The Ontario Securities Commission

OSC Bulletin

December 10, 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)

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Table of Contents

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

December 10, 2010

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

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

SCHEDULED OSC HEARINGS

December 13, 2010 10:00 a.m.	**Paladin Capital Markets Inc., John David Culp and Claudio Fernando Maya** s. 127 C. Price in attendance for Staff Panel: CSP
December 15-16, 2010 10:00 a.m.	**Questrade Inc.** s. 21.7 A. Heydon in attendance for Staff Panel: JDC/CSP
December 16, 2010 2:30 p.m.	**Global Partners Capital, Asia Pacific Energy Inc., 1666475 Ontario Inc. operating as "Asian Pacific Energy", Alex Pidgeon, Kit Ching Pan also known as Christine Pan, Hau Wai Cheung, also known as Peter Cheung, Tony Cheung, Mike Davidson, or Peter McDonald, Gurdip Singh Gahunia also known as Michael Gahunia or Shawn Miller, Basis Marcellinius Toussaint also known as Peter Beckford, and Rafique Jiwani also known as Ralph Jay** s. 127 M. Boswell in attendance for Staff Panel: PLK/MGC
January 7, 2011 9:30 a.m.	**North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti** s. 127 M. Britton in attendance for Staff Panel: CSP

January 7, 2011 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** s. 127 H. Craig in attendance for Staff Panel: CSP
January 10, January 12-21, 2011 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** s. 127 and 127.1 H. Daley in attendance for Staff Panel: JDC/MCH
January 10, January 12-21, January 26-February 1, 2011 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** s. 127 A. Perschy/C. Rossi in attendance for Staff Panel: [TBA]/PLK
January 11, 2011 2:30 p.m.	**Paul Azeff, Korin Bobrow, Mitchell Finkelstein, Howard Jeffrey Miller and Man Kin Cheng (a.k.a. Francis Cheng)** s. 127 T. Center in attendance for Staff Panel: JEAT
January 17-21, 2011 10:00 a.m.	**Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin** s. 127 H. Craig in attendance for Staff Panel: PJL/SA
January 25, 2011 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** s. 127 P. Foy in attendance for Staff Panel: CSP
January 25, 2011 3:00 p.m.	**Majestic Supply Co. Inc., Suncastle Developments Corporation, Herbert Adams, Steve Bishop, Mary Kricfalusi, Kevin Loman and CBK Enterprises Inc.** s. 37, 127 and 127.1 D. Ferris in attendance for Staff Panel: CSP
January 26, 2011 10:00 a.m.	**Rezwealth Financial Services Inc., Pamela Ramoutar, Chris Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc. and Sylvan Blackett** s. 127(1) and (5) A. Heydon in attendance for Staff Panel: CSP
January 26, 2011 11:00 a.m.	**Global Consulting and Financial Services, Crown Capital Management Corporation, Canadian Private Audit Service, Executive Asset Management, Michael Chomica, Peter Kuti, Jan Chomica, and Lorne Banks** s. 127 M. Boswell in attendance for Staff Panel: CSP

January 26, 2011 12:00 p.m.	**QuantFX Asset Management Inc., Vadim Tsatskin, Lucien Shtromvaser and Rostislav Zemlinsky** s. 127 H. Craig in attendance for Staff Panel: CSP
January 27, 2011 2:00 p.m.	**Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiaints Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group** s. 127 and 127.1 H. Craig in attendance for Staff Panel: MGC
January 31 – February 7, February 9-18, February 23, 2011 10:00 a.m.	**Anthony Ianno and Saverio Manzo** s. 127 and 127.1 A. Clark in attendance for Staff Panel: TBA
January 31, February 1-7, February 9-11, 2011 10:00 a.m.	**Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk** s. 37, 127 and 127.1 C. Price in attendance for Staff Panel: TBA
February 8, 2011 2:30 p.m.	**Ameron Oil and Gas Ltd. and MX-IV, Ltd.** s. 127 M. Boswell in attendance for Staff Panel: TBA
February 11, 2011 10:00 a.m.	**Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman** s. 127(7) and 127(8) M. Boswell in attendance for Staff Panel: TBA
February 14-18, February 23-March 1, 2011 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** s. 127 P. Foy in attendance for Staff Panel: TBA
February 25, 2011 10:00 a.m.	**Hillcorp International Services, Hillcorp Wealth Management, Suncorp Holdings, 1621852 Ontario Limited, Steven John Hill, and Danny De Melo** s. 127 A. Clark in attendance for Staff Panel: TBA
March 1-7, March 9-11, March 21 and March 23-31, 2011 10:00 a.m.	**Paul Donald** s. 127 C. Price in attendance for Staff Panel: TBA
March 7, 2011 10:00 a.m.	**Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton** s. 127 H. Craig in attendance for Staff Panel: TBA

March 21 and March 23-31, 2011 May 2 and May 4-16, 2011 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** s. 127 H. Craig in attendance for Staff Panel: TBA
March 30, 2011 10:00 a.m.	**Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang** s. 127 and 127.1 M. Britton in attendance for Staff Panel: TBA
April 4 and April 6-7, 2011 April 11-18 and April 20, 2011 10:00 a.m.	**Uranium308 Resources Inc., Michael Friedman, George Schwartz, Peter Robinson, and Shafi Khan** s. 127 M. Boswell in attendance for Staff Panel: TBA
April 4 and April 6-15, 2011 10:00 a.m.	**New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd., L. Jeffrey Pogachar, Paola Lombardi and Alan S. Price** s. 127 M. Britton in attendance for Staff Panel: TBA
April 5, 2011 2:30 p.m.	**Lehman Brothers & Associates Corp., Greg Marks, Kent Emerson Lounds and Gregory William Higgins** s. 127 H. Craig in attendance for Staff Panel: TBA
April 11-18, April 20-21 and April 26-29, 2011 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** s. 127 Y. Chisholm in attendance for Staff Panel: TBA
April 26-27, 2011 10:00 a.m.	**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: JEAT/PLK/MGC
May 2, May 4-16, 2011 10:00 a.m.	**Innovative Gifting Inc., Terence Lushington, Z2A Corp., and Christine Hewitt** s. 127 M. Boswell in attendance for Staff Panel: TBA
June 6-8, 2011 10:00 a.m.	**Lehman Brothers & Associates Corp., Greg Marks, Kent Emerson Lounds and Gregory William Higgins** s. 127 H. Craig in attendance for Staff Panel: TBA

September 12-19 and September 21-30, 2011	**FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun** s. 127
10:00 a.m.	C. Price in attendance for Staff Panel: TBA
TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell** s. 127 J. Waechter in attendance for Staff Panel: TBA
TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly** s. 127 K. Daniels in attendance for Staff Panel: TBA
TBA	**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	**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 **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 **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 **Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)**

s. 127 and 127.1

D. Ferris in attendance for Staff

Panel: TBA

TBA **Abel Da Silva**

s. 127

M. Boswell in attendance for Staff

Panel: TBA

TBA **Richvale Resource Corp., Marvin Winick, Howard Blumenfeld, John Colonna, Pasquale Schiavone, and Shafi Khan**

s. 127(7) and 127(8)

H. Craig 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

TBA **Global Energy Group, Ltd. and New Gold Limited Partnerships**

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA **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**

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA **Sextant Capital Management Inc., Sextant Capital GP Inc., Otto Spork, Robert Levack and Natalie Spork**

s. 127

T. Center 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 Notice of Ministerial Approval of Amendments to NI 81-101 Mutual Fund Prospectus Disclosure, Forms 81-101F1 and 81-101F2 and Companion Policy 81-101CP Mutual Fund Prospectus Disclosure and Related Amendments

NOTICE OF MINISTERIAL APPROVAL OF AMENDMENTS TO
NATIONAL INSTRUMENT 81-101 MUTUAL FUND PROSPECTUS DISCLOSURE,
FORMS 81-101F1 AND 81-101F2 AND
COMPANION POLICY 81-101CP MUTUAL FUND PROSPECTUS DISCLOSURE
AND RELATED AMENDMENTS

On November 23, 2010, the Minister of Finance approved the following rules and consequential rule amendments (collectively, the Rules) made by the Ontario Securities Commission (the Commission):

- amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* and Forms 81-101F1 *Contents of Simplified Prospectus* and 81-101F2 *Contents of Annual Information Form*, including new Form 81-101F3 *Contents of Fund Facts* and amendments to Companion Policy 81-101CP to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;

- consequential amendments to National Instrument 81-102 *Mutual Funds* and Companion Policy 81-102CP to National Instrument 81-102 *Mutual Funds*;

- consequential amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* and Companion Policy 81-106CP to NI 81-106 *Investment Fund Continuous Disclosure*; and

- consequential amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR).

The Rules were made by the Commission on September 14, 2010.

The Rules have an effective date of January 1, 2011. The Rules were previously published in a Supplement to the Bulletin on October 8, 2010.

The Rules are published in Chapter 5 of this Bulletin.

December 10, 2010

1.1.3 Notice of Ministerial Approval of IFRS-Related Amendments to Securities Rules and Regulation 1015 under the Securities Act

NOTICE OF MINISTERIAL APPROVAL
OF IFRS-RELATED AMENDMENTS TO
SECURITIES RULES
AND
REGULATION 1015 UNDER THE SECURITIES ACT

On November 23, 2010, the Minister of Finance approved National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107) and amendments to additional rules set out in Appendix A. NI 52-107 and the approved amendments implement the changeover in Canada to International Financial Reporting Standards (IFRS) for financial years beginning on or after January 1, 2011. The amendments were made by the Commission in September 2010 and come into force on January 1, 2011, generally in relation to financial years beginning on or after January 1, 2011. The amendments were published in Supplement 3 of the October 1, 2010 Bulletin.

On November 23, 2010, the Minister of Finance also approved amendments to Regulation 1015 under the *Securities Act* in connection with NI 52-107, which amendments were filed as O. Reg. 437/10 on November 29, 2010. These amendments come into force on January 1, 2011. They are consistent with the description given in Appendix K of the notice relating to NI 52-107 in Supplement 3 of the October 1, 2010 Bulletin.

Related to the Commission's approval of NI 52-107 and the other IFRS-related amendments, the Commission also approved a new Companion Policy to NI 52-107, as well as amendments to other policies set out in Appendix B.

Staff Notices withdrawn effective on the coming-into-force of NI 52-107 are set out in Appendix C.

IFRS-related rule and policy amendments covered by Supplement 3 of the October 1, 2010 Bulletin are being republished in the Bulletin today in Supplement 5. There are no changes from the October 1, 2010 publication, with the following exceptions:

1. The Commission has corrected the first sentence of section 2.9 of the Companion Policy to NI 52-107 by replacing the words "less that nine" with the words "less than nine".

2. The Commission has corrected the first sentence of section 2.20 of the Companion Policy to NI 52-107 by deleting the words "prepared financial statements".

3. The Commission has corrected the wording of section 3.5 of the Companion Policy to OSC Rule 13-502 *Fees* by replacing the words "less the current portion" in that section by the words "including the current portion".

The text of the IFRS-related amendments to Regulation 1015 under the *Securities Act* is published in Chapter 9.

Other IFRS-related amendments to National Policy 41-201 *Income Trusts and Indirect Offerings* and CSA Staff Notice 52-306 *Non-GAAP Financial Measures* were published in the Bulletin on November 12, 2010. They are not reproduced today, but may be accessed on the OSC website.

As referred to in CSA Staff Notice 81-320 published on October 8, 2010, IFRS-related amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* have been deferred.

December 10, 2010

Appendix A
List of Rules that were the Subject of IFRS-Related Amending Instruments

OSC Rule 13-502 *Fees*

OSC Rule 13-503 *(Commodity Futures Act) Fees*

National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*

National Instrument 14-101 *Definitions*

National Instrument 21-101 *Marketplace Operation*

National Instrument 31-103 *Registration Requirements and Exemptions*

National Instrument 33-109 *Registration Information*

National Instrument 41-101 *General Prospectus Requirements*

National Instrument 44-101 *Short Form Prospectus Distributions*

National Instrument 44-102 *Shelf Distributions*

National Instrument 45-106 *Prospectus and Registration Exemptions*

National Instrument 51-102 *Continuous Disclosure Obligations*

OSC Rule 51-801 *Implementing National Instrument 51-102 Continuous Disclosure Obligations*

National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*

National Instrument 52-110 *Audit Committees*

National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*

OSC Rule 62-504 *Take-Over Bids and Issuer Bids*

National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*

OSC Rule 71-802 *Implementing National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*

Appendix B
List of Policies that were the Subject of IFRS-Related Amending Instruments

National Policy 12-202 *Revocation of a Compliance-related Cease Trade Order*

National Policy 12-203 *Cease Trade Orders for Continuous Disclosure Defaults*

Companion Policy to OSC Rule 13-502 *Fees*

Companion Policy to National Instrument 31-103 *Registration Requirements and Exemptions*

Companion Policy to National Instrument 41-101 *General Prospectus Requirements*

Companion Policy to National Instrument 44-101 *Short Form Prospectus Distributions*

Companion Policy to National Instrument 45-106 *Prospectus and Registration Exemptions*

OSC Policy 51-601 *Reporting Issuer Defaults*

OSC Policy 51-604 *Defence for Misrepresentations in Forward-Looking Information*

Companion Policy to National Instrument 51-102 *Continuous Disclosure Obligations*

Companion Policy to National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*

Companion Policy to National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*

Appendix C
List of OSC Staff Notices Withdrawn on Coming into Force of NI 52-107

OSC Staff Accounting Communiqué 52-706 *No Requirement to Provide Management Report under CICA*

OSC Staff Accounting Notice 52-709 *Income Statement Presentation of Goodwill Charges*

OSC Staff Accounting Communiqué 52-711 *Income Statement Presentation*

OSC Staff Accounting Communiqué 52-712 *Accounting Basis in an Initial Public Offering ("IPO")*

OSC Staff Notice 52-713 *Report on Staff's Review of Interim Financial Statements and Interim Management's Discussion and Analysis – February 2002*

OSC Staff Accounting Communiqué 52-714 *Restructuring and Similar Charges (Including Write-downs of Goodwill)*

1.1.4 CSA Staff Notice 13-317 – Amendments to the SEDAR Filer Manual

CSA STAFF NOTICE 13-317 – AMENDMENTS TO THE SEDAR FILER MANUAL

Introduction

National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* (NI 13-101) incorporates by reference the *System for Electronic Analysis and Retrieval (SEDAR) Filer Manual* ("the Manual"). The Manual has been updated a number of times, most recently in 2006. Since 2006, there have been many updates to SEDAR in terms of both document types and functionality that need to be reflected in the Manual. Staff of the Canadian Securities Administrators ("CSA") are issuing this Notice to inform users that a new version of the Manual that reflects these changes, is now available.

Manual Version 8.15

The new version of the Manual provides updated and new guidance on a number of matters, notably:

- privacy
- updated internet links
- XBRL documents
- passport processes
- the changing of access of SEDAR documents from public to private
- filing processes contemplated by CSA instruments and policies
- SEDAR statuses (e.g., clear for final)
- the types of correspondence that may be sent via SEDAR
- categories, types and documents associated with SEDAR electronic filing

The version number of the Manual is 8.15, corresponding to the most current SEDAR release, SEDAR version 8.15, implemented on December 13, 2010. Manual Version 8.15 will be accessible on the SEDAR website at www.sedar.com.

For more information

If additional information is required, please contact your local SEDAR Customer Service Representative or the CDS INC. Help Desk at 1-800-219-5381.

December 10, 2010

1.4 Notices from the Office of the Secretary

1.4.1 North American Financial Group Inc. et al.

FOR IMMEDIATE RELEASE
December 2, 2010

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

AND

IN THE MATTER OF
NORTH AMERICAN FINANCIAL GROUP INC.,
NORTH AMERICAN CAPITAL INC.,
ALEXANDER FLAVIO ARCONTI, AND
LUIGINO ARCONTI

TORONTO – The Commission issued an Order in the above named matter which provides that the Temporary Order as amended be extended to January 10, 2011 and the hearing in this matter be adjourned to January 7, 2011 at 9:30 a.m.

A copy of the Order dated December 2, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.2 X Inc.

FOR IMMEDIATE RELEASE
December 3, 2010

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

AND

IN THE MATTER OF
X INC.

TORONTO – The Panel of the Commission released the following in the above named matter:

1. Redacted Confidential Reasons and Order (s. 17) issued March 25, 2010; and

2. Redacted Decision (Held In Camera) issued October 26, 2010

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

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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Director, Communications & Public Affairs
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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 Richvale Resource Corporation et al.

FOR IMMEDIATE RELEASE
December 3, 2010

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

AND

IN THE MATTER OF
RICHVALE RESOURCE CORPORATION,
MARVIN WINICK, HOWARD BLUMENFELD,
JOHN COLONNA, PASQUALE SCHIAVONE,
AND SHAFI KHAN

TORONTO – The Commission issued an Order in the above named matter which provides that, pursuant to subsection 127(8) of the Act, the Temporary Order is extended against each of Richvale, Winick, Blumenfeld, Schiavone and Khan until the conclusion of the hearing on the merits in relation to Staff's Allegations; and the hearing in this matter is adjourned to February 28th, 2011 at 10:00 a.m. at which time a confidential pre-hearing conference shall take place.

A copy of the Order dated December 2, 2010 is available at **www.osc.gov.on.ca**.

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1.4.4 Shaun Gerard McErlean et al.

FOR IMMEDIATE RELEASE
December 3, 2010

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

AND

IN THE MATTER OF
SHAUN GERARD MCERLEAN,
SECURUS CAPITAL INC., AND
ACQUIESCE INVESTMENTS

TORONTO – The Commission issued a Temporary Order in the above named matter which provides that the Temporary Order be extended until the completion of the hearing of this matter and the hearing of this matter be adjourned to January 24, 2011 at 10:00 a.m. for a pre hearing conference.

A copy of the Temporary Order dated December 3, 2010 is available at **www.osc.gov.on.ca**.

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1.4.5 Baffinland Iron Mines Corporation et al.

FOR IMMEDIATE RELEASE
December 6, 2010

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

AND

IN THE MATTER OF
BAFFINLAND IRON MINES CORPORATION,
IRON ORE HOLDINGS, LP
AND ITS WHOLLY-OWNED SUBSIDIARY
NUNAVUT IRON ORE ACQUISITION INC.

TORONTO – Following a hearing held on November 18, 2010 in the above named matter, the Commission issued its Reasons For Decision.

A copy of the Reasons For Decision dated December 3, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.6 Irwin Boock et al.

FOR IMMEDIATE RELEASE
December 6, 2010

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

AND

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

TORONTO – The Commission issued an Order in the above named matter which provides that:

(a) the Stay shall lapse as of the date of this Order;

(b) the Status Hearing shall be adjourned until January 27, 2011 at 2 p.m. at the offices of the Commission, or such other date as may be agreed by the parties and fixed by the Office of the Secretary; and

(c) the Status Hearing may be conducted in writing in advance of January 27, 2011, by way of a draft consent order filed with the Commission setting dates for the Merits Hearing, provided that matters that might otherwise be subject to the Status Hearing do not require an attendance before the Commission.

A copy of the Order dated November 29, 2010 is available at **www.osc.gov.on.ca**.

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1.4.7 TBS New Media Ltd. et al.

FOR IMMEDIATE RELEASE
December 6, 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 February 9, 2011; and the Hearing is adjourned to February 8, 2011 at 2:30 p.m. for a confidential pre-hearing conference.

A copy of the Temporary Order dated December 6, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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SECRETARY

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416-593-2315

For investor inquiries:

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1-877-785-1555 (Toll Free)

1.4.8 Innovative Gifting Inc. et al.

FOR IMMEDIATE RELEASE
December 8, 2010

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

AND

IN THE MATTER OF
INNOVATIVE GIFTING INC., TERENCE LUSHINGTON, Z2A CORP., AND CHRISTINE HEWITT

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing on the merits in this matter shall commence on May 2, 2011 and continue until May 16, 2011, with the exception that the hearing on the merits will not be heard on May 3, 2011; counsel for Z2A and Hewitt will make a motion to the Commission on March 30, 2011 at 2 p.m. for severance of this matter; and the Temporary Order as against IGI is extended until the conclusion of the hearing on the merits.

A copy of the Order dated December 6, 2010 is available at **www.osc.gov.on.ca**.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Silver One Mining Corporation – 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).

December 1, 2010

Lang Michener LLP
1500 - 1055 West Georgia Street
P.O. Box 11117
Vancouver, BC V6E 4N7

Attention: Alexis Cloutier

Dear Madam:

Re: Silver One Mining Corporation (the Applicant) - Application for a decision under the securities legislation of Alberta and Ontario (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.

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

2.1.2 Bronco Energy Ltd. – s. 1(10)

Headnote

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

Applicable Legislative Provisions

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

Citation: Bronco Energy Ltd., Re, 2010 ABASC 554

December 2, 2010

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

AND

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

AND

IN THE MATTER OF
BRONCO ENERGY 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**) for an order deeming the Filer to have ceased to be a reporting issuer in the Jurisdictions.

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

(a) the Alberta Securities Commission is the principal regulator for this application, and

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

Interpretation

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

Representations

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

1. The Filer was incorporated under the laws of Alberta and has a head office in Calgary, Alberta.

2. Pursuant to a plan of arrangement completed on November 4, 2010, Legacy Oil + Gas Inc. (**Legacy**) acquired all of the issued and outstanding class A common shares of the Filer (**Bronco Shares**) and all of the 6% secured subordinated convertible debentures of the Filer.

3. The Bronco Shares were delisted from the Toronto Stock Exchange at the close of business on November 9, 2010.

4. The authorized capital of the Filer consists of an unlimited number of Bronco Shares, all of which are held by Legacy, and an unlimited number of preferred shares, none of which are issued and outstanding.

5. No securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.

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

7. The Filer is not in default of any requirements of the Legislation, except for the requirement to file its interim financial statements, MD&A, and related certifications for the September 30, 2010 interim period due November 15, 2010.

8. The Filer has no current intention to seek public financing by way of an offering of securities.

9. The Filer did not surrender its status as a reporting issuer in British Columbia pursuant to BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* (the **BC Instrument**) in order to avoid the 10-day waiting period under the BC Instrument.

10. As the Filer is a reporting issuer in British Columbia, and is in default of the Legislation as described in paragraph 7 above, the Filer is not eligible to use the simplified procedure under CSA Staff Notice 12-307 *Applications for a Decision that an Issuer in not a Reporting Issuer* in order to apply for the decision sought.

11. Upon the grant of the relief requested, the Filer will not be a reporting issuer or the equivalent in any jurisdiction of Canada.

12. The Filer seeks an order deeming the Filer to have ceased to be a reporting issuer in the Jurisdictions.

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 Filer is deemed to have ceased to be a reporting issuer.

"Blaine Young"
Associate Director, Corporate Finance

2.1.3 0879597 B.C. Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for an order than the issuer is not a reporting issuer under applicable securities laws – issuer has outstanding warrants exercisable into securities of parent that are held by 18 securiyholders resident in Ontario – warrant holders no longer require public disclosure in respect of the issuer – relief granted.

Applicable Legislative Provisions

Securities Act (Ontario), s. 1(10)(b).

