured so that any period of no liquidity (both before and after the conversion), is as short as possible.

**2. Post-conversion compliance with NI 81-102**

*Compliance with NI 81-102*

OSC staff generally expect that a closed-end fund with a built-in conversion feature will comply with NI 81-102 from its inception, particularly if the conversion may, or will, happen within a foreseeable period of time from the initial distribution of the closed-end fund.

If the closed-end fund intends to operate in a manner not permitted by NI 81-102, it may need exemptive relief to continue certain investment strategies or features at the time that it converts to a mutual fund. In these instances, OSC staff recommend that the application for the exemptive relief be filed concurrently with the initial prospectus filing of the closed-end fund. These applications will be evaluated in the context of the regulatory regime and policy concerns currently applicable to conventional mutual funds. If the decision to convert is made only after the initial distribution of the closed-end fund, OSC staff expect the issuer to have considered what modifications, if any, to the features or investment strategies of the fund are necessary to be in compliance with NI 81-102 upon conversion to a mutual fund.

*Consistent investment objectives and strategies*

For a closed-end fund without a built-in conversion feature that converts after the initial distribution, OSC staff expect the issuer to consider if there will be a fundamental change to the investment objectives, strategies, fees, management and operations of the closed-end fund following its conversion to a mutual fund. If so, OSC staff would generally expect securityholders of the fund to be given the opportunity to vote on these fundamental changes.

*Illustration of past performance*

OSC staff have observed that, following conversion to a mutual fund, some funds wish to show the past performance of the closed-end fund in sales communications. Section 15.6 of NI 81-102 prohibits a mutual fund from showing in sales communications past performance from a period that is before the time when the mutual fund offered its securities under a simplified prospectus. This would prohibit the display of the past performance of the closed-end fund. However, the form requirements applicable to management reports of fund performance under Form 81-106F1 require that reporting issuers show past performance from inception, including pre-conversion past performance.

When contemplating a built-in conversion feature or conversion, OSC staff expect issuers to consider how they intend to illustrate past performance. If the issuer requests exemptive relief to permit the mutual fund to show the past performance of the closed-end fund in sales communications, OSC staff will consider whether the past performance is relevant and useful for investors and will be appropriately presented and qualified, as necessary.

**3. Costs associated with the conversion**

*Merger costs*

When conversions are structured as a merger between the closed-end fund and a mutual fund, OSC staff expect that the fund manager will absorb the costs of the merger. Costs of the merger are more appropriately borne by the fund manager as opposed to securityholders where it is the fund manager's decision to merge the funds and the manager benefits from the merger. In such instances, OSC staff generally take the view that it is inappropriate for any merger costs to be charged either to the terminating closed-end fund or to the continuing mutual fund.

**For Further Information**

Issuers and their counsel are encouraged to contact OSC staff at an early stage in the planning of a conversion feature or conversion that may give rise to any questions concerning the issues discussed in this Notice.

**Questions**

If you have any questions, please refer them to:

Stephen Paglia
Legal Counsel
Investment Funds Branch
Phone: 416-593-2393
spaglia@osc.gov.on.ca

Melissa Schofield
Senior Legal Counsel
Investment Funds Branch
Phone: 416-595-8777
mschofield@osc.gov.on.ca

**October 29, 2010**

### 1.1.4 Notice of Commission Approval of Amendments to MFDA Rules and Policy No. 6 Resulting from NI 31-103 Registration Requirements and Exemptions

**NOTICE OF COMMISSION APPROVAL**
**OF AMENDMENTS TO MFDA RULES AND POLICY NO. 6**
**RESULTING FROM NATIONAL INSTRUMENT 31-103 REGISTRATION REQUIREMENTS AND EXEMPTIONS**

The Ontario Securities Commission (OSC) has approved the MFDA's proposed amendments to MFDA Rule 1.2 (Individual Qualifications), Rule 2.5 (Minimum Standards of Supervision), Rule 5.6 (Record Retention) and Policy No. 6 *Information Reporting Requirements*. In addition, the Alberta Securities Commission, British Columbia Securities Commission, Saskatchewan Financial Services Commission, Manitoba Securities Commission, New Brunswick Securities Commission and Nova Scotia Securities Commission have either approved, not disapproved, or not objected to the amendments.

The amendments are conforming and consequential in nature and are intended to ensure that the requirements under the MFDA Rules and Policies are consistent with those under National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103).

The amendments were published for a 90-day comment period in the Ontario Securities Commission Bulletin on December 25, 2009. The MFDA received six comment letters on the proposed amendments. The MFDA's summary and responses to these comment letters is in Chapter 13 of this Bulletin.

Also in Chapter 13 is a blacklined copy of Rules 1.2, 2.5, 5.6 and Policy No. 6 showing the changes to the version published in December 2009. Some amendments proposed in the December 2009 version respecting proficiency, referral arrangements and content of account statement requirements have been put on hold pending the coming into force of proposed revisions to similar requirements under NI 31-103.

**October 29, 2010**

### 1.1.5 OSC Staff Notice 21-704 – Market Regulation Branch Annual Report – 2010

OSC Staff Notice 21-704 – *Market Regulation Branch Annual Report – 2010* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

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ONTARIO SECURITIES COMMISSION

OSC Staff Notice 21-704

2010

# Market Regulation Branch Annual Report

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# 1. Introduction

**1.1 Role of the Market Regulation Branch**

**1.2 Focus of the Market Regulation Branch**

OSC ONTARIO SECURITIES COMMISSION

# 1. Introduction

This report summarizes the Market Regulation Branch's key policy activities and initiatives relating to market structure and clearing and settlement for the fiscal year ending March 31, 2010 (fiscal 2010). It also provides an update on these key initiatives for the subsequent period up to September 15, 2010.

## 1.1 Role of the Market Regulation Branch

The Market Regulation Branch (or we) regulates key market infrastructure entities and develops and implements policies to address market structure, trading and post-trade clearing and settlement issues.

Market infrastructure entities include marketplaces (exchanges and alternative trading systems (ATSs)), self-regulatory organizations (SROs), clearing agencies, compensation funds, information processors and matching service utilities.

These entities are required to comply with requirements that are imposed through securities legislation, or imposed by the OSC as terms and conditions of recognition, approval or exemption. The objective of our regulation and oversight is to assess compliance by these entities with statutory and other requirements. We do this by reviewing and approving their rules, conducting reviews of their operations and reviewing their reporting. We also work closely with some of them, such as SROs and other entities that play a role in the regulation of our market participants, in an effort to harmonize regulatory requirements.

## 1.2 Focus of the Market Regulation Branch

Over the past few years, numerous ATSs have started operating in Canada, creating a multiple marketplace environment. As part of the competitive landscape, different ATSs and exchanges now offer market participants choices with respect to facilities and trading strategies. In addition, technology plays a key role in how marketplaces offer services and how market participants conduct trading. The evolution of technology has led to an increasingly complex market. These recent developments in market structure have had an impact on retail and institutional investors, marketplaces and dealers.

At the same time, the recent financial crisis highlighted the role of other market infrastructure entities, in particular clearing agencies, in reducing the risks and uncertainties faced by market participants, and thus their systemic importance.

As the Canadian market is undergoing significant changes, a key focus for the Market Regulation Branch in fiscal 2010 included analyzing and monitoring these changes and addressing regulatory concerns. In particular, we focused on issues related to trading on multiple marketplaces and the role of technology.

As part of policy development, we frequently consult with marketplaces, dealers, vendors, investors and other market participants, and seek feedback through the public comment process. We would like to thank everyone who participated in consultations and responded to our requests for comments. We welcome further comments as we continue to work through various initiatives.

# 2. Changes in Market Structure

**2.1 Multiple marketplaces**

**2.2 The emergence of non-transparent marketplaces and new order types**

**2.3 Use of technology in trading**

# 2. Changes in Market Structure

The emergence of multiple marketplaces and new order types and advances in technology have increased the complexity of trading. They have had an impact on how dealers and investors trade and have highlighted the need for a greater understanding by all who trade in the market of the options available.

The Market Regulation Branch at the OSC, and in some cases together with other CSA jurisdictions and the Investment Industry Regulatory Organization of Canada (IIROC), have been monitoring changes to the Canadian market structure and have been analyzing whether these changes give rise to regulatory concerns.

In fiscal 2010, we focused on order protection, the regulation of ATSs and exchanges and market structure issues relating to dark liquidity[1] and electronic trading. We have taken and will continue to take a holistic approach when reviewing market structure issues because they cannot be examined in isolation.

## 2.1 Multiple marketplaces

The number of equity marketplaces operating in Canada has increased from six in 2005 to 10 in 2010. We have been examining various issues relating to the emergence of multiple marketplaces, in particular:

- The need to prevent immediately accessible, visible, better-priced limit orders from being traded through; and
- The appropriateness of regulation of ATSs and exchanges.

### A. Order protection rule

On November 13, 2009, the Canadian Securities Administrators (CSA) introduced the Order Protection Rule (OPR) through amendments to National Instrument 21-101 *Marketplace Operation* (NI 21-101) and related Companion Policy 21-101CP, and National Instrument 23-101 *Trading Rules* and related Companion Policy 23-101CP. The OPR will come into effect on February 1, 2011.

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1 "Dark liquidity" is a term that refers generally to dark pools and dark orders. Dark pools are marketplaces that offer no pre-trade transparency. Dark orders are orders that have limited or no transparency.

Currently, the applicable provisions are found in IIROC's UMIR 5.2 *Best Price Obligation*, which only applies to dealers. The OPR will shift the obligation to marketplaces. It will require marketplaces to have policies and procedures reasonably designed to prevent trade-throughs, so that immediately accessible, visible, better-priced limit orders are executed before inferior-priced orders. CSA staff are currently working with the industry to address implementation issues.

Order protection is essential in maintaining investor confidence and fairness in the market. In a multiple marketplace environment, market participants, including retail investors, must be assured that no immediately accessible, visible, better-priced limit orders are being traded through, regardless of the marketplace where the order is entered, the sophistication of the participant or the size of the order.

For more information:

- CSA Notice of Amendments to National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*, published on November 13, 2009
- CSA Staff Notice 23-307 *Order Protection Rule – Implementation Milestones*
- CSA Staff Notice 23-309 *Frequently Asked Questions about the Order Protection Rule and Intentionally Locked or Crossed Markets – Part 6 of National Instrument 23-101 and Related Companion Policy*
- UMIR 5.2 *Best Price Obligation*

## B. Regulation of ATSs and exchanges

Market Regulation staff at the OSC, together with staff of the other CSA jurisdictions, continue to review the regulatory requirements for recognized exchanges and ATSs to determine if they are up to date and appropriate for the current competitive landscape.

OSC staff completed the first phase of the review, which focused on transparency of filings by exchanges and ATSs. In October 2009, OSC staff implemented a process that would make public, summary information about proposed changes to operations of all marketplaces. This process has since been expanded to also publish summary information about initial operations of new ATSs. The summary information, both regarding proposed changes and initial operations, will be published for a 30-day comment period. OSC staff have also indicated that marketplaces are expected to publish a detailed description on their websites of how their market or facility operates and the order types available and order features or characteristics. This enables dealers

and investors alike to obtain information about the choices they face when trading in Canada's multiple marketplace environment.

The second phase of the review involves examining the requirements for exchanges and ATSs set out in NI 21-101. Because of the similarities of certain operations of exchanges and ATSs, we are considering whether any requirements should be aligned. The second phase is expected to be completed at the end of 2010 and any resulting amendments to NI 21-101 will be published for comment.

For more information:

- OSC Staff Notice 21-703 *Transparency of the Operations of Stock Exchanges and Alternative Trading Systems*

### 2.2 The emergence of non-transparent marketplaces and new order types

On October 2, 2009, the CSA and IIROC published Concept Paper 23-404 *Dark Pools, Dark Orders and Other Developments in Market Structure in Canada*. The paper sought feedback on a broad range of market structure issues, including dark pools, new dark order types, market pegged orders[2] and smart order routers (SORs)[3]. Click here to read the concept paper and the comments that we received. In addition, the CSA and IIROC held a forum on March 23, 2010 for market participants to discuss the issues raised in the concept paper.

The key issues raised by market participants in response to the concept paper and at the forum include:

- whether dark pools should be required to offer price improvement;
- the practice of dark pools sending indications of interest to attract order flow;
- the fairness of a marketplace using a proprietary SOR that has access to information on that marketplace that is not otherwise available to other marketplace participants; and
- the practice of broker preferencing[4].

[2] Market pegged orders are orders that are priced and re-priced to a reference price such as the national best bid (offer) or a marketplace's best bid (offer). They are also referred to as reference priced orders.

[3] A smart order router is a technological tool that connects to multiple marketplaces and consolidates and analyzes order information from these marketplaces. It then makes order routing decisions seeking to obtain best execution and/or best price, or facilitate the execution of the strategy determined by the user.

[4] Broker preferencing means a marketplace feature that allows orders from the same participant or subscriber to execute ahead of other orders posted at the same price in a central limit order book.

On May 28, 2010, the CSA and IIROC published Joint Staff Notice 23-308 *Update on Forum to Discuss CSA/IIROC Joint Consultation Paper 23-404 "Dark Pools, Dark Orders and Other Developments in Market Structure in Canada" and Next Steps*
The notice summarizes the issues that were discussed and provides an overview of the views expressed on those issues including a summary of comments.

OSC staff, along with IIROC and other CSA staff, are currently working on a draft position paper to be published in fall 2010. It will outline our position on some of the issues identified in the concept paper and the forum relating specifically to dark pools and dark orders.

### 2.3 Use of technology in trading

Technology has increased the speed and complexity of trading. It has also led to easier access to marketplaces for non-dealers, either by subscribing to ATSs or by having "direct market access" (DMA) through their dealers.

Together with other CSA jurisdictions and IIROC, we continue to examine the risks associated with technology and electronic trading and, where appropriate, we will develop responses to address any regulatory concerns.

## A. Market Events of May 6

The market volatility on May 6, 2010 dominated the equity market headlines, with financial markets experiencing a brief but very severe drop in prices, followed by an equally rapid recovery. Although less dramatic declines were seen in Canadian markets than in the U.S. markets, some declines were significant. The CSA and IIROC are working closely on a number of initiatives in response to the events of May 6. IIROC has also completed its analysis of the events and has published a report on its findings.

For more information:

- Joint CSA/IIROC News Release dated May 14, 2010
- IIROC's report *Review of the Market Events of May 6, 2010*

## B. Electronic trading and direct market access

The CSA and IIROC have been examining issues relating to direct market access (DMA) and are developing a proposal that will address risks associated with electronic trading (such as market risk, and credit risk), DMA and other issues associated with technology. We are also examining issues related to high frequency trading, co-location and outsourcing.

For more information:

- Joint CSA/Market Regulation Services Inc. Notice on Trade-Through Protection, Best Execution and Access to Marketplaces, dated April 20, 2007
- CSA/IIROC Joint Staff Notice 23-308 *Update on Forum to Discuss CSA/IIROC Joint Consultation Paper 23-404 "Dark Pools, Dark Orders and Other Developments in Market Structure in Canada" and Next Steps*

# 3. Clearing and Settlement

**3.1 Mandatory recognition of clearing agencies**

**3.2 Institutional trade matching deadline**

OSC ONTARIO SECURITIES COMMISSION

# 3. Clearing and Settlement

### 3.1 Mandatory recognition of clearing agencies

As of March 1, 2011, amendments to section 21.2 of the *Securities Act* (Ontario) will prohibit clearing agencies from carrying on business in Ontario unless they are recognized as a clearing agency by the Commission. Clearing agencies operating in Ontario will, therefore, be required to apply to be recognized or exempted from the recognition requirement.

On March 19, 2010, we issued OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*. The notice sets out the following:

- the criteria that a clearing agency is expected to meet in order to operate in Ontario,
- the application process,
- how we handle applications for recognition or exemption from the recognition requirement, and
- our approach in making recommendations to the Commission with respect to the application.

The notice also describes some scenarios where we may be prepared to recommend to the Commission that a clearing agency be exempted from the recognition requirement.

We encourage all entities operating, or intending to operate, as a clearing agency in Ontario to familiarize themselves with the new statutory requirement and to contact staff listed on OSC Staff Notice 24-702 with any questions.

For more information:

- OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*

### 3.2 Institutional trade matching deadline

On April 16, 2010, the CSA published amendments to NI 24-101 *Institutional Trade Matching and Settlement* (NI 24-101). NI 24-101 requires dealers and advisers to establish, maintain and enforce policies and procedures to achieve matching of institutional trades by a specified deadline. The original deadline was set at midnight on the date that the trades occurred (i.e.

trade date), and NI 24-101 provided for a transition period to meet this deadline. The amendments remove the original matching deadline, and maintain the current deadline of no later than noon on the business day following the trade date (i.e. trade date + 1). The amendments became effective on July 1, 2010.

NI 24-101 came into force on April 1, 2007. Since then, CSA staff have been monitoring the industry's progress in achieving the matching deadline for institutional trades of midnight on the trade date. It became apparent that industry participants required more time to adjust their middle and back office processes to meet this matching deadline. The industry has also commented that this matching deadline is not justified from a cost-benefit perspective without a clear indication that the standard trade date + 3 settlement cycle in the North American capital markets would be shortened.

We, together with other CSA staff, continue to monitor developments in this area. In the future, the CSA may consider re-introducing the matching deadline of midnight on trade date into NI 24-101 if circumstances were to change, for example, if the standard trade date + 3 settlement cycle in global markets is shortened.

We are currently reviewing CSA Staff Notice 24-305 *Frequently Asked Questions About National Instrument 24-101* – Institutional Trade Matching and Settlement *and Related Companion Policy* and will make any consequential changes necessary to reflect the amendments to NI 24-101.

For more information:

- CSA Notice of Amendments to National Instrument 24-101 *Institutional Trade Matching and Settlement* and Companion Policy 24-101CP *Institutional Trade Matching and Settlement* dated April 16, 2010
- CSA Notice and Request for Comments on Proposed Amendments to National Instrument 24-101 *Institutional Trade Matching and Settlement* and Companion Policy 24-101CP *Institutional Trade Matching and Settlement* dated October 30, 2009
- CSA Staff Notice 24-305 *Frequently Asked Questions About National Instrument 24-101* – Institutional Trade Matching and Settlement *and Related Companion Policy*

# Market Regulation Branch Contact List

OSC ONTARIO SECURITIES COMMISSION

# Market Regulation Branch Contact List

| | | |
|---|---|---|
| Susan Greenglass | Director | sgreenglass@osc.gov.on.ca |
| Antoinette Leung | Manager | aleung@osc.gov.on.ca |
| Tracey Stern | Manager | tstern@osc.gov.on.ca |
| Kent Bailey | Trading Specialist | kbailey@osc.gov.on.ca |
| Alina Bazavan | Data Analyst | abazavan@osc.gov.on.ca |
| Christopher Byers | Legal Counsel | cbyers@osc.gov.on.ca |
| Lucia Cheung | Senior Advisor | lcheung@osc.gov.on.ca |
| Barbara Fydell | Senior Legal Counsel | bfydell@osc.gov.on.ca |
| Sonali GuptaBhaya | Legal Counsel | sguptabhaya@osc.gov.on.ca |
| John Kearns | Senior Advisor | jkearns@osc.gov.on.ca |
| Winfield Liu | Senior Legal Counsel | wliu@osc.gov.on.ca |
| Maxime Paré | Senior Legal Counsel | mpare@osc.gov.on.ca |
| Leslie Pearson | Legal Counsel | lpearson@osc.gov.on.ca |
| Ruxandra Smith | Senior Accountant | ruxsmith@osc.gov.on.ca |
| Emily Sutlic | Senior Legal Counsel | esutlic@osc.gov.on.ca |
| Jonathan Sylvestre | Senior Accountant | jsylvestre@osc.gov.on.ca |

For general questions and complaints, please contact the OSC Inquiries and Contact Centre at inquiries@osc.gov.on.ca.

ONTARIO SECURITIES COMMISSION

# OSC Staff Notice 21-704

As the regulatory body responsible for overseeing the capital markets in Ontario, the Ontario Securities Commission administers and enforces the provincial Securities Act, the provincial Commodity Futures Act and administers certain provisions of the provincial Business Corporations Act. The OSC is a self-funded Crown corporation accountable to the Ontario Legislature through the Minister of Finance.

## 1.2 Notices of Hearing

### 1.2.1 Majestic Supply Co. Inc. et al. – ss. 37, 127, 127.1

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

**AND**

**IN THE MATTER OF**
**MAJESTIC SUPPLY CO. INC.,**
**SUNCASTLE DEVELOPMENTS CORPORATION,**
**HERBERT ADAMS, STEVE BISHOP,**
**MARY KRICFALUSI, KEVIN LOMAN AND**
**CBK ENTERPRISES INC.**

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

**TAKE NOTICE THAT** the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 37, 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Act*") at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on November 23, 2010 at 2:30 p.m., or as soon thereafter as the hearing can be held, to consider:

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

(a) trading in any securities by Majestic Supply Co. Inc. (“Majestic”), Suncastle Developments Corporation (“Suncastle”), Herbert Adams (“Adams”), Steve Bishop (“Bishop”), Mary Kricfalusi (“Kricfalusi”), Kevin Loman (“Loman”) and CBK Enterprises Inc. (“CBK”), collectively the "Respondents", cease permanently or for such period as is specified by the Commission;

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

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

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

(e) the Respondents be reprimanded;

(f) Adams, Bishop, Kricfalusi and Loman, (collectively the "Individual Respondents") resign one or more positions that they hold as a director or officer of any issuer, registrant, or investment fund manager;

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

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

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

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

(ii) whether, in the opinion of the Commission, an order should be made pursuant to section 37 of the *Act* that the Respondents cease permanently to telephone from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities; and,

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

**BY REASON OF** the allegations as set out in the Statement of Allegations of Staff of the Commission dated October 20, 2010 and such further additional allegations as counsel may advise and the Commission may permit;

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

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

**DATED** at Toronto this 20th day of October, 2010

"John Stevenson"
Secretary to the Commission

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

**AND**

**IN THE MATTER OF**
**MAJESTIC SUPPLY CO. INC.,**
**SUNCASTLE DEVELOPMENTS CORPORATION,**
**HERBERT ADAMS, STEVE BISHOP,**
**MARY KRICFALUSI, KEVIN LOMAN AND**
**CBK ENTERPRISES INC.**

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

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

**THE RESPONDENTS**

1. Majestic Supply Co. Inc. ("Majestic") is an Ontario company. Majestic was the result of a merger of two Ontario corporations, 1562497 Ontario Inc. ("1562497") and Decorative Impressions Inc. ("Decorative") on April 1, 2006. Majestic was marketed as a provider of environmentally friendly printing products and systems, including Souken water-based ink.

2. 1562497 was an Ontario company incorporated on May 2, 2003. 1562497 was the predecessor of Majestic and carried on business as Majestic Supply Co. prior to its merger with Decorative.

3. Herbert Adams ("Adams") was an original officer and director of 1562497 and subsequently Majestic. Adams was also the secretary of 1562497 from May 1, 2005 until the merger to form Majestic on April 1, 2006. Adams resigned as the secretary and director of Majestic on November 16, 2006.

4. Steve Bishop ("Bishop") began as vice-president of Corporate Finance and secretary of Majestic on September 1, 2006 and became a director of Majestic on November 16, 2006. Bishop was formerly registered as a mutual fund and limited market dealer salesperson with the Commission at various times between March 26, 1982 and March 17, 1999.

5. Suncastle Developments Corporation ("Suncastle") is an Ontario company incorporated on February 22, 1983. Suncastle was a company incorporated and controlled by Adams. Suncastle handled research and development activities for Majestic. Adams has been a director of Suncastle since approximately October 28, 1988. Adams became the secretary of Suncastle on May 1, 2005.

6. Mary Kricfalusi ("Kricfalusi") began as president and director of Suncastle on April 1, 2006. Kricfalusi was a vice-president with Majestic from April 1, 2006 to November 16, 2006.

7. Kevin Loman ("Loman") is an individual who was retained by Majestic to sell Majestic shares. Loman was formerly registered as a mutual fund and limited market dealer salesperson on or between 2003 and 2005 with the Alberta Securities Commission (the "ASC").

8. CBK Enterprises Inc. ("CBK") is a company incorporated pursuant to the Laws of Territory of the British Virgin Islands ("BVI") on July 20, 2007. Pursuant to two trust declarations and agreements, CBK held 850,000 shares of Majestic in trust for each of Kricfalusi and Adams.

**OVERVIEW**

9. The Respondents sold Majestic shares contrary to the registration and prospectus requirements of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Act*"). The Respondents raised approximately $5.3 million from approximately 134 investors through: (i) loan agreements, loan conversion agreements and promissory notes issued by Adams, Kricfalusi, 1562497 [now Majestic] and Majestic; (ii) the issuance of Majestic shares from treasury; and (iii) the secondary sales of Majestic shares owned by Suncastle, Adams and CBK. Bishop and Loman acted as salespersons for the sale of Majestic shares and received commissions on sales of Majestic shares issued from treasury and through secondary sales.

**LOAN AGREEMENTS, LOAN CONVERSION AGREEMENTS AND PROMISSORY NOTES**

10. From November 30, 2005 to January 31, 2008, Adams, Kricfalusi, 1562497 [now Majestic] and Majestic borrowed at least $750,000 directly from investors. Investors signed loan agreements, loan conversion agreements and/or promissory notes which provided the investor with the right to convert the loan amount to Majestic shares usually at a conversion rate of 1 Majestic share per $1.00 of loan amount. Most investors were advised that the monies raised would be used for Majestic's business.

11. The loan agreements, loan conversion agreements and promissory notes were securities as defined in the *Act*.

12. Staff allege that Adams, Kricfalusi, 1562497 [now Majestic] and Majestic breached subsections 25(1) and 53(1) of the *Act* by raising monies from investors using loan agreements, loan conversion agreements in circumstances in which exemptions from the registration and prospectus requirements of the *Act* were not available for these trades.

**SALES OF MAJESTIC SHARES**

13. Staff allege that from November 30, 2005 to January 31, 2008 inclusive, 1562497 and Majestic issued Majestic shares from treasury to approximately 69 shareholders. Investors in Ontario and Alberta were issued shares for 1562497 and/or Majestic at prices which ranged from $0.50 to $1.00 per share. During this period, Majestic raised approximately $2.2 million from the sale of Majestic shares issued from treasury.

14. In selling 1562497 and/or Majestic shares to Ontario and Alberta residents, Majestic purported to rely upon the prospectus and registration exemptions for selling securities to accredited investors contained in National Instrument 45-106 ("NI 45-106") in circumstances in which the exemption was not available.

15. The sales of Majestic shares were trades in securities not previously issued and were therefore distributions.

16. No prospectus receipt has been issued to qualify the sale of Majestic shares.

17. Staff allege that Majestic, Adams, Bishop and Loman sold Majestic shares from treasury contrary to the registration and prospectus requirements found in sections 25 and 53 of the *Act*.

18. Adams, Suncastle and CBK also subsequently raised approximately $3.1 million from the resale of their Majestic shares to investors.

19. Majestic was not a reporting issuer and therefore the resale of Majestic shares subsequent to initial trades made in reliance on specified exemptions from the prospectus requirements in NI 45-106 were distributions as the conditions in section 2.5 of in NI 45 - 102-Resale of Securities were not met.

20. None of the Respondents are registered with the Commission.

21. Staff allege that the Respondents sold previously distributed Majestic shares contrary to subsections 25(1) and 53(1) of the *Act*.

**SALES COMMISSIONS**

22. Majestic hired Bishop and Loman who acted as salespersons for the sale of Majestic shares.

23. Bishop and Majestic signed a commission agreement for the sale of Majestic shares which provided that: (i) Bishop was only to solicit subscriptions for Majestic shares from buyers who were accredited investors; and (ii) Bishop was to ensure that all investors completed the Certificate of Accredited Investor attached to the Subscription Agreement prior to their investments.

24. Bishop received cash commissions of approximately 3% to 5% of the amounts raised as well as shares of Majestic as compensation. Bishop received cash commissions in the total amount of approximately $43,000 and received approximately 600,000 Majestic shares.

25. Loman received: (i) a 10% commission from Majestic for sales of Majestic shares out of treasury; and (ii) commissions from Suncastle of 25% of the secondary sales of Majestic shares. Loman received cash commissions in the total amount of approximately $228,000.

**MAJESTIC'S FAILURE TO FILE A REPORT OF EXEMPT DISTRIBUTION**

26. Section 6.1 of NI 45-106 requires an issuer distributing securities of its own issue under specified exemptions, including the accredited investor exemption, to file a report in the local jurisdiction in which the distribution takes place.

27. The distribution of Majestic shares occurred in Ontario and required Majestic to file reports of exempt distribution with the Commission.

28. Majestic failed to file a Form 45-106F1 – Report of Exempt Distribution with the Commission relating to the distribution of Majestic shares contrary to section 6.1 of NI 45-106.

**PROHIBITED REPRESENTATIONS AND UNDERTAKINGS**

29. Majestic, Adams, Bishop and Loman made representations to potential investors including representations regarding the future listing and future value of Majestic shares with the intention of effecting trades in Majestic shares contrary to section 38 of the *Act*.

**CONDUCT IN BREACH OF THE ACT AND CONTRARY TO THE PUBLIC INTEREST**

30. The Respondents have traded in securities and acted as securities salespersons contrary to subsections 25(1) and 53(1) of the *Act* and contrary to the public interest.

31. Majestic, through its agents, and Adams, Bishop and Loman have made representations regarding the future listing and future value of Majestic shares with the intention of effecting sales of Majestic shares contrary to subsections 38(2) and 38(3) of the *Act* and contrary to the public interest.

32. As officers and directors of Majestic, Adams, Kricfalusi and Bishop have authorized, permitted or acquiesced in breaches by Majestic of sections 25, 38 and 53 of the *Act* and section 6.1 of NI 45-106 contrary to section 129.2 of the *Act* and in doing so have engaged in conduct contrary to the public interest.

33. As officers and directors of Suncastle, Adams and Kricfalusi have authorized, permitted or acquiesced in breaches by Suncastle of sections 25, 38 and 53 of the *Act* contrary to section 129.2 of the *Act* and have engaged in conduct contrary to the public interest.

34. Such additional allegations as Staff may advise and the Commission may permit.

**Dated:** at Toronto this 20th day of October, 2010

## 1.3 News Releases

### 1.3.1 Canadian Securities Regulators Publish Additional Guidance on Environmental Disclosure

**FOR IMMEDIATE RELEASE**
**October 27, 2010**

**CANADIAN SECURITIES REGULATORS PUBLISH**
**ADDITIONAL GUIDANCE ON ENVIRONMENTAL DISCLOSURE**

**Toronto** – The Canadian Securities Administrators (CSA) today published CSA Staff Notice 51-333 *Environmental Reporting Guidance* for reporting issuers about meeting existing environmental disclosure requirements.

The Notice should assist issuers in assessing which information must be disclosed on material environmental matters, such as risks related to weather patterns or environmental legislation. These disclosure requirements are set out primarily in National Instrument 51-102 *Continuous Disclosure Obligations*.

Environmental matters comprise a broad range of issues, including air, land, water and waste. These matters can affect issuers in several ways, including interrupting operations, resulting in material unplanned costs, providing new business opportunities, and potentially affecting reputation, capital expenditures, and a licence to operate.

"Greater transparency is needed regarding the nature and extent of environmental risks and other environmental matters," said Jean St-Gelais, Chair of the CSA and President and Chief Executive Officer of the Autorité des marchés financiers (Québec). "This guidance should greatly assist issuers in complying with their disclosure obligations, which would ultimately provide investors with much more complete information on environmental matters."

Following consultations with investors, issuers and experts, the Notice provides guidance on compliance with disclosure rules in the following areas:

- Environmental risks and related matters;
- Environmental risk oversight and management;
- Forward-looking information requirements as they relate to environmental goals and targets; and
- Impact of adoption of International Financial Reporting Standards (IFRS) on disclosure of environmental liabilities.

Copies of the Notice and related rule materials are available on the websites of CSA members.