December 6, 2010

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO AND ALBERTA
(THE JURISDICTIONS)

AND

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

AND

IN THE MATTER OF
0879597 B.C. LTD. (THE FILER)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) to cease to be a reporting issuer (the **Exemption Sought**).

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

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation existing under the laws of the Province of British Columbia and was formed by the amalgamation (the **Amalgamation**) of Garson Gold Corp. (**Garson**) and 0876785 B.C. Ltd. (**Alexis Subco**), pursuant to the plan of arrangement (the **Arrangement**) completed at 12:01 a.m. (Vancouver time) (the **Effective Time**) on April 29, 2010 (the **Effective Date**) among Garson, Alexis Minerals Corporation (Alexis), Alexis Subco and the security holders of Garson. The Filer's head office is located at 65 Queen Street West, Suite 815, Toronto, Ontario, M5H 2M5.

2. The Filer is a reporting issuer or the equivalent in each of the Jurisdictions. The Filer 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.

3. The Filer is authorized to issue an unlimited number of common shares (the **Filer Shares**), of which all of the issued and outstanding Filer Shares are owned by Alexis. As of November 26, 2010, the Filer also had outstanding 8,852,974 common share purchase warrants (the **Filer Warrants**) expiring between March 4, 2011 and September 10, 2011, each Filer Warrant exercisable at a price between $0.10 and $0.12 into 0.29 of a common share of Alexis (an **Alexis Share**). Other than the Filer Shares and the Filer Warrants, the Filer has no securities, including debt securities, issued or outstanding.

4. Alexis, the parent company of the Filer, is a corporation existing under the laws of Ontario. Alexis is authorized to issue an unlimited number of Alexis Shares. Alexis is a reporting issuer or the equivalent in each of the Jurisdictions and the Alexis Shares are listed and traded on the TSX under the symbol "AMC".

5. Immediately prior to the Effective Time, Garson was a corporation existing under the laws of British Columbia and had the following issued and outstanding securities: (a) 211,502,192 common shares (the **Garson Shares**); (b) 6,855,825 options (the **Garson Options**), each exercisable into one Garson Share; and (c) 41,344,956 common share purchase warrants (the **Garson Warrants**) expiring between June 24, 2010 and September 10, 2011, each Garson Warrant exercisable at a price between $0.06 and $0.1668 into one Garson Share.

6. Garson was a reporting issuer or the equivalent in each of the Jurisdictions immediately prior to the Effective Time and the Garson Shares were listed and traded on the TSX Venture Exchange (**TSXV**) under the symbols "GG".

7. Immediately prior to the Effective Time, Alexis Subco was a corporation existing under the laws of British Columbia and was a wholly-owned subsidiary of Alexis.

8. At the Effective Time, Alexis acquired all of the issued and outstanding Garson Shares (other than those held by Alexis) pursuant to the Arrangement.

9. Under the Arrangement, in addition to other matters, the following occurred as of the Effective Time:

   (a) each Garson Share was transferred to Alexis in consideration for 0.29 of an Alexis Share;

   (b) each Garson Option was exchanged for options (the **Converted Alexis Options**) entitling the holders thereof to acquire Alexis Shares, with the number of Alexis Shares and exercise prices adjusted in accordance with the terms of the Garson Options based on the exchange ratio of 0.29 of an Alexis Share for each Garson Share;

   (c) each Garson Warrant will entitle the holder to acquire a number of Alexis Shares (based on the exchange ratio of 0.29 of an Alexis Share for each Garson Share), with the number of shares and exercise price adjusted in accordance with the terms of each Garson Warrant;

   (d) Alexis transferred all of the Garson Shares held by Alexis including the Garson Shares acquired pursuant to the Arrangement, to Alexis Subco in exchange for an equal number of common shares of Alexis Subco;

   (e) Alexis Subco and Garson amalgamated to form the Filer and continue as one corporation under the British Columbia Business Corporations Act; and

   (f) Alexis received on the Amalgamation one Filer Share in exchange for each common share of Alexis Subco previously held and all of the issued and outstanding Garson Shares were cancelled.

10. On April 29, 2010, 2,661,581 additional Alexis Shares were listed and posted for trading on the TSX as a result of the Arrangement, and additional Alexis Shares were reserved for issuance upon exercise of the Filer Warrants and

the Converted Alexis Options. The Garson Shares were delisted from the TSXV at the close of business on May 4, 2010.

11. On completion of the Arrangement, the Filer became a reporting issuer because Garson, one of the amalgamating companies, was a reporting issuer for a period of at least twelve months prior to the Amalgamation.

12. On completion of the Arrangement, the Filer became liable for the obligations of Garson for each Garson Warrant and the Garson Warrants became the Filer Warrants, which are the only securities of the Filer that are publicly held.

13. Pursuant to the terms of the Arrangement, each holder of a Garson Warrant outstanding immediately prior to the Effective Date, became entitled upon completion of the Arrangement, to receive, upon the exercise of such holder's warrant, in lieu of each Garson Share to which such holder was previously entitled to, 0.29 of an Alexis Share for each Garson Warrant, subject to adjustment. Pursuant to the terms of the Arrangement and the Amalgamation, each Garson Warrant became a Filer Warrant. As a party to the Arrangement, Alexis is obligated to issue the number of Alexis Shares necessary to meet the Filer's obligations upon the exercise of a Filer Warrant.

14. The simplified procedure under CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* is not available to the Filer, as it will continue to have greater than 15 security holders in total in Ontario. All of the Filer Shares are beneficially owned, directly or indirectly, by Alexis and the Filer Warrants are beneficially owned, directly or indirectly, by 35 security holders, of which 18 are residents of Ontario.

15. The Filer has no intention of accessing the capital markets in the future by issuing any further securities to the public, and has no intention of issuing any securities.

16. The Filer and Alexis are, to the best of the Filer's knowledge, not in default of any of its obligations under the Legislation as a reporting issuer, except that it did not file its interim financial statements and related management's discussion and analysis for the interim period ended September 30, 2010 as required under National Instrument 52-102 Continuous Disclosure Obligations and the certificates of interim filings as required under National Instrument 52-109 Certificate of Disclosure in Issuers' Annual and Interim Filings, which became due on November 29, 2010.

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

18. The Filer is not required to remain a reporting issuer in the Jurisdictions under any contractual arrangement between the Filer and the holders of the Filer Warrants, including any indenture governing the Filer Warrants.

19. The Filer is not a reporting issuer or the equivalent in any jurisdiction in Canada, other than the Jurisdictions.

Decision

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

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

"Mary Condon"
Commissioner
Ontario Securities Commission

"Margot Howard"
Commissioner
Ontario Securities Commission

2.1.4 Veresen Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption granted to a successor issuer 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 a preliminary short form prospectus – disclosure regarding the predecessor issuer will effectively be the disclosure of the successor issuer – predecessor issuer is qualified to file a short form prospectus.

Exemption granted to a successor issuer from the requirement to deliver personal information forms for individuals for whom the LP previously delivered personal information forms.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions.

Citation: Veresen Inc., Re, 2010 ABASC 553

December 2, 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
VERESEN 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:

(a) the requirement under section 2.8 of National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**) 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 (the **Notice of Intention Relief**); and

(b) the requirement under subsection 4.1(b) of NI 44-101 for the Filer to deliver a Personal Information Form and Authorization to Collect, Use and Disclose Personal Information (in the form attached as Appendix A to National Instrument 41-101 *General Prospectus Requirements*) (a **PIF**) for each director and executive officer of the Filer at the time of filing a preliminary short form prospectus for whom Fort Chicago Energy Partners L.P. (**Fort Chicago**), the sole shareholder of the Filer, has previously delivered any of the documents described in clauses 4.1(b)(i)(E) through (G) of NI 44-101 at the time of filing such preliminary short form prospectus (the **PIF Relief**).

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

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

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions* or 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:

Fort Chicago

1. Fort Chicago is a limited partnership established under the *Partnership Act* (Alberta) pursuant to a limited partnership agreement dated as of October 9, 1997, as amended and restated on November 21, 1997 and May 13, 2003, and as further amended on May 25, 2005, among Fort Chicago Energy Management Ltd., the general partner of Fort Chicago, and each person who is admitted to Fort Chicago as a limited partner from time to time in accordance with the terms thereof (the **Partnership Agreement**).

2. The head office of Fort Chicago is located in Calgary, Alberta.

3. Fort Chicago is a reporting issuer in each of the provinces of Canada and is not in default of the requirements of securities legislation applicable to it.

4. The authorized capital of Fort Chicago consists of an unlimited number of Class A limited partnership units (**Class A Units**) and an unlimited number of Class B limited partnership units, issuable in series, of which as at November 25, 2010, there were 156,189,192 Class A Units issued and outstanding and no Class B limited partnership units issued and outstanding.

5. The Class A Units are listed on the Toronto Stock Exchange (the **TSX**).

The Filer

6. The Filer is a corporation incorporated under the *Business Corporations Act* (Alberta) (the **ABCA**).

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

8. The Filer is a wholly-owned subsidiary of Fort Chicago.

9. The Filer is not a reporting issuer in any jurisdiction and is not in default of any of the requirements of securities legislation applicable to it.

10. The common shares of the Filer (the **Common Shares**) are not listed or posted for trading on any exchange or quotation and trade reporting system, however, the TSX has conditionally approved the listing of the Common Shares to be issued in connection with the Arrangement (as defined below).

The Arrangement

11. Each of Fort Chicago, Fort Chicago Energy Management Ltd. (the **General Partner**) and the Filer have entered into an arrangement agreement dated October 18, 2010 (the **Arrangement Agreement**) pursuant to which such parties have agreed to proceed with a plan of arrangement under section 193 of the ABCA (the **Arrangement**) involving such parties and the holders of Class A Units (**Unitholders**).

12. As one of the steps of the Arrangement, each Class A Unit will be exchanged for one Common Share. Immediately following the completion of the Arrangement:

    (a) the Filer will own all of the issued and outstanding Class A Units;

    (b) the sole business of the Filer will be the current business of Fort Chicago;

    (c) the Filer will be a reporting issuer or the equivalent under the securities legislation in each of the provinces of Canada; and

(d) the Common Shares will, subject to approval by the TSX, be listed on the TSX.

13. Pursuant to the Partnership Agreement and an interim order of the Court of Queen's Bench of Alberta dated October 19, 2010, the completion of the Arrangement will be conditional upon, among other things, Unitholders passing an extraordinary resolution approving the Arrangement at a special meeting of Unitholders scheduled for November 23, 2010 (the **Meeting**). The passing of the extraordinary resolution will require the approval of Unitholders representing not less than 66 2/3% of the votes cast by Unitholders, other than Fort Chicago, the General Partner or any of their representative affiliates, voting in person or by proxy at the Meeting.

14. An information circular describing the Arrangement was mailed to Unitholders on October 25, 2010.

Exemptions Sought

Notice of Intention Relief

15. Fort Chicago is qualified to file a prospectus in the form of a short form prospectus pursuant to 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 section 2.8(4) of NI 44-101.

16. The Filer anticipates that it may wish to file a preliminary short form prospectus following the completion of the Arrangement, relating to the offering or potential offering of securities of the Filer.

17. In anticipation of the filing of a preliminary short form prospectus, and assuming the Arrangement has been completed, the Filer intends to file a notice of intention to be qualified to file a short form prospectus (the **Notice of Intention**) following completion of the Arrangement. In the absence of the Notice of Intention Relief, the Filer will not be qualified to file a preliminary short form prospectus until 10 business days from the date upon which the Notice of Intention is filed.

18. Pursuant to the qualification criteria set forth in sections 2.2 and 2.7 of NI 44-101, following the Arrangement, the Filer will be qualified to file a short form prospectus pursuant to NI 44-101.

19. Notwithstanding section 2.2 of NI 44-101, section 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.

20. The short form prospectus of the Filer 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 the Filer.

PIF Relief

21. Fort Chicago has previously delivered the documents described in clauses 4.1(b)(i)(E) through (G) of NI 44-101 (the **Fort Chicago PIFs**) for each individual acting in the capacity of director or executive officer of Fort Chicago or the General Partner.

22. In the absence of the PIF Relief, the Filer would be required to deliver a PIF for each director and executive officer of the Filer for whom Fort Chicago has already delivered a PIF.

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:

(a) the Notice of Intention Relief is granted, provided that at the time the Filer files its Notice of Intention, the Filer meets the requirements of Section 2.2 of NI 44-101; and

(b) the PIF Relief is granted, provided that:

(i) each individual:

A. for whom Fort Chicago has previously delivered a Fort Chicago PIF; and

B. who is a director or executive officer of the Filer at the time of a prospectus filing by the Filer,

authorizes the Decision Makers, in respect of the prospectus filing by the Filer, to collect, use and disclose the personal information that was previously provided in the Fort Chicago PIF;

(ii) at the time of the Filer's first prospectus filing, the Filer delivers to the Decision Makers an authorization of indirect collection, use and disclosure of personal information, substantially in the form of authorization attached as Appendix A;

(iii) the Filer will, if requested by a Decision Maker, promptly deliver such further information from each individual referred to in clause (b)(i) above as the Decision Maker may require; and

(iv) the PIF Relief will terminate in any jurisdiction in which the decision is in effect on the effective date of any change to subparagraph 4.1(b)(i) of NI 44-101.

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

APPENDIX A
AUTHORIZATION OF INDIRECT COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION

The Personal Information Forms in respect of the individuals listed in attached Schedule 1, which were filed by [Insert issuer name] (the **Trust**) with provincial securities regulators in Canada on [insert date] (the **Trust Filings**), contain personal information concerning each individual acting in the capacity of director or executive officer of the Trust (the **Personal Information**), as required by securities legislation in respect of a prospectus filing by the Trust. [Insert issuer name] (the **Issuer**) hereby confirms that each individual listed on Schedule 1:

(a) is a director or executive officer of the Issuer;

(b) has consented to the use of the Personal Information (previously provided in the Trust Filing) pertaining to that individual, in respect of an anticipated prospectus filing by the Issuer;

(c) has been notified by the Issuer

  (i) that the Personal Information is being collected indirectly by the regulator under the authority granted to it by provincial securities legislation or provincial legislation relating to documents held by public bodies and the protection of personal information;

  (ii) that the Personal Information is being collected and used for the purpose of enabling the regulator to administer and enforce provincial securities legislation, including those obligations that require or permit the regulator to refuse to issue a receipt for a prospectus if it appears to the regulator that the past conduct of management or promoters of the Issuer affords reasonable grounds for belief that the business of the Issuer will not be conducted with integrity and in the best interests of its security holders; and

  (iii) of the contact, business address and business telephone number of the regulator in the local jurisdiction as set out in the attached Schedule 2, who can answer questions about the regulator's indirect collection of the Personal Information; and

(d) has authorized the indirect collection, use and disclosure of the Personal Information by the regulators as described in Schedule 2, in respect of a prospectus filing by the Issuer.

Date: _____
Name of Issuer

Per: _____
Name
Official Capacity

(Please print the name of the person signing on behalf of the Issuer)

2.1.5 Fort Chicago Power 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).

December 3, 2010

Bennett Jones LLP
4500 Bankers Hall East
855 - 2 Street SW
Calgary, AB T2P 4K7

Attention: Jon Hoyles

Dear Sir:

Re: Fort Chicago Power Ltd. (the Applicant) – Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the Jurisdictions) that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions for a decision under the securities legislation (the **Legislation**) of the Jurisdictions 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

2.1.6 Man Investments Canada Corp.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency, s. 3.1 – A registrant to early adopt IFRS for purposes of preparing its financial statements required to be delivered to the regulator or regulatory authority pursuant to National Instrument 31-103 Registration Requirements and Exemptions – The registrant has assessed the readiness of its staff, board, audit committee, and auditors.

Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency, s. 3.1.

December 7, 2010

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

AND

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

AND

IN THE MATTER OF
MAN INVESTMENTS CANADA CORP.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Filer from the requirements in section 3.1 of National Instrument 52-107 – *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (**NI 52-107**) that the financial statements be prepared in accordance with Canadian GAAP (the **Exemption Sought**), for so long as the Filer prepares its financial statements in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board (**IFRS-IASB**) except that any investments in subsidiaries, jointly controlled entities and associates must be accounted for as specified for separate financial statements in International Accounting Standard 27 *Consolidated and Separate Financial Statements*, as amended from time to time (**IAS 27**) for the financial periods beginning on or after April 1, 2010 to March 31, 2011.

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia (together with the Jurisdiction, collectively, the **Jurisdictions**).

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act* on March 22, 2006.

2. The Filer is not a reporting issuer in any jurisdiction in Canada, as such term is defined in subsection 1(1) of the *Securities Act* (Ontario).

3. The Filer is registered as an adviser in the category of portfolio manager in Ontario and Alberta. The Filer is also registered as a dealer in the category of exempt market dealer in each of the Jurisdictions. The Filer is also registered in the category of investment fund manager in Ontario.

4. The principal office of the Filer is located at 70 York Street, Suite 1202, Toronto, Ontario M5J 1S9.

5. The Filer is part of the Man Investments division of Man Group plc (**Man Group**). Man Group is a world-leading alternative investment management business listed on the London Stock Exchange and is a member of the FTSE 100 Index with US$38.5 billion in assets under management and a market capitalization of approximately US$5.7 billion as of June 30, 2010. Man Group is a member of the Dow Jones Sustainability World Index and the FTSE4Good Index. Man Group employs more than 1,400 people in 15 locations, with key centres in London (UK) and Pfäffikon (Switzerland) and offices in Australia, Bermuda, Canada, Guernsey, Hong Kong, Ireland, Japan, Luxembourg, Netherlands, Singapore, Switzerland, UAE, UK, Uruguay and USA.

6. The Filer is an indirect subsidiary of Man Group. Man Group beneficially owns all of the issued and outstanding shares in the capital of the Filer. In preparing its financial statements, Man Group follows a comprehensive consolidation process which involves the consolidation of multiple subsidiary financial statements into a single set of consolidated financial statements prepared in accordance with IFRS-IASB. The consolidation process facilitates Man Group's compliance with regulated activities in the United Kingdom by the Financial Services Authority of the United Kingdom.

7. The Filer's financial year-end is March 31.

8. The Filer is not transitioning to the IFRS-IASB financial reporting framework because for the financial years ended prior to and including March 31, 2010, the Filer has prepared its audited financial statements in accordance with IFRS-IASB for purposes of consolidated financial reporting by Man Group and, thereafter, amended its audited financial statements with the additional disclosure required in accordance with Canadian GAAP for purposes of compliance with applicable regulatory requirements under NI 52-107.

9. NI 52-107 sets out acceptable accounting principles for financial reporting by domestic issuers, foreign issuers, registrants and other market participants. Under NI 52-107, domestic registrants are required to prepare financial statements in accordance with Canadian GAAP applicable to publicly accountable enterprises.

10. 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.

11. In CSA Staff Notice 52-321 – *Early Adoption of International Financial Reporting Standards, Use of US GAAP and Reference to IFRS-IASB* (**CSA Staff Notice 52-321**), 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, notwithstanding the requirements under section 3.1 of NI 52-107.

12. The Filer believes that adoption of IFRS-IASB will eliminate complexity and cost for the Filer's financial statement preparation process.

13. The Filer has the necessary technology and administrative processes in place to prepare IFRS-IASB financial statements as it already prepares its audited financial statements in accordance with IFRS-IASB for purposes of consolidated financial reporting by Man Group.

14. The Filer has carefully assessed the readiness of its staff, board of directors and auditors for the adoption by the Filer of IFRS-IASB for financial periods beginning on or after April 1, 2010 and has concluded that the Filer and all parties are adequately prepared for the Filer's immediate adoption of IFRS-IASB for the financial periods beginning on April 1, 2010.

15. The Filer has considered the implications of adopting IFRS-IASB beginning on or after April 1, 2010 on its obligations under Canadian securities legislation and concluded the early adoption is in the best interests of the Filer and users of its financial statements.

Decision

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

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

   (a) the Filer prepares its financial statements required to be delivered to the regulator or regulatory authority in accordance with IFRS-IASB except that any investments in subsidiaries, jointly controlled entities and associates must be accounted for as specified for separate financial statements in IAS 27 for the financial periods beginning on or after April 1, 2010; and

   (b) the Filer's financial statements include:

      (i) the following statement:

      These financial statements are prepared in accordance with the IFRS-IASB except that any investments in subsidiaries, jointly controlled entities and associates are accounted for as specified for separate financial statements in IAS 27; and

      (ii) an auditor's report that expresses an unqualified opinion that:

      These financial statements are prepared in accordance with the financial reporting framework that is IFRS-IASB except that any investments in subsidiaries, jointly controlled entities and associates are accounted for as specified for separate financial statements in IAS 27.

"Marrianne Bridge"
Deputy Director, Compliance and Registrant Regulation
Ontario Securities Commission

2.2 Orders

2.2.1 North American Financial Group Inc. 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
NORTH AMERICAN FINANCIAL GROUP INC.,
NORTH AMERICAN CAPITAL INC.,
ALEXANDER FLAVIO ARCONTI, AND
LUIGINO ARCONTI

ORDER
Sections 127(7) & 127(8)

WHEREAS on the 10th day of November, 2010, pursuant to subsections 127(1) and 127(5) of the *Securities Act*, RSO 1990, c S.5, as amended (the "Act"), the Ontario Securities Commission (the "Commission") made an order against North American Financial Group Inc. ("NAFG"), North American Capital Inc. ("NAC"), Alexander Flavio Arconti ("Flavio") and Luigino Arconti ("Gino");

AND WHEREAS on the 10th day of November, 2010, pursuant to subsection 127(6) of the Act, the Commission ordered that the following Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS by Commission Order dated November 10, 2010, the Commission made the following temporary order (the "Temporary Order");

1. pursuant to clause 2 of subsection 127(1) of the Act, that trading in the securities of NAFG and NAC shall cease;

2. pursuant to clause 2 of subsection 127(1) of the Act, that NAFG, NAC, Flavio and Gino cease trading in all securities; and

3. that pursuant to clause 3 of subsection 127(1) of the Act, that the exemptions contained in Ontario securities law do not apply to NAFG, NAC, Flavio or Gino.

AND WHEREAS by Commission Order dated November 23, 2010, the Temporary Order was amended such that Flavio and Gino may trade in securities for their own accounts or their parents' accounts or for the accounts of their registered retirement savings plan or registered income fund (as defined in the Income Tax Act (Canada)) provided that they trade through accounts opened in their parents' names or either of their names only;

AND WHEREAS the Temporary Order as amended was extended to December 3, 2010;

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

AND WHEREAS the parties to this proceeding consent to the making of this order;

I**T IS ORDERED** that the Temporary Order as amended be extended to January 10, 2011 and the hearing in this matter be adjourned to January 7, 2011 at 9:30 a.m.

DATED at Toronto this 2nd day of December, 2010.

"J. D. Carnwath"

2.2.2 Richvale Resource Corporation et al. – ss. 127(1), 127(8)

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

AND

**IN THE MATTER OF
RICHVALE RESOURCE CORPORATION,
MARVIN WINICK, HOWARD BLUMENFELD,
JOHN COLONNA, PASQUALE SCHIAVONE,
AND SHAFI KHAN**

**ORDER
(Subsections 127(1) and 127(8))**

WHEREAS on March 19, 2010, the Ontario Securities Commission (the "Commission") issued a temporary cease trade 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 i) that trading in the securities of Richvale Resource Corp. ("Richvale") shall cease and ii) Richvale and its representatives, including Marvin Winick ("Winick"), Howard Blumenfeld ("Blumenfeld"), Pasquale Schiavone ("Schiavone") and Shafi Khan ("Khan") cease trading in all securities (the "Temporary Order");

AND WHEREAS, on March 19, 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 March 19, 2010, the Commission issued directions under section 126(1) of the Act freezing assets in bank accounts in the name of Richvale and Khan (collectively, the "Freeze Directions");

AND WHEREAS on March 22, 2010, the Commission issued a notice of hearing to consider, among other things, the extension of the Temporary Order, to be held on April 1, 2010 at 10 a.m. (the "Notice of Hearing");

AND WHEREAS the Notice of Hearing sets out that the Hearing is to consider, *inter alia*, whether, in the opinion of the Commission, it is in the public interest, pursuant to subsections 127 (7) and (8) of the Act, to extend the Temporary Order until the conclusion of the hearing, or until such further time as considered necessary by the Commission;

AND WHEREAS Staff of the Commission ("Staff") have served all of the respondents with copies of the Temporary Order, the Notice of Hearing, and documents related to the Freeze Directions as evidenced by the Affidavit of Kathleen McMillan, sworn on March 31, 2010, and filed with the Commission;

AND WHEREAS on April 1, 2010, Richvale, Blumenfeld, Schiavone and Khan did not appear before the Commission to oppose Staff's request for the extension of the Temporary Order;

AND WHEREAS on April 1, 2010, Winick communicated to the Commission through an agent that he was not opposed to the extension of the Temporary Order:

AND WHEREAS on April 1, 2010, the Panel considered the evidence and submissions before it and the Panel was of the opinion that it was in the public interest to extend the Temporary Order;

AND WHEREAS on April 1, 2010, the Panel ordered that the Temporary Order is amended as follows to create the "Amended Temporary Order" dated April 1, 2010:

i) the name "PAQUALE SCHIAVONE" in the style of cause is amended to "PASQUALE SCHIAVONE";

ii) paragraph 5 of the Temporary Order is amended to read as follows: Shafi Khan ("Khan") is acting as a representative of Richvale;

iii) paragraph 9 (i) is amended to read as follows: trading in securities of Richvale without proper registration or an appropriate exemption from the registration requirements under the Act contrary to section 25 of the Act; and

iv) it is further ordered pursuant to clause 2 of subsection 127 (1) of the Act that any exemptions contained in Ontario securities laws in respect of Richvale, Winick, Blumenfeld, Schiavone and Khan are removed.

AND WHEREAS on April 1, 2010, the Panel ordered, pursuant to subsection 127 (8) of the Act that the Amended Temporary Order is extended to June 4, 2010 and that the hearing in this matter is adjourned to June 3, 2010, at 10:00 a.m.;

AND WHEREAS on June 3, 2010, Staff advised the Panel that Staff were requesting that the Amended Temporary Order be extended to December 3, 2010 and that the hearing in this matter be adjourned to December 2, 2010 at 10:00 a.m.;

AND WHEREAS on June 3, 2010, Staff provided the Panel with proof that Richvale, Winick, Blumenfeld, Schiavone, and Khan all consented to Staff's request to extend the Amended Temporary Order and to adjourn the hearing in this matter;

AND WHEREAS on June 3, 2010, the Panel concluded that, pursuant to subsection 127(5) of the Act, in the absence of a continuing cease-trade order, the length of time required to conclude a hearing could be prejudicial

to the public interest and that it was in the public interest to extend the Temporary Order;

AND WHEREAS on June 3, 2010, the Commission ordered, pursuant to subsection 127(8) of the Act, that the Amended Temporary Order be extended to December 3, 2010 and that the hearing in this matter be adjourned to December 2, 2010, at 9:30 a.m.;

AND WHEREAS on November 10, 2010, the Commission issued a Notice of Hearing pursuant to sections 37, 127 and 127.1 of the Act accompanied by a Statement of Allegations, dated November 10, 2010, filed by Staff with respect to Richvale, Winick, Blumenfeld, John Colonna ("Colonna"), Schiavone and Khan ("Staff's Allegations");

AND WHEREAS a hearing was held in this matter on December 2, 2010 at 9:30 a.m.;

AND WHEREAS Staff filed the affidavit of service of Daniela De Chellis, sworn on November 26, 2010, evidencing service of: (a) a certified copy of the Order of the Commission dated June 3, 2010; (b) the Notice of Hearing dated November 10, 2010; and, (c) Staff's Allegations against Richvale, Winick, Blumenfeld, Colonna, Schiavone and Khan (collectively the "Respondents");

AND WHEREAS Staff attended at the hearing on December 2, 2010, and made submissions: (a) seeking an extension of the Temporary Order until the conclusion of the hearing on the merits in relation to Staff's Allegations; (b) advising that disclosure is available to be picked up by the Respondents; and (c) requesting that the matter be adjourned to a date in early 2011 when a confidential pre-hearing conference shall take place;

AND WHEREAS none of the Respondents attended at the hearing on December 2, 2010;

AND WHEREAS on December 2, 2010, the Panel considered the evidence and submissions before it;

AND WHEREAS on December 2, 2010, the Panel determined that satisfactory information has not been provided to the Commission by any of the parties subject to the Temporary Order;

AND WHEREAS the Panel is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED, pursuant to subsection 127(8) of the Act, that the Temporary Order is extended against each of Richvale, Winick, Blumenfeld, Schiavone and Khan until the conclusion of the hearing on the merits in relation to Staff's Allegations; and,

IT IS FURTHER ORDERED that the hearing in this matter is adjourned to February 28th, 2011 at 10:00 a.m. at which time a confidential pre-hearing conference shall take place.

DATED at Toronto this 2nd day of December, 2010

"James D. Carnwath"

2.2.3 Shaun Gerard McErlean et al. – ss. 127(1), 127(7)

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

AND

IN THE MATTER OF
SHAUN GERARD MCERLEAN,
SECURUS CAPITAL INC., AND
ACQUIESCE INVESTMENTS

TEMPORARY ORDER
Section 127(1) & 127(7)

WHEREAS on the 12th day of August, 2010, pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), the Ontario Securities Commission (the "Commission") made the following order against Shaun Gerard McErlean ("McErlean"), Acquiesce Investments ("Acquiesce") and Securus Capital Inc. ("Securus") (collectively the "Respondents");

AND WHEREAS on the 12th day of August, 2010, pursuant to subsection 127(6) of the Act, the Commission ordered that the following Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS by Commission Order dated August 12, 2010, the Commission made the following temporary order (the "Temporary Order");

1. pursuant to clause 2 of subsection 127(1) of the Act, that trading of securities by the Respondents shall cease; and

2. that pursuant to clause 3 of subsection 127(1) of the Act, that the exemptions contained in Ontario securities law do not apply to the Respondents.

AND WHEREAS the Commission held a hearing on August 25, 2010;

AND WHEREAS on the 25th day of August, 2010, the Commission ordered that the Temporary Order be extended to September 29, 2010 and the hearing in this matter be adjourned to September 28, 2010 at 2:30 p.m.;

AND WHEREAS on the 28th day of September, 2010, on the consent of the parties, the Commission ordered that the Temporary Order be extended to October 28, 2010 and the hearing in this matter be adjourned to October 27, 2010 at 1 p.m.;

AND WHEREAS on the 27th day of October, on the consent of the parties, the Commission ordered that the Temporary Order to be extended to December 6, 2010 and

the hearing in this matter be adjourned to December 3, 2010 at 9 a.m.

AND WHEREAS the Commission held a hearing on December 3, 2010;

AND WHEREAS at the hearing on December 3, 2010, the parties consented to the extension of the Temporary Order until the completion of the hearing of this matter and agreed to adjourn the hearing for a pre hearing conference on January 24, 2011 at 10 a.m.;

AND WHEREAS the Commission is satisfied that it is in the public interest to make the following order;

IT IS ORDERED that the Temporary Order be extended until the completion of the hearing of this matter and the hearing of this matter be adjourned to January 24, 2011 at 10:00 a.m. for a pre hearing conference.

DATED at Toronto this 3rd day of December, 2010.

"James D. Carnwath"

2.2.4 Duran Ventures Inc. – s. 1(11)(b)

Headnote

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

Statutes Cited

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

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

AND

IN THE MATTER OF
DURAN VENTURES INC.

ORDER
(clause 1(11)(b))

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

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

AND UPON the Applicant representing to the Commission as follows:

1. The Applicant is a company governed by the *Canada Business Corporations Act* (the "**CBCA**").

2. The Applicant was incorporated under the *Company Act* (British Columbia) on March 5, 1997 and was continued under the CBCA on October 30, 2008.

3. The head office of the Applicant is located at 87 Front Street East, 2nd Floor, Toronto, ON M5E 1B8. The registered office of the Applicant is located at 350 Wellington Street West, Suite G-19, Toronto, ON M5V 3W9.

4. The authorized capital of the Applicant consists of an unlimited number of common shares of which 117,520,958 common shares are issued and outstanding and 100,000,000 preferred shares, of which none are issued and outstanding. An aggregate of 10,647,500 common shares of the Applicant are also reserved for issuance on the exercise of warrants granted by the Applicant. A

further aggregate of 7,342,500 common shares of the Applicant are also reserved for issuance on the exercise of stock options granted by the Applicant.

5. The Applicant became a reporting issuer under the *Securities Act* (Alberta) (the **Alberta Act**) and the *Securities Act* (British Columbia) (the **BC Act**) on April 29, 1999.

6. The Applicant is not currently a reporting issuer or equivalent in any jurisdiction in Canada other than Alberta and British Columbia.

7. The Applicant's common shares are listed on the TSX Venture Exchange (the **TSX-V**) and currently trade under the trading symbol "DRV".

8. The Applicant is not on the list of defaulting reporting issuers maintained pursuant to the Alberta Act and the BC Act and, to the best of its knowledge, is not in default of any requirement of either the Alberta Act or the BC Act or the rules and regulations made thereunder.

9. The Applicant is not in default of any of the rules, regulations or policies of the TSX-V.

10. The continuous disclosure materials filed by the Applicant under the Alberta Act and the BC Act are available on the System for Electronic Document Analysis and Retrieval.

11. The continuous disclosure requirements of the Alberta Act and the BC Act are substantially the same as the requirements under the Act.

12. Pursuant to the policies of the TSX-V, a listed-issuer, which is not otherwise a reporting issuer in Ontario, must assess whether it has a "significant connection to Ontario" (as defined in the policies of the TSX-V) and, upon becoming aware that it has a significant connection to Ontario, promptly make a bona fide application to the Commission to be deemed a reporting issuer in Ontario.

13. The Applicant has determined that it has a "significant connection to Ontario" as its mind and management are principally located in Toronto, Ontario and reasonably believes that beneficial shareholders of the Applicant resident in Ontario own in excess of 10% of the issued and outstanding shares of the Applicant.

14. While the Applicant is not aware of the number of beneficial shareholders resident in the Province of Ontario, the Applicant has 49 registered shareholders resident in the Province of Ontario, including CDS & Co., which hold an aggregate of 111,154,769 common shares, representing approximately 95% of the issued and outstanding shares of the Applicant. Not including CDS & Co., the Applicant has registered shareholders resident in Ontario which hold an aggregate of 8,037,766 common shares, representing approximately 7% of the issued and outstanding common shares of the Applicant. As such, the Applicant reasonably believes that beneficial shareholders of the Applicant resident in Ontario own in excess of 20% of the issued and outstanding shares of the Corporation.

15. Neither the Applicant nor any of its officers, directors, nor, to the knowledge of the Applicant or its directors or officers, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, has:

    (a) been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority;

    (b) entered into a settlement agreement with a Canadian securities regulatory authority; or

    (c) been the subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.

16. Neither the Applicant nor any of its officers, directors, nor, to the knowledge of the Applicant or its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been subject to:

    (a) any known or ongoing or concluded investigations by:

        (i) a Canadian securities regulatory authority; or

        (ii) a court or regulatory body, other than the Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or

    (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

17. Other than set forth below in paragraph 18 of this Order, neither any of the officers or directors of the Applicant, nor, to the knowledge of the Applicant, or its officers and directors, any shareholder holding sufficient securities of the Applicant to

affect materially the control of the Applicant, is or has been at the time of such event an officer or director of any other issuer which is or has been subject to:

(a) any cease trade order or similar order, or order that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or

(b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

18. The statement in paragraph 17, is qualified by the following disclosure:

(a) Mr. Daniel Hamilton, Chief Financial Officer of Duran was the Chief Financial Officer of McLaren Resources Inc. ("McLaren") during which time McLaren was subject to a cease trade order imposed by the Ontario Securities Commission on February 4, 2009 for the failure of McLaren to file its audited annual financial statements and related MD&A for the year ended September 30, 2008. Mr. Hamilton resigned as the Chief Financial Officer of McLaren on March 16, 2009. The cease trade order against McLaren was subsequently revoked on December 22, 2009.

AND UPON the Commission being satisfied that granting this Order would not be prejudicial to the public interest;

IT IS ORDERED pursuant to clause 1(11)(b) of the Act that the Applicant is a reporting issuer for the purposes of Ontario securities law.

DATED at Toronto, this 2nd day of December, 2010.

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

2.2.5 Irwin Boock et al.

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

AND

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

ORDER

WHEREAS on October 16, 2008, the Ontario Securities Commission (the "Commission") commenced the within proceeding by issuing 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");

AND WHEREAS on October 14, 2009, Staff of the Commission ("Staff") brought a disclosure motion (the "Motion") regarding the Respondent, Irwin Boock ("Boock");

AND WHEREAS the Motion was heard by the Commission on October 21, 2009, November 2 and 20, 2009 and January 8, 2010;

AND WHEREAS on December 10, 2009, the Commission ordered that the hearing on the merits of this matter (the "Merits Hearing") shall commence on February 1, 2010;

AND WHEREAS on January 29, 2010, the Commission ordered that the Merits Hearing be adjourned *sine die* pending the release of the Commission's decision on the Motion;

AND WHEREAS on February 9, 2010, the Commission issued a decision on the Motion (the "Disclosure Decision");

AND WHEREAS Boock commenced an Application for Judicial Review before the Superior Court of Justice (Divisional Court) of the Disclosure Decision ("JR Application");

AND WHEREAS counsel for Boock advised the Commission at an attendance on February 24, 2010 that the Divisional Court had advised that it was expected that the JR Application could be heard in advance of the dates

scheduled for the commencement of a hearing into the merits of this matter;

AND WHEREAS on February 24, 2010, the Commission made an order that:

a) the Disclosure Decision be stayed on an interim basis until the earlier of the date of a decision on the merits in the JR Application or September 13, 2010, or until such further date as ordered by the Commission;

b) the parties shall attend at the offices of the Commission on September 13, 2010 at 9:00 a.m. to advise the Commission of the status of the determination of the JR Application (the "Status Hearing"); and

c) the Merits Hearing shall commence on October 18, 2010 and, excluding October 26, 2010, shall continue for three weeks until November 5, 2010 and thereafter on such dates as may be determined by the parties and the Office of the Secretary;

AND WHEREAS Boock is no longer represented by counsel and is currently acting in person;

AND WHEREAS on June 18, 2010, pursuant to Staff's request for an earlier Status Hearing, Staff, Boock, counsel to Stanton DeFreitas ("DeFreitas"), and counsel to Jason Wong ("Wong") attended before the Commission;

AND WHEREAS on June 18, 2010 Boock and Staff provided the Commission with a status update with respect to the JR Application and the Commission made an order adjourning the Status Hearing until June 29, 2010 to give Boock an opportunity to take steps toward perfecting the JR Application;

AND WHEREAS on June 29, 2010, Staff, Boock, counsel to DeFreitas and counsel to Wong attended before the Commission;

AND WHEREAS on June 29, 2010, upon hearing submissions from Staff and Boock, the Commission adjourned the Status Hearing until Thursday, July 15, 2010 at 10:00 a.m. to give Boock an opportunity to take further steps toward perfecting the JR Application;

AND WHEREAS on July 15, 2010, the Commission was advised that the JR Application had been perfected and that a hearing date of October 27, 2010 had been set by the Superior Court of Justice (Divisional Court) for the hearing of the JR Application;

AND WHEREAS on July 15, 2010, the Commission made an order that:

a) the dates for the Merits Hearing, previously set to commence on October 18, 2010, shall be vacated;

b) the Status Hearing currently scheduled for September 13, 2010 shall be vacated;

c) the Status Hearing shall be adjourned until November 29, 2010 at 9:30 a.m. at the offices of the Commission; and

d) the Disclosure Decision shall be stayed on an interim basis until the earlier of the date of a decision on the merits in the JR Application or November 29, 2010, or until such further date as ordered by the Commission

AND WHEREAS on October 27, 2010, the JR Application was heard by the Superior Court of Justice (Divisional Court);

AND WHEREAS on that same date, the Superior Court of Justice (Divisional Court) dismissed the JR Application (the "JR Decision");

AND WHEREAS on November 29, 2010, the Commission held a Status Hearing in this matter, and Staff, Boock and counsel for Wong attended;

AND WHEREAS Boock advised that he intends to retain counsel for purposes of the Merits Hearing;

AND WHEREAS Staff submits that the appeal period in respect of the JR Decision has expired;

AND WHEREAS Staff advised and Boock has confirmed that he has not taken steps in respect of an appeal of the JR Decision;

AND WHEREAS Boock advised that he consents to the release of the material that is subject to the Disclosure Decision;

AND WHEREAS Staff advised that it is seeking to schedule dates for the Merits Hearing and has requested that the Status Hearing be adjourned to January 27, 2011 to give the parties an opportunity to agree upon such dates;

AND WHEREAS Staff advised that it will renew its efforts to contact all the Respondents in respect of setting a date for the Merits Hearing, including Respondents who have not participated to date in this proceeding;

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

IT IS HEREBY ORDERED THAT

a) the Stay shall lapse as of the date of this Order;

b) the Status Hearing shall be adjourned until January 27, 2011 at 2 p.m. at the offices of the Commission, or such other date as may be agreed by the parties

and fixed by the Office of the Secretary; and

c) the Status Hearing may be conducted in writing in advance of January 27, 2011, by way of a draft consent order filed with the Commission setting dates for the Merits Hearing, provided that matters that might otherwise be subject to the Status Hearing do not require an attendance before the Commission.

Dated at Toronto this 29th day of November, 2010.

"Mary G. Condon"

2.2.6 TBS New Media Ltd. et al. – ss. 127(7), 127(8)

FOR IMMEDIATE RELEASE
December 6, 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

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 conference 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 extended the Temporary Order, as amended by the July 12, 2010 Order, to December 7, 2010;

AND WHEREAS on December 6, 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 December 6, 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 10, 2010 order;

IT IS ORDERED that the Temporary Order, as amended by the July 12, 2010 Order, is extended to February 9, 2011;

IT IS FURTHER ORDERED that the Hearing is adjourned to February 8, 2011 at 2:30 p.m. for a confidential pre-hearing conference.

Dated at Toronto this 6th day of December, 2010.

“James D. Carnwath”

2.2.7 Innovative Gifting Inc. et al. – s. 127

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

AND

IN THE MATTER OF
INNOVATIVE GIFTING INC., TERENCE LUSHINGTON, Z2A CORP., AND CHRISTINE HEWITT

ORDER
(Section 127)

\

WHEREAS on February 20, 2009, the Ontario Securities Commission (the "Commission") issued a temporary cease trade 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, *inter alia*, that all trading in securities by Innovative Gifting Inc. ("IGI") shall cease (the "Temporary Order");

AND WHEREAS on February 20, 2009, 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 February 23, 2009, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on March 6, 2009 at 10:00 a.m.;

AND WHEREAS the Notice of Hearing set out that the Hearing was to consider, *inter alia*, whether, in the opinion of the Commission, it was 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 March 6, July 10, November 30, 2009 and on February 3, 2010, hearings were held before the Commission and the Commission ordered that the Temporary Order be extended;

AND WHEREAS on February 3, 2010, the Commission ordered that the Temporary Order be extended until March 8, 2010 and the hearing with respect to the matter be adjourned to March 5, 2010;

AND WHEREAS on March 2, 2010, the Commission issued a Notice of Hearing to consider, *inter alia*, whether to make orders, pursuant to sections 127 and 127.1 of the Act, against IGI, Terence Lushington ("Lushington"), Z2A Corp. ("Z2A") and Christine Hewitt ("Hewitt") (collectively the "Respondents");

AND WHEREAS on March 2, 2010, Staff of the Commission issued a Statement of Allegations against the Respondents;

AND WHEREAS Staff served the Respondents with the Notice of Hearing dated March 2, 2010 and Staff's Statement of Allegations dated March 2, 2010. Service by Staff was evidenced by the Affidavit of Service of Joanne Wadden, sworn on March 4, 2010, which was filed with the Commission;

AND WHEREAS on March 5, 2010, the Commission ordered that the Temporary Order be extended until April 13, 2010 and the hearing with respect to the matter be adjourned to April 12, 2010;

AND WHEREAS on April 12, 2010, counsel for Staff, counsel for IGI and Lushington, and counsel for Z2A and Hewitt appeared before the Commission and made submissions;

AND WHEREAS on April 12, 2010, counsel for Staff requested an extension of the Temporary Order as against IGI;

AND WHEREAS on April 12, 2010, counsel for IGI and Lushington consented to the extension of the Temporary Order as against IGI;

AND WHEREAS on April 12, 2010, counsel for Staff provided counsel for the Respondents with Staff's initial disclosure in this matter;

AND WHEREAS on April 13, 2010, the Commission issued an order that: (1) the Temporary Order is extended as against IGI until July 22, 2010; and (2) the hearing with respect to the Notice of Hearing dated March 2, 2010 and with respect to the Temporary Order is adjourned to July 21, 2010 at 10:00 a.m., at which time a pre-hearing conference will be held;

AND WHEREAS on July 21, 2010, a pre-hearing conference was commenced and counsel for Staff, counsel for IGI and Lushington, and counsel for Z2A and Hewitt appeared before the Commission and made submissions;

AND WHEREAS on July 21, 2010, counsel for Staff requested an extension of the Temporary Order as against IGI and counsel for IGI and Lushington consented to the extension of the Temporary Order as against IGI;

AND WHEREAS on July 21, 2010, the Commission issued an order that: (1) the Temporary Order be extended as against IGI until September 10, 2010; and (2) the hearing with respect to the Notice of Hearing dated March 2, 2010 and with respect to the Temporary Order be adjourned to September 9, 2010 at 10:00 a.m., at which time the pre-hearing conference will be continued;

AND WHEREAS on September 9, 2010, the pre-hearing conference was continued and counsel for Staff and counsel for IGI and Lushington appeared before the Commission and made submissions. Counsel for Z2A and Hewitt did not attend but counsel for Staff advised the Commission of counsel's submissions;

AND WHEREAS on September 9, 2010, all counsel submitted that the hearing be adjourned and counsel for Staff requested an extension of the Temporary Order as against IGI, and counsel for IGI and Lushington consented to the extension of the Temporary Order as against IGI;

AND WHEREAS on September 9, 2010, the Commission ordered that the Temporary Order be extended as against IGI until November 5, 2010 and that the hearing with respect to the Notice of Hearing dated March 2, 2010 and with respect to the Temporary Order be adjourned to November 4, 2010 at 3:00 p.m., at which time the confidential pre-hearing conference will be continued and dates will be fixed for the hearing on the merits in this matter;

AND WHEREAS on November 3, 2010, all parties requested, in writing, that the pre-hearing conference scheduled for November 4, 2010 be adjourned to 10 a.m. on December 6th, 2010 and at that time dates will be fixed for the hearing on the merits in this matter;

AND WHEREAS on November 3, 2010, counsel for IGI advised, in writing, that IGI consented to the extension of the Temporary Order as against IGI until after the new date set for the continuing pre-hearing conference;

AND WHEREAS on November 4, 2010, the Commission ordered that the Temporary Order be extended as against IGI until December 7th, 2010 and that the hearing with respect to the Notice of Hearing dated March 2, 2010 and with respect to the Temporary Order be adjourned to December 6th, 2010 at 10:00 a.m., at which time the confidential pre-hearing conference will be continued and dates will be fixed for the hearing on the merits in this matter;

AND WHEREAS on December 6, 2010, all parties attended the pre-hearing conference and all parties made submissions to the Commission;

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

IT IS ORDERED that the hearing on the merits in this matter shall commence on May 2, 2011 and continue until May 16, 2011, with the exception that the hearing on the merits will not be heard on May 3, 2011;

IT IS FURTHER ORDERED that counsel for Z2A and Hewitt will make a motion to the Commission on March 30, 2011 at 2 p.m. for severance of this matter; and

IT IS FURTHER ORDERED that the Temporary Order as against IGI is extended until the conclusion of the hearing on the merits.