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

For more information:

Theresa Ebden
Ontario Securities Commission
416-593-8307

Sylvain Théberge
Autorité des marchés financiers
514-940-2176

Mark Dickey
Alberta Securities Commission
403-297-4481

Ken Gracey
British Columbia Securities Commission
604-899-6577

Ainsley Cunningham
Manitoba Securities Commission
204-945-4733

Wendy Connors-Beckett
New Brunswick Securities Commission
506-643-7745

Natalie MacLellan
Nova Scotia Securities Commission
902-424-8586

Barbara Shourounis
Saskatchewan Financial Services Commission
306-787-5842

Janice Callbeck
PEI Securities Office
Office of the Attorney General
902-368-6288

Graham Lang
Yukon Securities Registry
867-667-5466

Donn MacDougall
Northwest Territories
Securities Office
867-920-8984

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

Louis Arki
Nunavut Securities Office
867-975-6587

### 1.3.2 OSC Releases 2010 Branch Reports

**FOR IMMEDIATE RELEASE**
**October 27, 2010**

**OSC RELEASES 2010 BRANCH REPORTS**

**TORONTO** – The Ontario Securities Commission (OSC) recently released annual reports on the activities of four of its Branches: Compliance and Registrant Regulation, Corporate Finance, Investment Funds and Market Regulation.

The reports summarize each Branch's key activities for the 2010 fiscal year, such as policy initiatives, and results of compliance and disclosure reviews. The reports are intended to assist market participants in understanding and complying with their obligations under Ontario securities law. The reports also highlight new initiatives that will impact market participants.

The OSC has oversight responsibility for approximately 1,400 registered firms, 65,000 registered individuals, 1,400 reporting issuers and 3,100 publicly-offered investment funds, as well as self-regulatory organizations, marketplaces and clearing agencies.

The reports are available under the Instruments, Rules & Policies section of the OSC website at www.osc.gov.on.ca:

- OSC Staff Notice 33-734 *2010 Compliance and Registrant Regulation Branch Annual Report*
- OSC Staff Notice 51-706 *2010 Corporate Finance Branch Annual Report*
- OSC Staff Notice 81-712 *2010 Investment Funds Branch Annual Report*
- OSC Staff Notice 21-704 *2010 Market Regulation Branch Annual Report*

For media inquiries:

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

Theresa Ebden
Senior Communications Specialist
416-593-8307

Robert Merrick
Senior Communications Specialist
416-593-2315

For investor inquiries:

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

## 1.4 Notices from the Office of the Secretary

### 1.4.1 Ciccone Group et al.

**FOR IMMEDIATE RELEASE**
**October 22, 2010**

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

**AND**

**IN THE MATTER OF**
**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**

**TORONTO** – The Commission issued an Order in the above named matter which provides that, pursuant to subsections 127(7) and (8) of the Act, (i) the Temporary Order is extended as against Ciccone Group, Medra, 990509, Cachet, Tadd, Ciccone, Malinowski, Brubacher, and Martin to January 26, 2011; and (ii) the Hearing is adjourned to January 25, 2011, at 2:00 p.m.

A copy of the Order dated October 21, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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

Theresa Ebden
Senior Communications Specialist
416-593-8307

Robert Merrick
Senior Communications Specialist
416-593-2315

For investor inquiries:

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

### 1.4.2 FactorCorp Inc. et al.

**FOR IMMEDIATE RELEASE**
**October 22, 2010**

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

**AND**

**IN THE MATTER OF**
**FACTORCORP INC., FACTORCORP FINANCIAL**
**INC., AND MARK IVAN TWERDUN**

**TORONTO** – The Commission issued an Order which provides that the hearing on the merits shall commence on September 12, 2011 and continue to September 30 except for September 20, 2011.

A copy of the Order dated October 22, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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

Theresa Ebden
Senior Communications Specialist
416-593-8307

Robert Merrick
Senior Communications Specialist
416-593-2315

For investor inquiries:

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

### 1.4.3 TBS New Media Ltd. et al.

**FOR IMMEDIATE RELEASE**
**October 25, 2010**

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

**AND**

**IN THE MATTER OF**
**TBS NEW MEDIA LTD., TBS NEW MEDIA PLC,**
**CNF FOOD CORP., CNF CANDY CORP.,**
**ARI JONATHAN FIRESTONE AND MARK GREEN**

**TORONTO** – The Commission issued an Order in the above named matter which provides that the pre-hearing conference is adjourned to December 6, 2010 at 10:00 a.m.

A copy of the Order dated October 22, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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

Theresa Ebden
Senior Communications Specialist
416-593-8307

Robert Merrick
Senior Communications Specialist
416-593-2315

For investor inquiries:

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

### 1.4.4 TBS New Media Ltd. et al.

**FOR IMMEDIATE RELEASE**
**October 25, 2010**

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

**AND**

**IN THE MATTER OF**
**TBS NEW MEDIA LTD., TBS NEW MEDIA PLC,**
**CNF FOOD CORP., CNF CANDY CORP.,**
**ARI JONATHAN FIRESTONE AND MARK GREEN**

**TORONTO** – The Commission issued a Temporary Order in the above named matter which provides that the Temporary Order, as amended by the July 12, 2010 order, is extended to December 7, 2010; and that the Hearing is adjourned to December 6, 2010 at 10:00 a.m. for a confidential pre-hearing conference.

A copy of the Temporary Order dated October 22, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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

Theresa Ebden
Senior Communications Specialist
416-593-8307

Robert Merrick
Senior Communications Specialist
416-593-2315

For investor inquiries:

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

### 1.4.5 Lehman Brothers & Associates Corp. et al.

**FOR IMMEDIATE RELEASE**
**October 25, 2010**

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

**AND**

**IN THE MATTER OF**
**LEHMAN BROTHERS & ASSOCIATES CORP.,**
**GREG MARKS, KENT EMERSON LOUNDS AND**
**GREGORY WILLIAM HIGGINS**

**TORONTO** – The Commission issued an Order in the above named matter which provides that the hearing on the merits is to commence on June 6, 2011 at 10:00 a.m. at the offices of the Commission, 20 Queen Street West, 17th Floor, Toronto, and shall continue on June 7 and 8, 2011, or such further or other dates as may be agreed to by the parties and fixed by the Office of the Secretary; and the parties attend before the Commission on April 5, 2011 at 2:30 p.m. for the purpose of having a status hearing, at the offices of the Commission, 20 Queen Street West, 17th Floor, Toronto.

A copy of the Order dated October 21, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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

Theresa Ebden
Senior Communications Specialist
416-593-8307

Robert Merrick
Senior Communications Specialist
416-593-2315

For investor inquiries:

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

### 1.4.6 Lehman Brothers & Associates Corp. et al.

**FOR IMMEDIATE RELEASE**
**October 25, 2010**

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

**AND**

**IN THE MATTER OF**
**LEHMAN BROTHERS & ASSOCIATES CORP.,**
**GREG MARKS, MICHAEL (MIKE) LEHMAN**
**(A.K.A. MIKE LAYMEN), KENT EMERSON LOUNDS**
**AND GREGORY WILLIAM HIGGINS**

**TORONTO** – The Commission issued a Temporary Order in the above named matter which provides that, pursuant to subsections 127 (7) and (8) of the Act, the Temporary Order is extended to the conclusion of the hearing on the merits.

A copy of the Temporary Order dated October 21, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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

Theresa Ebden
Senior Communications Specialist
416-593-8307

Robert Merrick
Senior Communications Specialist
416-593-2315

For investor inquiries:

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

### 1.4.7 L. Jeffrey Pogachar et al.

**FOR IMMEDIATE RELEASE**
**October 25, 2010**

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

**AND**

**IN THE MATTER OF**
**L. JEFFREY POGACHAR, PAOLA LOMBARDI,**
**ALAN S. PRICE, NEW LIFE CAPITAL CORP.,**
**NEW LIFE CAPITAL INVESTMENTS INC.,**
**NEW LIFE CAPITAL ADVANTAGE INC.,**
**NEW LIFE CAPITAL STRATEGIES INC.,**
**1660690 ONTARIO LTD., 2126375 ONTARIO INC.,**
**2108375 ONTARIO INC., 2126533 ONTARIO INC.,**
**2152042 ONTARIO INC., 2100228 ONTARIO INC., AND**
**2173817 ONTARIO INC.**

**TORONTO** – The Commission issued the following orders in the above named matter:

1. An Order dated October 25, 2010 granting Groia & Company's request to be removed as counsel of record for L. Jeffrey Pogachar and Paola Lombardi; and

2. An Order dated October 25, 2010 adjourning the hearing dates to April 4-15, 2011 except April 5, 2011 peremptory to the Respondents with or without counsel.

A copy of the Orders are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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

Theresa Ebden
Senior Communications Specialist
416-593-8307

Robert Merrick
Senior Communications Specialist
416-593-2315

For investor inquiries:

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

### 1.4.8 Majestic Supply Co. Inc. et al.

**FOR IMMEDIATE RELEASE**
**October 26, 2010**

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

**AND**

**IN THE MATTER OF**
**MAJESTIC SUPPLY CO. INC.,**
**SUNCASTLE DEVELOPMENTS CORPORATION,**
**HERBERT ADAMS, STEVE BISHOP,**
**MARY KRICFALUSI, KEVIN LOMAN AND**
**CBK ENTERPRISES INC.**

**TORONTO** – The Office of the Secretary issued a Notice of Hearing on October 20, 2010 setting the matter down to be heard on November 23, 2010 at 2:30 p.m. or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated October 20, 2010 and Statement of Allegations of Staff of the Ontario Securities Commission dated October 20, 2010 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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

Theresa Ebden
Senior Communications Specialist
416-593-8307

Robert Merrick
Senior Communications Specialist
416-593-2315

For investor inquiries:

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

### 1.4.9 Abel Da Silva

**FOR IMMEDIATE RELEASE**
**October 27, 2010**

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

**AND**

**IN THE MATTER OF**
**ABEL DA SILVA**

**TORONTO** – The Commission issued an Order in the above named matter which provides that (1) the hearing on the merits with respect to the Notice of Hearing dated September 20th, 2010 and Staff's Amended Statement of Allegations dated September 20th, 2010 shall take place on November 29th, 2010 at 10:00 a.m.; and (2) should Da Silva not appear at the hearing on the merits on November 29th, 2010 at 10:00 a.m. and an affidavit of service is provided to the Commission by Staff confirming that Da Silva was made aware of this hearing date, Staff will bring a motion on November 29th, 2010 to have the hearing on the merits proceed in writing.

A copy of the Order dated October 26, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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

Theresa Ebden
Senior Communications Specialist
416-593-8307

Robert Merrick
Senior Communications Specialist
416-593-2315

For investor inquiries:

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

### 1.4.10 Axcess Automation LLC et al.

**FOR IMMEDIATE RELEASE**
**October 27, 2010**

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

**AND**

**IN THE MATTER OF**
**THE COMMODITY FUTURES ACT**
**R.S.O. 1990, c. C.20, AS AMENDED**

**AND**

**IN THE MATTER OF**
**AXCESS AUTOMATION LLC,**
**AXCESS FUND MANAGEMENT, LLC,**
**AXCESS FUND, L.P., GORDON ALAN DRIVER,**
**DAVID RUTLEDGE, 6845941 CANADA INC.**
**carrying on business as ANESIS INVESTMENTS,**
**STEVEN M. TAYLOR, BERKSHIRE MANAGEMENT**
**SERVICES INC. carrying on business as**
**INTERNATIONAL COMMUNICATION STRATEGIES,**
**1303066 ONTARIO LTD. carrying on business as**
**ACG GRAPHIC COMMUNICATIONS,**
**MONTECASSINO MANAGEMENT CORPORATION,**
**REYNOLD MAINSE, WORLD CLASS**
**COMMUNICATIONS INC. and RONALD MAINSE**

**TORONTO** – The Commission issued an Order in the above named matter which provides that (1) the hearing on the merits shall begin on Monday, April 11, 2011, and continue during the weeks of April 11 and April 18, 2011 and, if necessary, April 25, 2011; and (2) pursuant to clauses 2 and 3 of subsection 127(1) of the Securities Act and clause 3 of subsection 60(1) of the Commodity Futures Act, trading in any securities by the Axcess Automation, Axcess Fund Management, Axcess Fund, Driver, Taylor, Berkshire Management Services Inc. carrying on business as ICS, ACG and Montecassino shall cease, and any exemptions contained in Ontario securities law and Ontario commodity futures law shall not apply to them until this matter is disposed of by a hearing on the merits, and if necessary, a hearing on sanctions, or settlement, as the case may be, or until further order of the Commission.

A copy of the Order dated October 25, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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

Theresa Ebden
Senior Communications Specialist
416-593-8307

Robert Merrick
Senior Communications Specialist
416-593-2315

For investor inquiries:

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

# Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 Oil Optimization Inc.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – request for relief from the requirement that financial statements be prepared in accordance with Canadian GAAP for periods ending on or after a qualifying transaction so long as the issuer prepares its financial statements in accordance with IFRS-IASB – first fully compliant IFRS-IASB financial statements will be for the interim period ending September 30, 2010 – relief granted, subject to conditions.

**Applicable Legislative Provisions**

National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency.

**Citation:** Oil Optimization Inc., Re, 2010 ABASC 491

**October 20, 2010**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**Oil Optimization Inc.**
**(the Filer)**

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirement in section 3.1 of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (**NI 52-107**) that financial statements be prepared in accordance with Canadian GAAP (the **Exemption Sought**), in order that the following financial statements may be prepared in accordance with International Financial Reporting Standards (**IFRS**) as issued by the International Accounting Standards Board (**IFRS-IASB**):

(a) the Filer's financial statements for annual and interim periods ending on or after the date of the Proposed Transaction (as defined below); and

(b) Red Stag Resources Inc.'s financial statements for annual and interim periods ending before the date of the Proposed Transaction (as defined below) and after the date of the financial statements included in the Prospectus (as defined below).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-10**2) is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the **Passport Jurisdictions**); and

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

**Interpretation**

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

**Representations**

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

1. The Filer is a corporation incorporated pursuant to the *Business Corporations Act* (Alberta).

2. The Filer is a reporting issuer in the Jurisdictions and the Passport Jurisdictions.

3. The Filer is not in default of its reporting issuer obligations under the Legislation or the securities legislation of the Passport Jurisdictions.

4. The Filer's head office is located in Calgary, Alberta.

5. The authorized capital of the Filer consists of an unlimited number of common shares (the **Oil Shares**) and an unlimited number of preferred shares.

6. The Filer is a capital pool company listed on the NEX board of the TSX Venture Exchange (**TSXV**).

7. Red Stag Resources Inc. (**Red Stag**) is a corporation incorporated pursuant to the *Canada Business Corporations Act*.

8. Red Stag is not a reporting issuer or its equivalent in any jurisdiction of Canada.

9. Red Stag's head office is located in Calgary, Alberta.

10. The authorized capital of Red Stag consists of an unlimited number of common shares (the **Red Stag Shares**) and an unlimited number of shares designated as class A shares, issuable in series.

11. Red Stag is an oil and gas exploration company with its principal assets located in Thailand.

12. The Filer entered into a letter of intent dated July 23, 2010 with Red Stag pursuant to which the Filer and Red Stag agreed to effect a reverse take-over transaction (the **Proposed Transaction**) whereby Red Stag will become a wholly-owned subsidiary of the Filer (the post-transaction entity being the **Resulting Issuer**).

13. The Proposed Transaction, if completed, is intended to serve as the Filer's qualifying transaction under TSXV Policy 2.4 *Capital Pool Companies*.

14. Pursuant to the Proposed Transaction and following the proposed subdivision of the Oil Shares on the basis of 1.8 post-subdivision Oil Shares for each Oil Share outstanding, the holders of Red Stag Shares are expected to exchange such shares for Oil Shares on a 1:1 basis such that the holders of Red Stag Shares will control the Resulting Issuer.

15. Following completion of the Proposed Transaction, it is anticipated that:

    (a) the Resulting Issuer's head office will be located in Calgary, Alberta;

    (b) the Resulting Issuer will carry on the business currently carried on by Red Stag;

    (c) all or substantially all of the executive officers of the Resulting Issuer will be comprised of current officers of Red Stag and a majority of the board of directors of the Resulting Issuer will be comprised of current directors of Red Stag; and

    (d) the common shares of the Resulting Issuer will be listed for trading on the TSXV.

16. The Proposed Transaction will be a recapitalization of Red Stag and, accordingly, the financial statements of the Filer subsequent to the Proposed Transaction will be those of Red Stag.

17. On August 26, 2010 and in connection with the Proposed Transaction, the Filer filed a preliminary long form prospectus dated August 23, 2010 in each of the provinces of Canada other than Quebec with the intention of filing a final long form prospectus (the **Prospectus**) to qualify the distribution of up to 33,333,333 Oil Shares therein.

18. On October 15, 2010, the Filer filed the Prospectus in each of the provinces of Canada other than Quebec and the Commission issued a receipt for the Prospectus.

19. The Filer became a reporting issuer in Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador upon the Decision Makers issuing a final receipt for the Prospectus.

20. The Filer prepares its financial statements in accordance with Canadian GAAP.

21. The Canadian Accounting Standards Board has confirmed that publicly accountable enterprises will be required to prepare their financial statements in accordance with IFRS-IASB for financial statements relating to fiscal years beginning on or after January 1, 2011.

22. NI 52-107 sets out acceptable accounting principles for financial reporting under the Legislation by domestic issuers, foreign issuers, registrants and other market participants. Under NI 52-107, a domestic issuer must use Canadian GAAP with the exception that an SEC registrant may use US GAAP. Under NI 52-107, only foreign issuers may use IFRS-IASB.

23. In CSA Staff Notice 52-321 *Early Adoption of International Financial Reporting Standards, Use of US GAAP and Reference to IFRS-IASB*, staff of the Canadian Securities Administrators recognized that some issuers may wish to prepare their financial statements in accordance with IFRS-IASB for periods beginning prior to January 1, 2011 and indicated that staff were prepared to recommend exemptive relief on a case by case basis to permit a domestic issuer to do so, despite section 3.1 of NI 52-107.

24. Red Stag adopted IFRS-IASB with a date of transition to IFRSs of January 1, 2007 and has been preparing its financial statements, including its audited annual statements for the years ended December 31, 2009, 2008 and 2007 and its interim statements for the six months ended June 30, 2010, all of which are included in the Prospectus, in accordance with IFRS-IASB , in anticipation of the adoption of IFRS-IASB.

25. Red Stag's audited annual financial statements which are included in the Prospectus include:

    (a) the first-time adoption disclosures required by International Financial Reporting Standard 1 *First-time Adoption of International Financial Reporting Standards* (**IFRS 1**); and

    (b) an opening IFRS statement of financial position as of the date of the transition to IFRSs, January 1, 2007, that is presented with equal prominence to other statements and, in the case of the annual financial statements, such opening statement of financial position was audited.

26. Subject to obtaining the Exemption Sought and closing of the Proposed Transaction, the Filer intends to use IFRS-IASB to prepare its financial statements for annual and interim periods ending on or after the date of the Proposed Transaction.

27. The Filer believes the adoption of IFRS-IASB by the Filer will avoid potential confusion for the users of the Filer's financial statements as all financial statements reporting on the business of Red Stag will have been prepared using the same accounting standards.

28. Since Red Stag currently prepares its financial statements under IFRS-IASB, it has assessed the readiness of and believes the staff, board of directors, audit committee, auditors, investors and other market participants of the Resulting Issuer are adequately prepared for the adoption of IFRS-IASB by the Resulting Issuer.

29. The Filer has considered the implications of adopting IFRS-IASB for financial periods ending on or after the date of the Proposed Transaction on its obligations under securities legislation including, but not limited to, those relating to CEO and CFO certifications, business acquisition reports, offering documents, and previously released material forward looking information, and has concluded that if the Exemption Sought is granted the Filer will continue to be able to fulfill these obligations; and

30. The Filer included in the Prospectus information about its transition to IFRS-IASB, including:

    (a) an explanation that the Proposed Transaction is a recapitalization;

    (b) an explanation that the Filer's accounting will be a continuation of Red Stag's accounting which has been IFRS-IASB since inception;

    (c) the accounting policy and implementation decisions Red Stag made;

    (d) the exemptions available under IFRS 1 that Red Stag applied in preparing financial statements in accordance with IFRS-IASB; and

    (e) major identified differences between Red Stag's previous accounting policies and those that Red Stag applied in preparing financial statements in accordance with IFRS-IASB.

**Decision**

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

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

(a) the Proposed Transaction is completed;

(b) the Filer prepares its financial statements for periods ending on or after the date of the Proposed Transaction in accordance with IFRS-IASB;

(c) Red Stag prepares its financial statements for periods ending before the date of the Proposed Transaction and after the date of the financial statements included in the Prospectus in accordance with IFRS-IASB;

(d) if the Filer or Red Stag presents the components of profit or loss in a separate income statement, the separate income statement is displayed immediately before the statement of comprehensive income;

(e) the Filer and Red Stag's annual IFRS-IASB financial statements disclose an explicit and unreserved statement of compliance with IFRS; and

(f) the Filer and Red Stag's IFRS-IASB interim financial statements disclose compliance with International Accounting Standard 34 Interim Financial Reporting.

"Blaine Young"
Associate Director, Corporate Finance

### 2.1.2 Vermilion Resources Ltd. – s. 1(10)

**Headnote**

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

**Ontario Statutes**

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

October 21, 2010

Macleod Dixon LLP
3700 Canterra Tower
400 - 3 Avenue SW
Calgary, AB T2P 4H2

Attention: Jason M. Metcalf

Dear Sir:

**Re: Vermilion Resources Ltd. (the Applicant) – Application for a decision under the securities legislation of Alberta, Ontario and Québec (the Jurisdictions) that the Applicant is not a reporting issuer**

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

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

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

### 2.1.3 Storm Resources Ltd.

**Headnote**

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption granted from the requirement that financial statements be prepared in accordance with Canadian GAAP – the issuer recently became a reporting issuer; the issuer has not previously prepared financial statements in accordance with Canadian GAAP; the issuer has assessed the readiness of its staff, board, audit committee, auditors and investors.

**Applicable Legislative Provisions**

National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency.

**Citation:** Storm Resources Ltd., Re, 2010 ABASC 492

**October 21, 2010**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**STORM RESOURCES LTD.**
**(the Filer)**

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirement in section 3.1 of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (**NI 52-107**) that financial statements be prepared in accordance with Canadian GAAP (the **Exemption Sought**), in order that the Filer may prepare financial statements in accordance with International Financial Reporting Standards (**IFRS**) as issued by the International Accounting Standards Board (**IFRS-IASB**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

(a) the Alberta 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 British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; and

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

**Interpretation**

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

**Representations**

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

1. The Filer was incorporated in Alberta on June 8, 2010, its head office is located in Calgary, Alberta and its registered office is at Suite 3300, 421 – 7th Avenue S.W., Calgary, Alberta, T2P 4K9.

2. The Filer is a reporting issuer under the securities legislation of each of the provinces of Canada.

3. The Filer is an oil and gas exploration company with assets in Alberta and British Columbia.

4. The Filer does not have any operating revenue as it is still in the exploration phase.

5. The Filer's common shares are listed on the TSX Venture Exchange (**TSX-V**) under the symbol "SRX".

6. The Filer became a reporting issuer in the provinces of Canada pursuant to a plan of arrangement involving Storm Exploration Inc. (**Storm**), ARC Energy Trust, ARC Resources Ltd. (**ARC Resources**) and the Filer (the **Arrangement**) completed on August 17, 2010.

7. Under the Arrangement, the Filer was spun out of Storm. An aggregate of 16,631,241 common shares and 6,653,161 warrants to purchase common shares of the Filer were issued to Storm shareholders and 884,174 common shares of the Filer were issued to ARC Resources.

8. Pursuant to the Arrangement, certain resource properties consisting of approximately 117,200 net acres located in the Horn River Basin, Cabin/Kotcho/Junior and Umbach areas in north eastern British Columbia plus undeveloped land in the Red Earth area of Alberta, cash, a portfolio of listed securities and a 22% ownership position in a

private company (collectively, the **Assets**) were transferred to the Filer from Storm.

9. The Filer will record the acquisition of the Assets as the acquisition of a group of assets and, therefore, will allocate the cost of the acquisition among the individual identifiable assets and liabilities in the group based on the relative fair value at the acquisition date.

10. The Filer prepared a statement of financial position prepared in accordance with IFRS (which was also compliant with Canadian GAAP) as at June 8, 2010 for inclusion in the Storm Notice of Special Meeting and Information Circular (the **Circular**) mailed to Storm shareholders in connection with the Arrangement. The Circular has been filed on SEDAR under the Filer's and Storm's SEDAR profiles.

11. The Filer is currently, and has been since August 30, 2010 (the **Default Date**), in default of securities legislation due to the filing of financial statements which disclose that they were prepared in accordance with IFRS.

12. Except for the default noted above, the Filer is not in default of securities legislation of any province of Canada.

13. The Filer acknowledges that any right of action, remedy, penalty or sanction available to any person or company or to a securities regulatory authority against the Filer from the Default Date until the date of this decision document are not terminated or altered as a result of this decision.

14. The Canadian Accounting Standards Board has confirmed that publicly accountable enterprises will be required to prepare their financial statements in accordance with IFRS for interim and annual financial statements relating to fiscal years beginning on or after January 1, 2011.

15. The Filer's financial year-end is December 31.

16. NI 52-107 sets out acceptable accounting principles for financial reporting under the Legislation by domestic issuers, foreign issuers, registrants and other market participants; under NI 52-107, a domestic issuer must use Canadian GAAP with the exception that an SEC registrant may use US GAAP; under NI 52-107, only foreign issuers may use IFRS.

17. In CSA Staff Notice 52-321 *Early Adoption of International Financial Reporting Standards, Use of US GAAP and Reference to IFRS-IASB*, staff of the Canadian Securities Administrators recognized that some issuers may wish to prepare their financial statements in accordance with IFRS-IASB for periods beginning prior to January 1, 2011 and indicated that staff were prepared to recommend exemptive relief on a case by case basis to permit a domestic issuer to do so, despite section 3.1 of NI 52-107.

18. The Filer has evaluated its overall readiness to transition to IFRS, including the readiness of its staff, Board of Directors and Audit Committee, and has concluded that it is adequately prepared for adoption of IFRS effective immediately.

19. The Filer has considered the implications of adopting IFRS on its obligations under securities legislation including but not limited to, those relating to CEO and CFO certifications, business acquisition reports and offering documents.

20. For the Filer, because it is in a start-up position, the main areas of accounting focus are exploration, issuance of share capital, stock based compensation and accounting for cash and investments, all of which have very few or no significant differences under the two accounting frameworks.

**Decision**

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

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

(a) the Filer prepares its financial statements for annual and interim periods beginning on or after January 1, 2010 in accordance with IFRS-IASB;

(b) if the Filer presents the components of profit or loss in a separate income statement, the separate income statement is displayed immediately before the statement of comprehensive income;

(c) the Filer's annual IFRS-IASB financial statements disclose an explicit and unreserved statement of compliance with IFRS; and

(a) the Filer's IFRS-IASB interim financial statements disclose compliance with International Accounting Standard 34 Interim Financial Reporting.

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

### 2.1.4 Etruscan Resources Inc. – s. 1(10)

**Headnote**

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

**Applicable Legislative Provisions**

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

October 15, 2010

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

Dear Ms. Jones:

**Re: Etruscan Resources Inc. (the "Applicant") - Application for a decision under the securities legislation of Nova Scotia, Newfoundland and Labrador, Prince Edward Island, New Brunswick, Ontario, Manitoba, Saskatchewan and Alberta (the "Jurisdictions") that the Applicant is not a reporting issuer**

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

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

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

### 2.1.5 Morgan Stanley & Co. Incorporated and Morgan Stanley Smith Barney, LLC

**Headnote**

Filers exempted from section 13.12 [restriction on lending to clients] of National Instrument 31-103 Registration Requirements and Exemptions – Each of the two filers is registered under the Act as an "exempt market dealer" – One filer is a registered broker-dealer with the SEC and a member of FINRA, while the other filer is regulated in the UK by the FSA through permissions granted by the FSA – Terms and conditions on the exemptions require that: (i) the head office or principal place of business of the filer be in, depending upon the filer, either the USA or UK; (ii) in the case of the USA filer, it be registered under the securities legislation of the USA, in a category of registration that permits it to carry on the activities in the USA that registration as an investment dealer would permit it to carry on in Ontario, (iii) in the case of the UK filer, it be regulated under the securities legislation of the UK through permissions granted by the FSA that permit it to carry on the activities in the UK that registration as an investment dealer would permit to carry on in Ontario, (iv) by virtue of the regulation of the USA filer under the securities legislation of the USA, and the regulation of the UK filer under the securities legislation of UK, the USA filer and the UK filer are subject to requirements in respect of lending money, extending credit or providing margin to clients that result in substantially similar regulatory protections to those provided for under the capital and margin requirements of IIROC, that would be applicable if the filer if it were registered under the Act as an investment dealer and were a member of IIROC.

**Statute Cited**

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

**Instruments Cited**

National Instrument 14-101 Definitions.
National Instrument 31-103 Registration Requirements and Exemptions, ss. 13.12, 15.1.

**Decision Cited**

*In the Matter of AXA Rosenberg Investment Management LLC, Bloomberg Tradebook (Bermuda) Ltd., Bloomberg Tradebook LLC, BNY Mellon Capital Markets LLC, Credit Suisse Securities (Europe) Limited, Credit Suisse Securities (USA) LLC, Goldman Sachs Execution & Clearing, L.P., Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated and Morgan Stanley Smith Barney LLC.*, (2009) 32 OSCB 8030

**September 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**
**NATIONAL INSTRUMENT 31-103**
**REGISTRATION REQUIREMENTS AND EXEMPTIONS**
**(NI 31-103)**

**AND**

**IN THE MATTER OF**
**MORGAN STANLEY & CO. INCORPORATED (MSC)**
**AND**
**MORGAN STANLEY SMITH BARNEY, LLC (MSSB)**
**(collectively, the Filers and each, a Filer)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirement contained in section 13.12 of NI 31-103 that a registrant must not lend money, extend credit or provide margin to a client (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 Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in those provinces and territories in which the Filers are currently or intend to be registered as exempt market dealer.

**Interpretation**

Unless otherwise defined in this decision or the context otherwise requires, terms used in this decision that are defined in NI 31-103 have the same meaning, and other terms used in this decision that are defined in National Instrument 14-101 *Definitions* or MI 11-102 have the same meaning.

**Representations**

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

1. MSC is a corporation incorporated under the laws of the State of Delaware and its head office and

principal place of business are located in New York, New York.

2. MSSB is a limited liability company formed under the laws of the State of Delaware and its head office and principal place of business are located in Purchase, New York.

3. Each of the Filers is registered as a broker-dealer and investment adviser with the U.S. Securities and Exchange Commission (**SEC**) and is a member of the Financial Industry Regulatory Authority (**FINRA**).

4. MSC is registered under the Legislation as a dealer, in the category of "exempt market dealer". MSC is registered, or has applied for registration, as an exempt market dealer in each of the other provinces and territories of Canada. In addition, MSC acts as a dealer in reliance on section 8.18 [*international dealer*] of NI 31-103 in each province of Canada; and MSC acts as an adviser in reliance on section 8.26 [*international adviser*] of NI 31-103 in each province of Canada.

5. MSSB is registered under the Legislation as a dealer, in the category of "exempt market dealer". MSSB is registered, or has applied for registration, as an exempt market dealer in each of the other provinces and territories of Canada. In addition, MSSB acts as a dealer in reliance on section 8.18 [*international dealer*] of NI 31-103 in each province of Canada; and MSSB acts as an adviser in reliance on section 8.26 [*international adviser*] of NI 31-103 in each province of Canada.

6. Each of the Filers is a global financial services firm that provides investment, financing and related services to individuals and institutions. Services provided to clients include securities brokerage, trading and underwriting; investment banking, strategic services (including mergers and acquisitions) and other corporate advisory activities; origination, dealer and related activities; and securities clearance and settlement services and investment advisory and related record keeping services.