DATED at Toronto this 6th day of December, 2010.

"James E. A. Turner"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 X Inc. – s. 17

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

AND

IN THE MATTER OF
X INC.

CONFIDENTIAL REASONS AND ORDER
(SECTION 17)

Hearing:	December 2, 2009		
Reasons and Decision:	March 25, 2010		
Panel:	James E. A. Turner Carol S. Perry	– –	Vice-Chair Commissioner
Counsel:	Joel Wiesenfeld Andrew Gray (Torys LLP)	–	For the Bank
	Johanna Superina Cullen Price	–	For Staff of the Ontario Securities Commission

TABLE OF CONTENTS

CONFIDENTIAL REASONS AND ORDER

I. BACKGROUND

[1] This is a hearing to determine whether it is in the public interest to grant Staff's request that the Ontario Securities Commission (the "**Commission**") issue an order under subsection 17(1)(b) of the *Securities Act*, R.S.O. 1990, c. S.5., as amended (the "**Act**") permitting the disclosure of documents compelled pursuant to a summons dated November 13, 2008 issued under section 13 of the Act (the "**Summons**"). The Summons was issued pursuant to an investigation order of the Commission dated November 11, 2008 issued pursuant to section 11(1)(a) and (b) of the Act (the "**Section 11 Order**").

[2] Staff seeks an order permitting a foreign securities regulator (the "**Foreign Securities Regulator**") to disclose to a foreign criminal law enforcement agency (the "**Foreign Criminal Law Enforcement Agency**") documents (the "**Documents**") relating to two account holders obtained from a bank (the "**Bank**") pursuant to the Summons.

[3] Staff has given notice to the Bank as required under subsection 17(2)(b) of the Act. Staff seeks to obtain a disclosure order under subsection 17(1)(b) of the Act without giving notice to the two account holders under subsection 17(2)(a) of the Act and without obtaining their consent under subsection 17(3) of the Act.

[4] This matter relates only to documents provided to Staff pursuant to the Summons. It does not relate to compelled testimony. Staff submits that its request is consistent with the purposes and objectives of the Act and that it would be in the public interest for the Commission to authorize the disclosure because it will permit the Commission to assist the Foreign Securities Regulator and Foreign Criminal Law Enforcement Agency in enforcing securities and criminal laws. Providing that assistance is part of the Commission's mandate and consistent with the Commission's policy of international co-operation in securities enforcement matters.

[5] The Bank submits that disclosure under subsection 17(1)(b) of the Act is not permitted without notice being provided to the two account holders as the persons "named by the Commission" in the Summons and as the persons directly affected by the proposed disclosure order.

[6] The hearing of this application was held on December 2, 2009. In light of the confidential nature of the application, Staff requested that the hearing be held in camera pursuant to section 9 of the *Statutory Powers Procedure Act*, R.S.O. 1990, Chap. S. 22, as amended. As a result, these reasons will be treated as confidential until the need to preserve confidentiality becomes unnecessary. We intend, however, to issue a redacted version of these reasons as soon as practicable.

[7] Before we address whether disclosure of the Documents should be ordered pursuant to subsection 17(1) of the Act, we must determine (i) whether the account holders are entitled to reasonable notice and an opportunity to be heard under subsection 17(2)(a) of the Act, and (ii) whether written consent must be obtained from the account holders under subsection 17(3) of the Act.

II. THE FACTS

[8] For purposes of this matter, the relevant facts are as follows:

(a) The Foreign Securities Regulator obtained the Documents pursuant to the Section 11 Order which was issued under subsection 11(1)(a) and (b) of the Act.

(b) Pursuant to the Section 11 Order, Staff delivered the Summons to the Bank requiring the production of documents relating to the two account holders.

(c) The Bank responded to the Summons and delivered the Documents to Staff.

(d) Staff seeks an order under subsection 17(1) of the Act permitting the Foreign Securities Regulator to disclose the Documents to the Foreign Criminal Law Enforcement Agency, which has general authority to bring criminal proceedings in the foreign jurisdiction.

(e) Staff gave notice of its application to the Bank pursuant to subsection 17(2)(b) of the Act, as the person from whom the Documents were obtained.

(f) The two account holders are identified in the Summons but are not identified in the Section 11 Order. The account holders are both corporations.

[9] The Bank objects to the Commission making the proposed order without notice to the two account holders under subsection 17(2)(a) of the Act, as persons "named by the Commission".

III. THE ISSUES

[10] The application made by Staff raises the following issues:

(a) Are the account holders entitled to reasonable notice and an opportunity to be heard under subsection 17(2)(a) of the Act in connection with the application?

(b) Is the written consent of the account holders required in these circumstances under subsection 17(3) of the Act?

(c) Is it in the public interest for the Commission to make an order under subsection 17(1) of the Act authorizing the disclosure of the Documents by the Foreign Securities Regulator to the Foreign Criminal Law Enforcement Agency?

[11] We decided that it was preferable to bifurcate the hearing of the application and to address the first two issues raised by Staff's application before hearing submissions on the third issue at a separate hearing. As a result, it was unnecessary for us to address many of the submissions of the Bank set forth in paragraph 19 of these reasons.

IV. ANALYSIS

A. Are the Account Holders Entitled to Reasonable Notice?

1. *Submissions of Staff*

[12] Staff submits that the only persons or companies entitled to notice under subsection 17(2) of the Act are the persons or companies from whom information is obtained (subsection 17(2)(b)) and the persons or companies "named by the Commission" (under subsection 17(2)(a) of the Act). Staff says that no person or company, other than the Bank, was named by the Commission for this purpose. Staff submits that the reference to persons or companies "named by the Commission" is a reference back to "the name of any person examined or sought to be examined" contained in subsection 17(1)(b). In this case, Staff submits that means only the Bank.

[13] Staff submits that there is no ambiguity in subsection 17(2)(a) of the Act and that we should not read words into clause (a). Staff submits that there is no basis to conclude that clause (a) should be interpreted as meaning persons that are "named in a section 11 order", "subjects of investigation", "affected parties" or "directly affected" by an order under subsection 17(1). Staff says that other sections of the Act include clear language expressly to that effect when that is intended by the Act.

[14] Staff submits that the Commission is a signatory to the International Organization of Securities Commissions' Memorandum of Understanding (the "**MoU**") with respect to co-operating in the international enforcement of securities laws. Staff submits that the public interest in international co-operation pursuant to the MoU clearly outweighs the Bank's (and, if considered, the account holders') interest in confidentiality. The disclosure sought by Staff is consistent with the purpose of the Act in facilitating international co-operation for the enforcement of securities laws, including criminal prosecution in respect of such matters.

[15] Staff submits that notice to third parties, such as the account holders, is not required under subsection 17(2) of the Act. Staff relies on the decision in *Re Black* where the Commission stated:

> In our view, subsection 17(2) of the Act does not require notice to be given to these third persons. Staff obtained these documents from Ravelston and gave notice to Ravelston. Thus, we are able to authorize the use and disclosure of documents produced by, and on behalf of Ravelston without further notice.
>
> *Re Black* (2008), 31 OSCB 10397 ("***Re Black***") at para. 249.

[16] Further, Staff refers us to *Re Royal Bank*, where the Commission held that customer account transaction information is a bank's property, not the customer's. Accordingly, the account holders have no property interest in the Documents and ought not to be given notice of Staff's application. Staff relies, in particular, on the following statement from *Re Royal Bank*:

> We are of the view that a summons issued pursuant to section 13 of the *Securities Act* is a "writ or process" issued in or pursuant to a legal proceeding. Consequently, these types of summonses may fall under subsection 462(1(a) of the Bank Act. However, we agree with Staff that the summons at issue in this proceeding does not fall under this subsection. According to a plain language reading of subsection 462(1)(a), it is clear that it applies to property; [sic] that a bank has possession of, belonging to a person. Consequently, this section does not apply to account

> transaction information because such information is not property belonging to a person, rather, it is the bank's property. Thus, subsection 462(1) of the Bank Act does not apply to the section 13 summons at issue in this proceeding.
>
> *Re Royal Bank* (2002), 25 OSCB 1855 ("***Re Royal Bank***") at para. 36.

2. *Submissions of the Bank*

[17] The Bank submits that the Documents obtained from the Bank include correspondence from and to the account holders, audiotapes, account documentation (including account opening documents and authorizations), account statements and documents evidencing transfers of funds.

[18] The Bank submits that it is evident from the plain language of the Act that disclosure under subsection 17(2) is not permitted in these circumstances without notice being provided to the account holders as persons "named by the Commission" in the Summons and as persons directly affected by the proposed disclosure order. Counsel for the Bank also stated his personal view that notice should also be given to the persons named in the Section 11 Order as persons "named by the Commission". In addition, the Bank submits that the account holders must consent under subsection 17(3) of the Act in order for the Commission to provide compelled information to a domestic or international police force or person responsible for the enforcement of criminal law in Canada or elsewhere.

[19] The Bank relies on the decision in *Re Black* which the Bank submits establishes the following principles:

(a) the power of the Commission to compel a person to provide evidence is a broad and unusual power, providing an investigator with a highly intrusive power to compel by summons the delivery of documentary evidence and the attendance of a witness to provide oral evidence;

(b) the coercive powers of sections 11 and 13 of the Act are balanced by the confidentiality and non-disclosure protections contained in sections 16 and 17;

(c) section 17 of the Act provides limited exceptions to the confidentiality regime created by section 16;

(d) disclosure under subsection 17(1) of the Act will be appropriate only in the "most unusual circumstances", where the public interest in permitting disclosure clearly outweighs the confidentiality protections provided in the Act;

(e) the presumption is in favour of protecting confidentiality, not the other way around, and the Commission should order disclosure only to the extent necessary to carry out its mandate under the Act;

(f) the person seeking a disclosure order has the onus of demonstrating that the disclosure of the evidence is in the public interest;

(g) the public interest engaged by subsection 17(1) of the Act requires a balancing of the integrity and efficacy of the investigative process, the right of those investigated to privacy and confidences, and the potential harm and prejudice that could be caused by the disclosure;

(h) in considering whether to order disclosure under subsection 17(1) of the Act, the Commission must consider whether parties may suffer harm as a result of the disclosure and whether the Commission will lose control over the evidence and its use if it is disclosed;

(i) any disclosure of compelled evidence obtained under the Act for purposes that are outside the scope of the Act and the supervisory role of the Commission will not generally be in the public interest; and

(j) disclosure of compelled evidence to the Foreign Criminal Law Enforcement Agency is prohibited without the consent of the relevant person or company.

(*Re Black*, *supra*, at paras. 68, 76, 78, 80, 82, 83, 112, 113, 116, 124, 133, 220, 221, 223, 230, 232, 233 and 236).

[20] The Bank submits that it owes its customers a duty of confidentiality. The Bank's duty of confidentiality includes the requirement to provide notice to a customer when the Bank is compelled by law to disclose the customer's confidential information to third parties (*Robertson v. CIBC*, [1995] 1 All E.R. 824 (P.C.) and *Re Royal Bank*, *supra*, at para. 4).

[21] While the Bank has no "personal" interest in whether the Commission orders disclosure, it does have an interest in ensuring that any disclosure order in respect of its customers is made in a manner that is consistent with and permitted by the Act. This interest arises, in part, as a result of the duty of confidentiality it owes to its customers.

3. *The Legal Framework*

[22] The investigation regime under Part VI of the Act gives the Commission power to compel testimony and documents and imposes strict confidentiality requirements. Sections 11, 13, 16, 17 and 18 of the Act are relevant to Staff's application. We have set out the relevant portions of those sections in Schedule A to these reasons.

[23] Section 11 authorizes the Commission to appoint persons to make such investigation as it considers expedient for the due administration of Ontario securities law and to assist in the due administration of the securities laws in another jurisdiction.

[24] Section 11 of the Act serves an important and legitimate public interest: to facilitate the investigation of violations of the Act. In *British Columbia Securities Commission v. Branch*, Justice L'Heureux-Dube, in her concurring opinion, held that the investigatory powers provided for in the Act are "the primary vehicle for the effective investigation and deterrence of insider trading, stock manipulation, and other trading practices contrary to the public interest…" (*British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3 ("***Branch***") at para. 79).

[25] In *Branch*, the Supreme Court of Canada held that the purposes of the British Columbia *Securities Act*, namely the protection of investors, capital markets efficiency and ensuring public confidence in the regulatory regime, are of substantial public importance and justify the power of a securities commission to compel testimony and documents.

[26] Section 13 of the Act permits the persons making an investigation under an order issued pursuant to section 11 or 12 of the Act, to compel a person by summons to provide oral testimony under oath and to provide documentary evidence.

[27] The Commission commented on the importance of that power in *Re Black*:

> The power of the Commission to compel a person to come forward and give statements under oath is a broad and unusual power afforded by the Legislature to the Commission to enable it to carry out its responsibilities to the public under the Act. The Court of Appeal has recognized that the right to compel a witness to make a statement under oath is "perhaps the most important tool which Staff has in conducting investigations". (*Biscotti v. Ontario Securities Commission* (1991), 1 O.R. (3d) 409 at para. 10 (C.A.).)
>
> *Re Black*, *supra*, at para. 112.

[28] Subsection 16(1) of the Act provides that, except in accordance with section 17, no person summoned may disclose, except to their legal counsel, the nature or content of an investigation order, the name of a person examined, any testimony given, the nature and content of the questions asked or documents requested or the fact that any document was produced.

[29] Subsection 16(2) of the Act provides that any information compelled under section 13 is for the exclusive use of the Commission, or of any other regulators specified in the investigation order, and may not be disclosed or produced except as permitted under section 17.

[30] Section 17 of the Act contemplates circumstances in which testimony, information and documents compelled under section 13 of the Act may be disclosed or produced. Subsection 17(1) provides that compelled evidence may be disclosed where the Commission considers that it would be in the public interest to make an order authorizing disclosure.

[31] No order under subsection 17(1) may be made unless notice and an opportunity to be heard is given to "persons and companies named by the Commission" (subsection 17(2)(a)) and to "the person or company that gave the testimony or from which the information was obtained" (subsection 17(2)(b)).

4. *Analysis of* Re Black

[32] Staff has given notice of this application to the Bank, which is the person from whom Staff obtained the Documents under the Summons. Staff submits that the Commission has held that third parties are not entitled to notice under subsection 17(2).

[33] In *Re Black*, the documents obtained under a section 13 summons included documents that the company named in the summons had obtained from third parties. The Commission concluded as follows:

> As discussed above, we have determined that it would only be in the public interest under subsection 17(1) of the Act to authorize the use and disclosure of documents produced by, and on behalf of Ravelston. Accordingly, we must ensure the Commission has given the required notice in subsection 17(2) of the Act with respect to these documents before we authorize their use and disclosure.
>
> Ravelston was given notice of this Application and an opportunity to be heard; in fact it made written submissions. However, the documents produced by, or on behalf of Ravelston may include documents Ravelston obtained from third persons who have not received notice of this Application. If we determine that these third persons are entitled to notice, subsection 17(2) of the Act would prevent us from authorizing the use and disclosure of the documents.
>
> In our view, subsection 17(2) of the Act does not require notice to be given to these third persons. Staff obtained these documents from Ravelston and gave notice to Ravelston. Thus, we are able to authorize the use and disclosure of documents produced by, and on behalf of Ravelston without further notice. …
>
> *Re Black*, *supra*, at paras. 247 to 249

[34] While the Commission concluded in *Re Black* that there was no obligation to give notice to the relevant third parties pursuant to subsection 17(2) of the Act, the reasons of the Commission do not indicate whether the third parties were named by the Commission in the summons pursuant to which the documents were obtained. We do not know whether only Ravelston was named in that summons; it seems unlikely, however, that the relevant third parties would have been named. Accordingly, in *Re Black*, the obligation to provide notice pursuant to subsections 17(2)(a) *and* (b) may have been fulfilled by the notice to Ravelston. Further, it is not clear from the reasons in *Re Black* whether it was practicable for the Commission to provide notice to the third parties. We note that, in *Re Black*, the application was made on an urgent basis to permit the use of the compelled evidence by the respondents in making full answer and defence in an approaching U.S. criminal proceeding. As a result, giving notice to the third parties may not have been practicable in the circumstances.

[35] We also note that the Commission, in *Re Black*, in authorizing disclosure of the documents, (i) had the consent to that disclosure of Ravelston, the company named in the summons and a respondent in the Commission proceeding, (ii) received no objections from other respondents to the disclosure, and (iii) imposed a series of conditions to limit the use of the documents and to provide legal protections in connection with their use.

[36] We do not read the reasons in *Re Black* as having concluded that notice is never required to be given under subsection 17(2)(a) to a third party other than the person who gave the testimony or from whom the information was obtained. We would distinguish the circumstances before us from those in *Re Black* on the basis that, in this case (i) the two account holders were specifically identified in the Summons, (ii) we are not aware of any reason why it would not be practicable to give notice to them, and (iii) the application is for an order permitting disclosure to the Foreign Criminal Law Enforcement Agency, rather than for disclosure to permit the use of compelled evidence by a defendant in a U.S. criminal proceeding for the purposes of making full answer and defence.

5. *Interpretation of Subsection 17(2)(a)*

[37] In order to resolve Staff's application, we must interpret the language of subsection 17(2)(a) of the Act. In doing that, we will apply the principle of statutory interpretation set out by the Supreme Court of Canada in *BellExpressVu Limited Partnership v. Rex* [2002] S.C.J. No. 43 as follows:

> In Elmer Driedger's definitive formulation, found at p. 87 of his *Construction of Statutes* (2nd ed. 1983):
>
> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> Driedger's modern approach has been repeatedly cited by this Court as the preferred approach to statutory interpretation across a wide range of interpretive settings [citations omitted] …
>
> Other principles of interpretation – such as the strict construction of penal statutes and the "Charter values" presumption – only receive application where there is ambiguity as to the meaning of a provision.

In interpreting subsection 17(2)(a), we must recognise the regulatory context of that section within the scheme of the Act and the objective of the Commission in ensuring compliance with that regulatory scheme.

[38] We certainly agree with Staff that one of the important purposes of the Act includes international co-operation in the enforcement of securities laws and that the Commission should, to the extent it reasonably can, comply with the principles reflected in the MOU. That does not mean, however, that such interest necessarily outweighs the interests of the Bank and the account holders in these circumstances.

[39] There is no question that the Commission's investigatory power under section 11 of the Act provides a powerful means by which the Commission carries out its mandate to protect investors and regulate capital markets. In interpreting section 17 of the Act, it is important that we recognize the potentially intrusive nature of the Commission's investigatory power under section 11 and the need to balance that power by the protections and confidentiality obligations contained in sections 16 and 17. The use of the power to compel testimony and evidence is critical to achieving the Commission's regulatory mandate, but that power must be exercised in a manner that takes account of the legitimate rights and expectations as to privacy of the parties compelled.

[40] Subsection 17(2)(a) of the Act requires reasonable notice of an application under subsection 17(1) to be given to "persons or companies named by the Commission". In our view, those words are ambiguous in the circumstances. While we agree with Staff that we should not read broad words into the section, we must give some reasonable interpretation to the words used. Staff's interpretation of them did not assist us. In interpreting the words of subsection 17(2)(a), it is clear that they refer to persons or companies other than the person or company that gave the testimony or from whom the documents or information were obtained. Those latter persons are expressly specified in subsection 17(2)(b) of the Act as persons to whom notice must be given. It is equally clear that clauses (a) and (b) are conjunctive, joined by the word "and", suggesting two separate categories of persons.

[41] In this case, the two account holders are named by the Commission in the Summons. Moreover, they are the persons who have the real interest in whether the Documents are disclosed to the Foreign Criminal Law Enforcement Agency notwithstanding their privacy interests. As noted above, the Bank has an obligation of confidentiality with respect to its customers' account information but, apart from that obligation, it has no particular interest in whether or not the Commission orders that the Documents be disclosed to the Foreign Criminal Law Enforcement Agency under subsection 17(1) of the Act.

6. *Conclusion as to Required Notice*

[42] In our view, the phrase "persons or companies named by the Commission" should be interpreted in these circumstances in a manner that recognises the parties with the real interest in whether the Documents are disclosed. That is the two account holders. In our view, the "persons or companies named by the Commission" constitute at least the persons or companies who are identified in a summons issued under section 13 of the Act. If we had been in any doubt as to that conclusion, we believe that we have discretion, in any event, to have required that notice of the application be given to the two account holders.

[43] We are not aware of any impracticality in this case in giving reasonable notice to the account holders and providing them an opportunity to be heard on this application.

[44] We are not expressing any view on whether subsection 17(2)(a) of the Act would also apply to persons or companies named in a section 11 order.

[45] In our view, this matter does not turn on the question of who legally owns the Documents. The Bank may be the legal owner. Clearly, however, the Documents reflect information about the customer accounts. It is the customers that have the principal privacy interest with respect to the information in the Documents and it is those customers who could be prejudiced by the disclosure of the Documents to the Foreign Criminal Law Enforcement Agency.

[46] For these reasons, we have concluded that notice is required to be given pursuant to subsection 17(2)(a) of the Act to the account holders named by the Commission in the Summons. Accordingly, the account holders are entitled to notice of Staff's application.

B. Are the Written Consents of the Account Holders Required in These Circumstances?

1. *Submissions of Staff*

[47] Staff submits that the application does not relate to testimony given by the account holders, but only to documents provided to Staff. Staff argues that the compulsion of documents does not attract the same protections against self-incrimination as testimony. Further, Staff submits that the Documents, as business records, have a very low expectation of privacy attached to them.

[48] Staff submits that the Supreme Court of Canada held in *Branch* that there are no self-incrimination concerns in respect of compelled documents that are pre-existing. Moreover, Staff submits that the constitutional right against self-incrimination does not apply to corporations. The account holders in this case are both corporations.

2. *Submissions of the Bank*

[49] The Bank submits that the Commission's decision and reasoning in *Re Black* is directly applicable to this issue. In *Re Black*, the Commission dismissed the motion for disclosure, other than in respect of one corporate respondent that consented to the disclosure. The Commission stresses in its reasons that it would lose control over the use of the compelled evidence once it was disclosed, and that it could be used to incriminate persons in U.S. criminal proceedings where the protection against self-incrimination is not available on the same basis as in Canada.

[50] The Bank points out that in *Re Black* disclosure was ordered by the Commission with respect to one corporate respondent because that party consented to the disclosure order. In view of the corporation's consent, the Commission was not required to consider that party's privacy interest or the question of self-incrimination.

[51] The Bank submits that, in a subsequent decision, the Commission placed significant weight on the consent of the party affected in determining whether to order disclosure under subsection 17(1) of the Act (*Re Y* (2009) 32 OSCB 7188).

3. *The Legal Framework*

[52] Subsection 17(3) of the Act prohibits disclosure of "testimony" to a person responsible for law enforcement in Canada or another jurisdiction without the consent of the person from whom the testimony was obtained.

[53] Section 18 of the Act provides that "testimony" given under section 13 cannot be admitted as evidence in a quasi-criminal prosecution under section 122 of the Act or in any other prosecution governed by the *Provincial Offences Act*. A similar restriction is imposed under subsection 17(7) with respect to disclosure of testimony under subsection 17(6).

4. *Analysis*

[54] The Bank's submissions as to why disclosure of the Documents should not be made rest primarily on concerns as to self-incrimination with respect to compelled testimony. Staff's request, however, does not seek authority to disclose compelled testimony. Rather, the request relates to disclosure of the Documents obtained from the Bank under the Summons. It appears to us that the Act treats these two categories of compelled evidence differently. While compelled testimony invokes the protection that is reflected in sections 17(8) and 18 of the Act, the compulsion of documents generally does not. It seems to us that there is a legitimate rationale for the Act making that distinction.

[55] It is clear that subsection 17(1) by its language distinguishes between testimony and other types of compelled documents and information. In contrast, subsection 17(3) refers specifically to "testimony", and not documents or information, and requires consent to "disclosure of testimony". To reiterate, we are not being asked to make an order permitting disclosure of testimony; we are being asked to order disclosure of the Documents produced by the Bank.

[56] The Bank submits that the Commission concluded in *Re Black* that the prohibition in subsection 17(3) of the Act applies to both testimony and documentary evidence. That conclusion is based on the following passage:

> However, the issue in this Application is not whether the Applicants can disclose the Evidence to the U.S. Attorney; that would be prohibited by subsection 17(3) of the Act. The issue is whether the Applicants can use and disclose the Evidence in the U.S. Criminal Proceeding for the purposes of making full answer and defence.
>
> *Re Black*, *supra*, at para. 68.

For purposes of the reasons in *Re Black*, the term "Evidence" was defined to include both testimony and documents.

[57] Based on our reading of *Re Black*, the Commission did not expressly turn its mind to the distinction between testimony and documents when it referred to subsection 17(3) of the Act. In the passage set forth in paragraph 56 of these reasons, the Commission was primarily contrasting the circumstances that it was addressing, which did not involve direct disclosure to the U.S. Attorney. In our view, the Commission did not come to a substantive conclusion that subsection 17(3) of the Act applies to both testimony and documents. Accordingly, in our view, the passage referred to above does not resolve the issue before us.

[58] We agree with Staff that the compulsion of documents does not generally attract the same concerns as to self-incrimination as the compulsion of testimony. In any event, there is a very low expectation of privacy related to documents that

constitute pre-existing business records. We note in this respect, however, that not all of the Documents may be properly characterized as business records. We did not receive full submissions on that question.

5. *Conclusion as to Required Consent*

[59] While we have set forth our preliminary analysis above, because of our conclusion that notice of Staff's application should be given to the account holders, we will not come to a final conclusion on the question of whether the account holders' consents are required under subsection 17(3) in this matter. It may be that the account holders will wish to make submissions to us on that issue.

C. Conclusion

[60] For the reasons discussed above, we have concluded that reasonable notice of Staff's application and an opportunity to be heard shall be given pursuant to subsection 17(2)(a) of the Act to the account holders named by the Commission in the Summons.

[61] If Staff wishes to proceed with the application, it should contact the Secretary's Office to schedule a hearing, upon notice to the Bank and the account holders, to address the remaining issues, including whether in the circumstances it is in the public interest for us to order under subsection 17(1) of the Act that the Documents be disclosed to the Foreign Criminal Law Enforcement Agency.

Dated the 25th day of March, 2010.

"James E. A. Turner"

"Carol S. Perry"

Schedule A

Relevant Provisions of the *Securities Act* (Ontario)

Subsection 11(1) of the Act provides as follows:

> **11.** (1) **Investigation order** – The Commission may, by order, appoint one or more persons to make such investigation with respect to a matter as it considers expedient,
>
> (a) for the due administration of Ontario securities law or the regulation of the capital markets in Ontario; or
>
> (b) to assist in the due administration of the securities laws or the regulation of the capital markets in another jurisdiction.

Subsection 13(1) of the Act provides as follows:

> **13.** (1) **Power of investigator or examiner** – A person making an investigation or examination under section 11 or 12 has the same power to summon and enforce the attendance of any person and to compel him or her to testify on oath or otherwise, and to summon and compel any person or company to produce documents and other things, as is vested in the Superior Court of Justice for the trial of civil actions, and the refusal of a person to attend or to answer questions or of a person or company to produce such documents or other things as are in his, her or its custody or possession makes the person or company liable to be committed for contempt by the Superior Court of Justice as if in breach of an order of that court.

Section 16 of the Act provides as follows:

> **16.** (1) **Non-disclosure** – Except in accordance with section 17, no person or company shall disclose at any time, except to his, her or its counsel,
>
> (a) the nature or content of an order under section 11 or 12; or
>
> (b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13.
>
> (2) **Confidentiality** – If the Commission issues an order under section 11 or 12, all reports provided under section 15, all testimony given under section 13 and all documents and other things obtained under section 13 relating to the investigation or examination that is the subject of the order are for the exclusive use of the Commission or of such other regulator as the Commission may specify in the order, and shall not be disclosed or produced to any other person or company or in any other proceeding except as permitted under section 17.

Section 17 of the Act provides as follows:

> **17.** (1) **Disclosure by Commission** – If the Commission considers that it would be in the public interest, it may make an order authorizing the disclosure to any person or company of,
>
> (a) the nature or content of an order under section 11 or 12;
>
> (b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13; or
>
> (c) all or part of a report provided under section 15.
>
> (2) **Opportunity to object** – No order shall be made under subsection (1) unless the Commission has, where practicable, given reasonable notice and an opportunity to be heard to,

(a) persons and companies named by the Commission; and

(b) in the case of disclosure of testimony given or information obtained under section 13, the person or company that gave the testimony or from which the information was obtained.

(3) **Disclosure to police** – Without the written consent of the person from whom the testimony was obtained, no order shall be made under subsection (1) authorizing the disclosure of testimony given under subsection 13 (1) to,

(a) a municipal, provincial, federal or other police force or to a member of a police force; or

(b) a person responsible for the enforcement of the criminal law of Canada or of any other country or jurisdiction.

(4) **Terms and conditions** – An order under subsection (1) may be subject to terms and conditions imposed by the Commission.

(5) **Disclosure by court** – A court having jurisdiction over a prosecution under the *Provincial Offences Act* initiated by the Commission may compel production to the court of any testimony given or any document or other thing obtained under section 13, and after inspecting the testimony, document or thing and providing all interested parties with an opportunity to be heard, the court may order the release of the testimony, document or thing to the defendant if the court determines that it is relevant to the prosecution, is not protected by privilege and is necessary to enable the defendant to make full answer and defence, but the making of an order under this subsection does not determine whether the testimony, document or thing is admissible in the prosecution.

(6) **Disclosure in investigation or proceeding** – A person appointed to make an investigation or examination under this Act may disclose or produce anything mentioned in subsection (1), but may do so only in connection with,

(a) a proceeding commenced or proposed to be commenced by the Commission under this Act; or

(b) an examination of a witness, including an examination of a witness under section 13.

(7) **Disclosure to police** – Without the written consent of the person from whom the testimony was obtained, no disclosure shall be made under subsection (6) of testimony given under subsection 13 (1) to,

(a) a municipal, provincial, federal or other police force or to a member of a police force; or

(b) a person responsible for the enforcement of the criminal law of Canada or of any other country or jurisdiction.

Section 18 of the Act provides as follows:

18. Prohibition on use of compelled testimony – Testimony given under section 13 shall not be admitted in evidence against the person from whom the testimony was obtained in a prosecution for an offence under section 122 or in any other prosecution governed by the *Provincial Offences Act*.

3.1.2 X Inc. – Decision (Held In Camera)

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

AND

IN THE MATTER OF
X INC.

DECISION
(HELD *IN CAMERA*)

Hearing:	August 31, 2010 and September 8, 2010		
Decision:	October 26, 2010		
Panel:	James E. A. Turner	–	Vice-Chair (Chair of the Panel)
	Carol S. Perry	–	Commissioner
	James D. Carnwath	–	Commissioner
Counsel:	Karen Manarin Sean Horgan Cullen Price Pavel Malysheuski	–	for Staff of the Ontario Securities Commission
	Joel Wiesenfeld Andrew Gray	–	for the Bank

DECISION

COMMISSIONER CARNWATH

[1] The Executive Director of the Ontario Securities Commission (the "Commission") applies *in camera* pursuant to s. 144 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Act*"). The Executive Director seeks an order pursuant to s. 144 of the *Act* varying or revoking the Confidential Reasons and Order of the Commission dated March 25, 2010 (the "Decision") in this matter. The Bank opposes any change to the Decision which required certain of its account holders be given notice of Staff's application under s. 17(1) of the *Act*.

[2] The matters to be resolved are:

(A) Our reasons for imposing conditions in an order sealing the Fresh Evidence which the Executive Director submitted in support of the application.

(B) Were certain of the Bank's account holders entitled to notice of Staff's application under s. 17(1) of the *Act*, as the Decision directed?

(C) What is the appropriate test on a s. 144 application?

I. BACKGROUND

[3] On November 23, 2009, Staff requested that a panel of the Commission (the "Panel") issue an order under s. 17(1) of the *Act* permitting a foreign securities regulator (the "Foreign Securities Regulator") to disclose to a foreign criminal law enforcement agency (the "Foreign Criminal Law Enforcement Agency") certain compelled documents relating to two account holders of the Bank.

[4] Staff provided the Bank with notice of the motion pursuant to ss. 17(2) of the *Act*. On December 2, 2009, Staff and counsel for the Bank made submissions *in camera* on the motion. The only facts that were relied upon were the agreed facts, reproduced as follows:

(i) The OSC issued an investigation Order under section 11 of the *Act*.

(ii) Under the section 11 Order, Staff delivered a summons to the Bank for the production of documents relating to two account holders (the "Documents").

(iii) The Bank responded to the summons and delivered the Documents to Staff.

(iv) The Foreign Securities Regulator obtained the Documents pursuant to an Order under section 11(l)(b) of the *Act*.

(v) Staff seek an Order under section 17 of the *Act* permitting the Foreign Securities Regulator to disclose the Documents to the Foreign Criminal Law Enforcement Agency.

(vi) Staff provided notice to the Bank pursuant to section 17(2) of the *Act*.

(vii) The Bank objects to the making of the proposed Order without notice to the two account holders.

[5] Staff submitted that notice to third parties, such as the account holders, was not required under ss. 17(2)(a). The Bank submitted that ss. 17(2)(a) of the *Act* required that notice be provided to the two corporate account holders.

[6] In its Decision, the Panel held that "persons named by the Commission" in ss. 17(2)(a) of the *Act* included persons referred to in a s. 13 summons. It ordered that notice of Staff's motion and an opportunity to be heard be given to the two corporate account holders, who were indeed named in the s. 13 summons. The Decision turned primarily on the interpretation of ss. 17(2)(a) of the *Act*.

[7] The Panel also concluded that it was "not aware of any reason why it would not be practicable to give notice" to the two corporate account holders and provide them with "an opportunity to be heard on this application".

[8] Following the issue of the Panel's confidential reasons and order on March 25, 2010, the Executive Director made the application which is the subject of this hearing.

[9] The Notice of Application recites that circumstances have changed such that it is not practicable to provide notice to the two corporate account holders. It further recites that Staff are in possession of affidavit evidence (the "Fresh Evidence") that demonstrates that it is not practicable to provide notice to the two corporate account holders.

[10] The Notice of Application also discloses that the Fresh Evidence contained confidential information that should not be disclosed. Staff sought a sealing order for the Fresh Evidence before the hearing of this application.

II. ANALYSIS

(A) Our reasons for imposing conditions on an order sealing the Fresh Evidence which the Executive Director submitted in support of the application.

[11] At the opening of the *in camera* hearing, counsel for Staff told us that the first order of business from Staffs perspective was a motion for a sealing order of the Fresh Evidence. The order was sought not only to keep the Fresh Evidence confidential but also to prevent its disclosure to the Bank. Evidently the declarant provided the Fresh Evidence to Staff on the basis that it would be sealed and not given to the Bank. If the Panel decided that the sealing order would not issue, Staff's intention was to request an adjournment to consider whether to abandon the application in the absence of a sealing order, or to proceed and argue s. 144 of the *Act* in any event.

[12] Not surprisingly, counsel for the Bank was quick to point out the difficulties facing the Bank, flowing from Staff's request for a sealing order. Counsel noted that the Bank was not agent or proxy for the account holders whose rights and interests were at issue.

[13] The Panel received copies of the Fresh Evidence and adjourned for a short recess. Upon its return, the Chair told the parties that the Panel had not examined the Fresh Evidence. The Panel proposed that counsel for the Bank would leave the hearing room. Before counsel for the Bank withdrew, the Panel heard submissions from Staff with respect to the sealing order.

[14] Counsel for the Bank then withdrew and Staff counsel told the Panel that it proposed to make its submissions by referring to the paragraph numbers in the declaration without referring to that evidence. Counsel for the Bank then re-entered the hearing room and counsel for Staff made extensive submissions on why the sealing order should be granted without giving the Bank an opportunity to examine the Fresh Evidence.

[15] Staff submitted that the procedure they proposed was analogous to an "O'Connor" application, where evidence is sought to be led in a criminal prosecution without disclosing it to the accused. With respect, we disagree.

[16] On an O'Connor application, the court is involved in reviewing the evidence. If it is relevant to the accused's ability to make full answer and defense, following any called-for redaction, the accused must receive it. Since Staff made it clear that no part of the Fresh Evidence could be revealed to the Bank or the account holders, any meaningful redaction could not take place.

[17] The many cases cited by Staff in support of its submission deal with applications by members of the media for access to contents of search warrants obtained during the course of an investigation. Those cases do not help us.

[18] Rule 15.2 of the *OSC Rules of Procedure* states that,

> If a party proposes to introduce new evidence at the hearing of the application for a further decision or for a revocation or variation of a decision, the party shall, at least 10 days before the hearing, advise every other party as to the substance of the new evidence and shall deliver to every other party copies of all new documents that the party will rely on at the hearing.

The rule requires that the Bank receive the new evidence. Nowhere in its submissions did Staff refer to r.15.2 nor make submissions as to why it could be disregarded.

[19] Following submissions by counsel for the Bank, the Panel adjourned over the lunch recess. On its return, the decision of the Panel was that it would grant a sealing order, but on conditions. The Fresh Evidence was to be disclosed on a confidential basis to legal counsel for the Bank and one of the Bank's senior legal officers. The order was to last for 6 months, subject to the right of Staff to apply for an extension.

[20] The Bank stressed the lack of procedural fairness in what Staff proposed. We agree with its submission that to withhold from the Bank the substance of the Fresh Evidence would result in a process devoid of procedural fairness. The concerns of the Panel were to ensure that the Bank, as a party to the proceeding, had a fair opportunity to respond to Staff's application in accordance with the principles of natural justice. To conclude otherwise would be contrary to the public interest.

(B) Were certain of the Bank's account holders entitled to notice of Staff's application under s. 17(1) of the *Act*, as the Decision directed?

[21] On the return date of September 8, 2010, Staff told us it was withdrawing the motion based on the Fresh Evidence and wished to proceed to argue the s. 144 application. This removed the necessity to address any of the arguments made by Staff that were premised on new or fresh evidence. At Staff's request the hearing continued *in camera*.

[22] Staff opened its submissions on the s. 144 application with the following statement:

> What we seek to do is clarify and explain various aspects of the original decision and what staff will be doing for you today is pointing out inaccuracies in the decision.

[23] Staff then drew our attention to the OSC decision in *Re Ultramar PLC* (1991), 14 O.S.C.B. 5221 and the following finding:

> After hearing the submissions of all counsel, we concluded that when an application is brought under provisions of section 140 (now s.144) of the *Act*, for an Order revoking or varying a decision made by the Commission, and that application is disputed by the part[y] that applied for and received the Order or Ruling, we should, except in the most unusual circumstances, before we consider rescinding or varying the Order or Ruling, find that the original applicant had either misrepresented a fact to the Commission or omitted to state a material fact, or alternatively that there was, unknown to that applicant, a material fact which was not therefore brought to the attention of the original panel. We should also consider whether or not the knowledge of such material fact by the original panel would in our opinion have been likely to have affected the Order or Ruling made. In this case, none of these circumstances were in our opinion present. We do not believe that any of the facts raised by counsel for Ultramar could be considered to be material in the circumstances of the Order and Ruling that were made on October 18, 1991. Accordingly we denied the request of Ultramar.

Staff then told the Panel that it was proceeding on the first part of the statement in *Ultramar*, i.e. that the original applicant had either misrepresented a fact to the Commission or omitted to state a material fact which Staff identified as the inaccuracies in the Decision it would establish. We are at a loss to understand this submission. It is Staff who is the applicant in this matter. How Staff could rely on a fact which it misrepresented or omitted to state is beyond us.

[24] Staff drew our attention to the decision in *Re Universal Settlements International Inc.* (2003), 26 O.S.C.B. 2345, particularly the following finding:

> Section 144 is appropriate to be used to vary or revoke a decision of the Commission when new facts come to light, or new law is enacted, making it desirable to change the decision that has been rendered. I am not aware of a section 144 proceeding being used to review and second-guess a decision of another panel of the Commission, although there is nothing in section 144 that would prevent us from doing that if we decided it was the right thing to do.

Following on the reference to *Re Universal Settlements International Inc.*, Staff submitted that, based on the inaccuracies in the Decision that would be pointed out to the Panel, it would be "the right thing to do" to revoke or vary the order.

[25] The first inaccuracy alleged by Staff was a submission by the Bank referred to in paragraph 51 of the Decision in which the Bank submitted that the Commission placed significant weight on the consent of the party affected in determining whether to order disclosure under ss. 17(1) of the *Act* (*Re Y* (2009), 32 O.S.C.B. 7188). When it was pointed out to Staff that a submission by the Bank could hardly qualify as an inaccuracy in the Decision, Staff agreed.

[26] To establish the second inaccuracy alleged by Staff, we were referred to para. 29 of Staff's Factum. That paragraph refers to the Dagenais/Mentuck test setting out when a publication ban/sealing order can be ordered. At this point in the hearing the sealing order question had been disposed of and the Panel was concerned with the alleged inaccuracies in the Decision whereby the Panel directed that the account holders must be given notice of the s. 17 application. We are not satisfied that principles developed to respond to an application for a sealing order have very much to do with the considerations applicable to an application for a s. 144 order.

[27] There then followed a lengthy examination of those sections in the Decision where the Panel referred to the bank's obligation to its account holders. Staff's submission, as we understand it, was that in balancing the importance of cooperation with American authorities and the Bank's obligation to its account holders, the Panel was inaccurate in that balancing. We reject this submission.

[28] It is important to remember the issues identified by the Panel in the Decision. The first issue the Panel felt it had to decide was whether the account holders were entitled to reasonable notice and an opportunity to be heard under ss. 17(2)(a) of the *Act* in connection with the application pursuant to s. 17. of the *Act*. In paragraph 37 of the Decision, the Panel engaged in an analysis of ss. 17(2)(a) of the *Act*. In doing so it applied the principles of statutory interpretation set out by the Supreme Court of Canada in *BellExpressVu Limited Partnership v. R.*, [2002] S.C.J. No. 43. The Panel concluded its analysis in para. 40:

> In interpreting the words of subsection 17(2)(a), it is clear that they refer to persons or companies other than the person or company that gave the testimony or from whom the documents or information were obtained. Those latter persons are expressly specified in subsection 17(2)(b) of the *Act* as persons to whom notice must be given. It is equally clear that clauses (a) and (b) are conjunctive, joined by the word "and", suggesting two separate categories of persons.

[29] In its analysis of ss. 17(a) and (b), nowhere does the Panel refer to or consider the Bank's obligation of confidentiality to its account holders, nor was it necessary for the Panel to do so. Nowhere in Staff's submissions has the Panel's analysis of s. 17(2)(a) and (b) been characterized as an "inaccuracy". In the final analysis, the Bank's obligations to its account holders were irrelevant to the Panel's decision.

(C) What is the appropriate test on a s. 144 application?

[30] No decision was cited to us, nor do we know of one, where the Executive Director has applied under s. 144 to vary or revoke a decision which found against Staff's submissions in a contested hearing. There is an explanation for this.

[31] The *Act* is structured to make it clear that Staff cannot appeal a Panel decision on the merits. Subsection 9(1) provides that "a person or company" directly affected by a final decision of the Commission may appeal to the Divisional Court. Staff is neither a person or a company. Subsection 9(4) provides that the Commission is the respondent to an appeal taken under s. 9. These two sections read together express the legislative intention that Staff shall have no right of appeal.

[32] Nevertheless, the *Act* recognizes that situations may arise where it is obvious that a decision cannot stand. Examples include:

- A change in the law not brought to the attention of the Panel;
- A conclusive and binding decision not brought to the attention of the Panel;
- A misstatement of a material fact affecting the outcome; and

- Where "fresh evidence" has been discovered that would have a bearing on the outcome and which was not discoverable at the time of the hearing.

[33] In *Re Banks* (2003), 26 O.S.C.B. 5189, a misunderstanding caused the Panel to assume that counsel for Mr. Banks had completed his submissions, when he had yet to make submissions on sanctions. The Executive Director, to his credit, brought a s. 144 application to permit Mr. Banks to seek a variation permitting submissions on sanction.

[34] Earlier in these reasons we referred to the statement in *Re Universal Settlements*, above, cited by Staff. We repeat the statement here for convenience.