7. Each of the Filers routinely lends money, extends credit and provides margin to many of its clients around the world, including in Canada, in connection with, and as an integral part of, its brokerage services. These services are provided in order to facilitate, among other things, the purchase and short-selling of securities by clients.

8. Each of the Filers is subject to regulations of the Board of Governors of the U.S. Federal Reserve System (**Board**), the SEC, FINRA and the New York Stock Exchange (**NYSE**) regarding the lending of money, extension of credit and provision of margin that are designed to provide substantially similar protections to the regulations regarding the lending of money, extension of credit or provision of margin to which dealer members of the Investment Industry Regulatory Organization of Canada (**IIROC**) are subject, and each of the Filers is in compliance in all material respects with all such regulations. In particular, each of the Filers is subject to the margin requirements imposed by the Board, including Regulations T, U and X under the Securities Exchange Act of 1934, as supplemented by Rule 431 of the NYSE Rules, and the FINRA Rules.

Section 13.12 of NI 31-103

9. By virtue of its registration under the Legislation as an exempt market dealer, each of the Filers is subject to the prohibition on lending money, extending credit or providing margin to a client in section 13.12 of NI 31-103.

10. In certain comments received on NI 31-103, after it was published for comment, it was suggested that the prohibitions in section 13.12 should not apply to exempt market dealers that are members of foreign self-regulatory organizations, or subject to regulatory requirements in a foreign jurisdiction, where the dealer is subject to margin regimes similar to that imposed by IIROC. The Canadian Securities Administrators responded to these comments by suggesting that these circumstances could be considered on a case-by-case basis, through exemption applications, and that an exemption should be made available to registrants who have "adequate measures in place to address the risks involved and other related regulatory concerns".

11. Each of the Filers was granted a temporary one-year exemption from section 13.12 of NI 31-103 in a decision of the principal regulator dated September 28, 2009, *In the Matter of AXA Rosenberg Investment Management LLC, Bloomberg Tradebook (Bermuda) Ltd., Bloomberg Tradebook LLC, BNY Mellon Capital Markets LLC, Credit Suisse Securities (Europe) Limited, Credit Suisse Securities (USA) LLC, Goldman Sachs Execution & Clearing, L.P., Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated and Morgan Stanley Smith Barney LLC*. This temporary exemption addresses an immediate transition difficulty for each of the Filers which arose on September 28, 2009 with the coming into force of NI 31-103. As indicated in that decision, the temporary exemption was intended to facilitate the case-by case assessment of exemption applications referred to in paragraph 10.

**Decision**

The principal regulator is satisfied that this 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 so long as:

(a) the head office or principal place of business of the Filer is in the United States;

(b) the Filer is licensed or registered under the securities legislation of the United States in a category of licensing or registration that permits it to carry on the activities in the United States that registration as an investment dealer would permit it to carry on in the Jurisdiction; and

(c) by virtue of the registration referred to in paragraph (b), including required membership in one or more self-regulatory organizations, the Filer is subject to requirements in respect of its lending money, extending credit or providing margin to clients (including clients that are located in Canada) that result in substantially similar regulatory protections to those provided under the capital and margin requirements of IIROC that would be applicable to the Filer if it were registered under the Legislation as an investment dealer and were a member of IIROC.

"Erez Blumberger"
Deputy Director, Registrant Regulation
Ontario Securities Commission

### 2.1.6 Goldman, Sachs & Co. and Goldman Sachs Execution & Clearing, L.P.

**Headnote**

Filers exempted from section 13.12 [restriction on lending to clients] of National Instrument 31-103 Registration Requirements and Exemptions – Each of the two filers is registered under the Act as an "exempt market dealer" – One filer is a registered broker-dealer with the SEC and a member of FINRA, while the other filer is regulated in the UK by the FSA through permissions granted by the FSA – Terms and conditions on the exemptions require that: (i) the head office or principal place of business of the filer be in, depending upon the filer, either the USA or UK; (ii) in the case of the USA filer, it be registered under the securities legislation of the USA, in a category of registration that permits it to carry on the activities in the USA that registration as an investment dealer would permit it to carry on in Ontario, (iii) in the case of the UK filer, it be regulated under the securities legislation of the UK through permissions granted by the FSA that permit it to carry on the activities in the UK that registration as an investment dealer would permit to carry on in Ontario, (iv) by virtue of the regulation of the USA filer under the securities legislation of the USA, and the regulation of the UK filer under the securities legislation of UK, the USA filer and the UK filer are subject to requirements in respect of lending money, extending credit or providing margin to clients that result in substantially similar regulatory protections to those provided for under the capital and margin requirements of IIROC, that would be applicable if the filer if it were registered under the Act as an investment dealer and were a member of IIROC.

**Statute Cited**

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

**Instruments Cited**

National Instrument 14-101 Definitions.
National Instrument 31-103 Registration Requirements and Exemptions, ss. 13.12, 15.1.

**Decision Cited**

*In the Matter of AXA Rosenberg Investment Management LLC, Bloomberg Tradebook (Bermuda) Ltd., Bloomberg Tradebook LLC, BNY Mellon Capital Markets LLC, Credit Suisse Securities (Europe) Limited, Credit Suisse Securities (USA) LLC, Goldman Sachs Execution & Clearing, L.P., Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated and Morgan Stanley Smith Barney LLC.*, (2009) 32 OSCB 8030

**September 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**
**NATIONAL INSTRUMENT 31-103**
**REGISTRATION REQUIREMENTS AND EXEMPTIONS**
**(NI 31-103 )**

**AND**

**IN THE MATTER OF**
**GOLDMAN, SACHS & CO. AND**
**GOLDMAN SACHS EXECUTION & CLEARING, L.P.**
**(collectively, the Filers and each, a Filer)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirement contained in section 13.12 of NI 31-103 that a registrant must not lend money, extend credit or provide margin to a client (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 Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in those provinces and territories in which the Filers are currently or intend to be registered as exempt market dealer.

**Interpretation**

Unless otherwise defined in this decision or the context otherwise requires, terms used in this decision that are defined in NI 31-103 have the same meaning, and other terms used in this decision that are defined in National Instrument 14-101 *Definitions* or MI 11-102 have the same meaning.

**Representations**

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

1. Goldman, Sachs & Co. (**GSCO**) is a limited partnership formed under the laws of the State of New York. The head office of GSCO is located in New York, New York, United States of America. GSCO is an indirect, wholly-owned subsidiary of The Goldman Sachs Group, Inc. (**GS Group**). GSCO is registered as a broker-dealer and investment adviser with the U.S. Securities and Exchange Commission (the **SEC**) and is a member of the Financial Industry Regulatory Authority (**FINRA**). GSCO is a member of all major U.S. stock exchanges and U.S. commodity futures exchanges.

2. GSCO is registered under the Legislation as a dealer, in the category of "exempt market dealer". GSCO is registered, or has applied for registration, as an exempt market dealer and portfolio manager in each of the other provinces of Canada and the Yukon Territory. In addition, GSCO acts as a dealer in reliance on section 8.18 [*international dealer*] of NI 31-103 in each of the provinces of Canada and the Yukon Territory; and GSCO acts as an adviser in reliance on section 8.26 [*international adviser*] of NI 31-103 in each of the provinces of Canada and the Yukon Territory.

3. Goldman Sachs Execution & Clearing, L.P. (**GSEC**) is a limited partnership formed under the laws of the State of New York. The head office of GSEC is located in Jersey City, New Jersey, United States of America. GSEC is an indirect, wholly owned subsidiary of GS Group. GSEC is registered as a broker-dealer with the SEC and is a member of FINRA. GSEC is a member of all major U.S. stock exchanges and U.S. commodity futures exchanges.

4. GSEC is registered under the Legislation as a dealer, in the category of "exempt market dealer". GSEC is registered, or has applied for registration, as an exempt market dealer in each of the other provinces and the Yukon Territory. In addition, GSEC acts as a dealer in reliance on section 8.18 [*international dealer*] of NI 31-103 in each of the provinces of Canada and the Yukon Territory.

5. The Filers are part of a global financial services firm that provides investment, financing and related services to individuals and institutions. Services provided to clients by the Filers include securities brokerage, clearance and settlement services and related financing and record keeping services. Additionally, GSCO acts as a dealer and provides underwriting, investment banking, corporate advisory, investment advisory and other related services traditionally provided by a full service broker dealer.

6. Each of the Filers routinely lends money, extends credit and provides margin to many of its clients around the world, including in Canada, in connection with, and as an integral part of, its brokerage services. These services are provided in order to facilitate, among other things, the purchase and short-selling of securities by clients.

7. Each of the Filers is subject to regulations of the Board of Governors of the U.S. Federal Reserve System (the **Board**), the SEC, FINRA and the New York Stock Exchange (the **NYSE**) regarding the lending of money, extension of credit and provision of margin to clients (the **U.S. Margin Regulations**) that are designed to provide protections that are substantially similar to the protections provided by the regulations regarding the lending of money, extension of credit and provision of margin to which dealer members of the Investment Industry Regulatory Organization of Canada (**IIROC**) are subject, and each of the Filers is in compliance in all material respects with all applicable U.S. Margin Regulations. In particular, each of the Filers is subject to the margin requirements imposed by the Board, including Regulations T, U and X, under applicable SEC rules and under NYSE Rule 431.

Section 13.12 of NI 31-103

8. By virtue of its registration under the Legislation as an exempt market dealer, each of the Filers is subject to the prohibition on lending money, extending credit or providing margin to a client in section 13.12 of NI 31-103.

9. In certain comments received on NI 31-103, after it was published for comment, it was suggested that the prohibitions in section 13.12 should not apply to exempt market dealers that are members of foreign self-regulatory organizations, or subject to regulatory requirements in a foreign jurisdiction, where the dealer is subject to margin regimes similar to that imposed by IIROC. The Canadian Securities Administrators responded to these comments by suggesting that these circumstances could be considered on a case-by-case basis, through exemption applications, and that an exemption should be made available to registrants who have "adequate measures in place to address the risks involved and other related regulatory concerns".

10. Each of the Filers was granted a temporary one-year exemption from section 13.12 of NI 31-103 in a decision of the principal regulator dated September 28, 2009, *In the Matter of AXA Rosenberg Investment Management LLC, Bloomberg Tradebook (Bermuda) Ltd., Bloomberg Tradebook LLC, BNY Mellon Capital Markets LLC, Credit Suisse Securities (Europe) Limited, Credit Suisse Securities (USA) LLC, Goldman Sachs Execution & Clearing, L.P., Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated and Morgan Stanley Smith Barney LLC*. This temporary exemption addresses an immediate transition difficulty for each of the Filers which arose on September 28, 2009 with the coming into force of NI 31-103. As indicated in that decision, the temporary exemption was intended to facilitate the case-by case assessment of exemption applications referred to in paragraph 9.

**Decision**

The principal regulator is satisfied that this 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 so long as:

(a) the head office or principal place of business of the Filer is in the United States;

(b) the Filer is licensed or registered under the securities legislation of the United States in a category of licensing or registration that permits it to carry on the activities in the United States that registration as an investment dealer would permit it to carry on in the Jurisdiction; and

(c) by virtue of the registration referred to in paragraph (b), including required membership in one or more self-regulatory organizations, the Filer is subject to requirements in respect of its lending money, extending credit or providing margin to clients (including clients that are located in Canada) that result in substantially similar regulatory protections to those provided for under the capital and margin requirements of IIROC that would be applicable to the Filer if it were registered under the Legislation as an investment dealer and were a member of IIROC.

"Erez Blumberger"
Deputy Director, Registrant Regulation
Ontario Securities Commission

### 2.1.7 Credit Suisse Securities (USA) LLC and Credit Suisse Securities (Europe) Limited

**Headnote**

Filers exempted from section 13.12 [restriction on lending to clients] of National Instrument 31-103 Registration Requirements and Exemptions – Each of the two filers is registered under the Act as an "exempt market dealer" – One filer is a registered broker-dealer with the SEC and a member of FINRA, while the other filer is regulated in the UK by the FSA through permissions granted by the FSA – Terms and conditions on the exemptions require that: (i) the head office or principal place of business of the filer be in, depending upon the filer, either the USA or UK; (ii) in the case of the USA filer, it be registered under the securities legislation of the USA, in a category of registration that permits it to carry on the activities in the USA that registration as an investment dealer would permit it to carry on in Ontario, (iii) in the case of the UK filer, it be regulated under the securities legislation of the UK through permissions granted by the FSA that permit it to carry on the activities in the UK that registration as an investment dealer would permit to carry on in Ontario, (iv) by virtue of the regulation of the USA filer under the securities legislation of the USA, and the regulation of the UK filer under the securities legislation of UK, the USA filer and the UK filer are subject to requirements in respect of lending money, extending credit or providing margin to clients that result in substantially similar regulatory protections to those provided for under the capital and margin requirements of IIROC, that would be applicable if the filer if it were registered under the Act as an investment dealer and were a member of IIROC.

**Statute Cited**

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

**Instruments Cited**

National Instrument 14-101 Definitions.
National Instrument 31-103 Registration Requirements and Exemptions, ss. 13.12, 15.1.

**Decision Cited**

*In the Matter of AXA Rosenberg Investment Management LLC, Bloomberg Tradebook (Bermuda) Ltd., Bloomberg Tradebook LLC, BNY Mellon Capital Markets LLC, Credit Suisse Securities (Europe) Limited, Credit Suisse Securities (USA) LLC, Goldman Sachs Execution & Clearing, L.P., Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated and Morgan Stanley Smith Barney LLC.*, (2009) 32 OSCB 8030

**September 28, 2010**

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

**AND**

**IN THE MATTER OF**
**CREDIT SUISSE SECURITIES (USA) LLC (CSSU)**
**AND**
**CREDIT SUISSE SECURITIES (EUROPE) LIMITED**
**(CSSE) (collectively, the Filers)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirement contained in section 13.12 [*restriction on lending to clients*] of National Instrument 31-103 *Registration Requirements and Exemptions* (**NI 31-103**) that a registrant must not lend money, extend credit or provide margin to a client (the **Exemption Sought**).

**Interpretation**

Terms defined in National Instrument 14-101 *Definitions* and Multilateral Instrument 11-102 *Passport System* have the same meaning if used in this decision, unless otherwise defined or the context otherwise requires.

**Representations**

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

CSSU

1. CSSU is a limited liability corporation incorporated under the laws of the State of Delaware. Its head office is located in New York, New York, United States of America (**U.S.A.**).

2. CSSU is a wholly-owned subsidiary of Credit Suisse (USA), Inc., a Delaware corporation, and an indirect wholly-owned subsidiary of Credit Suisse Group AG, a Swiss corporation.

3. CSSU is registered as a broker-dealer with the United States Securities and Exchange Commission (**SEC**), and is a member of the Financial Industry Regulatory Authority (**FINRA**). This registration permits CSSU to carry on in the U.S.A., being its home jurisdiction, substantially similar activities that registration as an investment dealer would authorize it to carry on in the Jurisdiction if CSSU were registered under the Legislation as an investment dealer.

4. CSSU is a member of major securities exchanges, including the NASDAQ OMX, the Chicago Stock Exchange, NYSE Euronext (**NYSE**), and the Philadelphia Stock Exchange.

5. CSSU is registered as a Futures Commission Merchant with the United States Commodity Futures Trading Commission, and is a member of the National Futures Association. Pursuant to these registrations, CSSU is authorized to handle customer orders and receive and hold customer margin deposits, and otherwise act as a futures broker, in the U.S.A.

6. CSSU is a Foreign Approved Participant of the Montreal Exchange and a Trading Participant of ICE Futures Canada, Inc. CSSU is also a member of the CME Group (including the Chicago Board of Trade), ICE Futures U.S., Inc., and other principal U.S.A. commodity exchanges, and trades through affiliated or unaffiliated member firms on all other exchanges, including exchanges in Canada, France, Italy, Japan, Singapore, Spain, Taiwan, Mexico, Korea and the United Kingdom.

7. CSSU provides a variety of capital raising, investment banking, market making, brokerage, and advisory services, including fixed income and equity sales and research, commodities trading, foreign exchange trading, emerging markets activities, securities lending, investment banking and derivatives dealing for governments, corporate and financial institutions. CSSU also conducts proprietary trading activities.

8. CSSU's Prime Services unit provides services through the following divisions: prime brokerage (i.e. facilitates multi-currency financing, clearance, settlement and custody of securities transactions), structured finance, securities lending, capital introductions, start-up consulting, and risk management.

9. CSSU is registered under the Legislation as a dealer, in the category of "exempt market dealer", and as an adviser, in the category of "portfolio manager", with terms and conditions restricting it to conducting its advising activities in accordance with Ontario Securities Commission Rule 35-502 *Non-Resident Advisers* for a one-year period ending September 28, 2010. In addition, CSSU acts as a dealer in reliance on section 8.18 [*international dealer*] of NI 31-103 in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Ontario, Prince Edward Island and Quebec; and CSSU acts as an adviser in reliance on section 8.26 [*international adviser*] of NI 31-103 in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Ontario, Prince Edward Island, Quebec and Saskatchewan.

CSSE

10. CSSE is a company incorporated under the laws of England and Wales. Its registered office is located in London, England, United Kingdom (the **U.K.**).

11. CSSE is a wholly-owned subsidiary of Credit Suisse Investment Holdings, a U.K. company, and an indirect wholly-owned subsidiary of Credit Suisse Group, a Swiss company.

12. CSSE is authorized and regulated in the U.K. by the Financial Services Authority (the **FSA**) and is a listed money market institution under the Financial Services and Markets Act, 2000.

13. CSSE has permissions from the FSA that include advising on investments, arranging deals in investments, arranging, safeguarding and administering assets, dealing in investments as principal and agent and managing investments. CSSE's principal activities are the arranging of finance for clients in the international capital markets, the provision of financial advisory services and acting as dealer in securities, derivatives and foreign exchange on a principal and agency basis. These permissions authorize CSSE to carry on in the UK, being its home jurisdiction, substantially similar activities that registration as an investment dealer would authorize it to carry on in the Jurisdiction if CSSE were registered under the Legislation as an investment dealer.

14. CSSE is registered under the Legislation as a dealer in the category of "exempt market dealer". In addition, CSSE acts as a dealer in reliance on section 8.18 [*international dealer*] of NI 31-103 in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Ontario, Prince Edward Island, Quebec and Saskatchewan.

Section 13.12 of NI 31-103

15. By virtue of its registration under the Legislation as an exempt market dealer, each of the Filers is subject to the prohibition on lending money, extending credit or providing margin to a client in section 13.12 of NI 31-103.

16. In certain comments received on NI 31-103, after it was published for comment, it was suggested that the prohibitions in section 13.12 should not apply to exempt market dealers that are members of foreign self-regulatory organizations, or subject to regulatory requirements in a foreign jurisdiction, where the dealer is subject to margin regimes similar to that imposed by the Investment Industry Regulatory Organization of Canada (**IIROC**). The Canadian Securities Administrators responded to these comments by suggesting that these circumstances could be considered on a case-by-case basis, through exemption applications, and that an exemption should be made available to registrants who have "adequate measures in place to address the risks involved and other related regulatory concerns".

17. Each of the Filers was granted a temporary one-year exemption from section 13.12 of NI 31-103 in a decision of the principal regulator dated September 28, 2009, *In the Matter of AXA Rosenberg Investment Management LLC, Bloomberg Tradebook (Bermuda) Ltd., Bloomberg Tradebook LLC, BNY Mellon Capital Markets LLC, Credit Suisse Securities (Europe) Limited, Credit Suisse Securities (USA) LLC, Goldman Sachs Execution & Clearing, L.P., Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated and Morgan Stanley Smith Barney LLC*. This temporary exemption addresses an immediate transition difficulty for each of the Filers which arose on September 28, 2009 with the coming into force of NI 31-103. As indicated in that decision, the temporary exemption was intended to facilitate the case-by case assessment of exemption applications referred to in paragraph 16.

18. CSSU is subject to regulations of the Board of Governors of the U.S.A. Federal Reserve System, the SEC, FINRA and the New York Stock Exchange (the **NYSE**) regarding the lending of money, extension of credit and provision of margin to clients (the **U.S.A. Margin Regulations**) that provide protections that are substantially similar to the protections provided by the requirements regarding the lending of money, extension of credit and provision of margin to clients to which dealer members of IIROC are subject. In particular, CSSU is subject to the margin requirements imposed by the Board, including Regulations T, U and X, under applicable SEC rules and under NYSE Rule 431. CSSU is in compliance in all material respects with all applicable U.S.A. Margin Regulations.

19. While the regulatory environment in which CSSE operates does not currently contain specific restrictions or regulations on how much credit may be extended by a lender to a borrower, nor how much credit a borrower may receive, such activity is covered by the prudential rules governing credit risk management and capital adequacy (the **U.K. Rules**). The UK Rules provide protections that are substantially similar to the protections provided by the requirements regarding the lending of money, extension of credit and provision of margin to clients to which dealer members of IIROC are subject. In particular, CSSE is subject to Basel II requirements, as adopted by the European Union Capital Requirements Directive and implemented in the FSA's Prudential Sourcebook for Banks, Building Societies and Investment Firms. CSSE is in compliance in all material respects with all applicable U.K Rules.

**Decisions**

The principal regulator is satisfied that each of these decisions meet 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 by CSSU is granted so long as:

(a) the head office or principal place of business of CSSU is in the U.S.A.;

(b) CSSU is registered under the securities legislation of the U.S.A. in a category of registration that permits it to carry on the activities in the U.S.A. that registration as an investment dealer would permit it to carry on in the Jurisdiction; and

(c) by virtue of the registration referred to in paragraph (b), including required membership in one or more self-regulatory organizations, CSSU is subject to requirements in respect of its lending money, extending credit or providing margin to clients (including clients that are located in Canada) that result in substantially similar regulatory protections to those provided for under the capital and margin requirements of IIROC that would be applicable to CSSU if it were registered under the Legislation as an investment dealer and were a member of IIROC.

The decision of the principal regulator under the Legislation is that the Exemption Sought by CSSE is granted so long as:

(d) the head office or principal place of business of CSSE is in the U.K.;

(e) CSSE is regulated under the securities legislation of the UK, through permissions granted by the FSA, that permits it to carry on the activities in the UK that registration as an investment dealer would permit it to carry on in the Jurisdiction; and

(f) by virtue of the permissions referred to in paragraph (e), CSSE is subject to requirements in respect of its lending money, extending credit or providing margin to clients (including clients that are located in Canada) that result in substantially similar regulatory protections to those provided for under the capital and margin requirement of IIROC that would be applicable to CSSE if it were registered under the Legislation as an investment dealer and were a member of IIROC.

"Erez Blumberger"
Deputy Director, Registrant Regulation
Ontario Securities Commission

### 2.1.8 UTS Energy Corporation – s. 1(10)

**Headnote**

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

**Applicable Legislative Provisions**

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

**Citation:** UTS Energy Corporation, Re, 2010 ABASC 497

October 25, 2010

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

**Attention: Mark Spiro**

Dear Sir:

**Re: UTS Energy Corporation (the Applicant) – Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the Jurisdictions) that the Applicant is not a reporting issuer**

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

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

"Blaine Young"
Associate Director, Corporate Finance

### 2.1.9 Swiss Water Decaffeinated Coffee Income Fund and Ten Peaks Coffee Company Inc.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer granted relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation – Issuer is only internally restructuring, not adding or removing any assets or changing the shareholders' proportionate interest in the issuer's operations; the issuer will provide sufficient information about the transaction for shareholders to understand the restructuring – issuer also granted relief from the qualification criteria in NI 44-101 so it can file a short form prospectus – The issuer is a new reporting issuer that is the continuation of an existing business; the issuer satisfies all the criteria for the exemption in s. 2.7 except that the audited comparative annual financial statements incorporated in its final prospectus are not its own, but are the financial statements of the existing business – Issuer also granted relief to file its short form prospectus less then 10 days after it files its notice of intention to file a short form prospectus – The issuer is a successor issuer resulting from the conversion of an income fund under a plan of arrangement; the issuer would be entitled to rely on the exemption for successor issuers in s. 2.7(2) except that the financial statements incorporated into the information circular are not its own but are those of the existing business; the issuer is otherwise qualified to file a short form prospectus; the existing business is not required to file a notice of intention by virtue of s. 2.8(4); the relevant continuous disclosure for investors under the offering is the continuous disclosure of the fund, which will be incorporated by reference into the short form prospectus.

**Applicable Legislative Provisions**

National Instrument 51-102, s. 13.1 Continuous Disclosure Obligations.
National Instrument 44-101, s. 8.1 Short Form Prospectus Distributions.

**October 21, 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**
**SWISS WATER DECAFFEINATED COFFEE**
**INCOME FUND (the Fund) AND TEN PEAKS**
**COFFEE COMPANY INC. (Ten Peaks)**
**(together, the Applicants)**

**DECISION**

**Background**

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

(a) exempting the Fund from the requirement under Item 14.2 of Form 51-102F5 *Information Circular* (the Circular Form) of the Legislation to include in the management information circular (Information Circular) to be prepared by the Fund and delivered to the holders (Unitholders) of trust units (Units) in connection with a special meeting (Meeting) of Unitholders expected to be held in December 2010 for the purposes of considering a plan of arrangement under the *Canada Business Corporations Act* (the CBCA) resulting in the reorganization of the Fund's trust structure into a corporate structure (the Conversion Transactions): (a) the financial statements of Swiss Water Decaffeinated Coffee Company Inc. (SWDCC) for the financial years ended December 31, 2009, December 31, 2008, and December 31, 2007; (b) the corresponding management's discussion and analysis for the financial years ended December 31, 2009, and December 31, 2008; and (c) certain comparative statements of SWDCC and of Ten Peaks, the resulting entity of the

proposed conversion, including (i) a comparative income statement, a statement of retained earnings, and a cash flow statement of Ten Peaks for the most recent interim period ended more than 45 days before the date of the Information Circular, and (ii) a balance sheet of Ten Peaks as at the end of the most recent interim period ended more than 45 days before the date of the Circular (the Circular Relief);

(b) exempting Ten Peaks from the qualification criteria for short form prospectus eligibility contained in subsection 2.2(d) of National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) following completion of the Conversion Transactions until the earlier of (a) March 31, 2011; and (b) the date upon which Ten Peaks has filed both its annual financial statements and annual information form for the year ended December 31, 2010, under NI 51-102 *Continuous Disclosure Obligations* (NI 51-102) (the Qualification Relief); and

(c) exempting Ten Peaks from the requirement to file a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the filing of its first preliminary short form prospectus after the notice (the Prospectus Relief).

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 Applicants have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 Passport System (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador; and

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

**Interpretation**

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 Applicants:

**The Swiss Water Entities and Ten Peaks**

1. the Fund is an unincorporated, open-ended, limited purpose trust established under the laws of the Province of British Columbia pursuant to a trust indenture dated April 2, 2002;

2. the Fund is a reporting issuer (or the equivalent thereof) in each province of Canada and, to its knowledge, is currently not in default of any applicable requirements under the securities legislation of any such province;

3. the Fund is authorized to issue an unlimited number of Units and as at September 30, 2010, the Fund had 6,675,200 Units issued and outstanding;

4. the Units are listed and posted for trading on the Toronto Stock Exchange (TSX) under the trading symbol "SWS.UN";

5. the Fund has filed an "AIF" and has "current financial statements" (as such terms are defined in NI 44-101) for the financial year ended December 31, 2009;

6. the Fund holds all of the common shares (SWDCC Shares) and Series A and Series B Notes (SWDCC Notes) of SWDCC, a corporation incorporated under the laws of British Columbia;

7. SWDCC is not a reporting issuer in any jurisdiction and the SWDCC Shares and the SWDCC Notes are not listed or posted for trading on any exchange or quotation and trade reporting system;

8. the Fund does not carry on an active business, but holds, through the SWDCC Shares and the SWDCC Notes, an indirect 100% interest in SWDCC which carries on a green coffee decaffeination business (the Business);

9. Ten Peaks is a direct wholly-owned subsidiary of the Fund and will have conducted no business prior to the effective date (the Effective Date) of the Conversion Transactions;

10. prior to the completion of the Conversion Transactions, Ten Peaks will not be a reporting issuer in any jurisdiction and its common shares (Ten Peaks Shares) will not be listed or posted for trading on any exchange or quotation and trade reporting system;

**Conversion Transactions**

11. as part of the Conversion Transactions: (i) the Units will be cancelled; (ii) Ten Peaks Shares will be distributed to holders of Units on a one-for-one basis; (iii) the Fund will be dissolved into Ten Peaks; (iv) SWDCC will continue to carry on the Business it presently carries out on behalf of the Fund, and (v) Ten Peaks will own, directly or indirectly, all of the existing assets and assume all of the existing liabilities of the Fund, effectively resulting in the reorganization of the Fund's trust structure into a corporate structure;

12. following the completion of the Conversion Transactions: (i) the sole business of Ten Peaks will be the current business of the Fund; (ii) all equity holders of the Fund will own Ten Peaks Shares, rather than Units now held by Unitholders; (iii) Ten Peaks will be a reporting issuer or the equivalent under the securities legislation in all of the provinces of Canada; and (iv) the Ten Peaks Shares will, subject to approval by the TSX, be listed on the TSX;

13. the Conversion Transactions will not result in a change in beneficial ownership of the assets and liabilities of the Fund and Ten Peaks will continue to carry on the Business through SWDCC following the Conversion Transactions; the Conversion Transactions will be an internal reorganization undertaken without dilution to the Unitholders; the Unitholders will, following completion of the Conversion Transactions, be the shareholders of Ten Peaks;

14. under the Fund's constating documents, the CBCA and applicable securities laws, the Unitholders will be required to approve the Conversion Transactions at the Meeting; the Conversion Transactions must be approved by not less than two-thirds of the votes cast by Unitholders at the Meeting; the Meeting is anticipated to take place on December 9, 2010, and the Circular is expected to be mailed on or around November 1, 2010;

15. the Conversion Transactions will be accounted for on a continuity of interest basis and accordingly, following the Conversion Transactions, the comparative consolidated financial statements for Ten Peaks prior to the Conversion Transactions will reflect the financial position, results of operations and cash flows as if Ten Peaks had always carried on the business formerly carried on by the Fund;

16. the Conversion Transactions will be a "restructuring transaction" under NI 51-102 in respect of the Fund and therefore will require compliance with Item 14.2 of the Circular Form;

**Financial statements and MD&A disclosure in the Circular**

17. Item 14.2 of the Circular Form requires, among other items, that the Circular contain the disclosure (including financial statements and management's discussion and analysis) prescribed under securities legislation and described in the form of prospectus that Ten Peaks would be eligible to use immediately prior to the sending and filing of the Circular for a distribution of its securities; therefore, the Circular must contain the disclosure in respect of Ten Peaks prescribed by Form 41-101F1 – *Information Required in a Prospectus* (the Prospectus Form) and by NI 41-101;

18. as Ten Peaks will not have been in existence for three years on the date of the Information Circular, Item 32.l(a) of the Prospectus Form requires that the financial statements of SWDCC be included as it is the predecessor entity that will form the business of Ten Peaks;

19. Items 8.2(l)(a) and 8.2(2) of the Prospectus Form require the Fund to include management's discussion and analysis corresponding to each of the financial years ended December 31, 2009, and December 31, 2008, of SWDCC (the MD&A) in the Circular;

20. Item 32.2(1) of the Prospectus Form requires the Fund to include certain annual financial statements of SWDCC in the Circular, including: (i) statements of income, retained earnings and cash flows of SWDCC for each of the financial years ended December 31, 2009, December 31, 2008, and December 31, 2007; and (ii) a balance sheet of SWDCC as at the end of December 31, 2009, and December 31, 2008 (the SWDCC Financial Statements); in addition, Item 32.3(1) of the Prospectus Form requires the Fund to include certain

comparative statements of SWDCC and of Ten Peaks in the Circular (the Interim Financial Statements), including (a) a comparative income statement, a statement of retained earnings, and a cash flow statement of Ten Peaks for the most recent interim period ended more than 45 days before the date of the Circular and (b) a balance sheet of Ten Peaks as at the end of the most recent interim period ended more than 45 days before the date of the Circular (the SWDCC Financial Statements and the Interim Financial Statements are referred to collectively as the Financial Statements);

21. subsection 4.2(1) of NI 41-101 requires that the SWDCC Financial Statements required to be included in the Circular must be audited in accordance with National Instrument 52-107 – *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107);

**Exemptions Sought**

*Circular Relief*

22. Ten Peaks was established for the exclusive purpose of effecting the Conversion Transactions and will have no material assets (other than a nominal amount of cash) or business operations prior to the Effective Date;

23. the financial statements of the Fund are reported on a consolidated basis, which includes the financial results of SWDCC; SWDCC does not report its financial results independently from the consolidated financial statements of the Fund; the Financial Statements and the MD&A, if prepared, would not include the accounts of the Fund; there are transactions between the Fund and SWDCC that would be eliminated when consolidation is performed; to present the Financial Statements and the MD&A in the Information Circular, which would exclude accounts of the Fund, would present the effects of only one side of the financing activities between the Fund and SWDCC; this would result in intra-group liabilities and intragroup interest expense being reflected in the Financial Statements;

24. the Financial Statements and the MD&A are not relevant to the Unitholders for the purposes of considering the Conversion Transactions; once the Conversion Transactions are completed, the financial statements and management's discussion and analysis of Ten Peaks will be substantially and materially the same as the consolidated financial statements of the Fund filed in accordance with Part 4 of NI 51-102 because the financial position of the entity that exists both before and after the Conversion Transactions is substantially the same;

25. the Circular will contain prospectus level disclosure in accordance with the Prospectus Form (other than the Financial Statements and MD&A) and will contain sufficient information to enable a reasonable Unitholder to form a reasoned judgement concerning the nature and effect of the Conversion Transactions and the nature of the resultant public entity and reporting issuer from the Conversion Transactions, being Ten Peaks;

*Prospectus Relief*

26. subsection 2.7(2) of NI 44-101 contains an exemption for successor issuers from the qualification criteria for short form prospectus eligibility contained in subsection 2.2(d) of NI 44-101, if an information circular relating to the restructuring transaction that resulted in the successor issuer was filed by the successor issuer or an issuer that was a party to the restructuring transaction, and such information circular (i) complied with applicable securities legislation, and (ii) included disclosure in accordance with Item 14.2 or 14.5 of the Circular Form of the successor issuer; Ten Peaks cannot rely on this exemption because the Financial Statements and MD&A will not be included in the Information Circular if the Circular Relief is granted;

**Prospectus filing following the Conversion Transactions**

27. the Fund is qualified to file a prospectus in the form of a short form prospectus under section 2.2 of NI 44-101 and is deemed to have filed a notice of intention to be qualified to file a short form prospectus under subsection 2.8(4) of NI 44-101;

28. the Applicants anticipate that Ten Peaks may wish to have the ability to file a preliminary short form prospectus following the completion of the Conversion Transactions, relating to the offering or potential offering of securities (including common shares or debt securities) of Ten Peaks;

29. in anticipation of the filing of a preliminary short form prospectus, and assuming the Conversion Transactions have been completed, Ten Peaks intends to file a notice of intention to be qualified to file a short form prospectus (the Notice of Intention) following completion of the Conversion Transactions; in the absence of

the Prospectus Relief, Ten Peaks will not be qualified to file a preliminary short form prospectus until 10 business days after the date upon which the Notice of Intention is filed;

30. pursuant to the qualification criteria set forth in section 2.2 of NI 44-101 as modified in the Qualification Relief, following the Conversion Transactions, Ten Peaks will be qualified to file a short form prospectus under NI 44-101;

31. notwithstanding section 2.2 of NI 44-101 as modified in the Qualification Relief, subsection 2.8(1) of NI 44-101 provides that an issuer is not qualified to file a short form prospectus unless it has filed a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the issuer filing its first preliminary short form prospectus; and

32. the short form prospectus of Ten Peaks will incorporate by reference the documents that would be required to be incorporated by reference under Item 11 of Form 44-101F1 in a short form prospectus of Ten Peaks, as modified by the Qualification Relief.