> Section 144 is appropriate to be used to vary or revoke a decision of the Commission when new facts come to light, or new law is enacted, making it desirable to change the decision that has been rendered. I am not aware of a section 144 proceeding being used to review and second-guess a decision of another panel of the Commission, although there is nothing in section 144 that would prevent us from doing that if we decided it was the right thing to do.

[35] With respect, the statement on its face is wrong in law. Only if the words "in accordance with applicable law" are added following the words "the right thing to do" can any useful meaning be ascribed to the statement. We do not say there can never be a situation where the Executive Director can apply under s. 144 to revoke or vary a Panel decision that went against Staff. We do say that only in the rarest of circumstances should such an application be considered. If the s. 144 application is, in effect, simply an appeal, it should be rejected as contrary to the intention of the *Act* and contrary to the public interest.

III. CONCLUSION

[36] We find it would be contrary to the intention of the *Act* and to the public interest to grant the Executive Director's application. The application is dismissed.

[37] We find no compelling reason to interfere with the Decision.

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

"James D. Carnwath"
James D. Carnwath

"Carol S. Perry"
I concur: Carol S. Perry

"James E. A. Turner"
I concur: James E. A. Turner

3.1.3 Baffinland Iron Mines Corporation et al.

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

AND

IN THE MATTER OF
BAFFINLAND IRON MINES CORPORATION,
IRON ORE HOLDINGS, LP
AND ITS WHOLLY-OWNED SUBSIDIARY
NUNAVUT IRON ORE ACQUISITION INC.

REASONS FOR DECISION

Hearing:	November 18, 2010		
Reasons:	December 3, 2010		
Panel:	James E. A. Turner	–	Vice-Chair and Chair of the Panel
	Mary G. Condon	–	Commissioner
	Paulette L. Kennedy	–	Commissioner
Counsel:	Katherine L. Kay Alexander D. Rose Jonathan Levy (Stikeman Elliott LLP)	–	For Baffinland Iron Mines Corporation
	Kent Thomson William N. Gula Steven Harris Andrea Burke (Davies Ward Phillips & Vineberg LLP)	–	For Iron Ore Holdings, LP and Nunavut Iron Ore Acquisition Inc.
	Alan Mark Dawn Whittaker Steve Tenai (Ogilvy Renault LLP)	–	For ArcelorMittal S.A.
	James Sasha Angus Naizam Kanji Erin O'Donovan	–	For Staff of the Ontario Securities Commission

TABLE OF CONTENTS

REASONS FOR DECISION

I. BACKGROUND

1. Introduction

[1] Nunavut Iron Ore Acquisition Inc. ("**Nunavut**") made an application to the Ontario Securities Commission (the "**Commission**") pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") to cease trade a shareholder rights plan originally established by Baffinland Iron Mines Corporation ("**Baffinland**") on January 13, 2006.

[2] This application arises out of an unsolicited all-cash offer made by Nunavut to purchase all of the outstanding common shares of Baffinland for $0.80 per common share (the "**Nunavut Offer**"). That offer was made on September 22, 2010, extended on October 28, 2010 and further extended on November 8, 2010. The Nunavut Offer expires on November 22, 2010 unless further extended.

2. The Parties

Nunavut

[3] Nunavut is a corporation existing under the laws of Canada with its principal and head office located in Toronto, Ontario. Nunavut was incorporated on August 27, 2010 and has not carried on any material business other than in connection with matters directly related to the Nunavut Offer. Nunavut is wholly-owned by Iron Ore Holdings, LP, a limited partnership formed under the laws of Delaware. Iron Ore Holdings, LP was formed solely for the purpose of making the Nunavut Offer.

Baffinland

[4] Baffinland is a corporation existing under the laws of the Province of Ontario with its principal and head office located in Toronto, Ontario. Baffinland is a publicly-traded junior mining company currently engaged in the exploration of one mineral property, the Mary River Property, located on Baffin Island in Nunavut Territory, Canada. The Mary River Property is in the exploration and development stage and to date Baffinland has not established an operating mine on that property.

[5] The largest shareholder of Baffinland is Resource Capital Funds, which owns approximately 23% of the outstanding common shares. Resource Capital Funds has entered into a lock-up agreement with ArcelorMittal (referred to in paragraph 10 of these reasons).

[6] The authorized capital of Baffinland consists of an unlimited number of common shares. As of October 6, 2010, the outstanding share capital of Baffinland consisted of 343,097,949 common shares. As of October 6, 2010, Baffinland also had outstanding options and warrants to purchase an aggregate of up to 59,869,322 common shares.

[7] Baffinland's common shares are listed on the Toronto Stock Exchange under the symbol "BIM".

3. The Shareholder Rights Plan

[8] Baffinland entered into a shareholder rights plan agreement (the "**Rights Plan**") on January 27, 2009, as an amendment to, and restatement of, the rights plan agreement originally entered into on January 13, 2006. The Rights Plan was approved by Baffinland shareholders on March 24, 2009. The Rights Plan was adopted for the stated purpose of providing:

> … the Board of Directors with sufficient time to explore and develop alternatives for maximizing Shareholder value if a take-over bid is made for the Company, and to provide every shareholder

> with an equal opportunity to participate in such bid. The Amended Rights Plan encourages a potential acquirer to proceed by a Permitted Bid (as defined in the Amended Rights Plan), which requires the take-over bid to satisfy certain minimum standards designed to promote fairness …
>
> (Baffinland Management Information Circular dated February 2, 2009)

4. The ArcelorMittal Offer and Support Agreement

[9] On November 8, 2010, ArcelorMittal S.A. ("**ArcelorMittal**") announced that it had entered into a support agreement with Baffinland (the "**Support Agreement**") pursuant to which ArcelorMittal agreed to make an all-cash offer to acquire all of the outstanding Baffinland common shares for $1.10 per common share, and all of the outstanding warrants of Baffinland issued on January 31, 2007 for $0.10 per warrant (the "**ArcelorMittal Offer**").

[10] Shareholders holding approximately 26% of the outstanding Baffinland common shares have entered into lock-up agreements with ArcelorMittal under which they have agreed to tender their shares to the ArcelorMittal Offer.

[11] ArcelorMittal cannot take up and pay for shares deposited under the ArcelorMittal Offer until at least December 20, 2010.

[12] The Support Agreement includes terms to the following effect:

(a) ArcelorMittal has the right to terminate the ArcelorMittal Offer unless at least 66 2/3% of the outstanding Baffinland common shares (on a fully-diluted basis) are tendered to its offer, which minimum tender condition cannot be waived or modified to less than 50% of the outstanding common shares;

(b) Baffinland is not permitted to directly or indirectly solicit competing offers or proposals but it is permitted to engage in discussions or negotiations with or furnish information to any person that has made a *bona fide* acquisition proposal that the board of directors of Baffinland (the "**Baffinland Board**") has determined is, or could reasonably be expected to lead to, a "**Superior Proposal**", as defined in the Support Agreement;

(c) ArcelorMittal has the right for a period of five business days to at least match the price offered under any competing offer or proposal and thereby keep the Support Agreement in place;

(d) Baffinland has agreed to waive the Rights Plan immediately prior to the expiry of the ArcelorMittal Offer, or earlier if requested by ArcelorMittal; and

(e) Baffinland will pay ArcelorMittal a "break fee" of $11 million if, amongst other events, the Support Agreement is terminated in order for Baffinland to accept, approve or enter into a definitive agreement relating to a Superior Proposal.

II. RELIEF SOUGHT BY NUNAVUT

[13] By letter dated November 1, 2010, Nunavut made an application (the "**Application**") to the Commission pursuant to section 127 of the Act seeking:

(a) a permanent order that trading cease in respect of any securities issued, or to be issued, under or in connection with the Rights Plan, including without limitation, in respect of the rights issued under the Rights Plan (the "**Rights**") and any common shares to be issued upon the exercise of the Rights;

(b) a permanent order removing prospectus exemptions in respect of the distribution of Rights on the occurrence of the Separation Time (as defined in the Rights Plan) and in respect of the exercise of the Rights; and

(c) such further and other relief as the Commission deems appropriate.

[14] The Nunavut Offer is expressly conditional upon the termination or discontinuance of the Rights Plan. Nunavut says that the Rights Plan is the only impediment to increasing the price offered under the Nunavut Offer, although it has made no commitment to do so.

III. THE COMMISSION'S DECISION

[15] On November 18, 2010, we held a hearing on the Application and heard evidence and received submissions from Nunavut, Baffinland, ArcelorMittal and Staff.

[16] At the outset of the hearing, we were advised that Baffinland, Nunavut and Staff consented to ArcelorMittal being granted standing to make submissions. We granted standing to ArcelorMittal on the grounds that ArcelorMittal could be affected by the outcome of the Application.

[17] On November 19, 2010, we issued an order cease trading the Rights Plan, with full reasons to follow. We took that action quickly because the Nunavut Offer was set to expire on November 22, 2010. Our order provides:

(a) pursuant to subsection 127(1)2 of the Act, that trading in any securities issued or to be issued under or in connection with the Rights Plan shall cease permanently; and

(b) pursuant to subsection 127(1)3 of the Act, that any exemptions contained in Ontario securities law do not apply permanently to any securities issued or to be issued under or in connection with the Rights Plan.

A copy of our order is attached as Schedule "A" to these reasons.

[18] These are our reasons for issuing the cease trade order in respect of the Rights Plan.

IV. KEY FACTS

[19] The facts that we consider most relevant to our decision are that:

(i) the Rights Plan has in fact provided sufficient time for the Baffinland Board to obtain a competing offer: the ArcelorMittal Offer. Accordingly, the Rights Plan has accomplished the objective of stimulating an auction by obtaining a competing offer for the benefit of Baffinland shareholders;

(ii) the Nunavut Offer is an unsolicited offer that has been outstanding for 57 days as of the date of this hearing; if that offer is amended to increase the price offered, it will remain open for an additional period of ten days from such variation;

(iii) the ArcelorMittal Offer is at a cash price of $1.10 per common share, which is approximately 38% higher than the cash price of $0.80 per common share under the Nunavut Offer. As a result, there is currently no realistic possibility that Baffinland shareholders will tender to the Nunavut Offer or that such offer will be successful at the current price;

(iv) at the date of the hearing, the Baffinland common shares were trading in the market at a price higher than the $1.10 offered under the ArcelorMittal Offer;

(v) as noted above, Baffinland has entered into the Support Agreement which provides, among other things, that:

(a) Baffinland will not solicit any competing offers but may terminate the Support Agreement if a financially superior offer or proposal is made that ArcelorMittal does not at least match;

(b) the Baffinland Board will waive the rights plan immediately prior to the expiry of the ArcelorMittal Offer (or earlier if requested by ArcelorMittal). As a result, the Rights Plan will remain outstanding against all offers until that time;

(vi) The Nunavut Offer has a significant timing advantage over the ArcelorMittal Offer because the Nunavut Offer was made first. Absent the Rights Plan, Baffinland common shares can be taken up under the Nunavut Offer on November 25, 2010, although Nunavut would have to extend the offer for at least ten days if it increases the price offered; ArcelorMittal cannot take up shares under its offer until at least December 20, 2010 and that take-up could be further delayed by the need for regulatory approvals;

(vii) Nunavut says that the Rights Plan is the only impediment to Nunavut increasing the price offered under the Nunavut Offer; Nunavut has not disclosed whether it intends to increase the price under its offer or on what terms it might do so;

(viii) No Baffinland shareholders have expressed any views in this hearing as to whether or not issuing an order cease trading the Rights Plan would be to their benefit or disadvantage; shareholder approval of the Rights Plan occurred prior to the making of either the Nunavut Offer or the ArcelorMittal Offer; and

(ix) Nunavut currently owns approximately 6% of the common shares of Baffinland. Nunavut entered into lock-up agreements with certain Baffinland shareholders under which those shareholders agreed to tender

> approximately 9.3% of the outstanding common shares to the Nunavut Offer. It appears that those agreements have now terminated as a result of the making of the ArcelorMittal Offer.

[20] As a practical matter, Nunavut cannot take up any Baffinland common shares under its offer until the Rights Plan is terminated. The Support Agreement prevents Baffinland from terminating the Rights Plan until the expiry of the ArcelorMittal Offer (or earlier if requested by ArcelorMittal).

V. LEGAL FRAMEWORK

[21] The Application is made by Nunavut pursuant to subsection 127(1) of the Act to cease trade the Rights Plan. In order to issue such a cease trade order, we must conclude that it is in the public interest to do so. That necessarily requires us to give careful consideration to all of the relevant facts and circumstances in this matter.

1. National Policy 62-202

[22] National Policy 62-202 *Defensive Tactics* ("**NP 62-202**") provides guidance to market participants as to the principles the Commission will apply in exercising its public interest discretion in respect of defensive tactics implemented by an issuer in response to a take-over bid. NP 62-202 is a policy and not a rule, and should be interpreted and applied as such.

[23] NP 62-202 sets forth the objectives of our take-over bid regime as follows:

> The primary objective of the take-over bid provisions of Canadian securities legislation is the protection of the bona fide interests of the shareholders of the target company. A secondary objective is to provide a regulatory framework within which take-over bids may proceed in an open and even-handed environment. The take-over bid provisions should favour neither the offeror nor the management of the target company, and should leave the shareholders of the target company free to make a fully informed decision.

[24] NP 62-202 goes on to state that:

> The Canadian securities regulatory authorities consider that unrestricted auctions produce the most desirable results in take-over bids and they are reluctant to intervene in contested bids. *However, they will take appropriate action if they become aware of defensive tactics that will likely result in shareholders being deprived of the ability to respond to a take-over bid or to a competing bid.* [emphasis added]

[25] Accordingly, our focus in deciding the Application is to protect the interests of Baffinland shareholders and one of the issues we must consider is whether the Rights Plan will likely result in Baffinland shareholders being deprived of the ability to respond to the Nunavut Offer.

2. Principles Derived From Previous Decisions

[26] The decision in *Re Canadian Jorex Ltd.* (1992) 15 OSCB 257 ("Canadian Jorex") was the first decision in which Canadian securities commissions considered the circumstances in which they would cease trade a shareholder rights plan or "poison pill". The Commission held in *Canadian Jorex* that there comes a time when a shareholder rights plan "has got to go". In our view, it is generally time for a shareholder rights plan "to go" when the rights plan has served its purpose by facilitating an auction, encouraging competing bids or otherwise maximizing shareholder value. A rights plan will be cease traded where it is unlikely to achieve any further benefits for shareholders.

[27] The Commission stated in *Canadian Jorex* that:

> For us, the public interest lies in allowing shareholders of a target company to exercise one of the fundamental rights of share ownership – the ability to dispose of shares as one wishes – without undue hindrance from, among other things, defensive tactics that may have been adopted by the target board with the best of intentions, but that are either misguided from the outset or, as here, have outlived their usefulness.
>
> (*Canadian Jorex*, *supra*, at p. 5)

[28] At the same time, the Commission has recognized the principle that:

> … The rules of the game should be clear and consistently applied to encourage bidders to come forward and the game must be played in an acceptable timeframe.
>
> (*Re Cara Operations Ltd. and The Second Cup Limited* (2002) 25 OSCB 7997 at para. 58)

[29] Notwithstanding the principles referred to above, at the end of the day, there is no one test or consideration that constitutes the "holy grail" when deciding whether a rights plan should remain in place or be cease traded. The outcome of a poison pill hearing depends on the specific facts and circumstances involved. Ultimately, the Commission must decide in the particular circumstances whether cease trading a shareholder rights plan is in the public interest.

[30] The Commission has identified the following factors as generally being relevant in considering whether it is time for a rights plan "to go":

(i) whether shareholder approval of the rights plan was obtained;

(ii) when the plan was adopted;

(iii) whether there is broad shareholder support for the continued operation of the plan;

(iv) the size and complexity of the target company;

(v) the other defensive tactics, if any, implemented by the target company;

(vi) the number of potential, viable offerors;

(vii) the steps taken by the target company to find an alternative bid or transaction that would be better for the shareholders;

(viii) the likelihood that, if given further time, the target company will be able to find a better bid or transaction;

(ix) the nature of the bid, including whether it is coercive or unfair to the shareholders of the target company;

(x) the length of time since the bid was announced and made; and

(xi) the likelihood that the bid will not be extended if the rights plan is not terminated.

(*Re Royal Host Real Estate Investment Trust*, 1999 LNONOSC 594 at p. 19) ("***Royal Host***")

Almost all of those considerations are relevant, to one extent or another, in the circumstances before us.

VI. ANALYSIS

1. The Auction is Coming to an End

[31] In this case, the Nunavut Offer has been outstanding for 57 days and has resulted in a higher priced competing offer being made by ArcelorMittal. Baffinland has entered into the Support Agreement with ArcelorMittal and has agreed not to solicit competing offers. The auction is not yet over although, as a practical matter, it is unlikely that a third bidder will be prepared to make an offer. Clearly, Nunavut is considering its response to the ArcelorMittal Offer and may increase that offer.

[32] Accordingly, in our view, it is not necessary for the Rights Plan to remain in place in order to facilitate an auction; there are now two competing bids on the table. To us, the most important consideration in these circumstances is that Baffinland has agreed in the Support Agreement not to solicit further offers and, accordingly, it needs no further time to do so. That suggests that the auction process is coming to an end. It seems unlikely that the Rights Plan will achieve more for shareholders in terms of inducing a further offer from a new bidder.

[33] Based on the evidence before us, we have concluded that there is no real and substantial possibility that Baffinland will be able to increase shareholder choice by keeping the Rights Plan in place (see *Re MDC Corp.*, 1994 LNONOSC 211).

2. Nunavut's Timing Advantage

[34] The Commission has concluded in the past that it will not permit a rights plan to be used for the purpose only of eliminating the timing advantage available to a first bidder. The Commission has stated that:

> The Act sets out minimum time periods during which a bid must remain open. That time period is not related to the existence of any other bid. Both *Lac Minerals Ltd.* and *Tarxien supra*, have considered timing issues and in both cases the pill was ceased traded immediately. It was our opinion the Commission should not interfere with the timing issues as between the bidders. To do so would require the Commission to attempt to equalize the expiry dates for all existing and

> potential bids. Such an equalization, however, would result in a situation where the last bidder would dictate the timing for all previous bidders. Not only would this have a detrimental effect on the bidding process, but such an approach was not contemplated under the Act.
>
> (*Re Chapters Inc. and Trilogy Retail Enterprises L.P.* (2001) 24 OSCB 1657 at para. 37) ("***Chapters***")

[35] We note that the Rights Plan does not by its terms expressly contemplate that it would be used to eliminate the timing difference between multiple bids.

[36] It is clear that one of the effects of the Support Agreement is to eliminate the timing advantage of the Nunavut Offer by maintaining the Rights Plan in the face of that offer. In effect, Nunavut cannot take up common shares under its offer until the expiry of the ArcelorMittal Offer. In our view, Nunavut is entitled as the first bidder to the timing advantage its offer has under our take-over bid regime. In our view, cease trading the Rights Plan now will allow the current offers to proceed in a fair and even-handed manner as contemplated by NP 62-202.

3. Forced Extension of the Nunavut Offer

[37] The effect of leaving the Rights Plan in place would be to force Nunavut to extend its offer for a substantial period of time if Nunavut wishes to compete with the ArcelorMittal Offer. That would expose Nunavut to potential costs and market risks in doing so. By making the Application, Nunavut has indicated that it may not be prepared to accept those costs and risks. In considering the same issue in *Chapters*, the Commission made the following comment:

> We do not consider it unreasonable that Trilogy might have withdrawn its offer. Mr. Wright testified as to the costs and risks associated with keeping an offer outstanding for a longer period of time. As a result, it was unlikely that an extension of the pill would lead to an increase in either the Future Shop Proposed Offer, or the Trilogy bid. In fact, the evidence demonstrated that the maintenance of the pill was precisely the obstacle preventing Trilogy from increasing its offer. Consequently, Trilogy chose not to amend its offer unless the pill was removed. Instead, Trilogy announced its intention to enhance its offer if and when the Commission cease traded the shareholders rights plan.
>
> (*Chapters*, *supra*, at para. 28)

[38] Accordingly, there is an obvious potential benefit to Baffinland shareholders if the Commission immediately issues an order cease trading the Rights Plan: Baffinland shareholders may potentially receive a higher offer from Nunavut. In our view, the fact that Nunavut has not disclosed whether and on what terms it would be prepared to increase its offer does not change that analysis.

4. Coercion

[39] Baffinland made a number of submissions with respect to the coercive nature of the Nunavut Offer, focused primarily on the reservation by Nunavut of the right to waive at any time the minimum tender condition in its offer and take up whatever Baffinland common shares are tendered at the time. The vast majority of take-over bids in this jurisdiction are made with a minimum tender condition that may be unilaterally waived by the offeror. A take-over bid is not inherently coercive for that reason. Baffinland shareholders are not being coerced or forced in any way to tender to the Nunavut Offer. To the contrary, it is unlikely that any shareholders are going to be enticed to tender to the Nunavut Offer given the current price per share under that offer. Baffinland shareholders who do not wish to take the risk that the ArcelorMittal Offer will not be completed can sell their shares in the market (as of the date of the hearing, the market price of the Baffinland common shares was higher than the price offered under the ArcelorMittal Offer). Accordingly, there is nothing to suggest that the Nunavut Offer is fundamentally unfair to or abusive of shareholders.

[40] Baffinland says, however, that Nunavut has not indicated its intentions with respect to varying its offer and that it is possible that future acts by Nunavut could be coercive of Baffinland shareholders. There is no doubt that currently there is uncertainty as to what Nunavut will do. But that uncertainty is inherent in a competitive bidding process. We are not prepared to speculate or assume that Nunavut will take actions in the future that would be coercive of or abusive to Baffinland shareholders. If Nunavut did so, we would intervene to protect the interests of shareholders.

[41] Baffinland has also argued that Nunavut could acquire a number of shares sufficient to block the ArcelorMittal bid and that could result in the premature end to the auction, to the disadvantage of Baffinland shareholders. Presumably, Nunavut would do that by taking up shares under its offer (having waived its minimum tender condition) and/or by purchasing shares in the market. Baffinland submits that the facts in this respect are similar to the facts in *Re Falconbridge Ltd.* (2006) 29 OSCB 6783 ("***Falconbridge***"), where the Commission allowed a rights plan to remain in place in order to prevent an offeror from acquiring

shares (under the bid or in the market) that could have put an early end to an auction. In *Falconbridge*, the competing bidder owned 19.9% of the outstanding shares of the target. As a result, the acquisition of a relatively small number of shares by that bidder could have ended the auction.

[42] The important difference in this case is that Nunavut owns only 6% of the outstanding common shares of Baffinland. Given the current price offered under the Nunavut offer, we have to assume that there are virtually no shares tendered to that offer. Accordingly, waiving the minimum tender condition and taking up shares tendered is not a viable strategy for Nunavut at this time. In respect of the possibility of market purchases, there is a 5% limit on the number of shares that Nunavut may purchase and, in any event, the fact that those shares are trading at a market price substantially higher than its offer may be an impediment to Nunavut acquiring shares in the market. As a result, given its current ownership of Baffinland common shares, it seems unlikely that Nunavut would be able to acquire sufficient common shares to frustrate the ArcelorMittal Offer and put an end to the auction. We note, in this respect, that Nunavut's stated objective is to acquire all of the outstanding common shares of Baffinland. Accordingly, we do not view these circumstances as falling within the principle adopted by the Commission in *Falconbridge*.

[43] We also note in this respect that the lock-up agreements originally entered into by Nunavut have now terminated. It is ArcelorMittal that currently has the benefit of lock-up agreements relating to approximately 26% of the outstanding common shares.

[44] Accordingly, we reject any suggestion that the Nunavut Offer is currently coercive of or abusive to Baffinland shareholders.

5. Deference to the Terms of the Support Agreement

[45] Baffinland and ArcelorMittal entered into the Support Agreement under which ArcelorMittal agreed to make the ArcelorMittal Offer. The terms of that agreement were the price Baffinland had to pay for obtaining the ArcelorMittal Offer for the benefit of Baffinland shareholders. Baffinland's agreement to the delayed termination of the Rights Plan, in effect, modifies the rules of the game as they relate to the timing of competing offers. We are not suggesting that there is anything inappropriate in Baffinland having agreed to that. We recognise that all of the parties to this hearing are advancing positions that are to their own strategic advantage.

[46] We do not agree, however, that we should defer to the decision of the Baffinland Board in having agreed to leave the Rights Plan in place until the expiry of the ArcelorMittal Offer. The primary objective of the Baffinland Board was to induce ArcelorMittal to make a higher priced competing offer and they achieved that objective by negotiating and entering into the Support Agreement. It is clear that the Support Agreement provides a number of strategic advantages to ArcelorMittal, including control over when the Rights Plan will be terminated. In any event, in our view, the terms of the Support Agreement cannot restrict our ability to act in the public interest.

6. Deference to the Business Judgment of the Baffinland Board

[47] Baffinland has also submitted that we should consider the factors discussed in *Royal Host* (see paragraph 30 of these reasons) "through the lens of deference to the reasonable business judgment of the target company's directors" as contemplated in *Re Neo Material Technologies Inc.* (2009), 63 BLR (4th) 123 (OSC) ("***Neo***"). We do not agree.

[48] In *Neo*, the Commission concluded that it would defer to the wishes of shareholders who had overwhelmingly voted to keep the relevant rights plan in place in the face of the specific bid that was before shareholders at the time of the vote. The vote was held only two weeks before the hearing. NP 62-202 states that "prior shareholder approval of corporate action would, in appropriate cases, allay" concerns with respect to a defensive tactic. In *Neo*, the Commission concluded that it should defer to the wishes of shareholders as expressed by the recent shareholder vote.

[49] Having concluded that it should do so, the Commission then asked whether there were any circumstances that would lead it to a different conclusion. One such consideration was whether or not the board of directors of Neo was acting in accordance with its fiduciary duties in having decided not to solicit competing bids. If the board was not complying with its fiduciary duties that might have led the Commission to cease trade the Neo rights plan regardless of the shareholder vote (although whether the Commission would have done so is an open question).

[50] One can perhaps do no better in this respect than quote from the Commission's summary of its conclusions in *Neo*. The Commission stated that, in all of the circumstances, it was not satisfied that it was in the public interest to cease trade the Neo rights plan at the particular time. It stated that:

> While we will expand on these points below, we are influenced by the following considerations, as we noted in our decision of May 11, 2009:

(a) the Second Shareholder Rights Plan was adopted by the Neo Board in the context of, and in response to the Pala Offer;

(b) there is no evidence that the process undertaken by the Neo Board to evaluate and respond to the Pala Offer, including the decision to implement the Second Shareholder Rights Plan, was not carried out in what the Neo Board determined to be the best interests of the corporation and of Neo's shareholders, as a whole;

(c) an overwhelming majority of Neo's shareholders (excluding Pala) approved the Second Shareholder Rights Plan while the Pala Offer remained outstanding;

(d) the evidence supports a finding that Neo's shareholders were, or were provided with a reasonable opportunity to be, sufficiently informed about the Second Shareholder Rights Plan prior to casting their votes, and there is no evidence that Neo's shareholders were insufficiently informed; and

(e) there is no evidence to suggest that management or the Neo Board coerced or unduly pressured Neo's shareholders to approve the Second Shareholder Rights Plan.

(*Neo*, *supra*, at para. 31)

[51] Accordingly, in our view, *Neo* does not stand for the proposition that the Commission will defer to the business judgment of a board of directors in considering whether to cease trade a rights plan, or that a board of directors in the exercise of its fiduciary duties may "just say no" to a take-over bid. Such a conclusion would have been inconsistent with the provisions of NP 62-202 and the relatively long line of regulatory decisions that began with *Canadian Jorex*. To the contrary, the Commission in *Neo* deferred to the wishes of shareholders as contemplated by NP 62-202. Neo suggests only that whether or not the board of directors of a target issuer is acting in the best interests of that issuer and its shareholders, and is complying with its fiduciary duties, is a relevant, although secondary, consideration for the Commission in deciding whether to cease trade a rights plan. Whether a board of directors is complying with its fiduciary duties does not determine the outcome of a poison pill hearing.

7. Does the Rights Plan Deny Shareholders the Ability to Tender to the Nunavut Offer?

[52] As noted above, one of the principal questions we must address is whether the Rights Plan is currently denying Baffinland shareholders the ability to respond to the Nunavut Offer. In our view, there is a reasonable argument that the Rights Plan is not denying Baffinland shareholders that ability. There is no doubt that Nunavut has a current offer outstanding. However, as a result of the ArcelorMittal Offer, that offer is not viable in practical terms unless Nunavut increases the price under that offer. Accordingly, no Baffinland shareholders would have any current interest in tendering to the Nunavut Offer. The Rights Plan is not, in any real sense, preventing the Baffinland shareholders from accepting the Nunavut Offer. Put another way, in the circumstances, the Application by Nunavut is premature.

[53] It would have been an easier decision for us if Nunavut had indicated that it was prepared to increase its offer to some specified amount if we cease traded the Rights Plan. That would have blunted a number of the submissions made to us by Baffinland and ArcelorMittal. Obviously, Nunavut does not have any obligation to do that.

[54] While Baffinland's submission in this respect has some resonance with us, we concluded, on balance, in weighing the various considerations discussed above, that it is preferable to allow events with respect to the two competing offers to unfold without hindrance by the Rights Plan. Had we left the Rights Plan in place, we would likely have had the Application back before us in the event that Nunavut increased its offer. That could have put the Commission in the position of having to assess the viability of an amended Nunavut offer and whether Baffinland shareholders might wish to tender to it. The Commission has clearly stated in the past that it is not its role to assess the financial terms or desirability of a particular offer or transaction. That is the role of shareholders. While there is no assurance that there will ultimately be a clear winner between the ArcelorMittal Offer and the Nunavut Offer, Baffinland shareholders are capable of making the relevant choices. As stated by the Commission in *Canadian Jorex*:

> … we have every confidence that the shareholders of a target company will ultimately be quite able to decide for themselves, with the benefit of the advice they receive from the target board and others, including their own advisers, whether or not to dispose of their shares and, if so, at what price and on what terms. And to us the public interest lies in allowing them to do just that.
>
> (*Canadian Jorex*, *supra*, at p. 6)

[55] It is the Baffinland shareholders who should determine the outcome of the two competing bids for their shares. It is our role to ensure that the two offers proceed in an open, fair and even-handed environment in accordance with applicable securities law. In doing that, we have considered and applied the principles reflected in NP 62-202.

VII. CONCLUSION

[56] For these reasons, we concluded that it was in the public interest to cease trade the Rights Plan immediately. Accordingly, we issued the order attached as Schedule "A" to these reasons.

[57] We appreciated the very helpful materials provided, and submissions made, by all of the counsel in this matter.

Dated at Toronto this 3rd day of December, 2010.

"James E. A. Turner"

"Mary G. Condon"

"Paulette L. Kennedy"

Schedule "A"

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

AND

IN THE MATTER OF
BAFFINLAND IRON MINES CORPORATION,
IRON ORE HOLDINGS, LP
AND ITS WHOLLY-OWNED SUBSIDIARY
NUNAVUT IRON ORE ACQUISITION INC.

ORDER
(Section 127)

WHEREAS Nunavut Iron Ore Acquisition Inc. ("**Nunavut Iron**" or the "**Applicant**") applied to the Ontario Securities Commission (the "**Commission**") by way of an application dated November 1, 2010 (the "**Application**") for a permanent order pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act"**) that trading cease in respect of any securities to be issued under or in connection with a Baffinland Iron Mines Corporation ("**Baffinland**") shareholder rights plan approved by shareholders on March 24, 2009;

AND WHEREAS on September 22, 2010, an unsolicited offer was made by Nunavut Iron to purchase all of the outstanding common shares of Baffinland (the "**Baffinland Shares**") for $0.80 in cash per share and such offer was extended on October 28, 2010 and further extended on November 8, 2010 (the "**Nunavut Offer**");

AND WHEREAS on November 8, 2010, ArcelorMittal S.A. ("**ArcelorMittal**") announced that it had entered into a support agreement with Baffinland (the "**Support Agreement**") pursuant to which it agreed to make an offer to acquire all of the outstanding Baffinland Shares for $1.10 cash per share, and all of the outstanding warrants of Baffinland issued on January 31, 2007 (the "**2007 Warrants**") for $0.10 cash per 2007 Warrant (the "**ArcelorMittal Offer**");

AND WHEREAS following the announcement of the ArcelorMittal Offer on November 8, 2010, Nunavut extended its offer to November 22, 2010;

AND WHEREAS on November 9, 2010, a Notice of Hearing was issued by the Office of the Secretary setting down the hearing of the Application on November 18, 2010;

AND WHEREAS the Application was heard on November 18, 2010 and Nunavut Iron, Baffinland, ArcelorMittal and Staff appeared at such hearing;

AND WHEREAS at the outset of the hearing, ArcelorMittal was granted standing to make oral submissions, on consent of the parties, and on the grounds that ArcelorMittal could be directly affected by the outcome of the Application;

AND WHEREAS Baffinland implemented a shareholder rights plan (the "**Rights Plan**") that was adopted by its board of directors (the "**Baffinland Board**") on January 27, 2009 and was subsequently approved by Baffinland shareholders on March 24, 2009;

AND WHEREAS the Applicant submits that it is in the public interest for the Commission to cease trade the Rights Plan in order to allow Baffinland shareholders to decide for themselves whether to accept the Nunavut Offer or the ArcelorMittal Offer;

AND WHEREAS Baffinland submits, among other things, that maintaining the Rights Plan would protect the interests of Baffinland shareholders and would facilitate the auction for the Baffinland Shares;

AND WHEREAS the Commission considered the evidence, relevant case law and the submissions of Nunavut Iron, Baffinland, ArcelorMittal and Staff at the hearing;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order and the Commission will issue reasons for this order in due course;

IT IS HEREBY ORDERED:

1. pursuant to subsection 127(1)2 of the Act, that trading in any securities issued or to be issued under or in connection with the Rights Plan shall cease permanently; and

2. pursuant to subsection 127(1)3 of the Act, that any exemptions contained in Ontario securities law do not apply permanently to any securities issued or to be issued under or in connection with the Rights Plan.

DATED at Toronto this 19th day of November, 2010.

"James E.A. Turner"

"Mary G. Condon"

"Paulette L. Kennedy"

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
Ra Resources Ltd.	06 Dec 10	17 Dec 10		
Whitemud Resources Inc.	08 Dec 10	20 Dec 10		

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Pure Energy Visions Corporation	06 Dec 10	17 Dec 10			
Cathay Forest Products Corp.	08 Dec 10	20 Dec 10			

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Pure Energy Visions Corporation	06 Dec 10	17 Dec 10			
Cathay Forest Products Corp.	08 Dec 10	20 Dec 10			

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Chapter 5

Rules and Policies

5.1.1 Amendments to NI 81-101 Mutual Fund Prospectus Disclosure

AMENDMENTS TO
NATIONAL INSTRUMENT 81-101 *MUTUAL FUND PROSPECTUS DISCLOSURE*

1. National Instrument 81-101 Mutual Fund Prospectus Disclosure is amended by this Instrument.

2. Section 1.1 is amended by

a. replacing "National Instrument 81-102***" with "***that Instrument***" in paragraph (b) of the definition of "commodity pool";***

b. adding the following definition after the definition of "financial year":

"fund facts document" means a completed Form 81-101F3 *Contents of Fund Facts Document*;**;**

c. repealing the definition of "NI 81-107";

d. replacing "National Instrument 81-102***" in the definition of "precious metals fund" with "***National Instrument 81-102 *Mutual Funds****".***

3. Section 1.2 is amended by replacing "National Instrument 81-102***" with "***National Instrument 81-102 *Mutual Funds****".***

4. Section 2.1 is replaced with the following:

2.1 Filing of Disclosure Documents – (1) A mutual fund

(a) that files a preliminary prospectus must file the preliminary prospectus in the form of a preliminary simplified prospectus prepared in accordance with Form 81-101F1 and concurrently file

(i) a preliminary annual information form prepared and certified in accordance with Form 81-101F2; and

(ii) a preliminary fund facts document for each class or series of securities of the mutual fund prepared in accordance with Form 81-101F3;

(b) that files a *pro forma* prospectus must file the *pro forma* prospectus in the form of a *pro forma* simplified prospectus prepared in accordance with Form 81-101F1 and concurrently file

(i) a *pro forma* annual information form prepared in accordance with Form 81-101F2; and

(ii) a *pro forma* fund facts document for each class or series of securities of the mutual fund prepared in accordance with Form 81-101F3;

(c) that files a prospectus must file the prospectus in the form of a simplified prospectus prepared in accordance with Form 81-101F1 and concurrently file

(i) an annual information form prepared and certified in accordance with Form 81-101F2; and

(ii) a fund facts document for each class or series of securities of the mutual fund prepared in accordance with Form 81-101F3;

(d) that files an amendment to a prospectus must

(i) file an amendment

(A) to the simplified prospectus and concurrently file an amendment to the related annual information form, or

(B) to the related annual information form if changes are made only to the annual information form;

(ii) if the amendment relates to the information contained in a fund facts document, concurrently file an amendment to the fund facts document;

(iii) if the amendment relates to a new class or series of securities of the mutual fund that is referable to the same portfolio of assets, concurrently file a fund facts document for the new class or series; and

(e) must file an amendment to a fund facts document, if a material change occurs that relates to the information contained in the fund facts document, as soon as practicable and, in any event, within 10 days after the day the change occurs.

(2) A mutual fund must not file a prospectus more than 90 days after the date of the receipt for the preliminary prospectus that relates to the prospectus..

5. Section 2.2 is amended by

a. replacing "shall***" in subsection (2) with "***must***";***

b. replacing "shall***" in subsection (3) with "***must***";***

c. adding the following after subsection (3):

(4) An amendment to a fund facts document must be prepared in accordance with Form 81-101F3 without any further identification and dated as of the date the fund facts document is being amended..

6. Section 2.3 is amended by

a. replacing "shall***" in subsection (1) with "***must***";***

b. replacing the portion of paragraph (1)(a) preceding subparagraph (i) with the following:

(a) file with a preliminary simplified prospectus, a preliminary annual information form and a preliminary fund facts document for each class or series of securities of the mutual fund**;**

c. replacing the portion of paragraph (1)(b) preceding subparagraph (i) with the following:

(b) at the time a preliminary simplified prospectus, a preliminary annual information form and a preliminary fund facts document for each class or series of securities of the mutual fund are filed, deliver or send to the securities regulatory authority**;**

d. replacing "shall***" in subsection (2) with "***must***";***

e. replacing the portion of paragraph (2)(a) preceding subparagraph (i) with the following:

(a) file with a *pro forma* simplified prospectus, a *pro forma* annual information form and a *pro forma* fund facts document for each class or series of securities of the mutual fund**;**

f. replacing the portion of paragraph (2)(b) preceding subparagraph (i) with the following:

(b) at the time a *pro forma* simplified prospectus, a *pro forma* annual information form and a *pro forma* fund facts document for each class or series of securities of the mutual fund are filed, deliver or send to the securities regulatory authority**;**

g. ***adding the following after subparagraph (2)(b)(ii):***

(ii.1) a copy of the *pro forma* fund facts document for each class or series of securities of the mutual fund, blacklined to show changes, including the text of deletions, from the latest fund facts document previously filed,**;**

h. ***replacing "***shall***" in subsection (3) with "***must***";***

i. ***replacing the portion of paragraph (3)(a) preceding subparagraph (i) with the following:***

(a) file with a simplified prospectus, an annual information form and a fund facts document for each class or series of securities of the mutual fund**;**

j. ***adding the following after subparagraph (3)(b)(ii):***

(ii.1) a copy of the fund facts document for each class or series of securities of the mutual fund, blacklined to show changes, including the text of deletions, from the preliminary or *pro forma* fund facts document,**;**

k. ***replacing "***2.3(1)(b)(ii) or 2.3(2)(b)(iv)***" in subparagraph (3)(b)(iii) with "***(1)(b)(ii) or (2)(b)(iv)***";***

l. ***replacing "***shall***" in subsection (4) with "***must***";***

m. ***striking out "***and***" at the end of subparagraph (4)(a)(iii);***

n. ***adding the following after subparagraph (4)(a)(iii):***

(iii.1) if the amendment relates to the information contained in a fund facts document, an amendment to the fund facts document, and**;**

o. ***adding the following after subparagraph (4)(b)(ii):***

(ii.1) if an amendment to a fund facts document is filed, a copy of the fund facts document, blacklined to show changes, including the text of deletions, from the latest fund facts document previously filed,**;**

p. ***replacing "***2.3(1)(b)(ii), 2.3(2)(b)(iv) or 2.3(3)(b)(iii)***" in subparagraph (4)(b)(iii) with "***(1)(b)(ii), (2)(b)(iv) or (3)(b)(iii)***";***

q. ***replacing "***shall***" in subsection (5) with "***must***";***

r. ***striking out "***and***" at the end of subparagraph (5)(a)(iii);***

s. ***adding the following after subparagraph (5)(a)(iii):***

(iii.1) if the amendment relates to the information contained in a fund facts document, an amendment to the fund facts document, and**;**

t. ***replacing "***2.3(1)(b)(ii), 2.3(2)(b)(iv) or 2.3(3)(b)(iii)***" in subparagraph (5)(b)(i) with "***(1)(b)(ii), (2)(b)(iv) or (3)(b)(iii)***";***

u. ***replacing "***; and***" with "***,***" at the end of subparagraph (5)(b)(ii);***

v. ***adding the following after subparagraph (5)(b)(ii):***

(ii.1) if an amendment to a fund facts document is filed, a copy of the fund facts document, blacklined to show changes, including the text of deletions, from the latest fund facts document previously filed, and***; and***

w. adding the following after subsection (5):

(5.1) A mutual fund must

(a) file the following documents with an amendment to a fund facts document unless subsection (4) or (5) applies:

(i) an amendment to the corresponding annual information form, certified in accordance with Part 5.1,

(ii) any other supporting documents required to be filed under securities legislation; and

(b) at the time an amendment to a fund facts document is filed, deliver or send to the securities regulatory authority

(i) details of any changes to the personal information required to be delivered under subparagraph (1)(b)(ii), (2)(b)(iv) or (3)(b)(iii), in the form of the Personal Information Form and Authorization, since the delivery of that information in connection with the filing of the simplified prospectus of the mutual fund or another mutual fund managed by the manager,

(ii) a copy of the amended and restated fund facts document blacklined to show changes, including the text of deletions, from the most recently filed fund facts document; and

(iii) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation..

7. The following section is added after section 2.3:

2.3.1 Websites

(1) If a mutual fund or the mutual fund's family has a website, the mutual fund must post to at least one of those websites a fund facts document filed under this Part as soon as practicable and, in any event, within 10 days after the date that the document is filed.

(2) A fund facts document posted to the website referred to in subsection (1) must

(a) be displayed in a manner that would be considered prominent to a reasonable person; and

(b) not be attached to or bound with another fund facts document.

(3) Subsection (1) does not apply if the fund facts document is posted to a website of the manager of the mutual fund in the manner required under subsection (2)..

8. Section 3.1 is amended by

a. replacing the first reference to "shall***" with "***must***" and deleting the second reference to "***shall***"; and***

b. adding the following after paragraph 1:

1.1. The most recently filed fund facts document for each class or series of securities of the mutual fund, filed either concurrently with or after the date of the simplified prospectus..

9. Sections 3.3, 3.4 and 3.5 are amended by replacing "shall***" with "***must***" wherever it occurs.***

10. Section 4.1 is amended by

a. replacing subsection (1) with the following:

4.1 Plain Language and Presentation – (1) A simplified prospectus, annual information form and fund facts document must be prepared using plain language and in a format that assists in readability and comprehension.**;**

b. replacing "shall***" with "***must***" wherever it occurs in subsection (2); and***

c. adding the following after subsection (2):

(3) A fund facts document must

(a) be prepared for each class and each series of securities of a mutual fund in accordance with Form 81-101F3;

(b) present the items listed in the Part I section of Form 81-101F3 and the items listed in the Part II section of Form 81-101F3 in the order stipulated in those parts;

(c) use the headings and sub-headings stipulated in Form 81-101F3;

(d) contain only the information that is specifically required or permitted to be in Form 81-101F3;

(e) not incorporate any information by reference; and

(f) not exceed four pages in length**..**

11. Section 4.2 is replaced with the following:

4.2 Preparation in the Required Form – Despite provisions in securities legislation relating to the presentation of the content of a prospectus, a simplified prospectus, an annual information form and a fund facts document must be prepared in accordance with this Instrument**..**

12. Subsections 5.1(1) and (2) are amended by replacing "shall***" with "***must***".***

13. Section 5.2 is amended by

a. replacing "shall***" with "***must***" in paragraphs (1)(a) and (b); and***

b. adding the following after subsection (1):

(1.1) Despite subsection (1), if attached to or bound with a single SP or multiple SP, the fund facts document must be the first document contained in the package**..**

14. Paragraph 5.3(2)(a) is amended by replacing "shall***" with "***must***".***

15. Subsections 5.4(1) and (2) are amended by replacing "shall***" with "***must***".***

16. The following section is added after section 5.4:

5.5 Combinations of Fund Facts Documents for Filing Purposes – For the purposes of section 2.1, a fund facts document may be attached to or bound with another fund facts document of a mutual fund in a simplified prospectus or, if a multiple SP, another fund facts document of a mutual fund combined in the multiple SP**..**

17. Section 5.1.2 is replaced with the following:

5.1.2 Date of Certificates – The date of the certificates required by this Instrument must be within 3 business days before the filing of the preliminary simplified prospectus, the simplified prospectus, the amendment to the simplified prospectus, the amendment to the annual information form or the amendment to the fund facts document, as applicable.

18. Part 6 is replaced with the following:

PART 6 EXEMPTIONS

6.1 Grant of Exemption – (1) The regulator or the securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

6.2 Evidence of exemption – (1) Subject to subsection (2) and without limiting the manner in which an exemption may be evidenced, the granting under this Part of an exemption from any form or content requirements relating to a simplified prospectus, annual information form or fund facts document, may be evidenced by the issuance of a receipt for a simplified prospectus and annual information form, or an amendment to a simplified prospectus or annual information form.