**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:

(a) the Circular Relief is granted provided that the Information Circular discloses that Ten Peaks is a newly incorporated entity that has no material assets, income or liabilities;

(b) the Qualification Relief is granted provided that any short form prospectus filed by Ten Peaks under NI 44-101 during the Qualification Relief specifically incorporates by reference:

(i) the Information Circular and any financial statements and related management's discussion and analysis of the Fund incorporated by reference into the Information Circular, and

(ii) any financial statements, management's discussion and analysis, material change reports or other documents that would have to be incorporated by reference in any short form prospectus filed by the Fund; and

(c) the Prospectus Relief is granted provided that, at the time Ten Peaks files its Notice of Intention, Ten Peaks meets the requirements of section 2.2 of NI 44-101, as modified by the Qualification Relief.

"Andrew Richardson, CA"
Acting Director, Corporate Finance
British Columbia Securities Commission

## 2.2 Orders

### 2.2.1 Ciccone Group et al. – ss. 127(7), 127(8)

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

**AND**

**IN THE MATTER OF**
**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**

**ORDER**
**(Subsections 127(7) and (8))**

**WHEREAS** on April 21, 2010, the Ontario Securities Commission (the "Commission") issued a temporary order pursuant to sections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that the Respondents cease trading in securities; that the exemptions contained in Ontario securities law do not apply to all of the Respondents except 990509 Ontario Inc. ("990509"); and that trading in the securities of 990509 and Medra Corporation ("Medra") cease (the "Temporary Order");

**AND WHEREAS** on April 21, 2010, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

**AND WHEREAS** on April 22, 2010, the Commission issued a notice of hearing giving notice that it will hold a hearing (the "Hearing") on May 3, 2010 at 10 a.m. to consider, among other things, whether it is in the public interest to extend the Temporary Order pursuant to subsections 127(7) and (8) of the Act until the conclusion of the Hearing, or until such further time as considered necessary by the Commission;

**AND WHEREAS** on May 3, 2010, the Commission extended the Temporary Order against all of the named respondents to October 22, 2010 and adjourned the Hearing to October 21, 2010;

**AND WHEREAS** on October 21, 2010, counsel for Staff, counsel for Klaudiusz Malinowski ("Malinowski") and Cachet Wealth Management ("Cachet"), and Steve Haney ("Haney"), on his own behalf, and Ben Giangrosso ("Giangrosso"), on his own behalf, appeared before the Commission for the Hearing;

**AND WHEREAS** Staff advised the Commission that it was not seeking an extension of the Temporary Order against Haney and Giangrosso but that it was seeking an extension of the Temporary Order for a period of 3 months as against the balance of the respondents;

**AND WHEREAS** counsel for Malinowski and Cachet advised the Commission that they do not oppose an extension of the Temporary Order;

**AND WHEREAS** Staff advised the Commission that counsel for Ciccone Group, 990509 and Vince Ciccone ("Ciccone") do not oppose the extension of the Temporary Order, and that Medra, Tadd Financial Inc. ("Tadd"), Darryl Brubacher ("Brubacher") and Andrew J. Martin ("Martin") consent to the extension of the Temproary Order;

**AND WHEREAS**, upon the submissions of Staff, counsel for Malinowski and Cachet, Haney, and Giangrosso, and upon review of the evidence filed by Staff, the Commission was of the opinion that it was in the public interest to make this Order;

**IT IS HEREBY ORDERED** pursuant to subsections 127(7) and (8) of the Act that:

(i) the Temporary Order is extended as against Ciccone Group, Medra, 990509, Cachet, Tadd, Ciccone, Malinowski, Brubacher, and Martin to January 26, 2011; and

(ii) the Hearing is adjourned to January 25, 2011, at 2:00 p.m.

**DATED** at Toronto this 21st day of October, 2010.

"James D. Carnwath"

### 2.2.2 FactorCorp 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**
**FACTORCORP INC., FACTORCORP FINANCIAL INC., AND MARK IVAN TWERDUN**

**ORDER**
**(Sections 127(1) of the Securities Act)**

**WHEREAS** by Order of the Superior Court of Justice dated October 17, 2007, KPMG Inc. ("KPMG") was appointed Receiver and Manager (the "Receiver") over the assets, undertakings and properties of FactorCorp and FactorCorp Financial and by Order of the Superior Court of Justice dated October 30, 2007, the appointment of the Receiver was confirmed and extended until further Order of the Court. The Receiver was discharged by Court Order dated March 18, 2009;

**AND WHEREAS** by Order of the Superior Court of Justice dated March 25, 2008, FactorCorp and FactorCorp Financial were adjudged bankrupt, a Bankruptcy Order was made against FactorCorp and FactorCorp Financial and KPMG was appointed Trustee of the Estates of FactorCorp and FactorCorp Financial (the "Trustee");

**AND WHEREAS** on May 12, 2009 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, accompanied by a Statement of Allegations (the "Statement of Allegations") filed by Staff of the Commission on the same date against Factorcorp Inc., Factorcorp Financial Inc., and Mark Twerdun ("Twerdun");

**AND WHEREAS** on May 12, 2009 a temporary order was continued against Twerdun, as varied on October 26, 2009, until this proceeding is concluded and a decision of the Commission is rendered or until the Commission considers it appropriate;

**AND WHEREAS** Twerdun brought a motion for particulars by Notice of Motion dated September 25, 2009;

**AND WHEREAS** on October 5, 2009, Staff consented to an order that it provide a reply to the demand for particulars;

**AND WHEREAS** Staff provided a reply to the demand for particulars on November 2, 2009 with the agreement of Twerdun;

**AND WHEREAS** on December 16, 2009, the Commission ordered that a motion brought by Twerdun to address an issue in respect of the cooperation of witnesses be heard on February 4, 2010;

**AND WHEREAS** on February 4, 2010, Twerdun brought a motion for disclosure and to address an issue in respect of the cooperation of witnesses;

**AND WHEREAS** on February 4, 2010, Staff consented to provide a letter to potential witnesses clarifying their ability to cooperate with Twerdun in this matter if they so desired and to obtain documents from the Trustee;

**AND WHEREAS** on February 5, 2010, Staff provided to Twerdun a letter to potential witnesses clarifying their ability to cooperate with Twerdun in this matter if they so desired;

**AND WHEREAS** on May 6, 2010 and July 30, 2010, following receipt of certain documents from the Trustee, Staff provided disclosure to Twerdun of documents sought by him by motion on February 4, 2010;

**AND WHEREAS** Staff and the Respondents have agreed to schedule the hearing on the merits for three weeks in September 2011;

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

**IT IS HEREBY ORDERED** that the hearing on the merits shall commence on September 12, 2011 and continue to September 30 except for September 20, 2011.

**DATED** at Toronto, this 22nd day of October 2010

"James Turner"

### 2.2.3 Rogers Communications Inc. – 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 3,000,000 of its class B 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 Securities 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**
**ROGERS COMMUNICATIONS INC.**

**ORDER**
**(Clause 104(2)(c))**

**UPON** the application (the "**Application**") of Rogers Communications Inc. (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 sections 94 to 94.8 and 97 to 98.7 of the Act (the "**Issuer Bid Requirements**") in connection with the proposed purchases ("**Proposed Purchases**") by the Issuer of up to 3,000,000 (the "**Subject Shares**") of the Issuer's Class B Non-Voting shares (the "**Shares**") from The Royal Bank of Canada and/or its affiliates (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, 10, 14 and 21 as they relate to the Selling Shareholder) having represented to the Commission that:

1. The Issuer is a corporation governed by the *Business Corporations Act* (British Columbia).

2. The corporate headquarters of the Issuer is located at 333 Bloor Street East, 10th Floor, Toronto, Ontario, M4W 1G9.

3. The Issuer is a reporting issuer in each of the provinces of Canada and the Shares are listed for trading on the Toronto Stock Exchange (the "**TSX**") and the New York Stock Exchange. The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

4. As of August 31, 2010, the authorized common share capital of the Issuer consists of 112,462,014 Class A Voting shares and 1,400,000,000 Shares. There are 462,110,605 Shares issued and outstanding as of that date.

5. The corporate headquarters of the Selling Shareholder is located in Toronto, Ontario.

6. The Selling Shareholder does not directly or indirectly own more than 5% of the issued and outstanding Shares.

7. The Selling Shareholder owns the Subject Shares and the Subject Shares were not acquired 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. Pursuant to a "Notice of Intention to Make a Normal Course Issuer Bid" filed with the TSX, as of February 15, 2010 (the "**Notice**"), the Issuer is permitted to make normal course issuer bid (the "**Bid**") purchases (each, a "**Bid Purchase**") to a maximum of the lesser of 43,600,000 Shares and that number of Shares that can be purchased under the Bid for an aggregate purchase price of C$1,500,000,000 in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "**TSX Rules**"). As of August 31, 2010, 17,994,700 Shares have been purchased under the Bid, including 4,000,000 Shares which were purchased pursuant to Off-Exchange Block Purchases. Assuming completion of the purchase of the Subject Shares, the Issuer will have purchased under the Bid an aggregate of 7,000,000 Shares pursuant to Off-Exchange Block Purchases, representing approximately 16% of the 43,600,000 Shares authorized to be purchased under the Bid.

9. In addition to making Bid Purchases by means of open market transactions, the Notice contemplates that the Issuer may purchase Shares by way of exempt offer.

10. The Issuer and the Selling Shareholder intend to enter into agreements of purchase and sale (each, an "**Agreement**") pursuant to which the Issuer will agree to acquire, by trades occurring prior to November 1, 2010, the Subject Shares from the Selling Shareholders for purchase prices (each, a "**Purchase Price**") that will be negotiated at arm's length between the Issuer and the Selling Shareholders. The Purchase Price will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Shares.

11. The purchase of the Subject Shares by the Issuer pursuant to the Agreement will constitute an "issuer bid" for purposes of the Act to which the Issuer Bid Requirements would apply.

12. Because the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Shares at the time of each trade, the Proposed Purchases 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.

13. 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 Shares at the time of the trade, the Issuer could otherwise acquire the Subject Shares as a "block purchase" (a "**Block Purchase**") in accordance with Section 629(1)7 of the TSX Rules and the exemption from the Issuer Bid Requirements in Section 101.2(1) of the Act.

14. The Selling Shareholder is at arm's length to the Issuer and is not an "insider" of the Issuer, an "associate" of an "insider" of the Issuer, or an "associate" or "affiliate" of the Issuer, as such terms are defined in the Act. In addition, the Selling Shareholder is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**").

15. The Issuer will be able to acquire the Subject Shares from the Selling Shareholder in reliance upon the exemption from the dealer registration requirements of the Act that is available as a result of the combined effect of section 2.16 of NI 45-106 and Section 4.1(a) of Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*.

16. Management is of the view that the Issuer will be able to purchase the Subject Shares at a lower price than the price at which the Issuer will be able to purchase the Shares under the Bid and management is of the view that this is an appropriate use of the Issuer's funds.

17. The purchase of Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's securityholders. As the Subject Shares are non-voting shares, the Proposed Purchases will not affect control of the Issuer. The Proposed Purchases will be carried out with a minimum of cost to the Issuer.

18. To the best of the Issuer's knowledge, as of August 31, 2010 the public float for the Shares consisted of approximately 90.47% for purposes of the TSX Rules.

19. The market for the Shares is a "liquid market" within the meaning of Section 1.2 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*.

20. Other than the Purchase Price, no additional fee or other consideration will be paid in connection with the Proposed Purchases.

21. At the time that an 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.

**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 the Proposed Purchases, provided that:

(a) the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit for the Bid Purchases in accordance with the TSX Rules;

(b) the Issuer will refrain from conducting a Block Purchase in accordance with the TSX Rules during the calendar week it completes each Proposed Purchase and may not make any further Bid Purchases for the remainder of that calendar day;

(c) the Purchase Price is not higher than the last "independent trade" (as that term is used in paragraph 629(1)1 of the TSX Rules) of a board lot of Shares immediately prior to the execution of each Proposed Purchase;

(d) the Issuer will otherwise acquire any additional Shares pursuant to the Bid and in accordance with the TSX Rules;

(e) immediately following its purchase of the Subject Shares from the Selling Shareholder, the Issuer will report the purchase of the Subject Shares to the TSX;

(f) at the time that the 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;

(g) the Issuer will issue a press release in connection with the Proposed Purchases; and

(h) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, more than one-third of the maximum number of Shares the Issuer can purchase under the Bid.

**Dated** at Toronto this 21st day of September.

"Margot C. Howard"
Commissioner
Ontario Securities Commission

"Wes M. Scott"
Commissioner
Ontario Securities Commission

### 2.2.4 TBS New Media Ltd. et al. – s. 127

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

**AND**

**IN THE MATTER OF**
**TBS NEW MEDIA LTD., TBS NEW MEDIA PLC,**
**CNF FOOD CORP., CNF CANDY CORP.,**
**ARI JONATHAN FIRESTONE AND MARK GREEN**

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

**WHEREAS** on September 3, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") accompanied by a Statement of Allegations dated September 3, 2010, issued by Staff of the Commission ("Staff") with respect to TBS New Media Inc. ("TBS"), TBS New Media PLC ("TBS PLC"), CNF Food Corp. ("CNF Food"), CNF Candy Corp. ("CNF Candy"), Ari Jonathan Firestone ("Firestone") and Mark Green ("Green") collectively the "Respondents";

**AND WHEREAS** the Notice of Hearing stated that a hearing would be held at the offices of the Commission on September 8, 2010;

**AND WHEREAS** on September 8, 2010 Staff confirmed that the Commission had received the affidavit of Charlene Rochman sworn September 7, 2010 which indicated that service of the Notice of Hearing and Statement of Allegations was attempted on all Respondents personally, electronically, through their counsel or at their last known address;

**AND WHEREAS** on September 8, 2010, Staff and counsel for TBS, TBS PLC, CNF Food, CNF Candy and Firestone attended the hearing and no one appeared on behalf of Green;

**AND WHEREAS** on September 8, 2010, counsel for TBS, TBS PLC, CNF Food, CNF Candy and Firestone requested that the hearing be adjourned and a pre-hearing conference scheduled;

**AND WHEREAS** on September 8, 2010, the Commission adjourned the hearing to October 21, 2010 at 11:00 a.m. for a confidential pre-hearing conference;

**AND WHEREAS** on September 9, 2010, Staff issued an Amended Statement of Allegations to amend the respondent named as "TBS New Media Inc." to "TBS New Media Ltd.";

**AND WHEREAS** on October 21, 2010, Staff appeared before the Commission to request that the pre-hearing conference be rescheduled, and informed the Commission they had advised counsel for TBS, TBS PLC,

CNF Candy, CNF Food and Firestone that they would be making the request;

**AND WHEREAS** on October 21, 2010, no one attended on behalf of any of the Respondents;

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

**IT IS ORDERED** that the pre-hearing conference is adjourned to December 6, 2010 at 10:00 a.m.

**DATED** at Toronto this 22nd day of October, 2010.

"James D. Carnwath"

### 2.2.5 TBS New Media Ltd. et al. – ss. 127(7), 127(8)

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

**AND**

**IN THE MATTER OF**
**TBS NEW MEDIA LTD., TBS NEW MEDIA PLC,**
**CNF FOOD CORP., CNF CANDY CORP.,**
**ARI JONATHAN FIRESTONE AND MARK GREEN**

**TEMPORARY ORDER**
**(Subsections 127(7) & 127(8))**

**WHEREAS** on June 29, 2010, the Ontario Securities Commission (the "Commission") issued a temporary order (the "Temporary Order") pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering the following:

(i) that all trading in the securities of TBS New Media Ltd. ("TBS"), TBS New Media PLC ("TBS PLC"), CNF Food Corp. ("CNF Food") and CNF Candy Corp. ("CNF Candy") shall cease;

(ii) that TBS, TBS PLC, CNF Food, CNF Candy, Ari Jonathan Firestone ("Firestone") and Mark Green ("Green"), collectively the "Respondents", cease trading in all securities; and

(iii) that any exemptions contained in Ontario securities law do not apply to TBS, TBS PLC,CNF Food, CNF Candy, Firestone and Green;

**AND WHEREAS** on June 29, 2010, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

**AND WHEREAS** on July 6, 2010, the Commission issued a notice of hearing to consider, among other things, the extension of the Temporary Order, to be held on July 12, 2010 at 10:00 a.m. (the "Notice of Hearing");

**AND WHEREAS** the Notice of Hearing set out that the hearing (the "Hearing") is to consider, amongst other things, whether in the opinion of the Commission it is in the public interest, pursuant to subsections 127(7) and (8) of the Act, to extend the Temporary Order until the conclusion of the Hearing, or until such further time as considered necessary by the Commission;

**AND WHEREAS** on July 12, 2010, a hearing was held before the Commission which counsel for Staff of the Commission ("Staff") attended, counsel attended on behalf of TBS, TBS PLC, CNF Food, CNF Candy and Firestone, but no one attended on behalf of Green;

**AND WHEREAS** on July 12, 2010, Staff provided the Commission with the Affidavit of Dale Victoria Grybauskas, sworn on July 9, 2010, describing the attempts of Staff to serve the Respondents with copies of the Temporary Order, the Notice of Hearing, and the Affidavit of Stephen Carpenter;

**AND WHEREAS** on July 12, 2010, the Commission was satisfied that Staff had properly served or attempted to serve the Respondents with copies of the Temporary Order, the Notice of Hearing and the Affidavit of Stephen Carpenter;

**AND WHEREAS** on July 12, 2010, the Commission considered the evidence and submissions before it and the Commission was of the opinion that satisfactory information has not been provided to it by the Respondents and the Commission was of the opinion that it was in the public interest to extend the Temporary Order, subject to an amendment of the Temporary Order for the benefit of Firestone;

**AND WHEREAS** Staff did not object to amending the Temporary Order, as submitted by counsel for Firestone;

**AND WHEREAS** on July 12, 2010, the Commission ordered that the Temporary Order be amended by including a paragraph as follows: Notwithstanding the provisions of this Order, Firestone is permitted to trade, solely through a registered dealer or, as appropriate, a registered dealer in a foreign jurisdiction (which dealer must be given a copy of this order) in (a) any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101 provided that he does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities; or (b) any security issued by a mutual fund that is a reporting issuer; and provided that Firestone provides Staff with the particulars of the accounts in which such trading is to occur (as soon as practicable before any trading in such accounts occurs) including the name of the registered dealer through which the trading will occur and the account numbers, and Firestone shall instruct the registered dealer to provide copies of all trade confirmation notices with respect to trading in the accounts directly to Staff at the same time that such notices are provided to him;

**AND WHEREAS** pursuant to subsections 127(7) and (8) of the Act, the Commission ordered that the Temporary Order, as amended by the July 12, 2010 order, be extended to September 9, 2010;

**AND WHEREAS** on September 3, 2010, the Office of the Secretary issued a notice of hearing accompanied by a Statement of Allegations setting the matter down to be heard on September 8, 2010 at 10:00 a.m.;

**AND WHEREAS** on September 8, 2010, a hearing was held before the Commission which counsel for Staff attended, counsel attended on behalf of TBS, TBS PLC, CNF Food, CNF Candy and Firestone, but no one attended on behalf of Green;

**AND WHEREAS** at the hearing on September 8, 2010, a pre-hearing in this matter was set down for October 21, 2010;

**AND WHEREAS** on September 8, 2010, counsel for TBS, TBS PLC, CNF Food, CNF Candy and Firestone consented to an extension of the Temporary Order to October 22, 2010;

**AND WHEREAS** on September 8, 2010, the Commission extended the Temporary Order, as amended by the July 12, 2010 order, to October 22, 2010;

**AND WHEREAS** on October 21, 2010, a hearing was held before the Commission which counsel for Staff attended, but no one attended on behalf of any of the Respondents;

**AND WHEREAS** on October 21, 2010, Staff informed the Commission that counsel for TBS, TBS PLC, CNF Food, CNF Candy and Firestone consented to a further extension of the Temporary Order, as amended by the July 12, 2010 order, via email dated October 19, 2010;

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

**IT IS ORDERED** that the Temporary Order, as amended by the July 12, 2010 order, is extended to December 7, 2010; and

**IT IS FURTHER ORDERED** that the Hearing is adjourned to December 6, 2010 at 10:00 a.m. for a confidential pre-hearing conference.

Dated at Toronto this 22nd day of October, 2010.

"James D. Carnwath"

### 2.2.6 Lehman Brothers & Associates Corp. et al. – s. 127

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

**AND**

**IN THE MATTER OF**
**LEHMAN BROTHERS & ASSOCIATES CORP.,**
**GREG MARKS, KENT EMERSON LOUNDS AND**
**GREGORY WILLIAM HIGGINS**

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

**WHEREAS** on September 3, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") accompanied by a Statement of Allegations dated September 3, 2010, issued by Staff of the Commission ("Staff") with respect to Lehman Brothers & Associates Corp. ("Lehman Corp."), Greg Marks ("Marks"), Kent Emerson Lounds ("Lounds") and Gregory William Higgins ("Higgins"), collectively the "Respondents",;

**AND WHEREAS** the Notice of Hearing stated that a hearing would be held at the offices of the Commission on September 8, 2010;

**AND WHEREAS** on September 8, 2010 Staff confirmed that the Commission had received the affidavit of Charlene Rochman sworn September 7, 2010 which indicated that service of the Notice of Hearing and Statement of Allegations was attempted on Lounds and Higgins personally, electronically, through their counsel or at their last known address and that Staff were unable to effect proper service on Marks and Lehman Corp. because Staff have been unable to determine a valid address for those respondents;

**AND WHEREAS** on September 8, 2010, Staff attended the hearing and no one appeared on behalf of the Respondents;

**AND WHEREAS** on September 8, 2010, Staff requested that the hearing be adjourned and a prehearing scheduled;

**AND WHEREAS** on September 8, 2010, Staff advised the Commission that counsel for Higgins consented to the adjournment;

**AND WHEREAS** on September 8, 2010, the hearing was adjourned to October 21, 2010 at 12:00 p.m. for a pre-hearing conference;

**AND WHEREAS** on October 21, 2010, Staff appeared before the Commission for a pre-hearing conference and no one attended on behalf of any of the Respondents;

**AND WHEREAS** on October 21, 2010, Staff satisfied the Commission that appropriate steps were taken to serve Lounds and Higgins with notice of the pre-hearing conference and Staff's pre-hearing conference submissions and that Staff continue to be unable to effect proper service on Marks and Lehman Corp. because Staff have been unable to determine a valid address for those respondents;

**AND WHEREAS** Staff informed the Commission that counsel for Higgins contacted Staff to indicate that he could not attend the hearing and that Staff had not heard from the other Respondents;

**AND WHEREAS** Staff requested that the Commission set dates for the hearing on the merits;

**IT IS ORDERED THAT** the hearing on the merits is to commence on June 6, 2011 at 10:00 a.m. at the offices of the Commission, 20 Queen Street West, 17th Floor, Toronto, and shall continue on June 7 and 8, 2011, or such further or other dates as may be agreed to by the parties and fixed by the Office of the Secretary;

**AND IT IS FURTHER ORDERED THAT** the parties attend before the Commission on April 5, 2011 at 2:30 p.m. for the purpose of having a status hearing, at the offices of the Commission, 20 Queen Street West, 17th Floor, Toronto.

Dated at Toronto this 21st day of October, 2010

"James D. Carnwath"

**2.2.7 Lehman Brothers & Associates Corp. et al. – ss. 127(1), 127(5)**

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

**AND**

**IN THE MATTER OF
LEHMAN BROTHERS & ASSOCIATES CORP.,
GREG MARKS, MICHAEL (MIKE) LEHMAN
(A.K.A. MIKE LAYMEN), KENT EMERSON LOUNDS
AND GREGORY WILLIAM HIGGINS**

**TEMPORARY ORDER
(Subsections 127(1) & 127(5))**

**WHEREAS** on June 29, 2010, the Ontario Securities Commission (the "Commission") issued a temporary order (the "Temporary Order") pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering the following:

I. that Lehman Brothers & Associates Corp. ("Lehman Corp."), Greg Marks ("Marks"), Michael (Mike) Lehman (a.k.a. Mike Laymen) ("Lehman"), Kent Emerson Lounds ("Lounds') and Gregory William Higgins ("Higgins"), collectively the "Respondents", cease trading in all securities; and

II. that any exemptions contained in Ontario securities law do not apply to the Respondents;

**AND WHEREAS** on June 29, 2010, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

**AND WHEREAS** on July 6, 2010, the Commission issued a notice of hearing to consider, among other things, the extension of the Temporary Order, to be held on July 12, 2010 at 10:30 a.m. (the "Notice of Hearing");

**AND WHEREAS** the Notice of Hearing set out that the hearing (the "Hearing") is to consider, amongst other things, whether in the opinion of the Commission it is in the public interest, pursuant to subsections 127(7) and (8) of the Act, to extend the Temporary Order until the conclusion of the Hearing, or until such further time as considered necessary by the Commission;

**AND WHEREAS** on July 12, 2010, a hearing was held before the Commission which counsel for Staff of the Commission ("Staff") attended but no one attended on behalf of the Respondents;

**AND WHEREAS** on July 12, 2010, Staff provided the Commission with the Affidavit of Dale Victoria Grybauskas, sworn on July 9, 2010, describing the attempts of Staff to serve the Respondents with copies of the Temporary Order, the Notice of Hearing and the Affidavit of Stephen Carpenter;

**AND WHEREAS** on July 12, 2010, the Commission was satisfied that Staff had properly served or attempted to serve the Respondents with copies of the Temporary Order, the Notice of Hearing and the Affidavit of Stephen Carpenter;

**AND WHEREAS** on July 12, 2010, counsel for Staff informed the Commission that counsel for Higgins could not attend the hearing but was content that the Temporary Order be extended;

**AND WHEREAS** on July 12, 2010, the Commission considered the evidence and submissions before it and the Commission was of the opinion that satisfactory information was not provided to it by the Respondents and that it was in the public interest to extend the Temporary Order;

**AND WHEREAS** on July 12, 2010, the Commission extended the Temporary Order to September 9, 2010;

**AND WHEREAS** on September 3, 2010, the Office of the Secretary issued a notice of hearing accompanied by a Statement of Allegations setting the matter down to be heard on September 8, 2010 at 10:30a.m.;

**AND WHEREAS** on September 8, 2010, a hearing was held before the Commission which counsel for Staff attended but no one attended on behalf of the Respondents;

**AND WHEREAS** on September 8, 2010, Staff informed the Commission that they are of the belief that Michael (Mike) Lehman (a.k.a. Mike Laymen) is an alias used by a person associated with Lehman Corp.;

**AND WHEREAS** on September 8, 2010, Staff advised the Commission that they were no longer seeking to extend the Temporary Order against Lehman;

**AND WHEREAS** on September 8, 2010, the Commission was of the opinion that it was in the public interest to extend the Temporary Order against the Respondents, other than Lehman;

**AND WHEREAS** on September 8, 2010, the Commission ordered that Lehman was no longer subject to the terms of the Temporary Order;

**AND WHEREAS** on September 8, 2010, the Commission extended the Temporary Order against the Respondents, other than Lehman, to October 22, 2010;

**AND WHEREAS** on September 8, 2010, the Commission adjourned the Hearing to October 21, 2010 at 12:00 p.m.;

**AND WHEREAS** on October 21, 2010, a hearing was held before the Commission which counsel for Staff attended, but no one attended on behalf of any of the Respondents;

**AND WHEREAS** on October 21, 2010, the Commission was satisfied that Staff had properly served or attempted to serve the Respondents with a copy of the Temporary Order;

**AND WHEREAS** on October 21, 2010, Staff requested that the Commission extend the Temporary Order until the conclusion of the hearing on the merits in this matter;

**AND WHEREAS** on October 21, 2010, the Commission ordered that the hearing on the merits is to commence on June 6, 2011 at 10:00 a.m. at the offices of the Commission, 20 Queen Street West, 17th Floor, Toronto, and shall continue on June 7 and 8, 2011, or such further or other dates as may be agreed to by the parties and fixed by the Office of the Secretary;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to extend the Temporary Order until the conclusion of the hearing on the merits;

**IT IS ORDERED THAT** pursuant to subsections 127 (7) and (8) of the Act that the Temporary Order is extended to the conclusion of the hearing on the merits.

Dated at Toronto this 21st day of October, 2010.

"James D. Carnwath"

### 2.2.8 L. Jeffrey Pogachar et al. – s. 127

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

**AND**

**IN THE MATTER OF**
**L. JEFFREY POGACHAR, PAOLA LOMBARDI,**
**ALAN S. PRICE, NEW LIFE CAPITAL CORP.,**
**NEW LIFE CAPITAL INVESTMENTS INC.,**
**NEW LIFE CAPITAL ADVANTAGE INC.,**
**NEW LIFE CAPITAL STRATEGIES INC.,**
**2126375 ONTARIO INC., 2108375 ONTARIO INC.,**
**2126533 ONTARIO INC., 2152042 ONTARIO INC.,**
**2100228 ONTARIO INC., 2173817 ONTARIO INC.,**
**AND 1660690 ONTARIO LTD.**

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

**WHEREAS** Groia & Company, the lawyers of record for the Respondents L. Jeffrey Pogachar and Paola Lombardi, brought a motion in writing seeking leave to be removed as lawyers of record for Mr. Pogachar and Ms. Lombardi;

**AND WHEREAS** the Commission considers it in the public interest to make this order;

**IT IS ORDERED** that the hearing of Groia & Company's motion in writing is approved.

**IT IS FURTHER ORDERED** that Groia & Company be removed as counsel of record for L. Jeffrey Pogachar and Paola Lombardi upon filing confirmation with the Commission of service of this order on Mr. Pogachar and Ms. Lombardi and that service may be effected on Mr. Pogachar and Ms. Lombardi by sending a copy of this Order to the email addresses for service as listed in Groia & Company's Notice of Motion;

**DATED** at Toronto this 25th day of October, 2010.

"James D. Carnwath"

### 2.2.9 L. Jeffrey Pogachar et al. – s. 127

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

**AND**

**IN THE MATTER OF**
**L. JEFFREY POGACHAR, PAOLA LOMBARDI,**
**ALAN S. PRICE, NEW LIFE CAPITAL CORP.,**
**NEW LIFE CAPITAL INVESTMENTS INC.,**
**NEW LIFE CAPITAL ADVANTAGE INC.,**
**NEW LIFE CAPITAL STRATEGIES INC.,**
**2126375 ONTARIO INC., 2108375 ONTARIO INC.,**
**2126533 ONTARIO INC., 2152042 ONTARIO INC.,**
**2100228 ONTARIO INC., 2173817 ONTARIO INC.,**
**AND 1660690 ONTARIO LTD.**

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

**WHEREAS** L. Jeffrey Pogachar and Paola Lombardi the ("Respondents") are no longer represented by counsel;

**AND WHEREAS** the hearing on the merits date is scheduled from November 8, 2010;

**AND WHEREAS** the Respondents should have sufficient time to retain new counsel, if they wish to do so.

**IT IS ORDERED** that the hearing dates for this matter is adjourned to April 4 to April 15, 2011, excluding April 5, 2011 peremptory to the Respondents with or without counsel.

**DATED** at Toronto this 25th day of October, 2010.

"James D. Carnwath"

### 2.2.10 Abel Da Silva

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

**AND**

**IN THE MATTER OF**
**ABEL DA SILVA**

**ORDER**

**WHEREAS** on October 21st, 2008 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in this matter and scheduled a hearing to commence on November 27th, 2008 at 3:00 p.m.;

**AND WHEREAS** Staff of the Ontario Securities Commission ("Staff") filed a Statement of Allegations dated October 20th, 2008 with the Commission;

**AND WHEREAS** Staff served Abel Da Silva ("Da Silva") with a certified copy of the Notice of Hearing and Staff's Statement of Allegations as evidenced by the Affidavit of Service of Wayne Vanderlaan, sworn on November 10th, 2008, filed with the Commission;

**AND WHEREAS** a panel of the Commission held a hearing on November 27th, 2008 at 3:00 p.m. and Staff attended and made submissions, including advising the Panel that the disclosure by Staff was available on this matter, and Staff undertook to notify Da Silva that disclosure was available;

**AND WHEREAS** on November 27th, 2008, Da Silva did not appear at the hearing;

**AND WHEREAS** on November 27th, 2008, a panel of the Commission ordered that the hearing in this matter is adjourned to June 4th, 2009 at 11:00 a.m.;

**AND WHEREAS** Staff served Da Silva with a certified copy of the Order of the Commission dated November 27th, 2008 as evidenced by the Affidavit of Service of Kathleen McMillan sworn on June 3rd, 2009;

**AND WHEREAS** on June 4th and September 10th, 2009, January 12th, April 12th, and June 30th, 2010 (the "appearance dates"), status hearings were held and Staff appeared before a panel of the Commission and provided the panel of the Commission with a status update with respect to this matter;

**AND WHEREAS** on the appearance dates, Da Silva did not attend before the Commission despite being made aware of those dates;

**AND WHEREAS** on each of the appearance dates, the Commission considered the submissions of Staff and was of the opinion that it was in the public interest to adjourn the hearing;

**AND WHEREAS** on September 2nd, 2010, a panel of the Commission ordered that the hearing with respect to the Notice of Hearing dated October 21st, 2008 and Staff's Statement of Allegations dated October 20th, 2008 be adjourned to October 5th, 2010 at 10:00 a.m.;

**AND WHEREAS** on September 20th, 2010, Staff filed an Amended Statement of Allegations and Notice of Hearing in this matter;

**AND WHEREAS** on September 21st, 2010, Staff served Da Silva with a certified copy of the Notice of Hearing and Staff's Amended Statement of Allegations dated September 20th, 2010 as evidenced by the Affidavit of Service of Charlene Rochman, sworn on October 1st, 2010, filed with the Commission

**AND WHEREAS** on October 5th, 2010, a status hearing was held which Da Silva did not attend, and the panel of the Commission ordered that the hearing with respect to the Notice of Hearing dated September 20th, 2010 and Staff's Amended Statement of Allegations dated September 20th, 2010 be adjourned to October 26th, 2010 at 9:30 a.m. for the purpose of having a pre-hearing conference;

**AND WHEREAS** on October 26th, 2010, a pre-hearing conference was held commencing at 9:30 a.m. which Da Silva did not attend despite being advised of the pre-hearing conference, and Staff made submissions to the panel of the Commission;

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

**IT IS ORDERED** that the hearing on the merits with respect to the Notice of Hearing dated September 20th, 2010 and Staff's Amended Statement of Allegations dated September 20th, 2010 shall take place on November 29th, 2010 at 10:00 a.m.;

**IT IS FURTHER ORDERED** that should Da Silva not appear at the hearing on the merits on November 29th, 2010 at 10:00 a.m. and an affidavit of service is provided to the Commission by Staff confirming that Da Silva was made aware of this hearing date, Staff will bring a motion on November 29th, 2010 to have the hearing on the merits proceed in writing.

**DATED** at Toronto this 26th day of October, 2010.

"James. D. Carnwath, Q.C."

### 2.2.11 Axcess Automation LLC et al. – ss. 127(1), 127.1 of the Securities Act and ss. 60, 60.1 of the CFA

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

**AND**

**IN THE MATTER OF**
**THE COMMODITY FUTURES ACT**
**R.S.O. 1990, c. C.20, AS AMENDED**

**AND**

**IN THE MATTER OF**
**AXCESS AUTOMATION LLC,**
**AXCESS FUND MANAGEMENT, LLC,**
**AXCESS FUND, L.P., GORDON ALAN DRIVER,**
**DAVID RUTLEDGE, 6845941 CANADA INC.**
**carrying on business as ANESIS INVESTMENTS,**
**STEVEN M. TAYLOR, BERKSHIRE MANAGEMENT**
**SERVICES INC. carrying on business as**
**INTERNATIONAL COMMUNICATION STRATEGIES,**
**1303066 ONTARIO LTD. carrying on business as**
**ACG GRAPHIC COMMUNICATIONS,**
**MONTECASSINO MANAGEMENT CORPORATION,**
**REYNOLD MAINSE, WORLD CLASS**
**COMMUNICATIONS INC. and RONALD MAINSE**

**ORDER**
**(Subsections 127(1) and 127.1 of the Securities Act and Sections 60 and 60.1 of the Commodity Futures Act)**

**WHEREAS** on April 15, 2009, the Ontario Securities Commission (the "Commission") made an order pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5., as amended (the "*Securities Act*") in respect of Axcess Automation LLC ("Axcess Automation"), Axcess Fund Management, LLC ("Axcess Fund Management"), Axcess Fund, L.P. ("Axcess Fund"), Gordon Alan Driver ("Driver") and David Rutledge ("Rutledge") that all trading in securities by them cease, and that any exemptions contained in Ontario securities law do not apply to them;

**AND WHEREAS** on April 29, 2009, with the consent of Axcess Automation, Axcess Fund Management, Axcess Fund, Driver and Rutledge, the Commission continued the April 15, 2009 order until October 15, 2009, and ordered that the matter return before the Commission on October 14, 2009 at 10:00 a.m. or such other time as set by the Secretary's Office;

**AND WHEREAS** on October 2, 2009, the Commission made an order pursuant to subsections 127(1) and (5) of the *Securities Act* in respect of Steven M. Taylor ("Taylor") and International Communication Strategies ("ICS") that all trading in securities by Taylor and ICS cease, and that any exemptions contained in Ontario securities law do not apply to Taylor and ICS;

**AND WHEREAS** on October 14, 2009, with the consent of Axcess Automation, Axcess Fund Management, Axcess Fund, Driver and Rutledge, and upon hearing submissions from Staff of the Commission, Taylor on his own behalf and on behalf of ICS, no one appearing for Axcess Automation, Axcess Fund Management, Axcess Fund, Driver and Rutledge, the Commission continued the April 29 and October 2, 2009 orders until April 14, 2010 and ordered that this matter return before the Commission on April 13, 2010 at 10:00 a.m. or such other time as set by the Secretary's Office;

**AND WHEREAS** on April 13, 2010, upon hearing submissions from Staff, who advised that Axcess Automation, Axcess Fund Management, Axcess Fund, Driver and Rutledge consented to a continuation of the order dated October 14, 2009 until August 16, 2010, no one appearing for Axcess Automation, Axcess Fund Management, Axcess Fund, Driver and Rutledge, and upon hearing Taylor, who, on his own behalf and on behalf of ICS, opposed the continuation of the order dated October 14, 2009, the Commission continued the October 14, 2009 order until August 16, 2010 and ordered that the matter return before the Commission on August 13, 2010 at 10:00 a.m. or such other time as set by the Secretary's Office;

**AND WHEREAS** on August 12, 2010, the Commission issued a Notice of Hearing and Statement of Allegations against Axcess Automation, Axcess Fund Management, Axcess Fund, Driver, Rutledge, 6845941 Canada Inc. carrying on business as Anesis Investments ("6845941"), Taylor, Berkshire Management Services Inc. carrying on business as ICS, 1303066 Ontario Ltd., carrying on business as ACG Graphic Communications ("ACG"), Montecassino Management Corporation ("Montecassino"), Reynold Mainse ("Reynold"), World Class Communications Inc. ("WCC") and Ronald Mainse ("Ronald");

**AND WHEREAS** by orders dated August 13, 2010, the Commission approved settlement agreements between Staff and Ronald dated August 4, 2010 and between Staff and Rutledge and 6845941 dated August 10, 2010;

**AND WHEREAS** the Statement of Allegations names Berkshire Management Services Inc. carrying on business as ICS;

**AND WHEREAS** on August 13, 2010, upon hearing submissions from Staff of the Commission and from Taylor who opposed the continuation of the order dated April 13, 2010 on his own behalf and on behalf of Berkshire Management Services Inc. carrying on business as ICS, ACG and Montecassino, no one appearing for Axcess Automation, Axcess Fund Management, Axcess Fund, Driver, Reynold, and WCC, the Commission ordered that all trading in securities by Taylor, Berkshire Management Services Inc. carrying on business as ICS, ACG and Montecassino cease and that any exemptions contained in Ontario securities law and Ontario commodity futures law do not apply to them until October 26, 2010 or until further order of the Commission, and that trading in any securities by Axcess Automation, Axcess Fund Management, Axcess Fund and Driver cease and any exemptions contained in Ontario securities law and Ontario commodity futures law shall not apply to them until the conclusion of the hearing in this matter or until further order of the Commission, and ordered that this matter return before the Commission on October 25, 2010 at 10:00 a.m. or such other time as set by the Secretary's Office;

**AND WHEREAS** on October 25, 2010, upon hearing submissions from Staff of the Commission and from Taylor who opposed the continuation of the order dated August 13, 2010 on his own behalf and on behalf of Berkshire Management Services Inc. carrying on business as ICS, ACG and Montecassino, no one appearing for Axcess Automation, Axcess Fund Management, Axcess Fund, Driver, Reynold, WCC;

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

**IT IS ORDERED THAT:**

1. the hearing on the merits shall begin on Monday, April 11, 2011, and continue during the weeks of April 11 and April 18, 2011 and, if necessary, April 25, 2011;

2. pursuant to clauses 2 and 3 of subsection 127(1) of the *Securities Act* and clause 3 of subsection 60(1) of the *Commodity Futures Act*, trading in any securities by the Axcess Automation, Axcess Fund Management, Axcess Fund, Driver, Taylor, Berkshire Management Services Inc. carrying on business as ICS, ACG and Montecassino shall cease, and any exemptions contained in Ontario securities law and Ontario commodity futures law shall not apply to them until this matter is disposed of by a hearing on the merits, and if necessary, a hearing on sanctions, or settlement, as the case may be, or until further order of the Commission.

**DATED** at Toronto this 25th day of October 2010.

"James D. Carnwath"

# Chapter 4

# Cease Trading Orders

### 4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

| Company Name | Date of Temporary Order | Date of Hearing | Date of Permanent Order | Date of Lapse/Revoke |
|---|---|---|---|---|
| | | | | |

**THERE ARE NO ITEMS FOR THIS WEEK.**

### 4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

| Company Name | Date of Order or Temporary Order | Date of Hearing | Date of Permanent Order | Date of Lapse/ Expire | Date of Issuer Temporary Order |
|---|---|---|---|---|---|
| | | | | | |

**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 |
|---|---|---|---|---|---|
| | | | | | |

**THERE ARE NO ITEMS FOR THIS WEEK.**

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## Chapter 7

# Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

## Chapter 8

# Notice of Exempt Financings

**REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1**

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 01/01/2009 to 12/31/2009 | 145 | Acuity Pooled Canadian Balanced Fund - Units | 4,827,865.93 | 277,346.72 |
| 01/01/2009 to 12/31/2009 | 255 | Acuity Pooled Pure Canadian Equity Fund - Units | 32,802,817.60 | 2,106,948.80 |
| 07/28/2010 | 2 | Apache Corporation - Common Shares | 3,375,864.15 | 62,000.00 |
| 08/12/2010 to 08/17/2010 | 12 | APO Energy Inc. - Common Shares | 6,948,500.00 | 5,345,000.00 |
| 09/28/2010 | 1 | Aspen Technology, Inc. - Common Shares | 1,159,425.00 | 125,000.00 |
| 10/20/2010 | 1 | Bank of Montreal - Debt | 1,536,750.00 | 1.00 |
| 06/25/2010 | | Beatrix Ventures Inc. - Flow-Through Units | NA | 2,800,000.00 |
| 09/16/2010 | 2 | Birch Hill Equity Partners IV, L.P. - Limited Partnership Interest | 1,000,000.00 | 1,000,000.00 |
| 10/01/2010 | 3 | Blue Acquisition Sub, Inc. - Notes | 6,639,750.00 | 3.00 |
| 09/28/2010 | 3 | Boshiwa International Holding Limited - Common Shares | 495,000.00 | 750,000.00 |
| 10/07/2010 | 3 | Brickman Group Holdings, Inc. - Notes | 10,369,320.00 | 10,200.00 |
| 10/18/2010 | 6 | Buchans Minerals Corporation - Units | 1,000,000.00 | 12,500,000.00 |
| 07/26/2010 | 1 | Camelot Information Systems Inc. - American Depository Shares | 283,580.00 | 25,000.00 |
| 08/16/2010 | 43 | Canadian Platinum Corp - Flow-Through Shares | 2,180,000.00 | 14,000,000.00 |
| 09/24/2010 to 10/04/2010 | 14 | Capella Resources Ltd. - Flow-Through Shares | 697,500.09 | 10,000,000.00 |
| 10/01/2010 | 1 | Capital Direct I Income Trust - Units | 100,000.00 | 10,000.00 |
| 07/05/2010 | 10 | Cenit Corporation - Units | 407,124.00 | 8,142,480.00 |
| 01/17/2010 to 01/26/2010 | 26 | Centurion Minerals Ltd. - Common Shares | 500,000.00 | 1,000,000.00 |
| 08/19/2010 | 68 | Cequence Energy Ltd. - Flow-Through Shares | 10,001,000.00 | 4,070,000.00 |
| 09/13/2010 | 2 | Chaparral Energy, Inc. - Notes | 17,958,950.64 | 2.00 |
| 10/07/2010 | 4 | Cincinnati Bell Inc. - Notes | 13,469,950.00 | 13,250.00 |
| 09/29/2010 | 1 | Clean Air Power Limited - Common Shares | 312,193.06 | 1,534,024.00 |
| 10/13/2010 | 5 | Clearwater Paper Corporation - Notes | 5,817,400.00 | 5.00 |
| 07/19/2010 | 24 | Columbus Gold Corporation - Units | 1,020,650.00 | 5,103,250.00 |
| 07/16/2010 | 5 | Cynapsus Therapeutics Inc. - Common Shares | 95,680.00 | 1,913,600.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 08/04/2010 | 5 | Cynapsus Therapeutics Inc. - Debentures | 180,000.00 | 5.00 |
| 07/16/2010 | 5 | Cynapsus Therapeutics Inc. - Debentures | 520,000.00 | 5.00 |
| 08/25/2010 | 43 | Darnley Bay Resources Limited - Units | 4,250,000.00 | 10,625,000.00 |
| 10/05/2010 | 7 | DaVita Inc. - Notes | 12,455,800.00 | 0.00 |
| 09/27/2010 | 1 | Detour Gold Corporation - Common Shares | 2,994,000.00 | 100,000.00 |
| 10/08/2010 | 1 | Development Notes Limited Partnership - Units | 12,415.00 | 12,415.00 |
| 01/27/2010 | 1 | Dorothy of OZ, LLC - Unit | 10,000.00 | 1.00 |
| 07/01/2009 to 06/30/2010 | 602 | Dynamic Alpha Performance Fund - Units | 38,338,220.73 | N/A |
| 07/01/2009 to 06/30/2010 | 261 | Dynamic Contrarian Fund - Units | 8,729,551.26 | N/A |
| 07/01/2009 to 06/30/2010 | 1 | Dynamic Focus+Alternative Fund - Units | 13,500.00 | N/A |
| 07/01/2009 to 06/30/2010 | 48 | Dynamic Income Opportunities Fund - Units | 1,699,127.39 | N/A |
| 07/01/2009 to 06/30/2010 | 95 | Dynamic Power Emerging Markets Fund - Units | 3,118,990.31 | N/A |
| 07/01/2009 to 06/30/2010 | 746 | Dynamic Power Hedge Fund - Units | 66,312,371.42 | N/A |
| 10/29/2009 to 06/30/2010 | 480 | Dynamic Real Estate & Infrastructure Income Fund - Units | 87,256,678.35 | N/A |
| 07/01/2009 to 06/30/2010 | 7 | Dynamic Strategic Value Fund - Units | 291,541.44 | N/A |
| 10/15/2010 | 12 | Ecometals Limited - Units | 534,750.00 | 3,565,000.00 |
| 10/05/2010 | 1 | Elester Group SE - American Depository Shares | 991,500.00 | 75,000.00 |
| 07/06/2010 | 1 | Energy Fuels Inc. - Common Shares | 3,080,000.00 | 19,250,000.00 |
| 09/21/2010 | 11 | Fancamp Exploration Ltd. - Flow-Through Units | 1,350,000.00 | 2,700,000.00 |
| 10/22/2010 | 7 | Fancamp Exploration Ltd. - Flow-Through Units | 908,000.00 | 1,816,000.00 |
| 09/21/2010 | 11 | Fancamp Exploration Ltd. - Units | 385,000.00 | 8,555,555.00 |
| 10/07/2010 | 1 | First Leaside Expansion Limited Partnership - Units | 100,000.00 | 100,000.00 |
| 10/08/2010 to 10/12/2010 | 2 | First Leaside Ultimate Limited Partnership - Units | 100,340.00 | 97,993.00 |
| 06/04/2010 | 17 | Founder Resources Inc. - Flow-Through Units | 2,179,800.00 | 4,765,000.00 |
| 06/04/2010 | 17 | Founder Resources Inc. - Units | 2,179,800.00 | 510,000.00 |
| 08/02/2010 | 1 | INPEX Corporation - Common Shares | 4,967,661.00 | 1,000.00 |
| 09/29/2010 | 3 | Intelivote Systems Inc. - Common Shares | 325,000.00 | 344,200.00 |
| 09/30/2010 | 7 | Investeco Private Equity Fund III, L.P. - Limited Partnership Units | 918,436.88 | 913.00 |
| 10/01/2010 | 1 | JPMorgan IIF Canadian 2 LP - Capital Commitment | 10,215,000.00 | 1.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 10/01/2010 | 1 | JPMorgan IIF Canadian 3 LP - Limited Partnership Interest | 102,150,000.00 | 1.00 |
| 10/18/2010 | 16 | Kinetex Resources Corporation - Units | 153,300.00 | 1,533,000.00 |
| 04/16/2010 to 04/21/2010 | 24 | KWG Resources Inc. - Units | 4,986,212.25 | 39,889,698.00 |
| 10/07/2010 | 1 | Lion Capital LLP - Limited Partnership Interest | 424,530,000.00 | 1.00 |
| 04/01/2009 to 03/31/2010 | 1 | London Capital Canadian Bond Fund - Units | 9,866,074.16 | N/A |
| 09/28/2010 | 16 | Lounor Exploration Inc. - Common Shares | 339,000.00 | 4,237,500.00 |
| 08/04/2010 | 9 | Lyrtech Inc. - Debentures | 250,000.00 | 250,000.00 |
| 08/04/2010 | 11 | Lyrtech Inc. - Units | 182,500.00 | 2,160,714.00 |
| 10/08/2010 | 1 | MacDonald Mines Exploration Ltd. - Units | 3,430,800.00 | 19,060,000.00 |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Focus Japan Class - Units | 11,451,339.61 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Founders Fund - Units | 52,685.51 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Founders Income & Growth Fund - Units | 4,407,792.78 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Growth Fund - Units | 11,086,218.23 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Ivy Canadian Fund - Units | 194,106.73 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Ivy Enterprise Class - Units | 2,307,623.87 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Ivy Foreign Equity Class - Units | 6,901.64 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Ivy Foreign Equity Fund - Units | 23,328,380.81 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Ivy Global Balanced Fund - Units | 469,799.67 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Ivy Growth & Income Fund - Units | 1,571,225.21 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Maxxum All-Canadian Equity Class - Units | 1,519,052.79 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Maxxum Canadian Balanced Fund - Units | 20,873,389.31 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Maxxum Canadian Equity Growth Fund - Units | 7,031,634.51 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Maxxum Dividend Class - Units | 60,003.57 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Maxxum Dividend Fund - Units | 47,817,991.53 | N/A |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Maxxum Monthly Income Fund - Units | 516,918.41 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Saxon International Equity Fund - Units | 30,527,023.47 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Saxon Small Cap Fund - Units | 11,181,077.29 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Saxon Stock Fund - Units | 12,027,883.20 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Saxon World Fund - Units | 50,462,396.16 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Sentinel Cash Management Fund - Units | 5,604,537.06 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Sentinel Corporate Bond Fund - Units | 31,275,763.31 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Sentinel Income Fund - Units | 8,798,500.78 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Sentinel Money Market Fund - Units | 2,012,476.67 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Mackenzie Sentinel U.S. Short-Term Yield Pool - Units | 2,306,472.49 | N/A |
| 07/09/2010 | MagIndustries Corp. - Common Shares | NA | 12,500,000.00 | |
| 10/18/2010 | 1 | Marret HYS Trust - Units | 9,270,834.79 | 750,195.00 |
| 07/06/2010 to 07/22/2010 | 16 | Maya Gold & Silver Inc. - Units | 1,000,200.00 | 4,000,200.00 |
| 02/10/2010 to 10/16/2010 | 7 | MBMI Resources Inc. - Common Shares | 234,000.00 | 1,170,000.00 |
| 03/08/2010 | 25 | MBMI Resources Inc. - Common Shares | 355,000.00 | 1,775,000.00 |
| 10/05/2010 | 2 | Mill Bay Ventures Inc. - Flow-Through Units | 300,000.00 | 1,363,635.00 |
| 09/17/2010 | 33 | Mirabela Nickel Limited - Common Shares | 19,228,000.00 | 12,650,000.00 |
| 07/29/2010 | 1 | Molycorp, Inc. - Common Shares | 2,502,675.00 | 185,000.00 |
| 10/06/2010 | 3 | Navious Maritime Acquistion Corporation and Navious Acquisition Finance (US) Inc. - Notes | 19,138,700.00 | 19,000.00 |
| 10/04/2010 | 1 | NBC Universal, Inc. - Notes | 5,116,334.79 | 1.00 |
| 09/26/2010 | 1 | New Solutions Financial (II) Corporation - Debenture | 50,000.00 | 1.00 |
| 10/14/2010 | 3 | Newcastle Minerals Ltd. - Common Shares | 25,300.00 | 220,000.00 |
| 08/20/2010 | 105 | Pacific Therapeutics Ltd. - Warrants | 32,000.00 | 64,000.00 |
| 12/30/2009 | 1 | Pacific & Western Credit Corp. - Preferred Share | 5,000.25 | 1.00 |
| 07/05/2010 to 07/14/2010 | 19 | Romios Gold Resources Inc. - Units | 1,469,500.00 | N/A |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 09/21/2010 | 20 | Sidon International Resources Corporation - Units | 800,000.00 | 8,000,000.00 |
| 03/18/2010 | 5 | Sitel Finance Corporation - Notes | 2,470,215.25 | N/A |
| 09/24/2010 | 1 | Societe d'exploration miniere Vior Inc. - Common Share Purchase Warrant | 432,000.00 | 5,400,000.00 |
| 07/23/2010 | 9 | Strait Gold Corporation - Units | 168,000.06 | 2,800,001.00 |
| 10/07/2010 to 10/12/2010 | 21 | St. Eugene Mining Corporation Limited - Flow-Through Units | 750,008.00 | 6,250,066.00 |
| 12/18/2009 to 12/23/2009 | 20 | St. Eugene Mining Corporation Limited - Units | 599,985.00 | 10,908,817.00 |
| 10/07/2010 to 10/12/2010 | 13 | St. Eugene Mining Corporation Limited - Non-Flow Through Units | 418,000.00 | 4,180,000.00 |
| 09/27/2010 | 33 | Suroco Energy Inc. - Common Shares | 13,177,553.43 | 29,283,446.00 |
| 04/01/2009 to 03/31/2010 | 1 | Symmetry Equity Class - Units | 154,015,920.40 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Symmetry Equity Pool - Units | 43,849,152.00 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Symmetry Fixed Income Pool - Units | 78,339,824.30 | N/A |
| 04/01/2009 to 03/31/2010 | 1 | Symmetry Registered Fixed Income Pool - Units | 86,648,245.79 | N/A |
| 07/16/2010 | 74 | Taku Gold Corp. - Units | 3,450,000.00 | 23,000,000.00 |
| 07/28/2010 | 4 | The Goldman Sachs Group, Inc. - Notes | 47,585,982.20 | 4.00 |
| 09/27/2010 | 15 | The Mark Limied Partnership - Limited Partnership Units | 500,000.00 | 250.00 |
| 10/15/2010 | 1 | The Religius Hospitallers of St. Josheph of Cornwall Ontario - Debenture | 13,500,000.00 | 1.00 |
| 10/12/2010 | 3 | Touchstone Investment Holdings Limited - Units | 3,040,820.68 | 19,724.00 |
| 09/21/2010 | 1 | Transocean Inc. - Note | 206,155.59 | 1.00 |
| 09/30/2010 | 7 | TrueBlue Connect Consolidated Ltd. - Preferred Shares | 1,050,000.00 | 1,050,000.00 |
| 08/17/2010 | 1 | Trueclaim exploration Inc. - Common Shares | 47,500.00 | 500,000.00 |
| 10/05/2007 to 10/23/2007 | 1 | TT International Fund plc - TT European Equity Fund - Common Shares | 3,483,011.85 | 128,087.73 |
| 09/22/2010 | 1 | UIL Holdings Corporation - Common Shares | 3,988,803.75 | 150,000.00 |
| 10/07/2010 to 10/08/2010 | 4 | Wimberly Fund - Trust Units | 44,085.00 | 44,085.00 |
| 10/08/2010 | 10 | Win-Eldrich Mines Limited - Units | 300,000.00 | 1,500,000.00 |
| 10/13/2010 | 1 | XM Satellite Radio Inc. - Note | 8,688,700.00 | 1.00 |

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## Chapter 11

# IPOs, New Issues and Secondary Financings

**Issuer Name:**
Banyan Coast Capital Corp.
Principal Regulator - Alberta
**Type and Date:**
Preliminary CPC Prospectus dated October 20, 2010
NP 11-202 Receipt dated October 20, 2010
**Offering Price and Description:**
$300,000.00 (2,000,000 Common Shares) Price: $0.15 per Common Share
**Underwriter(s) or Distributor(s):**
MACKIE RESEARCH CAPITAL CORPORATION
**Promoter(s):**
David M. Rutt
**Project** #1647403

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**Issuer Name:**
Strad Energy Services Ltd.
Principal Regulator - Alberta
**Type and Date:**
Amended and Restated Preliminary Long Form Prospectus dated October 26, 2010
NP 11-202 Receipt dated
**Offering Price and Description:**
$40,000,000.00 - * Common Shares - Price: $ * per Common Share
**Underwriter(s) or Distributor(s):**
Raymond James Ltd.
CIBC World Markets Inc.
Macquarie Capital Markets Canada Ltd.
Peters & Co. Limited
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Paradigm Capital Inc.
**Promoter(s):**
-
**Project** #1643647

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**Issuer Name:**
Bear Creek Mining Corporation
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated October 22, 2010
NP 11-202 Receipt dated October 22, 2010
**Offering Price and Description:**
$112,960,000.00 - 17,650,000 Common Shares Price: $6.40 per Common Share
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
Paradigm Capital Inc.
Haywood Securities Inc.
Raymond James Ltd.
Cormark Securities Inc.
Scotia Capital Inc.
**Promoter(s):**
-
**Project** #1648199

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**Issuer Name:**
Cline Mining Corporation
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated October 22, 2010
NP 11-202 Receipt dated October 22, 2010
**Offering Price and Description:**
$50,115,000.00 - 25,700,000 Common Shares Price: $1.95 per Common Share
**Underwriter(s) or Distributor(s):**
TD Securities Inc.
Jennings Capital Inc.
Macquarie Capital Markets Canada Ltd.
M Partners Inc.
**Promoter(s):**
-
**Project** #1648247

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**Issuer Name:**
EMED Mining Public Limited
Principal Regulator - Ontario
**Type and Date:**
Preliminary Long Form Prospectus dated October 19, 2010
NP 11-202 Receipt dated October 20, 2010
**Offering Price and Description:**
$ * - * Ordinary Shares Price: $ * per Share
**Underwriter(s) or Distributor(s):**
Canaccord Geniuty Corp.
GMP Securities L.P.
Paradigm Capital Inc.
**Promoter(s):**
-
**Project** #1647178

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**Issuer Name:**
Enbridge Inc.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Base Shelf Prospectus dated October 21, 2010
NP 11-202 Receipt dated October 21, 2010
**Offering Price and Description:**
US$2,000,000,000.00:
DEBT SECURITIES
COMMON SHARES
PREFERRED SHARES
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1647841

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**Issuer Name:**
General Motors Company
Principal Regulator - Ontario
**Type and Date:**
Amended and Restated Preliminary MJDS Prospectus dated October 25, 2010
NP 11-202 Receipt dated October 26, 2010
**Offering Price and Description:**
US$ * - * SHARES OF COMMON STOCK
**Underwriter(s) or Distributor(s):**
Morgan Stanley Canada Limited
**Promoter(s):**
-
**Project** #1621247

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**Issuer Name:**
General Motors Company
Principal Regulator - Ontario
**Type and Date:**
Amended and Restated Preliminary MJDS Prospectus dated October 25, 2010
NP 11-202 Receipt dated October 26, 2010
**Offering Price and Description:**
US$ * - * SHARES OF * % SERIES B MANDATORY CONVERTIBLE JUNIOR PREFERRED STOCK
Price: US$* per Share
**Underwriter(s) or Distributor(s):**
Morgan Stanley Canada Limited
**Promoter(s):**
-
**Project** #1621248

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**Issuer Name:**
GT Canada Medical Properties Real Estate Investment Trust
Principal Regulator - Ontario
**Type and Date:**
Preliminary Long Form Prospectus dated October 22, 2010
NP 11-202 Receipt dated October 22, 2010
**Offering Price and Description:**
Minimum $25,000,000.00 - Minimum * Units Price: $* per Unit
**Underwriter(s) or Distributor(s):**
Raymond James Ltd.
**Promoter(s):**
-
**Project** #1648028

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**Issuer Name:**
Lake Shore Gold Corp.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated October 20, 2010
NP 11-202 Receipt dated October 20, 2010
**Offering Price and Description:**
$392,400,000.00 - 109,000,000 Common Shares Price: $3.60 per Offered Share
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
**Promoter(s):**
-
**Project** #1647339

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**Issuer Name:**
Marquis Balanced Growth Portfolio
Marquis Balanced Income Portfolio
Marquis Balanced Portfolio
Marquis Equity Portfolio
Marquis Growth Portfolio
Marquis Institutional Balanced Growth Portfolio
Marquis Institutional Balanced Portfolio
Marquis Institutional Bond Portfolio
Marquis Institutional Canadian Equity Portfolio
Marquis Institutional Equity Portfolio
Marquis Institutional Global Equity Portfolio
Marquis Institutional Growth Portfolio
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectuses dated October 22, 2010
NP 11-202 Receipt dated October 25, 2010
**Offering Price and Description:**
Series I and G Units
**Underwriter(s) or Distributor(s):**
Goodman & Company, Investment Counsel Ltd.
**Promoter(s):**
Goodman & Company, Investment Counsel Ltd.
**Project** #: 1648184

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**Issuer Name:**
Oromin Explorations Ltd.
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated October 20, 2010
NP 11-202 Receipt dated October 20, 2010
**Offering Price and Description:**
$13,000,000.00 - 10,000,000 Common Shares Price: $1.30 per Common Share
**Underwriter(s) or Distributor(s):**
Cormark Securities Inc.
RBC Dominion Securities Inc.
Mackie Research Capital Corporation
Toll Cross Securities Inc.
**Promoter(s):**
-
**Project** #1647230

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**Issuer Name:**
Paramount Resources Ltd.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Base Shelf Prospectus dated October 25, 2010
NP 11-202 Receipt dated October 25, 2010
**Offering Price and Description:**
$400,000,000.00:
Debt Securities
Class A Common Shares
Subscription Receipts
Warrants
Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1648544

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**Issuer Name:**
Provident Energy Trust
Principal Regulator - Alberta
**Type and Date:**
Preliminary Short Form Prospectus dated October 25, 2010
NP 11-202 Receipt dated October 25, 2010
**Offering Price and Description:**
$150,000,000.00 - 5.75% Convertible Unsecured Subordinated Debentures Price: $1,000.00 per Debenture
**Underwriter(s) or Distributor(s):**
National Bank Financial Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
Canaccord Genuity Corporation
HSBC Securities (Canada) Inc.
FirstEnergy Capital Corp.
**Promoter(s):**
-
**Project** #1648673

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**Issuer Name:**
RS Technologies Inc.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Base Shelf Prospectus dated October 22, 2010
NP 11-202 Receipt dated October 22, 2010
**Offering Price and Description:**
$15,000,000.00:
Common Shares
Subscription Receipts Warrants Options
Debt Securities
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1648235

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**Issuer Name:**
UNX Energy Corp. (formerly Universal Power Corp.)
Principal Regulator - Alberta
**Type and Date:**
Preliminary Short Form Prospectus dated October 22, 2010
NP 11-202 Receipt dated October 22, 2010
**Offering Price and Description:**
$30,030,000.00 - 9,100,000 Offered Shares Price: $3.30 per Offered Share
**Underwriter(s) or Distributor(s):**
Macquarie Capital Markets Canada Ltd.
Cormark Securities Inc.
Clarus Securities Inc.
FirstEnergy Capital Corp.
Raymond James Ltd.
Octagon Capital Corporation
**Promoter(s):**
-
**Project** #1648122

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**Issuer Name:**
Ventana Gold Corp.
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated October 25, 2010
NP 11-202 Receipt dated October 25, 2010
**Offering Price and Description:**
$65,000,000.00 - 6,500,000 Common Shares issuable on exercise of 6,500,000 Special Warrants
Price: $10.00 per Special Warrant
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1648578

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**Issuer Name:**
Vero Energy Inc.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Short Form Prospectus dated October 21, 2010
NP 11-202 Receipt dated October 21, 2010
**Offering Price and Description:**
$10,003,500.00 - 1,539,000 Common Shares and $25,004,200.00 - 3,068,000 Flow Through Shares
Price: $6.50 per Common Share and $8.15 per Flow Through Share
**Underwriter(s) or Distributor(s):**
GMP Securities L.P.
FirstEnergy Capital Corp.
Dundee Securities Corporation
Macquarie Capital Markets Canada Ltd.
Paradigm Capital Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
**Promoter(s):**
-
**Project** #1647780

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**Issuer Name:**
Whiterock Real Estate Investment Trust
Principal Regulator - Ontario
**Type and Date:**
Preliminary Base Shelf Prospectus dated October 20, 2010
NP 11-202 Receipt dated October 20, 2010
**Offering Price and Description:**
$275,000,000.00:
Units
Debt Securities
Warrants
Subscription Receipts
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1647275

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**Issuer Name:**
Arcan Resources Ltd.
Principal Regulator - Alberta
**Type and Date:**
Final Short Form Prospectus dated October 22, 2010
NP 11-202 Receipt dated October 22, 2010
**Offering Price and Description:**
$43,500,000.00 - 9,062,500 Common Shares Price: $4.80 Per Offered Share
**Underwriter(s) or Distributor(s):**
Haywood Securities Inc.
Paradigm Capital Inc.
Wellington West Capital Markets Inc.
National Bank Financial Inc.
PI Financial Corp.
Stifel Nicolaus Canada Inc.
**Promoter(s):**
-
**Project** #1645003

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**Issuer Name:**
Black Birch Capital Acquisition II Corp.
Principal Regulator - Ontario
**Type and Date:**
Final CPC Prospectus dated October 19, 2010
NP 11-202 Receipt dated October 20, 2010
**Offering Price and Description:**
MINIMUM OFFERING: $400,000.00 or 4,000,000 Common Shares; MAXIMUM OFFERING: $1,500,000.00 or 15,000,000 Common Shares: PRICE: $0.10 per Common Share
**Underwriter(s) or Distributor(s):**
Northern Securities Inc.
**Promoter(s):**
Paul Haber
**Project** #1621292

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**Issuer Name:**
Boyuan Construction Group, Inc.
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus dated October 26, 2010
NP 11-202 Receipt dated October 26, 2010
**Offering Price and Description:**
Maximum $15,000,000.00 - 10% Convertible Unsecured Subordinated Debentures Due October 31, 2015 - Per $1,000 principal amount of Debentures
**Underwriter(s) or Distributor(s):**
Mackie Research Capital Corporation
National Bank Financial Inc.
PI Financial Corp.
**Promoter(s):**
-
**Project** #1642002

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**Issuer Name:**
Brookfield Renewable Power Fund
Principal Regulator - Quebec
**Type and Date:**
Final Short Form Prospectus dated October 22, 2010
NP 11-202 Receipt dated October 22, 2010
**Offering Price and Description:**
$152,950,000.00 - 7,000,000 Trust Units Price: $21.85 per Trust Unit
**Underwriter(s) or Distributor(s):**
CIBC World Markets Inc.
Scotia Capital Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Brookfield Financial Corp.
Canaccord Genuity Corp.
Clarus Securities Inc.
Dundee Securities Corporation
FirstEnergy Capital Corp.
Macquarie Capital Markets Canada Ltd.
**Promoter(s):**
-
**Project** #1645634

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**Issuer Name:**
Canadian Scholarship Trust Group Savings Plan 2001
Canadian Scholarship Trust Individual Savings Plan
Canadian Scholarship Trust Family Savings Plan
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated October 6, 2010 to the Long Form Prospectus dated May 26, 2010
NP 11-202 Receipt dated October 22, 2010
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Canadian Scholarship Trust Foundation
**Project** #1555930/1587392 (1555920)/1555941

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**Issuer Name:**
Chartwell Seniors Housing Real Estate Investment Trust
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus dated October 22, 2010
NP 11-202 Receipt dated October 22, 2010
**Offering Price and Description:**
$130,173,750.00 - 13,775,000 Units Price: $9.45 per Unit
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
National Bank Financial Inc.
TD Securities Inc.
Canaccord Genuity Corp.
HSBC Securities (Canada) Inc.
**Promoter(s):**
-
**Project** #1646205

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**Issuer Name:**
Dynamic Money Market Fund
Dynamic Money Market Class
Principal Regulator - Ontario
**Type and Date:**
Amendment No. 5 dated October 12, 2010 to
the Simplified Prospectuses dated December 23, 2009 (SP amendment no. 5) and Amendment No. 6
dated October 12, 2010 (together with SP amendment no. 5, "amendment no. 6") to the Annual
Information Form dated December 23, 2009
NP 11-202 Receipt dated October 20, 2010
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
Goodman & Company, Investment Counsel Ltd.
**Promoter(s):**
Goodman & Company Investment Counsel Ltd.
**Project** #1501539

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**Issuer Name:**
Dynamic Equity Income Fund
Principal Regulator - Ontario
**Type and Date:**
Amendment No. 6 dated October 13, 2010 to the Simplified Prospectus dated December 23, 2009 (SP amendment no. 6) and Amendment No. 7 dated October 13, 2010 (together with SP amendment no. 6, "amendment no. 7") to the Annual Information Form dated December 23, 2009
NP 11-202 Receipt dated October 20, 2010
**Offering Price and Description:**
Series A, F, I, O and T Securities @ Net Asset Value
**Underwriter(s) or Distributor(s):**
Goodman & Company Investment Counsel Ltd.
**Promoter(s):**
Goodman & Company Investment Counsel Ltd.
**Project** #1501539

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**Issuer Name:**
Essex Angel Capital Inc.
Principal Regulator - Ontario
**Type and Date:**
Amended and Restated CPC Prospectus dated October 20, 2010 (the amended prospectus) amending and restating the CPC Prospectus dated July 28, 2010.
NP 11-202 Receipt dated October 25, 2010
**Offering Price and Description:**
Maximum Offering: $2,630,000.00 or 26,300,000 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

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**Issuer Name:**
Horizons AlphaPro Gartman ETF
Horizons AlphaPro Seasonal Rotation ETF
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Prospectus dated October 19, 2010
NP 11-202 Receipt dated October 25, 2010
**Offering Price and Description:**
Class E units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
ALPHAPRO MANAGEMENT INC.
**Project** #1635224

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**Issuer Name:**
National Bank of Canada
Principal Regulator - Quebec
**Type and Date:**
Final Base Shelf Prospectus dated October 19, 2010
NP 11-202 Receipt dated October 20, 2010
**Offering Price and Description:**
$5,000,000,000.00:
Debt Securities (unsubordinated Indebtedness)
Debt Securities (subordinated indebtedness)
First Preferred Shares
Common Shares
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1644029

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**Issuer Name:**
NorthWest Healthcare Properties Real Estate Investment Trust
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus dated October 22, 2010
NP 11-202 Receipt dated October 22, 2010
**Offering Price and Description:**
$75,017,250.00 - 6,495,000 Units Price $11.55 per Offered Unit
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Genuity Corp.
Macquarie Capital Markets Canada Ltd.
**Promoter(s):**
-
**Project** #1645662

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**Issuer Name:**
OCP Credit Trust
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Non-Offering Prospectus dated October 25, 2010
NP 11-202 Receipt dated October 26, 2010
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Onex Credit Partners, LLC
**Project** #1643009

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**Issuer Name:**
OCP Senior Credit Fund
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Prospectus dated October 25, 2010
NP 11-202 Receipt dated October 26, 2010
**Offering Price and Description:**
$300,000,000.00 (30,000,000 Units) Maximum - $10.00 per Trust Unit; $60,000,000.00 (6,000,000 Units) Minimum - $10.00 per Trust Unit
**Underwriter(s) or Distributor(s):**
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
National Bank Financial Inc.
TD Securities Inc.
Dundee Securities Corporation
GMP Securities L.P.
Canaccord Genuity Corp.
HSBC Securities (Canada) Inc.
Macquarie Private Wealth Inc.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Desjardins Securities Inc.
Manulife Securities Incorporated
Mackie Research Capital Corporation
**Promoter(s):**
Onex Credit Partners, LLC
**Project** #1639628

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**Issuer Name:**
Advisor Series, Series F and Series O units of:
RBC DS Canadian Focus Fund
RBC DS U.S. Focus Fund
RBC DS International Focus Fund
RBC DS Balanced Global Portfolio
RBC DS Growth Global Portfolio
RBC DS All Equity Global Portfolio
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated October 22, 2010
NP 11-202 Receipt dated October 25, 2010
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
**Promoter(s):**
-
**Project** #1636786

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**Issuer Name:**
Russell Smaller Companies Pool (formerly Russell Small Cap Opportunities Pool)
(Series A, B, E, F and O units)
Russell Smaller Companies Class (formerly Russell Small Cap Opportunities Class)
(Series B, E and F shares
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated October 25, 2010
NP 11-202 Receipt dated October 26, 2010
**Offering Price and Description:**
Series A, B, E, F and O units
Series B, E and F shares
**Underwriter(s) or Distributor(s):**

Russell Investments Canada Limited
**Promoter(s):**
Russell Investments Canada Limited
**Project** #1638563

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**Issuer Name:**
Sino Vanadium Inc.
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus dated October 21, 2010
NP 11-202 Receipt dated October 22, 2010
**Offering Price and Description:**
Minimum Offering: $4,000,000.00 or 8,888,888 Units (the "Minimum Offering"); Maximum Offering: $21,000,000.00 or 46,666,666 Units (the "Maximum Offering"): Price: $0.45 per Unit
**Underwriter(s) or Distributor(s):**
Global Maxfin Capital Inc.
**Promoter(s):**
Ma Zhaoyang
Liu Bingqiang
**Project** #1609754

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**Issuer Name:**
The Toronto-Dominion Bank
Principal Regulator - Ontario
**Type and Date:**
Final Base Shelf Prospectus dated October 25, 2010
NP 11-202 Receipt dated October 26, 2010
**Offering Price and Description:**
$10,000,000,000.00:
Debt Securities (subordinated indebtedness)
Common Shares
Class A First Preferred Shares
Warrants to Purchase Preferred Shares
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1646336

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**Issuer Name:**
Yorkton Ventures Inc.
Principal Regulator - British Columbia
**Type and Date:**
Final CPC Prospectus dated October 14, 2010
NP 11-202 Receipt dated October 20, 2010
**Offering Price and Description:**
Minimum Offering: $400,000.00 (2,000,000 Common Shares); Maximum Offering: $600,000.00 (3,000,000 Common Shares) Price: $0.20 per Common Share
**Underwriter(s) or Distributor(s):**
Macquarie Private Wealth Inc.
**Promoter(s):**
Dale W. Peterson
Micheal W. Wilson
Nicholas F. Watters.
**Project** #1634060

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**Issuer Name:**
EarthRenew Corporation
Principal Jurisdiction - Alberta
**Type and Date:**
Preliminary Long Form Prospectus dated April 29, 2010
Amended and Restated Preliminary Long Form Prospectus dated June 4, 2010
Closed on October 22, 2010
**Offering Price and Description:**
$50,000,000.00 - * Units Price: * per Unit
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
BMO Nesbitt Burn Inc.
Canaccord Genuity Corp.
Jacob Securities Inc.
Thomas Weisel Partners Canada Inc.
**Promoter(s):**
Christianne Carin
**Project** #1572170

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**Issuer Name:**
Virgin Metals Inc.
**Type and Date:**
Rights Offering Circular dated October 14, 2010
Accepted on October 15, 2010
**Offering Price and Description:**
Offering of Rights to Subscribe for Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1640391

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# Chapter 12

# Registrations

### 12.1.1 Registrants

| Type | Company | Category of Registration | Effective Date |
|---|---|---|---|
| Change in Registration Category | Lombard Odier Darier Hentsch (Canada), Limited Partnership | From: Portfolio Manager<br><br>To: Portfolio Manager and Investment Fund Manager | October 20, 2010 |
| Consent to Suspension | Mallory Capital Group, LLC | Exempt Market Dealer | October 20, 2010 |
| Consent to Suspension | Newhouse Capital Corporation | Exempt Market Dealer | October 20, 2010 |
| Consent to Suspension | Matriarch Investments Inc. | Exempt Market Dealer | October 20, 2010 |
| Consent to Suspension | Newpark Capital Corp. | Exempt Market Dealer | October 20, 2010 |
| Change of Category | Stone Asset Management Limited | From: Portfolio Manager<br><br>To: Portfolio Manager and Investment Fund Manager | October 21, 2010 |
| Consent to Suspension (s. 30 of the Act – Surrender of Registration) | Quantum Global Financial Corp. | Portfolio Manager | October 21, 2010 |
| New Registration | Turnpointe Wealth Management Inc. | Portfolio Manager | October 22, 2010 |
| New Registration | Pennant Capital Partner Inc. | Exempt Market Dealer | October 22, 2010 |
| Change of Category | West Face Capital Inc. | From: Exempt Market Dealer and Portfolio Manager<br><br>To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager | October 22, 2010 |
| Consent to Suspension (s. 30 of the Act – Surrender of Registration) | Bick Financial Security Corporation | Exempt Market Dealer and Mutual Fund Dealer | October 25, 2010 |

| Type | Company | Category of Registration | Effective Date |
|---|---|---|---|
| New Registration | Terra Fund Management Ltd. | Investment Fund Manager | October 26, 2010 |

# Chapter 13

# SROs, Marketplaces and Clearing Agencies

## 13.1 SROs

### 13.1.1 Amendments to MFDA Rules and Policy No. 6 Resulting from NI 31-103 Registration Requirements and Exemptions

**[Amendments to version published for comment December 25, 2009]**

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**1. RULE NO. 1 – BUSINESS STRUCTURES AND QUALIFICATIONS**

**1.1 BUSINESS STRUCTURES**

1.1.1 **Members.** No Member or Approved Person (as defined in By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:

(a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as expressly provided in the Rules) and in accordance with the By-laws and Rules, other than:

(i) such business as relates solely to trading in deposit instruments conducted by any Approved Person not on account of the Member; and

(ii) such business conducted by an Approved Person as an employee of a bank and in accordance with the *Bank Act* (Canada) and the regulations thereunder and applicable securities legislation.

(b) all revenues, fees or consideration in any form relating to any business engaged in by the Member is paid or credited directly to the Member and is recorded on the books of the Member;

(c) the relationship between the Member and any person conducting securities related business on account of the Member is that of:

(i) an employer and employee, in compliance with Rule 1.1.4,

(ii) a principal and agent, in compliance with Rule 1.1.5, or

(iii) an introducing dealer and carrying dealer, in compliance with Rule 1.1.6;

(d) the business or trade or style name under which such securities related business is conducted is in accordance with Rule 1.1.7.

1.1.2 **Compliance by Approved Persons.** Each Approved Person who conducts or participates in any securities related business in respect of a Member in accordance with Rule 1.1.1.(c)(i) or (ii) shall comply with the By-laws and Rules as they relate to the Member or such Approved Person.

1.1.3 **Service Arrangements.** A Member or Approved Person may engage the services of any person including another Member or Approved Person, to provide services to the Member or Approved Person, as the case may be, provided that:

(a) the services do not in themselves constitute securities related business or duties or responsibilities that are required to be performed by the Member or Approved Person engaging the services pursuant to the By-laws, Rules or applicable securities legislation;

(b) any remuneration or compensation in any form in respect of such services shall only be paid or credited by the Member or Approved Person engaging the services, as the case may be, directly to the person providing the services and the payment or credit of such remuneration or compensation shall be recorded in the books and

records required to be maintained in accordance with the By-laws and Rules by the Member or Approved Person engaging such services;

(c) the Member or Approved Person engaging the services shall remain responsible for compliance with the By-laws and Rules and any applicable legislation;

(d) any person preparing and maintaining books and records as a service in respect of the business of the Member or Approved Person shall do so in accordance with the requirements of Rule 5, and such books and records shall be available for review by the Member or Approved Person during normal business hours and by the Corporation in accordance with the By-laws and Rules; and

(e) all material terms of the services to be engaged that relate to requirements of the Member or Approved Person under the By-laws, Rules, Policies or Forms shall be evidenced in writing and a copy of such terms, together with any amendments thereto from time to time or termination, shall be provided by the Member or Approved Person promptly to the Corporation upon request, together with any other information relating thereto as may be requested by the Corporation.

1.1.4 **Employees.** A Member may conduct its business by Approved Persons employed as employees by it provided that:

(a) any such employee is registered or licensed, in the manner necessary, and is in good standing, under the applicable legislation in the province or territory where the employee proposes to act;

(b) the Member shall be responsible for, and shall supervise, the conduct of the employee as an Approved Person in respect of the business including compliance with applicable legislation and the By-laws and Rules;

(c) the Member shall be liable to third parties (including clients) for the acts and omissions of the employee relating to the Member's business;

(d) the employee is in compliance with the legislation, By-laws and Rules applicable to the employee as an Approved Person; and

(e) where the Member and the Approved Person employed as an employee have entered into a written agreement, it shall not contain provisions which are inconsistent with an employment relationship or with the requirements set out in paragraphs (a) to (d) inclusive, of Rule 1.1.4.

1.1.5 **Agents.** A Member may conduct its business by Approved Persons retained or contracted by it as agents provided that:

(a) any such agent is registered or licensed in the manner necessary, and is in good standing, under the applicable legislation in the province or territory where the agent proposes to act;

(b) the Member shall be responsible for, and shall supervise, the conduct of the agent in respect of the business including compliance with applicable legislation and the By-laws and Rules;

(c) the Member shall be liable to third parties (including clients) for the acts and omissions of the agent relating to the Member's business;

(d) the agent is in compliance with the legislation, By-laws and Rules applicable to the agent;

(e) the financial institution bonds and insurance policies required to be maintained by the Member pursuant to Rule 4 cover and relate to the conduct of the agent;

(f) all books and records prepared and maintained by the agent in respect of such business of the Member shall be in accordance with Rule 5 and applicable legislation, shall be the property of the Member and shall be available for review by and delivery to the Member during normal business hours;

(g) all such business conducted by the agent is in the name of the Member subject to the provisions of Rule 1.1.7;

(h) the agent shall not conduct securities related business with or in respect of any person other than the Member;

(i) if the agent is engaged in or carrying on any business or activity other than business conducted on behalf of the Member, including any business or activity which is subject to regulation by any regulatory authority other

than a securities commission, compliance with the terms of the agreement referred to in paragraph (k) shall be monitored and enforced directly by the Member and not by or through any other person including another employer or principal of the agent;

(j) the terms or basis on which the agent may be engaged in or carry on any business or activity other than business conducted on behalf of the Member shall not prevent or impair the ability of the Member or the Corporation from monitoring and enforcing compliance by the agent with the terms of the agreement referred to in paragraph (k) or the By-laws or Rules; and

(k) the Member and the agent shall have entered into an agreement in writing, which shall be provided promptly to the Corporation upon request, containing terms which include the provisions of paragraphs (a) to (j), inclusive, and which do not include provisions which are inconsistent with paragraphs (a) to (j), and shall provide the Corporation with a certificate signed by an officer or director of such Member and, upon request by the Corporation, shall provide an opinion of counsel, confirming the agreement is in compliance with such provisions.

1.1.6 **Introducing and Carrying Arrangement**

(a) **Permitted Arrangements.** A Member may enter into an arrangement with another Member pursuant to which the accounts of one Member (the "introducing dealer") are carried by the other Member (the "carrying dealer") provided that:

(i) the arrangement shall satisfy the requirements of a carrying arrangement described in Rule 1.1.6(b);

(ii) an introducing dealer shall not introduce accounts to any person who is not a Member;

(iii) an introducing dealer may not introduce accounts to more than one Member, except that a Level 2, 3 or 4 Member may introduce to another Member accounts of clients which are self-directed plans registered for income tax purposes;

(iv) the Members shall enter into a written agreement evidencing the arrangement and reflecting the requirements of Rule 1.1.6(b) and such other matters as may be required by the Corporation;

(v) the arrangement (including the form of agreement referred to in Rule 1.1.6(b)) and any amendment to or termination of the arrangement or agreement, shall have been approved by the Corporation before it is to become effective; and

(vi) the arrangement shall be in compliance with the By-laws and Rules and the securities legislation applicable to either of the Members.

(b) **Terms of Arrangement.** A Member may enter into an agreement with another Member in accordance with Rule 1.1.6(a) if it satisfies the following requirements:

(i) Minimum Capital. The carrying dealer shall maintain at all times minimum capital of a Level 4 Dealer, and the introducing dealer shall maintain at all times minimum capital of a Level 1, 2, 3 or 4 Dealer, as the case may be;

(ii) Reporting of Client Balances. In calculating the risk adjusted capital required pursuant to Rule 3.1.1 and Form 1, the carrying dealer shall report all accounts of the clients (introduced by the introducing dealer to the carrying dealer and for whom assets are held in nominee name) on the carrying dealer's Form 1 and Monthly Financial Report;

(iii) Comfort Deposit. Any deposit (other than deposits on behalf of clients) provided to the carrying dealer by the introducing dealer pursuant to the terms of the agreement between them shall be segregated in accordance with Rule 3.3 by the carrying dealer and shall be held by the carrying dealer in a separate designated trust account for the introducing dealer;

The deposit provided by the introducing dealer to the carrying dealer shall be reported by the introducing dealer as an allowable asset on its Form 1 and Monthly Financial Report;

(iv) Segregation of Client Cash and Securities. The carrying dealer shall be responsible for holding and segregating in accordance with the requirements of Rule 3.3 all cash and securities held for clients introduced to it by an introducing dealer, provided that a Level 3 introducing dealer may hold cash,

and a Level 4 introducing dealer may hold cash and securities, for the accounts of clients to the extent to which such functions are not part of the services to be provided by the carrying dealer;

(v) Trust Accounts. The carrying dealer shall be responsible for and shall maintain in its name any trust accounts established in respect of cash received for the account of clients introduced to it by the introducing dealer, provided that a Level 3 or 4 introducing dealer may hold cash in such trust accounts to the extent to which such functions are not part of the services to be provided by the carrying dealer;

(vi) Insurance. The introducing dealer and carrying dealer shall each maintain minimum insurance in the amounts required and in accordance with Rule 4;

(vii) Amount of Insurance. The carrying dealer shall include all accounts introduced to it by the introducing dealer that are held in nominee name in its calculation of the "base amount" asset measurement for minimum Financial Institution Bond coverage for Clauses (A) through (E) under Rule 4;

(viii) Disclosure and Acknowledgement on Account Opening. At the time of opening each client account, the introducing dealer shall advise the client of the introducing dealer's relationship to the carrying dealer and of the relationship between the client and the carrying dealer and, in the case of a Level 1 or 2 introducing dealer, obtain from the client an acknowledgement in writing to the effect that such advice has been given. In the case of a Level 2 introducing dealer, the acknowledgement shall reflect that the introducing dealer has advised the client that the carrying dealer shall be responsible for and shall maintain in its name any trust accounts established in respect of cash received from clients and that all client cheques shall be payable to the carrying dealer;

(ix) Contracts, Account Statements, Confirmations and Client Communications. The name and role of each of the carrying dealer and the introducing dealer shall be shown on all contracts, account statements, confirmations and, in the case of a Level 1 introducing dealer, all client communications (as defined in Rule 2.8.1) and advertisements and sales communications (as defined in Rule 2.7.1) sent by either the introducing dealer or the carrying dealer in respect of accounts carried by the carrying dealer. In the case of a Level 1 introducing dealer, the name and role of the carrying dealer shall appear in at least equal size to that of the introducing dealer. The use of business or trade or style names shall be in accordance with Rule 1.1.7 as applicable. The carrying dealer shall be responsible for sending account statements and confirmations to clients introduced to it by the introducing dealer as required by the By-laws and Rules to the extent such statements and confirmations relate to trading or account positions in respect of which the carrying dealer has provided services;

(x) **Annual Disclosure.** A Level 3 or Level 4 introducing dealer may comply with the disclosure requirements under paragraph (ix) by providing written disclosure at least annually to each of its clients whose accounts are being carried by the carrying dealer, outlining the relationship between the introducing dealer and the carrying dealer and the relationship between the client and the carrying dealer;

(xi) **Clients Introduced to the Carrying Dealer.** Each client introduced to the carrying dealer by the introducing dealer shall be considered a client of the carrying dealer for the purposes of complying with the By-laws and Rules to the extent of the services provided by the carrying dealer; and

(xii) **Responsibility for Compliance.** Unless otherwise specified in Rule 2 or in this Rule 1.1.6, the introducing dealer which is a Level 1 Dealer and its carrying dealer shall be jointly and severally responsible for compliance with the By-laws and Rules for each account introduced to the carrying dealer by the introducing dealer, and in all other cases the introducing dealer shall be responsible for such compliance, subject to the carrying dealer being also responsible for compliance with respect to those functions it agrees to perform under the arrangement entered into under this Rule 1.1.6.

1.1.7 **Business Names, Styles, Etc.**

(a) **Use of Member Name.** Except as permitted pursuant to Rule 1.1.6 with respect to introducing dealers and carrying dealers and subject to Rule 1.1.7(b) and (c), all business carried on by a Member or by any person on its behalf shall be in the name of the Member or a business or trade or style name owned by the Member or an affiliated corporation of the Member.

(b) **Contracts, Account Statements and Confirmations.** Notwithstanding the provisions of paragraph (a), the legal name of the Member shall be included on any contracts, account statements or confirmations of the Member.

(c) **Use of Approved Person Trade Name.** Notwithstanding the provisions of paragraph (a), an Approved Person may conduct any business of the Member in a business or trade name or style name that is not that of, or owned by, the Member or its affiliated corporation if:

(i) the Member has given its prior written consent; and

(ii) in all materials communicated to clients or the public (other than contracts, account statements or confirmations in accordance with (iii)):

(A) the name is used together with the Member's legal name; and

(B) the Member's legal name or a business or trade or style name of the Member is at least equal in size and prominence to the business or trade or style name used by the Approved Person;

(iii) on contracts, account statements or confirmations, the Member's legal name must be at least equal in size and prominence to the business or trade or style name used by the Approved Person.

(d) **Notification of Trade Names.** Prior to the use of any business or style or trade names other than the Member's legal name, the Member shall notify the Corporation.

(e) **Compliance with Applicable Legislation.** Any business or trade or style name used by a Member or Approved Person must comply with the requirements of any applicable legislation relating to the registration of business or trade or style names.

(f) **Single Use of Trade Names.** No Member or Approved Person of such Member shall use any business or trade or style name that is used by any other Member, unless the relationship with such other Member is that of an introducing dealer and carrying dealer, in compliance with Rule 1.1.6.

(g) **Misleading Trade Name.** No Member or Approved Person shall use any business or trade or style name that is deceptive, misleading or likely to deceive or mislead the public.

(h) **Prohibition of Use of Trade Name.** The Corporation may prohibit a Member or Approved Person from using any business or trade or style name in a manner that is contrary to any provision of this Rule 1.1.7 or that is objectionable or contrary to the public interest.

## 1.2 INDIVIDUAL QUALIFICATIONS

1.2.1 ~~**Proficiency Requirements.** An individual must not perform an activity that requires registration under applicable securities legislation or proficiency under the Rules unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently.1.2.2~~

**Salespersons**

(a) **Compliance with MFDA Requirements.** Each Member shall ensure that any Approved Person who conducts any business on behalf of the Member executes and delivers to the Member an agreement in a form as prescribed from time to time by the Corporation agreeing, among other things, to be subject to, comply with and be bound by the By-laws and Rules.

(b) **Training and Supervision.** Upon commencement of trading or dealing in securities for the purposes of any applicable legislation on behalf of a Member, all Approved Persons who are salespersons shall complete a training program within 90 days of such commencement and a concurrent six month supervision period in accordance with such terms and conditions as may be prescribed from time to time by the Corporation, unless he or she has completed a training program and supervision period in accordance with this Rule with another Member or was licensed or registered in the manner necessary, and is in good standing, under applicable securities legislation to trade in mutual fund securities prior to the date of this Rule becoming effective.

(c) **Dual Occupations.** An Approved Person may have, and continue in, another gainful occupation, provided that:

(i) *Permitted by legislation.* The securities commission in the jurisdiction in which the Approved Person carries on or proposes to carry on business specifically permits him or her to devote less than his or her full time to the business of the Member for which he or she acts on behalf of;

(ii) *Not prohibited.* The securities commission in the jurisdiction in which the Approved Person carries on or proposes to carry on business does not prohibit an Approved Person from engaging in such gainful occupation;

(iii) *Member approval.* The Member for which the Approved Person carries on business either as an employee or agent is aware and approves of the Approved Person engaging in such other gainful occupation;

(iv) *Member procedures.* Such Member establishes and maintains procedures to ensure continuous service to clients and to address potential conflicts of interest;

(v) *Conduct unbecoming.* Any such gainful occupation of the Approved Person must not be such as to bring the Corporation, its Members or the mutual fund industry into disrepute;

(vi) *Disclosure.* Clear disclosure is provided to clients that any activities related to such other gainful occupation are not business of the Member and are not the responsibility of the Member; and

(vii) *Financial planning.* Any Approved Person that engages in financial planning services otherwise than through or on behalf of a Member must:

(A) Regulations – provide such services through another person that is either regulated by a governmental authority or statutory agency or subject to the rules and regulations of a widely-recognized professional association;

(B) Legislation – comply with the requirements of any applicable legislation in connection with the services;

(C) Access – ensure that, subject to any applicable legislation, the Member and the Corporation have access to financial plans prepared on behalf of the clients of the Member by its Approved Persons; and

(D) Proficiency – have satisfied any applicable proficiency requirements by securities regulatory authorities having jurisdiction.

(d) **Business Titles.** No Approved Person shall hold him or herself out to the public in any manner including, without limitation, by the use of any business name or designation of qualifications or professional experience that deceives or misleads, or could reasonably be expected to deceive or mislead, a client or any other person as to the proficiency or qualifications of the Approved Person under the Rules or any applicable legislation.

~~1.2.3~~1.2.2 **Reporting Requirements**

(a) **Member Reporting.** Every Member must report to the Corporation such information, in a manner and within such period of time, as may be prescribed by the Corporation from time to time relating to:

(i) complaints, criminal, civil and other legal proceedings, regulatory proceedings, arbitrations, contraventions and potential contraventions of legal and regulatory requirements, disciplinary action by regulatory bodies or by Members against Approved Persons, settlements with and compensation paid to clients, registration or licensing by any regulatory body, bankruptcies, insolvencies, garnishments and related events;

(ii) investigations by the Member relating to any of the matters in sub-section (i); and

(iii) information relating to the business and operation of the Member and its Approved Persons.

(b) **Approved Person Reporting.** Every Approved Person must report to the Member such information, in a manner and within such period of time, as may be prescribed by the Corporation from time to time relating to complaints, criminal, civil and other legal proceedings, regulatory proceedings, arbitrations, contraventions and potential contraventions of legal and regulatory requirements, disciplinary action by regulatory bodies,

settlements with and compensation paid to clients, registration or licensing by any regulatory body, bankruptcies, insolvencies, garnishments and related events.

(c) **Failure to Report.** A Member shall be liable for and pay to the Corporation levies or assessments in the amounts prescribed from time to time by the Corporation for the failure of the Member or Approved Person to report any information required to be reported in the manner and within the period of time prescribed by the Corporation.

## 2. RULE NO. 2 – BUSINESS CONDUCT

### 2.1 GENERAL

2.1.1 **Standard of Conduct.** Each Member and each Approved Person of a Member shall:

(a) deal fairly, honestly and in good faith with its clients;

(b) observe high standards of ethics and conduct in the transaction of business;

(c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and

(d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

2.1.2 **Member Responsible.** Each Member shall be responsible for the acts and omissions of each of its Approved Persons and other employees and agents relating to its business for all purposes under the By-laws and Rules.

2.1.3 **Confidential Information**

(a) All information received by a Member relating to a client or the business and affairs of a client shall be maintained in confidence by the Member and its Approved Persons and other employees and agents. No such information shall be disclosed to any other person or used for the advantage of the Member or its Approved Persons or other employees or agents without the prior written consent of the client or as required or authorized by legal process or statutory authority or where such information is reasonably necessary to provide a product or service that the client has requested.

(b) Each Member shall develop and maintain written policies and procedures relating to confidentiality and the protection of information held by it in respect of clients.

2.1.4 **Conflicts of Interest**

(a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.

(b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).

(c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.

(d) Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a), (b) and (c).

### 2.2 CLIENT ACCOUNTS

2.2.1 **"Know-Your-Client".** Each Member and Approved Person shall use due diligence:

(a) to learn the essential facts relative to each client and to each order or account accepted;

(b) to ensure that the acceptance of any order for any account is within the bounds of good business practice; and

(c) to ensure that each order accepted or recommendation made for any account of a client is suitable for the client and in keeping with the client's investment objectives; and

(d) to ensure that, notwithstanding the provisions of paragraph (c), where a transaction proposed by a client is not suitable for the client and in keeping with the client's investment objectives, the Member has so advised the client before execution thereof.

2.2.2 **New Account Application Form.** A New Account Application Form must be completed for each new account of a client. If the New Account Application Form does not include know-your-client information, this must be documented on a separate Know-Your-Client form. Such form or forms shall be duly completed to conform with the requirements of Rule 2.2.1 and shall be signed by the client and dated. Account numbers must not be assigned unless they are accompanied by the proper name and address for the client and such name and address must be supported by the New Account Application Form.

2.2.3 **New Account Approval.** Each Member shall designate a trading partner, director or officer or, in the case of a branch office, a branch manager reporting directly to the designated partner, director or officer, who shall be responsible for approval of the opening of new accounts and the supervision of account activity. The designated person shall prior to or promptly after the completion of any initial transaction specifically approve the opening of such account in writing and a record of such approval shall be maintained in accordance with Rule 5.

**2.2.4 Updating Know-Your-Client Information**

(a) The Form documenting know-your-client information must be updated to include any material change in client information whenever a Member or Approved Person or other employee or agent becomes aware of such change including pursuant to Rule 2.2.4(b).

(b) Without reducing the responsibility of Members in Rule 2.2.1, all Members must at least annually, in writing, request each client to notify the Member if the know-your-client information previously provided to the Member or the client's circumstances have materially changed. The date of such request and the date upon which any such client information is received and recorded or amended must be retained.

(c) Written authorization must be obtained from the client for any change in a client name.

**2.3 POWER OF ATTORNEY/LIMITED TRADING AUTHORIZATION**

2.3.1 (a) Prohibition. No Member or Approved Person shall accept or act upon a general power of attorney or other similar authorization from a client in favour of the Member or Approved Person or engage in any discretionary trading.

(b) **Exception.** Notwithstanding the provisions of paragraph (a), an Approved Person may accept or act upon a general power of attorney or similar authorization from a client in favour of the Approved Person where such client is a spouse, parent or child of the Approved Person and provided that:

(i) the Approved Person notifies the Member of the acceptance of the general power of attorney or similar authorization;

(ii) an Approved Person other than the Approved Person holding the general power of attorney must be the Approved Person of record on the account; and

(iii) such other conditions as prescribed by the Corporation are met.

2.3.2 **Limited Trading Authorization.** A Member or Approved Person may accept a limited trading authorization from a client for the express purpose of facilitating trade execution. In such circumstances a form of limited trading authorization as prescribed by the Corporation must be completed and approved by the compliance officer or branch manager, and retained in the client's file.

2.3.3 **Designation.** Each trade made pursuant to a limited trading authorization and its corresponding account must be identified as such in the books and records of the Member and on any order documentation.

## 2.4 REMUNERATION, COMMISSIONS AND FEES

2.4.1 **Payable by Member Only.** Any remuneration in respect of business conducted by an Approved Person on behalf of a Member must be paid by the Member (or its affiliates or its related Members which have received it from the Member) directly to and in the name of the Approved Person.

No Approved Person in respect of a Member shall accept or permit any associate to accept directly or indirectly, any remuneration, gratuity, benefit or any other consideration from any person other than the Member or its affiliates or its related Members, in respect of the business carried out by such Approved Person on behalf of the Member or its affiliates or its related Members.

2.4.2 **Referral Arrangements**

(a) **Definitions.** For the purpose of this Rule 2.4.2

(i) a "referral arrangement" is an arrangement whereby a Member is paid or pays a fee, including fees based on commissions or sharing a commission, for the referral of a client to or from another person; and

(ii) a referral arrangement does not include any payment to a third party service provider where the service provider has no direct contact with clients and where the services do not constitute securities related business.

(b) **Permitted Arrangements.** Referral arrangements may only be entered into on the following basis:

(i) the referral arrangement is only between a Member and another Member or between a Member and an entity that is (A) licensed or registered in another category pursuant to applicable securities legislation, (B) a Canadian financial institution for the purposes of National Instrument 14-101, (C) insurance agents or brokers, or (D) subject to such other regulatory system as may be prescribed by the Corporation;

(ii) there is a written agreement governing the referral arrangement prior to implementation;

(iii) all fees or other form of compensation paid as part of the referral arrangement, to or by the Member, must be recorded on the books and records of the Member; and

(iv) written disclosure of referral arrangements must be made to clients prior to any transactions taking place. The disclosure document must include an explanation or an example of how the referral fee is calculated, the name of the parties receiving and paying the fee, and a statement that it is illegal for the party receiving the fee to trade or advise in respect of securities if it is not duly licensed or registered under applicable securities legislation to so trade or advise.

2.4.3 **Service Fees or Charges.** No Member shall impose on any client or deduct from the account of any client any service fee or service charge relating to services provided by the Member in connection with the client's account unless written notice shall have been given to the client on the opening of the account or not less than 60 days prior to the imposition or revision of the fee or charge. For the purposes of this Rule, service fees or charges shall not include any commissions charged for executing trades.

## 2.5 MINIMUM STANDARDS OF SUPERVISION

2.5.1 **Member Responsibilities.** Each Member is responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business is in accordance with the By-laws, Rules and Policies and with applicable securities legislation.

2.5.2 **Ultimate Designated Person**

(a) **Designation.** Each Member must designate an individual registered under applicable securities legislation as an “ultimate designated person” who must be:

(i) the chief executive officer or sole proprietor of the Member;

(ii) an officer in charge of a division of the Member, if dealing in mutual funds occurs only within that division; or

(iii) an individual acting in a capacity similar to that of an officer described in (i) or (ii).

(b) **Responsibilities.** The ultimate designated person must:

(i) supervise the activities of the Member that are directed towards ensuring compliance with the By-laws, Rules and Policies and with applicable securities legislation by the Member and its Approved Persons; and

(ii) promote compliance with the By-laws, Rules and Policies and with applicable securities legislation by the Member and its Approved Persons.

2.5.3 **Chief Compliance Officer**

(a) **Designation.** Each Member must designate an individual registered under applicable securities legislation as a chief compliance officer" who must be:

(i) an officer or partner of the Member; or

(ii) the sole proprietor of the Member.

(b) **Responsibilities.** The chief compliance officer must:

(i) establish and maintain policies and procedures for assessing compliance by the Member and its Approved Persons with the By-laws, Rules and Policies and with applicable securities legislation;

(ii) monitor and assess compliance by the Member and its Approved Persons with the By-laws, Rules and Policies and with applicable securities legislation;

(iii) report to the ultimate designated person of the Member as soon as possible if the chief compliance officer becomes aware of any circumstances indicating that the Member, or any of its Approved Persons may be in non-compliance with the By-laws, Rules and Policies and with applicable securities legislation and any of the following apply:

(A) the non-compliance reasonably creates a risk of harm to a client;

(B) the non-compliance reasonably creates a risk of harm to the capital markets;

(C) the non-compliance is part of a pattern of non-compliance; and

(iv) submit a report to the board of directors or partners, as frequently as necessary and not less than annually, for the purpose of assessing compliance by the Member and its Approved Persons with the By-laws, Rules and Policies and with applicable securities legislation.

(c) Alternates. In the event that a chief compliance officer is temporarily absent or unable to perform his or her responsibilities, a Member shall designate one or more alternates who must be qualified as chief compliance officers pursuant to the applicable securities legislation and who shall carry out the responsibilities of the chief compliance officer.

2.5.4 **Access to Board.** The Member must permit its ultimate designated person and its chief compliance officer to directly access the board of directors or partners of the Member at such times as the ultimate designated person or the chief compliance officer may consider necessary or advisable in view of his or her responsibilities.

2.5.5 **Branch Manager**

(a) **Designation.** Each Member must designate an individual qualified as a branch manager pursuant to paragraph (b) for each branch office (as defined in By-law 1.1) of the Member. The Member is not required to designate a branch manager for a sub-branch office who is normally present at the office, provided that a branch manager who is not normally present at such sub-branch office, or a trading partner, director or officer or a compliance officer designated as the branch manager for such sub-branch office, supervises its business at the sub-branch office in accordance with the By-laws and Rules.

(b) **Proficiency Requirements.** An individual may not be designated by the Member as a branch manager pursuant to paragraph (a) or an alternate branch manager pursuant to paragraph (e) unless the individual has:

(i) met the requirements for a salesperson as prescribed under applicable securities legislation and has passed any one of the following examinations:

(A) the Branch Managers Course Exam offered by the CSI Global Education Inc.;

(B) the Mutual Fund Branch Managers' Examination Course Exam offered by the IFSE Institute; or

(C) the Branch Compliance Officers Course Exam offered by the CSI Global Education Inc.

(c) **Experience Requirements.** In addition to the requirements set out in Rule 2.5.5(b), each branch manager, except alternate branch managers, in respect of a Member shall:

(i) have acted as a salesperson, trading partner, director, officer or compliance officer registered under the applicable securities legislation for a minimum of two years; or

(ii) have a minimum of two years of equivalent experience to that of an individual described in paragraph (i).

(d) ~~**Currency of Courses.** For the purposes of the Rules, an individual is deemed to have not passed an examination or successfully completed a program unless the individual has done so within 36 months before the date the individual applied for registration or such longer period as may be specified by and subject to relevant requirements as the Corporation may determine if it is satisfied based on the individual's experience that his or her knowledge and proficiency remains relevant and current. (e)~~

**Responsibilities.**The branch manager must:

(i) supervise the activities of the Member at a branch or sub-branch that are directed towards ensuring compliance with the By-laws, Rules and Policies and with applicable securities legislation by the Member and its Approved Persons; and

(ii) supervise the opening of new accounts and trading activity at the branch office.

(~~f~~e) **Alternates.** In the event that a branch manager is temporarily absent or unable to perform his or her responsibilities, a Member shall designate one or more alternate branch managers who must be qualified as branch managers pursuant to paragraph (b) and who shall carry out the responsibilities of the branch manager, but are not required to be normally present at the branch office.

2.5.6 **Currency of Examination.** For the purposes of the Rules, an individual is deemed to have not passed an examination or successfully completed a program unless the individual has done so within 36 months before the date the individual applied for registration or such longer period as may be specified by and subject to relevant requirements as the Corporation may determine if it is satisfied based on the individual's experience that his or her knowledge and proficiency remains relevant and current.

2.5.7 ~~**Courses**2.5.4~~**Maintenance of Supervisory Review Documentation.** The Member must maintain records of all compliance and supervisory activities undertaken by it and its partners, directors, officers, compliance officers and branch managers pursuant to the By-laws and Rules.

~~2.5.5~~2.5.8 **No Delegation.** No Member or director, officer, partner, compliance officer, branch manager or alternate branch manager shall be permitted to delegate any supervision or compliance responsibility under the By-laws or Rules in respect of any business of the Member, except as expressly permitted pursuant to the By-laws and Rules.

## 2.6 BORROWING FOR SECURITIES PURCHASES

Each Member shall provide to each client a risk disclosure document containing the information prescribed by the Corporation when

(a) a new account is opened for the client; and

(b) when an Approved Person makes a recommendation for purchasing securities by borrowing, or otherwise becomes aware of a client borrowing monies for the purpose of investment,

provided that a Member is not required to comply with paragraph (b) if such a risk disclosure document has been provided to the client by the Member within the six month period prior to such recommendation or becoming so aware.

## 2.7 ADVERTISING AND SALES COMMUNICATIONS

2.7.1 **Definitions.** For the purposes of the By-laws and Rules:

(a) "advertisement" includes television or radio commercials or commentaries, billboards, internet websites, newspapers and magazine advertisements or commentaries and any published material promoting the business of a Member and any other sales literature disseminated through the communications media; and

(b) "sales communication" includes records, video tapes and similar material, market letters, research reports, and all other published material, except preliminary prospectuses and prospectuses, designed for or use in presentation to a client or a prospective client whether such material is given or shown to them and which includes a recommendation in respect of a security.

2.7.2 **General Restrictions.** No Member shall issue to the public, participate in or knowingly allow its name to be used in respect of any advertisement or sales communication in connection with its business which:

(a) contains any untrue statement or omission of a material fact or is otherwise false or misleading, including the use of a visual image such as a photograph, sketch, drawing, logo or graph which conveys a misleading impression;

(b) contains an unjustified promise of specific results;

(c) uses unrepresentative statistics to suggest unwarranted or exaggerated conclusions, or fails to identify the material assumptions made in arriving at these conclusions;

(d) contains any opinion or forecast of future events which is not clearly labelled as such;

(e) fails to fairly present the potential risks to the client;

(f) is detrimental to the interests of the public, the Corporation or its Members; or

(g) does not comply with any applicable legislation or the guidelines, policies or directives of any regulatory authority having jurisdiction over the Member.

2.7.3 **Review Requirements.** No advertisement or sales communication shall be issued unless first approved by a partner, director, officer, compliance officer or branch manager who has been designated by the Member as being responsible for advertisements and sales communications.

## 2.8 CLIENT COMMUNICATIONS

2.8.1 **Definition.** For the purposes of the By-laws and Rules "client communication" means any written communication by a Member or an Approved Person to a client of the Member, including trade confirmations and account statements, other than an advertisement or sales communication.

2.8.2 **General Restrictions.** No client communication shall:

(a) be untrue or misleading or use an image such as a photograph, sketch, logo or graph which conveys a misleading impression;

(b) make unwarranted or exaggerated claims or conclusions or fail to identify the material assumptions made in arriving at these conclusions;

(c) be detrimental to the interests of clients, the public, the Corporation or its Members;

(d) contravene any applicable legislation or any guideline, policy, rule or directive of any regulatory authority having jurisdiction over the Member; or

(e) be inconsistent or confusing with any information provided by the Member or Approved Person in any notice, statement, confirmation, report, disclosure or other information either required or permitted to be given to the client by a Member or Approved Person under the By-laws, Rules, Policies or Forms.

**2.8.3 Rates of Return**

(a) In addition to complying with the requirements in Rule 2.8.2, any client communication containing or referring to a rate of return regarding a specific account or group of accounts must be based on an annualized rate of return and explain the methodology used to calculate such rate of return in sufficient detail and clarity to reasonably permit the client to understand the basis for the rate of return.

(b) Notwithstanding the provisions of paragraph (a), where an account has been open for less than 12 months, the rate of return shown must be the total rate of return since account opening.

**2.9 INTERNAL CONTROLS**

Every Member shall establish and maintain adequate internal controls as prescribed by the Corporation from time to time.

**2.10 POLICIES AND PROCEDURES MANUAL**

Every Member shall establish and maintain written policies and procedures (that have been approved by senior management of the Member) for dealing with clients and ensuring compliance with the Rules, By-laws and Policies of the Corporation and applicable securities legislation.

**2.11 COMPLAINTS**

Every Member shall maintain a log of client complaints and shall establish written policies and procedures for dealing with client complaints which ensure that such complaints are dealt with promptly and fairly.

**2.12 TRANSFERS OF ACCOUNT**

2.12.1 **Definitions.** For the purposes of the By-laws and Rules:

(a) "account transfer" means the transfer in whole or in part of an account of a client of a Member at the request or with the authority of the client;

(b) "delivering Member" means in respect of an account transfer the Member from which the account of the client is to be transferred; and

(c) "receiving Member" means in respect of an account transfer the Member to which the account of the client is to be transferred.

2.12.2 **Transfers.** No account transfer shall be effected by a Member without the written authorization of the client holding the account. If an account transfer is authorized by a client, a delivering Member and a receiving Member shall act diligently and promptly in order to facilitate the transfer of the account in an orderly and timely manner.

**5. RULE NO. 5 – BOOKS, RECORDS & REPORTING**

**5.1 REQUIREMENT FOR RECORDS**

Every Member shall keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others and shall keep such other books, records and documents as may be otherwise required by the Corporation. Such books and records shall contain as a minimum the following:

(a) blotters, or other records, containing an itemized daily record of:

(i) all purchases and sales of securities;

(ii) all receipts and deliveries of securities, including certificate numbers;

(iii) all receipts and disbursements of cash;

(iv) all other debits and credits, the account for which each transaction was effected;

(v) the name of the securities;

(vi) the class or designation of the securities;

(vii) the number or value of the securities;

(viii) the unit and aggregate purchase or sale price; and

(ix) the trade date and the name or other designation of the person from whom the securities were purchased or received or to whom they were sold or delivered;

(b) an adequate record of each order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such record shall show:

(i) the terms and conditions of the order or instructions and of any modification or cancellation thereof;

(ii) the account for which entered or received; and

(iii) the time of entry or receipt, the price at which executed and, to the extent feasible, the time of execution or cancellation;

(c) where the order or instruction is placed by an individual other than the person in whose name the account is operated, or an individual duly authorized to place orders or instructions on behalf of a client that is a company, the name, sales number or designation or the individual placing the order or instruction shall be recorded;

(d) copies of confirmations of all purchases and sales of securities and copies of all other debits and credits for securities, cash and other items for the account of clients;

(e) a record of the proof of cash balances of all ledger accounts in the form of trial balances and a record of calculation of minimum capital, adjusted liabilities and risk adjusted capital required;

(f) all cheque books, bank statements, cancelled cheques and cash reconciliations;

(g) all bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of the Member;

(h) all limited trading authorizations in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation;

(i) all written agreements (or copies thereof) entered into by such Member relating to their business as such, including leveraging documentation, disclosure materials and agreements relating to any account; and

(j) all documentation relating to an advance of funds or extension of credit to or on behalf of a client, directly or indirectly, in connection with the receipt of funds on the redemption of mutual fund securities, including the prior written confirmation referred to in Rule 3.2.3.

**5.2 STORAGE MEDIUM**

All records and documents required to be maintained by a Member in writing or otherwise may be kept by means of mechanical, electrical, electronic or other devices provided:

(a) such method of record keeping is not prohibited under any applicable legislation;

(b) there are appropriate internal controls in place, to guard against the risk of falsification of the information recorded;

(c) such method provides a means to furnish promptly to the Corporation upon request legible, true and complete copies of those records of the Member which are required to be preserved; and

(d) the Member has suitable back-up and disaster recovery programs.

## 5.3 CLIENT REPORTING

### 5.3.1 Delivery of Account Statement

(a) Each Member shall send an account statement to each client in accordance with the following minimum standards:

(i) once every 12 months for a client name account;

(ii) once a month for nominee name accounts of clients where there is an entry during the month and a cash balance or security position; and

(iii) quarterly for nominee name accounts where no entry has occurred in the account and there is a cash balance or security position at the end of the quarter.

(b) A Member may not rely on any other person (including an Approved Person) to send account statements as required by this Rule.

(c) Notwithstanding the provisions of 5.3.1(b), a Member may rely on the trustee administering a self-directed registered plan to send the account statement required by paragraph (a)(i) where the following conditions are met:

(i) The Member does not act as agent for the trustee for the registered plans;

(ii) The trustee meets the definition of “Acceptable Institution” as defined in Form 1;

(iii) There is a services agreement in place between the Member and the trustee which complies with the requirements of MFDA Rule 1.1.3 and provides that the trustee is responsible for sending account statements to clients of the Member that comply with the requirements of MFDA Rule 5;

(iv) There is clear disclosure about which trades are placed by the Member;

(v) Clear disclosure must be provided on the account statement regarding which securities positions referred to on the statement are eligible for coverage by the MFDA Investor Protection Corporation and which are not (once the Corporation is offering coverage);

(vi) The Member’s full legal name must appear on the account statement together with the name of the trustee; and

(vii) The Member must receive copies of the statements to ensure that the information contained therein matches its own information regarding the transactions it executes.

(d) Notwithstanding the provisions of Rule 5.3.1(b), where a Member is affiliated with a fund manager and in connection with a specific client account is selling only the mutual fund securities of an issuer managed by such affiliated fund manager for that client account, the Member may rely on the affiliated fund manager to send the account statement required by paragraph (a)(i) for that specific account.

5.3.2 **Automatic Payment Plans.** Notwithstanding the provisions of Rule 5.3.1 (a)(ii), where a Member holds client assets in nominee name and the only entry in the client's account in a month relates to the client's participation in:

(a) any automatic payment plan that provides for systematic trading in the securities of a mutual fund on a monthly or more frequent basis, or

(b) other automatic entries such as dividends and reinvested distributions,

the Member shall send an account statement to the client quarterly.

5.3.3 **Content of Account Statement.** Each account statement must contain the following information:

(a) for nominee name accounts or accounts where the Member acts as an agent for the trustee for the purposes of administering a self-directed registered retirement savings or similar plan:

(i) the opening balance;

(ii) all debits and credits;

(iii) the closing balance;

(iv) the quantity and description of each security purchased, sold or transferred and the dates of each transaction, and;

(v) the quantity, description and market value of each security position held for the account;

(b) for client name accounts:

(i) all debits and credits;

(ii) the quantity and description of each security purchased, sold or transferred and the dates of each transaction; and

(iii) for automatic payment plan transactions, the date the plan was initiated, a description of the security and the initial payment amount made under the plan.

(c) for all accounts:

(i) the type of account;

(ii) the account number;

(iii) the date the statement was issued;

(iv) the period covered by the statement;

(v) the name of the Approved Person(s) servicing the account, if applicable; and

(vi) the name, address and telephone number of the Member.

5.3.4 **Member Business Only.** Only transactions executed by the Member may appear on the statement of account required pursuant to Rule 5.3.3.

**5.4 TRADE CONFIRMATIONS**

5.4.1 **Delivery of Confirmations.** Every Member who has acted as principal or agent in connection with any trade in a security shall promptly send by prepaid mail or deliver to the client a written confirmation of the transaction containing the information required under Rule 5.4.3. The Member need not send to its client a written confirmation of a trade in a security of a mutual fund where the manager of the mutual fund sends the client a written confirmation containing the information required to be sent under Rule 5.4.3.

5.4.2 **Automatic Payment Plans.** Where a transaction relates to a client's participation in an automatic payment plan that provides for systematic trading in the securities of a mutual fund on a monthly or more frequent basis, and the Member registers the mutual funds pursuant to the plan, the Member is required to send a trade confirmation for the initial purchase only.

5.4.3 **Content.** Every confirmation of trade sent to a client must set forth the following information:

(a) the quantity and description of the security;

(b) the price per share or unit at which the trade was effected;

(c) the consideration;

(d) the name of the Member;

(e) whether or not the Member is acting as principal or agent;

(f) if acting as agent, the name of the person or company from or to or through whom the security was bought or sold;

(g) the type of the account through which the trade was effected;

(h) the commission, if any, charged in respect of the trade;

(i) the amount deducted by way of sales, service and other charges;

(j) the amount, if any, of deferred sales charges;

(k) the name of the Approved Person, if any, in the transaction;

(l) the date of the trade; and

(m) the settlement date.

**5.5 ACCESS TO BOOKS AND RECORDS**

All books, records, documentation and other information required to be kept and maintained by a Member or Approved Person shall be available for review by the Corporation and the Corporation shall be entitled to make copies thereof and retain them for the purposes of carrying out its objects and responsibilities under the applicable securities legislation, the By-laws or the Rules.

**5.6 RECORD RETENTION**

Each Member shall retain copies of the records and documentation referred to in this Rule 5 for seven years from the date the record is created or such other time as may be prescribed by the Corporation.

## MFDA POLICY NO. 6

## INFORMATION REPORTING REQUIREMENTS

### 1. Introduction

This Policy establishes minimum requirements concerning events that Approved Persons are required to report to Members and events that Members are required to report to the MFDA pursuant to Rule 1.2.5.

Part A of this Policy, entitled "*Approved Person Reporting Requirements*", sets out details regarding the reporting of information under Rule 1.2.5(b) by Approved Persons.

Part B of this Policy, entitled "*Electronic Reporting Requirements for Members*", sets out details regarding reporting of information under Rule 1.2.5(a)(i) and Rule 1.2.5(a)(ii) by Members. All reporting under Part B must be submitted through the electronic reporting system provided by the MFDA. The reporting of events that are required to be submitted electronically by any other means is a failure to report the event and a failure to comply with this Policy.

Part C of this Policy, entitled "*Other Reporting Requirements for Members*", sets out details regarding reporting of information under Rule 1.2.5(a)(iii) by Members. All reporting under Part C must be submitted to the MFDA in writing.

In addition to these reporting requirements, MFDA Members are required to comply with other reporting requirements which may change from time to time, and which include but are not limited to:

(a) MFDA reporting requirements, some of which may also require MFDA approval:

  (i) By-law No.1 section 13.7 – Reorganizations, mergers and amalgamations;

  (ii) By-law No. 1 section 13.9 – Changes in ownership and control;

  (iii) Rule 1.1.6 – Introducing/Carrying dealer arrangements;

  (iv) Rule 3.1.1 – Change in dealer level;

  (v) Rule 3.1.2 – Risk adjusted capital less than zero;

  (vi) Rule 3.2.5 – Accelerated payment of long term debt; and

  (vii) Rule 3.5 – Financial filing requirements

(b) reporting requirements under applicable provincial securities laws in connection with a Member's mutual fund dealer registration.

### 2. Definitions

**"any jurisdiction"** means any jurisdiction inside or outside of Canada.

**"business day"** means a day other than Saturday, Sunday or any officially recognized Federal or Provincial Statutory holiday.

**"civil claim"** includes civil claims pending before a court or tribunal and arbitration.

**"client"** means a person who is a client of the Member.

**"compensation"** means the payment of a sum of money, securities, reversal or inclusion of a securities transaction (whether the transaction has a realized or unrealized loss) or any other equivalent type of entry which is intended to compensate a client or offset an act of a Member or Approved Person. A correction of a client account or position as a result of good faith trading errors and omissions is not considered to be "compensation" for the purposes of this Policy.

**"event"** means a matter that is reportable under this Policy by a Member or Approved Person.

**"law"** includes, but is not limited to, all legislation of any jurisdiction and includes any rules, policies, regulations, rulings or directives of any securities regulatory authority of any jurisdiction.

**"member business"** means all business activities conducted by and through the Member, whether securities related or otherwise.

**"misrepresentation"** means:

(i) an untrue statement of fact, either in whole or in part; or

(ii) an omission to state a fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

**"regulatory body"** means, but is not limited to, any regulatory or self-regulatory organization that grants persons or organizations the right to deal with the public in any capacity.

**"regulatory requirements"** means, but is not limited to, the by-laws, rules, policies, regulations, rulings, orders, terms and conditions of registration, or agreements of any regulatory body in any jurisdiction.

**"securities"** includes exchange contracts, commodity futures contracts and commodity futures options.

**"service complaints"** means:

(i) any complaint by a client which is founded on customer service issues and is not the subject of any securities law or regulatory requirements; or

(ii) any complaint by a client as a result of a good faith trading error or omission.

**3. General Reporting Requirements**

3.1. Events regarding Members that must be reported shall not be limited solely to securities related business, but shall include all member business.

3.2. Events regarding Approved Persons that are reported by Approved Persons to the Member shall not be limited solely to securities related business and member business, but shall include all business conducted by the Approved Person.

3.3. The obligation to report an event under this Policy is limited to events of which a Member or Approved Person has become aware regardless of the means by which the Member or Approved Person became aware of the event. If the reporting timeframes have expired before the Member or Approved Person has become aware of the event, the event shall be reported immediately after the Member or Approved Person has become aware of such event.

3.4. A Member is expected to be aware of events relating to Approved Persons by the receipt of reports from Approved Persons and by carrying out the Member's supervisory, monitoring and review obligations over the conduct of its business.

3.5. All requirements to report events regarding former Approved Persons are limited to events which occurred while the Approved Person was an Approved Person of the Member.

3.6. A Member shall designate a compliance officer at its head office (or another person at head office) to whom reports made by Approved Persons, as required by section 4, shall be submitted.

3.7. Documentation associated with each event required to be reported under this Policy shall be maintained for a minimum of 7 years from the resolution of the matter and made available to the MFDA upon request.

**PART A**
**APPROVED PERSON REPORTING REQUIREMENTS**

**4. Approved Person Reporting Requirements**

4.1. An Approved Person shall report the following events to his or her current Member in such detail as required by the Member, within 2 business days:

(a) the Approved Person is the subject of a client complaint in writing;

(b) the Approved Person is aware of a complaint from any person, whether in writing or any other form, and with respect to him or herself, or any other Approved Person, involving allegations of:

(i) theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation, or unauthorized trading; or

(ii) engaging in securities related business outside of the Member.

(c) whenever the Approved Person has reason to believe that he or she has or may have contravened, or is named as a defendant or respondent in any proceeding, in any jurisdiction, alleging the contravention of:

(i) any securities law; or

(ii) any regulatory requirements.

(d) the Approved Person is charged with, convicted of, pleads guilty or no contest to, any criminal offence, in any jurisdiction;

(e) the Approved Person is named as a defendant in a civil claim, in any jurisdiction, relating to the handling of client accounts or trading or advising in securities;

(f) the Approved Person is denied registration or a license that allows the Approved Person to deal with the public in any capacity by any regulatory body, or has such registration or license cancelled, suspended or terminated, or made subject to terms and conditions;

(g) the Approved Person becomes bankrupt or suspends payment of debts generally or makes an arrangement with creditors or makes an assignment or is declared insolvent;

(h) there are garnishments outstanding or rendered against the Approved Person in any civil court in Canada.

**PART B**
**ELECTRONIC REPORTING REQUIREMENTS FOR MEMBERS**

**5. General Member Electronic Reporting Requirements**

5.1. Members shall report the following events to the MFDA, through an electronic reporting system provided by the MFDA, within 5 business days of the occurrence of the event, except for events reported under section 6.1(a) of this Policy, which must be reported to the MFDA within 20 business days.

**6. General Events to be Reported**

6.1. Members shall report to the MFDA:

(a) all client complaints in writing, against the Member or a current or former Approved Person, relating to member business, except service complaints;

(b) whenever a Member is aware, through a written or verbal complaint or otherwise, that the Member or any current or former Approved Person has or may have contravened any provision of any law or has contravened any regulatory requirement, relating to:

(i) theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation, or unauthorized trading; or

(ii) engaging in securities related business outside of the Member.

(c) whenever the Member, or a current or former Approved Person, is:

(i) charged with, convicted of, pleads guilty or no contest to, any criminal offence, in any jurisdiction;

(ii) named as a defendant or respondent in, or is subject of, any proceeding or disciplinary action, in any jurisdiction, alleging contravention of any securities law;

(iii) named as a defendant or respondent in, or is the subject of, any proceeding or disciplinary action, in any jurisdiction, alleging contravention of regulatory requirements;

(iv) denied registration or a license that allows a person to deal with the public in any capacity by any regulatory body, or has such registration or license cancelled, suspended or terminated, or made subject to terms and conditions;

(v) named as a defendant in a civil claim, in any jurisdiction, relating to handling of client accounts or trading or advising in securities.

(d) whenever an Approved Person becomes bankrupt or suspends payment of debts generally or makes an arrangement with creditors or makes an assignment or is declared insolvent;

(e) there are garnishments outstanding or rendered against the Member or an Approved Person in any civil court in Canada.

**7. Reporting of Resolution of Events**

7.1. Members shall update event reports previously reported to reflect the resolution of any event that has been reported pursuant to section 6.1 of this Policy and such resolutions shall include but not be limited to:

(a) any judgments, awards, arbitration awards or orders and settlements in any jurisdiction;

(b) compensation paid to clients directly or indirectly, or any benefit received by clients from a Member or Approved Person directly or indirectly;

(c) any internal disciplinary action or sanction against an Approved Person by a Member;

(d) the termination of an Approved Person;

(e) the results of any internal investigation conducted.

**8. Other Events to be Reported**

8.1. For matters that are not the subject of an event report in section 6.1 of this Policy, the Member shall report to the MFDA:

(a) whenever the Member has initiated disciplinary action that involves suspension, demotion or the imposition of increased supervision on an Approved Person;

(b) whenever the Member has initiated disciplinary action that involves the withholding of commissions or the imposition of a financial penalty in excess of $1000;

(c) whenever an employment or agency relationship with an Approved Person is terminated and the Notice of Termination filed with the applicable securities commission discloses that the Approved Person was terminated for cause, or discloses information regarding internal discipline matters or restrictions for violations of regulatory requirements;

(d) whenever the Member or Approved Person has paid compensation to a client either directly or indirectly in an amount exceeding $15,000.

**PART C**
**OTHER REPORTING REQUIREMENTS FOR MEMBERS**

**9. Other Information Reporting Requirements for Member**

9.1. Members shall report the events under Part C of this Policy to the MFDA, in writing, within 5 business days of the occurrence of the event, except for events reported under section 10 of this Policy, which must be reported to the MFDA immediately.

**10. Bankruptcy, Insolvency and Related Events**

10.1. Members must report to the MFDA whenever:

(a) the Member is declared bankrupt;

(b) the Member makes a voluntary assignment in bankruptcy;

(c) the Member makes a proposal under any legislation relating to bankruptcy or insolvency;

(d) the Member is subject to, or instituting any proceedings, arrangement or compromise with creditors;

(e) a receiver and/or manager assumes control of the Member's assets.

**11. Change of Name**

11.1. Members must report to the MFDA any change with respect to:

(a) the legal name of the Member;

(b) the names under which the Member carries on business (trade or style names);

(c) trade, business or style names, other than that of the Member, used by Approved Persons. The name of the Approved Person, the trade or business name the Approved Person is using, and the Approved Person's branch location must be provided.

**12. Change of Contact Information**

12.1. Members must notify the MFDA of any change in address for service or main telephone or fax number.

**13. Change in Member Registration or Licensing**

13.1. Members must report to the MFDA any changes in the following:

(a) type of registration or licensing with the relevant securities commission;

(b) jurisdictions in which any dealer business of the Member is conducted; and

(c) investment products traded or dealt in.

**14. Changes in Organizational Structure**

14.1. Members must report to the MFDA any changes in a Member's directors, chief executive officer, ultimate designated person, chief compliance officer, chief financial officer, or chief operating officer or individuals performing the functional equivalent of any of those positions.

**15. Other Business Activities**

15.1. Members must report to the MFDA any business, other than the sale of investment products, which the Member engages in or proposes to engage in.

**16. Change of Auditor**

16.1. Members must report to the MFDA any change in a Member's auditor and/or audit engagement partner. A new Letter of Acknowledgement (Schedule H.1 of the MFDA Membership Application Package) must be submitted to the MFDA.

### 13.1.2 Summary of Public Comments Respecting Proposed Consequential Amendments Resulting from NI 31-103 *Registration Requirements and Exemptions* – MFDA Rules 1.2 (Individual Qualifications), 2.4.2 (Referral Arrangements), 2.5 (Minimum Standards of Supervision), 5.3 (Client Reporting), and 5.6 (Record Retention) and MFDA Policy No. 6 *Information Reporting Requirements* and Responses of the MFDA

**SUMMARY OF PUBLIC COMMENTS**
**RESPECTING PROPOSED CONSEQUENTIAL AMENDMENTS RESULTING FROM**
**NATIONAL INSTRUMENT 31-103 *REGISTRATION REQUIREMENTS AND EXEMPTIONS* –**
**MFDA RULES 1.2 (INDIVIDUAL QUALIFICATIONS), 2.4.2 (REFERRAL ARRANGEMENTS),**
**2.5 (MINIMUM STANDARDS OF SUPERVISION), 5.3 (CLIENT REPORTING), AND 5.6 (RECORD RETENTION)**
**AND**
**MFDA POLICY NO. 6 *INFORMATION REPORTING REQUIREMENTS* AND RESPONSES OF THE MFDA**

On December 23, 2009, the British Columbia Securities Commission and Ontario Securities Commission published proposed amendments to MFDA Rules 1.2 (Individual Qualifications); 2.4.2 (Referral Arrangements); 2.5 (Minimum Standards of Supervision); 5.3 (Client Reporting); and 5.6 (Record Retention) and MFDA Policy No. 6 *Information Reporting Requirements* (the "Proposed Amendments") for a 90-day public comment period.

The public comment period expired on March 23, 2010.

6 submissions were received during the public comment period:

1. BMO Investments Inc. ("BMO")
2. Desjardins Fédération des Caisses du Québec ("Desjardins")
3. IGM Financial Inc. ("IGM")
4. Investment Funds Institute of Canada ("IFIC")
5. Quadrus Investment Services Ltd. ("Quadrus")
6. Royal Mutual Funds Inc. ("RMFI") and Phillips, Hager & North Investment Funds Ltd. ("PH&N")

Copies of comment submissions may be viewed at the offices of the MFDA, 121 King Street West, Suite 1000, Toronto, Ontario by contacting Ken Woodard, Director, Communications and Membership Services, (416) 943-4602.

The following is a summary of the comments received, together with the MFDA's responses.

As a general matter, MFDA staff notes that proposed consequential amendments to MFDA Rules 1.2.1, 2.4.2 and 5.3.2 respecting proficiency, referral arrangements and content of account statement requirements have been put on hold pending the coming into force of revisions to such requirements under National Instrument 31-103 *Registration Requirements and Exemptions* ("NI 31-103") that are being made as part of the first year amendments to the Instrument.

**General Comments**

BMO, IFIC, IGM, RMFI and PH&N expressed support for regulatory efforts to align MFDA requirements with those under NI 31-103 and recommended that initiatives of securities regulatory authorities and self-regulatory organizations ("SROs") be developed in a coordinated and consistent way for the benefit of investors. IFIC and IGM noted that there are instances where the wording of the Proposed Amendments differs from the relevant wording in NI 31-103. These commenters suggested that to avoid uncertainty, and ensure consistency across distribution channels, the MFDA track the wording of NI 31-103 in the Proposed Amendments and only deviate from it where the context requires.

Citing MFDA Rule 2.5.1, Desjardins noted that it is evident that Members and Approved Persons are subject to applicable securities legislation and, as such, it should not be expressed in MFDA Rules.

**MFDA Response**

MFDA staff has and continues to participate along with Investment Industry Regulatory Organization of Canada ("IIROC") and Canadian Securities Administrators ("CSA") staff on working groups convened by the CSA to ensure that regulatory proposals under development by the SROs are harmonized to the extent possible and meet the same regulatory standards as requirements under NI 31-103. Significant staff time and effort has gone into this process and, as a result of numerous working

group discussions with CSA and IIROC staff and internal consultations, MFDA staff is confident that the Proposed Amendments are consistent with and meet regulatory standards established under NI 31-103.

Where the wording of conforming amendments to MFDA Rules differs from that used in the Instrument, this has been done to clarify (and not change) the regulatory intent of such requirements and to appropriately adapt them to MFDA Rules, having regard to the existing structure of the MFDA Rulebook (for example, certain requirements under NI 31-103 are addressed under MFDA Rules and subject to detailed guidance/clarification in other MFDA regulatory instruments). Staff will issue a Member Regulation Bulletin clarifying this matter.

In circumstances where it is appropriate, MFDA Rules and regulatory instruments make general reference to applicable requirements under securities legislation. The extent to which such references are made may vary depending upon the desirability of reminding Members of their additional obligations.

**Rule 1.2 – Individual Qualifications**

BMO expressed the view that while Rule 1.2.1 is intended to reflect subsection 3.4(1) of NI 31-103, which is referred to as the "proficiency principle", the proposed drafting may not yield practical results. BMO requested clarification as to what the MFDA would be looking for in the course of a sales compliance audit to satisfy itself that the Member is operating in compliance with this Rule. BMO noted that in cases where an activity requires registration, the individual will either be registered or will be subject to the conditions of an order for discretionary relief and, if an individual is subject to proficiency requirements but not registration, such as a branch manager, the individual will meet the proficiency requirements of the branch manager category. In light of this, BMO expressed the view that it is unclear under what circumstances an individual would be subject to, or when the MFDA would invoke, a reasonableness standard and that a proficiency principle does not appear to be well-suited or functional within the ambit of prescriptive Rules.

**MFDA Response**

The proficiency principle in section 3.4 of NI 31-103 goes beyond formal registration and experience requirements to impose a general obligation to ensure that registered individuals acting on behalf of registered firms are, at all times, able to engage in registered activities competently. As noted in section 3.4 of Companion Policy 31-103 CP Registration Requirements and Exemptions ("31-103CP"), this would include requiring firms to perform their own analysis of all products they recommend to clients and providing product training to ensure their registered representatives have a sufficient understanding of products and risks to meet their suitability obligations.

The proficiency principle is also intended to address requirements for new roles such as the Ultimate Designated Person ("UDP"), which have now been adopted under NI 31-103 and MFDA Rules, which do not otherwise have specified proficiency/experience requirements. During a compliance review, MFDA staff will consider whether the individual has sufficient experience and qualifications to be in the UDP role. Where a role has specific proficiency/experience requirements under MFDA Rules and/or securities legislation (e.g. Salespersons, Branch Managers, Chief Compliance Officers), MFDA staff, on a compliance review, will look for compliance with such requirements.

As noted, proposed consequential amendments to Rule 1.2.1 have been put on hold pending the coming into force of revisions to section 3.4(1) under NI 31-103 that are being made as part of the first year amendments to the Instrument.

**Former Rule 1.2.3 – Trading Partners, Directors, Officers and Compliance Officers**

Desjardins noted the proposed deletion of Rule 1.2.3 and requested confirmation that the MFDA does not intend to impose specific education and experience requirements for compliance officers, but rather will allow Members discretion in determining the proper standards in this area.

**MFDA Response**

Although Rule 1.2.3 has been deleted from the MFDA Rulebook, the Chief Compliance Officers ("CCO") of Members will still be expected to meet all applicable proficiency/experience requirements established under securities legislation.

**Rule 2.1.4 – Conflicts of Interest**

BMO, IGM and IFIC noted a difference between MFDA requirements with respect to conflicts of interest in Rule 2.1.4 and the provisions in NI 31-103. For example, IGM noted that the words "be aware" in section 2.1.4 impose a higher standard than "take reasonable steps to identify" in section 13.4 of NI 31-103 and that NI 31-103 has a materiality standard, which does not appear in Rule 2.1.4. IGM commented that, if the MFDA does not intend to have such a materiality standard, then to the extent a Member also has an exempt market dealer licence, the standards applicable to a client will be dependent on whether the Member is dealing with the client in respect of the mutual fund dealer licence or the exempt market dealer licence. BMO noted

that consistency with respect to how firms deal with conflicts of interest would be particularly important for Members that are or will be registered in another category of registration, as such Members can then have a single conflicts of interest policy that will allow them to approach and address conflicts of interest in a uniform manner across all their categories of registration. BMO and IGM also noted that the MFDA Rule requires disclosure to clients in all instances while NI 31-103 recognizes that disclosure is not always appropriate.

IGM and IFIC expressed the view that, given this difference, it is not apparent which of the rules is more stringent and, therefore, the applicable standard with which a Member must comply is unclear. IFIC and IGM recommended that Rule 2.1.4 be redrafted to make it consistent with section 13.4 of NI 31-103 to avoid confusion and ensure consistency of application across the industry.

**MFDA Response**

NI 31-103 and MFDA requirements with respect to conflicts of interest are consistent and meet the same regulatory objectives. Accordingly, by complying with MFDA requirements with respect to conflicts of interest, Members will be complying with requirements under NI 31-103.

Under Rule 2.1.4(a), Members and Approved Persons have an obligation to be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person. In discharging this obligation, both the Member and Approved Person are expected to act reasonably, including taking reasonable steps to identify conflicts of interest as required under NI 31-103.

In applying Rule 2.1.4, MFDA staff has taken the position that the concept of materiality is implicit in the Rule. Member Regulation Notice MR-0054 *Conflicts of Interest* ("MR-0054"), issued on June 22, 2006, clarifies the obligations of Members with respect to the management of conflicts of interest under Rule 2.1.4 and notes that MFDA staff does not expect Members to anticipate every potential conflict, regardless of the remoteness of a problem arising, and provide written disclosure of such conflicts. However, written disclosure must be provided in all cases where there is a reasonable likelihood that a client would consider the conflict important when entering into a proposed transaction.

**Rule 2.4.2 – Referral Arrangements**

**General Comments**

IGM recommended that proposed Rule 2.4.2 be amended to clarify that subsection (b)(i) only applies where the arrangement is entered into by an Approved Person and not where the arrangement is entered into by Member itself.

RMFI and PH&N noted that the wording of proposed Rule 2.4.2 does not entirely correspond to that of the applicable sections of NI 31-103, for example, the wording of MFDA Rule 2.4.2(b)(iii) is not consistent with section 13.8(b) of NI 31-103. RMFI and PH&N expressed the view that such approach may lead to inconsistent interpretation of the requirements among different registrants and recommended that MFDA Rules fully conform to requirements under NI 31-103.

**MFDA Response:**

The requirements under Rule 2.4.2 apply to both Members and Approved Persons. Where the wording of proposed Rule 2.4.2 differs from that used in respect of requirements for referral arrangements under NI 31-103, this, as noted, has been done to clarify (and not change) the regulatory intent of such requirements and to appropriately adapt them to MFDA Rules, having regard to the existing terminology and structure of the MFDA Rulebook. As noted, proposed consequential amendments to Rule 2.4.2 have been put on hold pending the coming into force of revisions to referral arrangement requirements under NI 31-103 that are being made as part of the first year amendments to the Instrument.

**Jurisdiction over Non-Securities Related Referral Arrangements**

Quadrus expressed the view that the Proposed Amendments would result in the expansion of the jurisdiction of securities regulators into non-securities fields through the proposed inclusion of non-securities referrals in the Rules. Quadrus commented that the current MFDA Rule which requires all securities related referrals to be done through the Member is appropriate given that dealers have knowledge of the area and this is what securities regulators are expected to regulate. Quadrus noted that even though the majority of its Approved Persons are dually licensed for both mutual funds and life insurance, some clients do not purchase mutual funds and only conduct insurance business with the Approved Person. In light of this, Quadrus expressed the view that a mutual fund dealer should not oversee Approved Persons' dealings with their life insurance clients, as may be required under the Proposed Amendments.

Quadrus expressed the view that Members will not be able to authorize referrals and still comply with the Proposed Amendments without assuming an excessive amount of potential liability. The exposure to liability and the resources needed to

ensure proper supervision would far outweigh any monetary benefits of referral arrangements to Members or Approved Persons.

Quadrus expressed concern that the due diligence requirement in proposed Rule 2.4.2(c) will require Members to supervise activities in which they do not have expertise and expose them to an unreasonable level of risk. Quadrus commented that, while dealers can reasonably be expected to have the ability to review and assess "securities related referrals", they should not be expected to review and assess other service professionals. Quadrus expressed concern that this requirement will result in many dealers simply banning referrals of any kind and noted that this would negatively impact clients who often look to their Approved Person as a knowledgeable source for referrals. Quadrus also expressed concern that banning such referrals would lead to them going “underground” and requested clarification as to dealers’ responsibility in policing these situations. Quadrus noted that Members have no way of easily determining whether an Approved Person has made a compensated referral in violation of its ban, which would impose an almost-impossible compliance burden on dealers, with little or no public policy rationale for it.

**MFDA Response**

We acknowledge the comment that the Proposed Amendments constitute a significant expansion from the current MFDA Rule, which is limited to referral arrangements in respect of securities related business. The proposed amendments to Rule 2.4.2 were made to conform MFDA requirements for referral arrangements with requirements established under Part 13 of NI 31-103.

**Definition of Referral Fee**

Quadrus expressed the view that the definition of "referral fee" in section 2.4.2(a)(iii), which includes "any form of compensation, direct or indirect", leaves considerable room for interpretation and requested clarification whether such incentives as tickets to a sporting event or Christmas gifts fall within the scope of "indirect compensation".

**MFDA Response**

The definition of referral fee in Rule 2.4.2(a)(iii) conforms to that included in section 13.7 of NI 31-103 and includes non-monetary compensation. CSA Staff Notice 31-313 *NI 31-103 Registration Requirements and Exemptions and related instruments – Frequently Asked Questions as of December 18, 2009* states that: “Referral Fee is defined in section 13.7 as *any* form of compensation. For example, gift certificates would be included.”

**Rules 2.5.2 and 2.5.3 – Ultimate Designated Person and Chief Compliance Officer**

IGM and IFIC noted that the use of the term "reasonably" in sections (A) and (B) of proposed Rule 2.5.3(b)(iii) is not consistent with the wording used in subsections 5.2(c)(i) and (ii) of NI 31-103, which use the words "in the opinion of a reasonable person”. BMO, IGM and IFIC also noted that Rule 2.5.3(b)(iv), which proposes that a report be submitted to the Board of Directors "as frequently as necessary and not less than annually", is inconsistent with section 5.2(d) of NI 31-103, which requires a report to be submitted "annually" and recommended harmonizing the wording of this section with that of NI 31-103.

BMO expressed the view that harmonization between the Rules and NI 31-103 in this area would be particularly important for Members who have other categories of registration, as this would allow the CCO to implement a uniform escalation and reporting policy to the firm’s Board. Moreover, BMO requested clarification whether the CCO will be free to determine what frequency is “necessary” based on his or her judgment, or if the MFDA intends to use criteria against which it will judge post facto whether it was necessary for the CCO to report to the Board more frequently than annually. BMO also noted that the proposed requirement to report as frequently as necessary is not consistent with MR-0057 *Joint Regulatory Notice on the Role of Compliance and Supervision*, which states that “[t]he Chief Compliance Officer must report the results from its monitoring to management and the board of directors at least annually, but should have direct access to senior management as needed to report significant issues as they arise.”

**MFDA Response**

MFDA staff is of the view that the wording adopted in Rule 2.5.3(b)(iii) is appropriate for the purpose of ensuring compliance with MFDA Rules and is consistent with the regulatory intent of section 5.2 of NI 31-103, as both provisions are based on a standard of reasonableness.

MFDA staff is of the view that Rule 2.5.3(b)(iv), as proposed, is appropriate, having regard to the role of the CCO and the purpose of the report to the Board, which is to provide the Board with reasonable assurance that all standards and requirements of applicable laws and regulations are being met. For the CCO to monitor and Board to assess firm compliance with securities legislation and MFDA Rules adequately, the CCO must have the ability to report issues to the Board in a timely manner. This may, on occasion, require reporting to the Board on a more frequent basis than annually. The proposed amendments are also consistent with section 11.4 of NI 31-103 which requires a registered firm to permit its UDP and CCO direct access to the Board of Directors at such times as the UDP or the CCO *may consider necessary or advisable in view of his or her responsibilities*.

The CCO would be required to determine, based on a reasonable exercise of his/her judgment, whether it is necessary to report to their Board more frequently than annually. During compliance reviews, MFDA staff will consider whether the CCO's exercise of judgment was reasonable, having regard to requirements under MFDA Rules and securities legislation. We note that this standard does not represent a change to current practice.

In addition to the responses above, we note that Rule 2.5.3, as proposed, is consistent with sections 5.2, 11.3 and 11.1 of 31-103CP respecting the responsibilities and designation of the CCO and the general requirement for registered firms to have compliance systems with internal controls and mechanisms that are likely to identify non-compliance at an early stage and allow the firm to correct non-compliant conduct in a timely manner.

MFDA staff is of the view that the Rule, as revised, is consistent with MR-0057. The Member Regulation Notice specifies a minimum frequency of *at least annually* but does not preclude more frequent reporting in the event that this becomes necessary.

**Rule 2.5.5 – Branch Manager Supervision**

BMO, IGM and IFIC noted that proposed Rule 2.5.5 is a departure from the MFDA's efforts to harmonize regulation across the industry as the branch manager category is no longer a category of registration. BMO and IGM noted recent amendments made by the IIROC, which eliminated its branch manager category and recommended adopting IIROC's approach of removing prescriptive requirements.

BMO, IGM, IFIC, RMFI and PH&N recommended that the MFDA replace the proposed Rules with respect to branch managers with a more flexible concept of supervision of branches that accords with section 11.1 of NI 31-103.

IGM, IFIC, RMFI and PH&N expressed the view that in today's fluid environment, it seems overly restrictive to mandate particulars such as the number of Approved Persons per branch and to stipulate requirements for physical locations and recommended that Members be allowed the option for a structure that meets branch manager controls based on risk management.

**MFDA Response**

As set out in the Notice accompanying the proposed amendments, MFDA staff, based on their compliance and enforcement experience to date, is of the view that the branch manager supervisory structure continues to be necessary to ensure appropriate supervision of Approved Persons at the branch level.

With respect to IIROC's removal of the branch manager category of registration and supervisory structure, we note that IIROC members engage in non-retail activities where such a supervisory structure would not necessarily be appropriate, whereas MFDA Members transact exclusively in the retail market. In addition, IIROC members have been subject to numerous compliance reviews and are very familiar with and accustomed to complying with their obligations in this area. The MFDA, in contrast, has only recently completed its second cycle of compliance examinations. While issues identified in our examinations indicate that a more prescriptive approach remains appropriate for MFDA Members at this time, staff will continue to monitor and assess Member compliance over time with a view to considering whether branch manager requirements should be amended in the future.

**Rule 2.5.5(d) – Currency of Courses**

IGM, IFIC, RMFI and PH&N noted that proposed Rule 2.5.5(d) does not include the provisions found in section 3.3 of NI 31-103, which provide that an individual may meet the relevant proficiency requirements by having gained relevant industry experience for a total of 12 months during the 36-month period. BMO, IFIC, RMFI and PH&N also noted that section 2.5.5(d) does not allow for proficiency requirements to be met by an individual having been previously registered in an equivalent category, which is permitted under current MFDA Rules and section 3.3 of NI 31-103. BMO and IFIC recommended that the MFDA allow for this type of previous registration to qualify as a way to meet the required proficiency.

IGM and IFIC expressed the view that these inconsistencies will cause certain individuals who would otherwise be qualified to have to undergo unnecessary testing or require an exemption from the MFDA, even though they meet the proficiency requirements under NI 31-103. BMO, Desjardins, IGM and IFIC recommended that the MFDA adopt similar wording to that found in NI 31-103 in order to ensure harmonization and avoid the unwarranted consequences of not including such proficiency flexibility.

RMFI and PH&N recommended that, to be consistent with the adoption of the examination-based model, Rule 2.5.5(d) (Currency of Courses) be renamed "Currency of Examination" and recommended that, if the examination-based model is intended to apply to the MFDA Rules generally as opposed to Rule 2.5.5 specifically, this paragraph be made into a stand-alone rule (for example, a new Rule 2.5.6). If however this paragraph is intended to apply to Rule 2.5.5 only, RMFI and PH&N

recommended that the wording of the Rule be amended accordingly (for example, instead of indicating "For the purposes of the Rules, an individual is deemed ... ", it should indicate "A Branch Manager is deemed ... ").

**MFDA Response**

With respect to amending “Currency of Courses” to “Currency of Examination” and making proposed Rule 2.5.5(d) a stand alone Rule, we acknowledge the comments and will make these changes.

MFDA staff is of the view that Rule 2.5.5(d), as proposed, is consistent with and meets the same regulatory objectives as NI 31-103.

Rule 2.5.5(d) adopts the same 36-month currency period as set out in subsection 3.3(1) of NI 31-103. In addition, Rule 2.5.5(d) allows the MFDA discretion, on a case-by-case basis, to consider a longer course currency period provided that the MFDA is satisfied that, based on the individual's experience, their knowledge and proficiency remains relevant and current. In determining whether an individual’s knowledge and proficiency is relevant and current, MFDA staff will consider the factors set out in the National Instrument, for example, previous registration and relevant securities industry experience. As discretion is contained within the Rule, no formal exemption application is required and, in practice, a review of alternate proficiency or course currency under this section is usually done by way of informal written requests and the provision of relevant information. In circumstances where relief from the course currency requirements of NI 31-103 is sought from the CSA, Members may submit their informal written requests to the MFDA concurrently and provide the same information to the MFDA that is being submitted to the CSA for its consideration.

**Rules 5.3.2 and 5.3.3 – Content of Account Statements**

IGM, IFIC and RMFI and PH&N noted that sections (b) and (c) of Rule 5.3.2 add a requirement for Members to report not just “securities” transactions but also “investments” and requested clarification as to what is intended by this wording. The commenters expressed the view that since section 14.14 of NI 31-103 does not contain the term “investments”, this inconsistency will confuse Members and recommended that the reference to “investments” be deleted from sections 5.3.2(b) and (c) in order to harmonize with NI 31-103 and to avoid confusion.

**MFDA Response**

Although section 14.14 of NI 31-103 limits account statement content requirements to reporting transactions in respect of securities, MFDA Members typically transact in securities as well as other investment products that may not meet the definition of a security in all CSA jurisdictions (e.g. Principle Protected Notes and Guaranteed Investment Certificates) and we note that it is appropriate for all such transactions to be reflected on account statements. In addition, we note that the amendments, as currently proposed, are consistent with IIROC account statement content requirements and would, as a result, allow Members with IIROC affiliates to harmonize the content of their account statements.

As noted, proposed consequential amendments to account statement content requirements under Rule 5.3.2 have been put on hold pending the coming into force of revisions to such requirements under NI 31-103 that are being made as part of the first year amendments to the Instrument.

**Transition Period**

Desjardins and IFIC noted that while sections 16.17(1) and (2) of NI 31-103 provide a mutual fund dealer with a two-year transition period for compliance with section 14.14 of the Instrument, the Proposed Amendments do not include any transitional provisions.

RMFI and PH&N recommended that, given the timelines for submission of comment letters in response to the Proposed Amendments, transition dates for the Proposed Amendments be determined independently rather than be harmonized with those under NI 31-103.

**MFDA Response**

MFDA staff is aware that requirements adopted under NI 31-103 are subject to specific transition periods. As was noted under Part III, Section D (Effective Date) of the Notice accompanying the Proposed Amendments, the MFDA will harmonize its transition periods with those under NI 31-103.

MFDA staff notes, however, that it is not appropriate to extend transition periods for its consequential Rule amendments beyond those established under NI 31-103, as certain requirements under the Instrument (i.e. those in respect of referral arrangements) are already in effect.

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