(2) The issuance of a receipt for a simplified prospectus and annual information form or an amendment to a simplified prospectus or annual information form is not evidence that the exemption has been granted unless

(a) the person or company that sought the exemption sent to the regulator or securities regulatory authority a letter or memorandum describing the matters relating to the exemption and indicating why consideration should be given to the granting of the exemption:

(i) on or before the date of the filing of the preliminary or *pro forma* simplified prospectus and annual information form;

(ii) at least 10 days before the issuance of the receipt in the case of an amendment to a simplified prospectus or annual information form; or

(iii) after the date of the filing of the preliminary or *pro forma* simplified prospectus and annual information form and received a written acknowledgement from the regulator or securities regulatory authority that the exemption may be evidenced in the manner set out in subsection (1); and

(b) the regulator or securities regulatory authority has not before, or concurrently with, the issuance of the receipt sent notice to the person or company that sought the exemption, that the exemption sought may not be evidenced in the manner set out in subsection (1)..

19. Form 81-101F1 Contents of Simplified Prospectus is amended

(a) in Item 3 of Part A by:

(i) replacing the third bullet under section 3.1 with the following:

- Additional information about the Fund is available in the following documents:
  - the Annual Information Form;
  - the most recently filed Fund Facts;
  - the most recently filed annual financial statements;
  - any interim financial statements filed after those annual financial statements;
  - the most recently filed annual management report of fund performance;
  - any interim management report of fund performance filed after that annual management report of fund performance.

These documents are incorporated by reference into this Simplified Prospectus, which means that they legally form part of this document just as if they were printed as a part of this document. You can get a copy of these documents, at your request, and at no cost, by calling [toll-free/collect] [insert the toll-free telephone number or telephone number where collect calls are accepted, as required by section 3.4 of the Instrument], or from your dealer.***; and***

(ii) replacing the third bullet under section 3.2 with the following:

- Additional information about each Fund is available in the following documents:
  - the Annual Information Form;
  - the most recently filed Fund Facts;
  - the most recently filed annual financial statements;
  - any interim financial statements filed after those annual financial statements;
  - the most recently filed annual management report of fund performance;
  - any interim management report of fund performance filed after that annual management report of fund performance.

These documents are incorporated by reference into this document, which means that they legally form part of this document just as if they were printed as a part of this document. You can get a copy of these documents, at your request, and at no cost, by calling [toll-free/collect] [insert the toll-free telephone number or telephone number where collect calls are accepted, as required by section 3.4 of the Instrument], or from your dealer.**.**

(b) in Item 14 of Part A by:

(i) replacing the first bullet under subsection 14(2) with the following:

- Additional information about the Fund[s] is available in the Fund['s/s'] Annual Information Form, Fund Facts, management reports of fund performance and financial statements. These documents are incorporated by reference into this Simplified Prospectus, which means that they legally form part of this document just as if they were printed as a part of this document.***; and***

(ii) replacing subsection 14(3) with the following:

(3) For a multiple SP in which the Part A section is bound separately from the Part B sections, state, in substantially the following words:

> A complete simplified prospectus for the mutual funds listed on this cover consists of this document and any additional disclosure document that provides specific information about the mutual funds in which you are investing. This document provides general information applicable to all of the [name of mutual fund family] funds. When you request a simplified prospectus, you must be provided with the additional disclosure document.**.**

(c) in Part B by adding the following after Item 9:

Item 9.1: Investment Risk Classification Methodology

(1) Briefly describe the methodology used by the manager for the purpose of identifying the investment risk level of the mutual fund as required by Item 5(2) in Part I of 81-101F3.

(2) State how frequently the investment risk level of the mutual fund is reviewed.

(3) Disclose that the methodology that the manager uses to identify the investment risk level of the mutual fund is available on request, at no cost, by calling [toll-free/collect call telephone number] or by writing to [address].

INSTRUCTION:

*Include a brief description of the formulas, methods or criteria used by the manager of the mutual fund in identifying the investment risk level of the mutual fund.**.***

(d) in Item 10 of Part B by:

(i) replacing Instruction (1) with the following:

*(1) In responding to the disclosure required by this Item, indicate the level of investor risk tolerance that would be appropriate for investment in the mutual fund.**; and***

(ii) by adding the following after Instruction (1):

*(1.1) Briefly describe how the manager has determined the level of investor risk tolerance that would be appropriate for investment in the mutual fund.**.***

20. Form 81-101F2 Contents of Annual Information Form is amended by:

(a) in Item 19 by replacing subsection 19(1) with the following:

(1) Include a certificate of the mutual fund that states:

(a) for a simplified prospectus and annual information form,

"This annual information form, together with the simplified prospectus and the documents incorporated by reference into the simplified prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the simplified prospectus, as required by the securities legislation of [insert the jurisdictions in which qualified] and do not contain any misrepresentations."

(b) for an amendment to a simplified prospectus or annual information form that does not restate the simplified prospectus or annual information form,

"This amendment no. [specify amendment number and date], together with the [amended and restated] annual information form dated [specify], [amending and restating the annual information form dated [specify],] [as amended by (specify prior amendments and dates)] and the [amended and restated] simplified prospectus dated [specify], [amending and restating the simplified prospectus dated [specify],] [as amended by (specify prior amendments and dates)] and the documents incorporated by reference into the [amended and restated] simplified prospectus, [as amended,] constitute full, true and plain disclosure of all material facts relating to the securities offered by the [amended and restated] simplified prospectus, [as amended,] as required by the securities legislation of [insert the jurisdictions in which qualified] and do not contain any misrepresentations.", and

(c) for an amendment that amends and restates a simplified prospectus or annual information form,

"This amended and restated annual information form dated [specify], amending and restating the annual information form dated [specify] [,as amended by (specify prior amendments and dates)], together with the [amended and restated] simplified prospectus dated [specify] [, amending and restating the simplified prospectus dated [specify]] [,as amended by (specify prior amendments and dates)] and the documents incorporated by reference into the [amended and restated] simplified prospectus, [as amended,] constitute full, true and plain disclosure of all material facts relating to the securities offered by the [amended and restated] simplified prospectus, [as amended,] as required by the securities legislation of [insert the jurisdictions in which qualified] and do not contain any misrepresentations."***.***

(b) in Item 22 by replacing the portion of subsection 22(1) before the Instruction with the following:

(1) Include a certificate of the principal distributor of the mutual fund that states:

> "To the best of our knowledge, information and belief, this annual information form, the financial statements of the fund [specify] for the financial period ended [specify] and the auditors' report on those financial statements, together with the simplified prospectus and the fund facts document dated [specify], constitute full, true and plain disclosure of all material facts relating to the securities offered by the simplified prospectus and do not contain any misrepresentation."***; and***

(c) in Item 24 by replacing the first bullet under subsection 24(2) with the following:

- Additional information about the Fund[s] is available in the Fund['s/s'] Fund Facts, management reports of fund performance and financial statements.**.**

21. The following form is added after Form 81-101F2 Contents of Annual Information Form:

National Instrument 81-101
Mutual Fund Prospectus Disclosure
Form 81-101F3
Contents of Fund Facts Document

GENERAL INSTRUCTIONS:

General

(1) This Form describes the disclosure required in a fund facts document for a mutual fund. Each Item of this Form outlines disclosure requirements. Instructions to help you provide this disclosure are in italic type.

(2) Terms defined in National Instrument 81-101 Mutual Fund Prospectus Disclosure, National Instrument 81-102 Mutual Funds, National Instrument 81-105 Mutual Fund Sales Practices or National Instrument 81-106 Investment Fund Continuous Disclosure and used in this Form have the meanings that they have in those national instruments.

(3) A fund facts document must state the required information concisely and in plain language.

(4) Respond as simply and directly as is reasonably possible. Include only the information necessary for a reasonable investor to understand the fundamental and particular characteristics of the mutual fund.

(5) National Instrument 81-101 Mutual Fund Prospectus Disclosure requires the fund facts document to be presented in a format that assists in readability and comprehension. This Form does not mandate the use of a specific format or template to achieve these goals. However, mutual funds must use, as appropriate, tables, captions, bullet points or other organizational techniques that assist in presenting the required disclosure clearly and concisely.

(6) This Form does not mandate the use of a specific font size or style but the font must be legible. Where the fund facts document is made available online, information must be presented in a way that enables it to be printed in a readable format.

(7) A fund facts document can be produced in colour or in black and white, and in portrait or landscape orientation.

(8) A fund facts document must contain only the information that is specifically mandated or permitted by this Form. In addition, each Item must be presented in the order and under the heading or sub-heading stipulated in this Form.

(9) A fund facts document must not contain design elements (e.g., graphics, photos, artwork) that detract from the information disclosed in the document.

Contents of a Fund Facts Document

(10) A fund facts document must disclose information about only one class or series of securities of a mutual fund. Mutual funds that have more than one class or series that are referable to the same portfolio of assets must prepare a separate fund facts document for each class or series.

(11) The fund facts document must be prepared on letter-size paper and must consist of two Parts: Part I and Part II.

(12) The fund facts document must begin with the responses to the Items in Part I of this Form.

(13) Part I must be followed by the responses to the Items in Part II of this Form.

(14) Each of Part I and Part II must not exceed one page in length, unless the required information in any section causes the disclosure to exceed this limit. Where this is the case, a fund facts document must not exceed a total of four pages in length.

(15) A mutual fund must not attach or bind other documents to a fund facts document, except those documents permitted under section 5.1 of National Instrument 81-101 Mutual Fund Prospectus Disclosure.

Consolidation of Fund Facts Document into a Multiple Fund Facts Document

(16) Fund facts documents must not be consolidated with each other to form a multiple fund facts document, except as permitted by section 5.1 of National Instrument 81-101 Mutual Fund Prospectus Disclosure. When a multiple fund facts document is permitted under the Instrument, a mutual fund must provide information about each of the mutual funds described in the document on a fund-by-fund or catalogue basis and must set out for each mutual fund separately the information required by this Form. Each fund facts document must start on a new page.

Multi-Class Mutual Funds

(17) As provided in National Instrument 81-102 Mutual Funds, a section, part, class or series of a class of securities of a mutual fund that is referable to a separate portfolio of assets is considered to be a separate mutual fund. Those principles apply to National Instrument 81-101 Mutual Fund Prospectus Disclosure and this Form.

PART I INFORMATION ABOUT THE FUND

Item 1: Introduction

Include at the top of the first page a heading consisting of:

(a) the title “Fund Facts”;

(b) the name of the manager of the mutual fund;

(c) the name of the mutual fund to which the fund facts document pertains and, if the mutual fund has more than one class or series of securities, the name of the class or series described in the fund facts document;

(d) the date of the document; and

(e) a brief introduction to the document using wording similar to the following:

> This document contains key information you should know about [insert name of the mutual fund]. You can find more detailed information in the fund’s simplified prospectus. Ask your adviser for a copy, contact [insert name of the manager of the mutual fund] at [insert if applicable the toll-free number and e-mail address of the manager of the mutual fund] [if applicable] or visit [insert the website of the mutual fund, the mutual fund’s family or the manager of the mutual fund] [as applicable].

INSTRUCTION:

The date for a fund facts document that is filed with a preliminary simplified prospectus or simplified prospectus must be the date of the certificate contained in the related annual information form. The date for a fund facts document that is filed with a pro forma simplified prospectus must be the date of the anticipated simplified prospectus. The date for an amended fund facts document must be the date of the certificate contained in the related amended annual information form.

Item 2: Quick Facts

Under the heading "Quick Facts", include disclosure in the form of the following table:

Date fund created: (see instruction 1)	**Portfolio manager:** (see instruction 4)
Total value on [date]: (see instruction 2)	**Distributions:** (see instruction 5)
Management expense ratio (MER): (see instruction 3)	**Minimum investment:** (see instruction 6)

INSTRUCTIONS:

(1) Use the date that the securities of the class or series of the mutual fund described in the fund facts document first became available to the public.

(2) Specify the net asset value of the mutual fund as at a date within 30 days before the date of the fund facts document. The amount disclosed must take into consideration all classes or series that are referable to the same portfolio of assets. For a newly established mutual fund, simply state that this information is not available because it is a new mutual fund.

(3) Use the management expense ratio (MER) disclosed in the most recently filed management report of fund performance (MRFP) for the mutual fund. The MER must be net of fee waivers or absorptions and, despite section 15.1(2) of National Instrument 81-106 Investment Fund Continuous Disclosure, need not include any additional disclosure about the waivers or absorptions. For a newly established mutual fund that has not yet filed a management report of fund performance, state that the MER is not available because it is a new mutual fund.

(4) Specify the name of the company or companies providing portfolio management services to the mutual fund. The mutual fund may also include the name of the specific individual(s) responsible for portfolio selection.

(5) Include disclosure under this element of the "Quick Facts" only if distributions are a fundamental feature of the mutual fund. Disclose the expected frequency and timing of distributions. If there is a targeted amount for distributions, the mutual fund may include this information.

(6) Specify both the minimum amount for an initial investment and for each additional investment. This can include minimum amounts for pre-authorized contribution plans.

Item 3: Investments of the Fund

(1) Briefly set out under the heading "What does the fund invest in?" a description of the fundamental nature of the mutual fund, or the fundamental features of the mutual fund that distinguish it from other mutual funds.

(2) For an index mutual fund,

(a) disclose the name or names of the permitted index or permitted indices on which the investments of the index mutual fund are based, and

(b) briefly describe the nature of that permitted index or those permitted indices.

(3) Include an introduction to the information provided in response to subsection (4) and subsection (5) using wording similar to the following:

> The charts below give you a snapshot of the fund's investments on [insert date]. The fund's investments will change.

(4) Include under the sub-heading "Top 10 investments [date]" a table disclosing:

(a) the top 10 positions held by the mutual fund;

(b) the total number of positions; and

(c) the percentage of net asset value of the mutual fund represented by the top 10 positions.

(5) Under the sub-heading "Investment mix [date]" include at least one, and up to two, charts or tables that illustrate the investment mix of the mutual fund's investment portfolio.

INSTRUCTIONS:

(1) Include in the information under "What does this fund invest in?" a description of what the mutual fund primarily invests in, or intends to primarily invest in, or that its name implies that it will primarily invest in, such as

(a) particular types of issuers, such as foreign issuers, small capitalization issuers or issuers located in emerging market countries;

(b) particular geographic locations or industry segments; or

(c) portfolio assets other than securities.

(2) Include a particular investment strategy only if it is an essential aspect of the mutual fund, as evidenced by the name of the mutual fund or the manner in which the mutual fund is marketed.

(3) If a mutual fund's stated objective is to invest primarily in Canadian securities, specify the maximum exposure to investments in foreign markets.

(4) The information under "Top 10 investments" and "Investment mix" is intended to give a snapshot of the composition of the mutual fund's investment portfolio. The information required to be disclosed under these sub-headings must be as at a date within 30 days before the date of the fund facts document. The date shown must be the same as the one used in Item 2 for the total value of the mutual fund.

(5) If the mutual fund owns more than one class of securities of an issuer, those classes should be aggregated for the purposes of this Item, however, debt and equity securities of an issuer must not be aggregated.

(6) Portfolio assets other than securities should be aggregated if they have substantially similar investment risks and profiles. For instance, gold certificates should be aggregated, even if they are issued by different financial institutions.

(7) Treat cash and cash equivalents as one separate discrete category.

(8) In determining its holdings for purposes of the disclosure required by this Item, a mutual fund must, for each long position in a derivative that is held by the mutual fund for purposes other than hedging and for each index participation unit held by the mutual fund, consider that it holds directly the underlying interest of that derivative or its proportionate share of the securities held by the issuer of the index participation unit.

(9) If a mutual fund invests substantially all of its assets directly or indirectly (through the use of derivatives) in securities of one other mutual fund, list the 10 largest holdings of the other mutual fund and show the percentage of the other mutual fund's net asset value represented by the top 10 positions. If the mutual fund is not able to disclose this information as at a date within 30 days before the date of the fund facts document, the mutual fund must include this information as disclosed by the other mutual fund in the other mutual fund's most recently filed fund facts document, or its most recently filed management report of fund performance, whichever is most recent.

(10) Indicate whether any of the mutual fund's top 10 positions are short positions.

(11) Each investment mix chart or table must show a breakdown of the mutual fund's investment portfolio into appropriate subgroups and the percentage of the aggregate net asset value of the mutual fund constituted by each subgroup. The names of the subgroups are not prescribed and can include security type, industry segment or geographic location. The mutual fund should use the most appropriate categories given the nature

of the mutual fund. The choices made must be consistent with disclosure provided under "Summary of Investment Portfolio" in the mutual fund's MRFP.

(12) In presenting the investment mix of the mutual fund, consider the most effective way of conveying the information to investors. All tables or charts must be clear and legible.

(13) For new mutual funds where the information required to be disclosed under "Top 10 investments" and "Investment mix" is not available, include the required sub-headings and provide a brief statement explaining why the required information is not available.

Item 4: Past Performance

(1) Under the heading "How has the fund performed?" include an introduction using wording similar to the following:

> This section tells you how the fund has performed over the past [insert the lesser of 10 years or the number of completed calendar years] years. Returns are after expenses have been deducted. These expenses reduce the fund's returns.
>
> It's important to note that this doesn't tell you how the fund will perform in the future. Also, your actual after-tax return will depend on your personal tax situation.

(2) Under the sub-heading "Average return" show

(a) the final value, of a hypothetical $1,000 investment in the mutual fund as at the end of the period that ends within 30 days before the date of the fund facts document and consists of the lesser of

(i) 10 years, or

(ii) the time since inception of the mutual fund;

and

(b) the annual compounded rate of return that would equate the initial $1,000 investment to the final value.

(3) Under the sub-heading "Year-by-year returns" provide a bar chart that shows the annual total return of the mutual fund, in chronological order with the most recent year on the right of the bar chart, for the lesser of

(a) each of the 10 most recently completed calendar years; and

(b) each of the completed calendar years in which the mutual fund has been in existence and which the mutual fund was a reporting issuer.

(4) Provide an introduction to the bar chart indicating

(a) that the bar chart shows the mutual fund's annual performance for each of the years shown; and

(b) for the particular years shown, the number of years in which the value of the mutual fund dropped.

INSTRUCTIONS

(1) In responding to the requirements of this Item, a mutual fund must comply with the relevant sections of Part 15 of National Instrument 81-102 Mutual Funds as if those sections applied to a fund facts document.

(2) Use a linear scale for each axis of the bar chart required by this Item.

(3) The x-axis and y-axis for the bar chart required by this Item must intersect at 0.

(4) A mutual fund that distributes different classes or series of securities that are referable to the same portfolio of assets must only show performance data related to the specific class or series of securities being described in the fund facts document.

(5) If the information required to be disclosed under this Item for "Average return" and "Year-by-year returns" is not reasonably available, include the required sub-headings and provide a brief statement explaining why the

required information is not available. Information under "Average return" will generally not be available for a mutual fund that has been distributing securities under a simplified prospectus for less than 12 consecutive months. Information under "Year-by-year returns" will generally not be available for a mutual fund that has been distributing securities under a simplified prospectus for less than one calendar year.

(6) The dollar amount shown under "Average return" may be rounded up to the nearest dollar.

(7) The percentage amounts shown under "Average return" and "Year-by-year returns" may be rounded up to the nearest decimal place.

Item 5: Risks

(1) Under the heading "How risky is it?" provide an introduction using wording similar to the following:

> When you invest in a fund, the value of your investment can go down as well as up. [Insert name of the manager of the mutual fund] has rated this fund's risk as [insert rating on the scale in Item 5(2)].
>
> For a description of the specific risks of this fund, see the fund's simplified prospectus.

(2) Using the investment risk classification methodology adopted by the manager, identify the mutual fund's investment risk level on the following scale:

Low	Low to Medium	Medium	Medium to High	High

INSTRUCTIONS:

(1) Based upon the investment risk classification methodology adopted by the manager of the mutual fund, identify where the mutual fund fits on the continuum of investment risk levels by showing the full investment risk scale set out in Item 5(2) and highlighting the applicable category on the scale.

(2) Where the mutual fund is a newly established mutual fund and it is not possible for the manager of the mutual fund to apply its investment risk classification methodology to the mutual fund, include a statement explaining that it is a new mutual fund and use the chart to indicate the investment risk level that the manager of the mutual fund would expect for the mutual fund.

Item 6: Guarantee

(1) Under the heading "Are there any guarantees?", if the mutual fund has an insurance or guarantee feature protecting all or some of the principal amount of an investment in the mutual fund:

(a) identify the person or company providing the guarantee or insurance;

(b) provide a brief description of the material terms of the guarantee or insurance, including the maturity date of the guarantee or insurance.

(2) If the mutual fund does not have any guarantee or insurance, state in wording similar to the following:

> Like most mutual funds, this fund doesn't have any guarantees. You may not get back the money you invest.

INSTRUCTION:

If applicable, state that the guarantee or insurance does not apply to the amount of any redemptions before the maturity date of the guarantee or before the death of the securityholder and that redemptions before that date would be based on the net asset value of the mutual fund at the time.

Item 7: Suitability

(1) Provide a brief statement of the suitability of the mutual fund for particular investors under the heading "Who is this fund for?". Describe the characteristics of the investor for whom the mutual fund may or may not be an appropriate investment, and the portfolios for which the mutual fund is and is not suited.

(2) State in bold font in wording similar to the following:

> Before you invest in any fund, you should consider how it would work with your other investments and your tolerance for risk.

INSTRUCTION:

If the mutual fund is particularly unsuitable for certain types of investors or for certain types of investment portfolios, emphasize this aspect of the mutual fund. Disclose both the types of investors who should not invest in the mutual fund, with regard to investments on both a short- and long-term basis, and the types of portfolios that should not invest in the mutual fund. If the mutual fund is particularly suitable for investors who have particular investment objectives, this can also be disclosed.

Item 8: Impact of Income Taxes on Investor Returns

Under the heading "A word about tax" provide a brief explanation of the income tax consequences for investors using wording similar to the following:

In general, you'll have to pay income tax on any money you make on a fund. How much you pay depends on the tax laws where you live and whether or not you hold the fund in a registered plan such as a Registered Retirement Savings Plan, or a Tax-Free Savings Account.

Keep in mind that if you hold your fund in a non-registered account, fund distributions are included in your taxable income, whether you get them in cash or have them reinvested.

PART II COSTS, RIGHTS AND OTHER INFORMATION

Item 1: Costs of Buying, Owning and Selling the Fund

1.1 Introduction

(1) Under the heading "How much does it cost?", state using wording similar to the following:

> The following tables show the fees and expenses you could pay to buy, own and sell [name of the class or series of securities covered in the fund facts document] [units/shares] of the fund.

(2) If applicable, state that

- the mutual fund has other classes or series of securities;
- the fees and expenses for each class or series of securities of the mutual fund are different; and
- the investor should ask about other classes or series of securities that may be suitable for the investor.

1.2 Illustrations of Different Sales Charge Options

(1) For a mutual fund with multiple sales charge options, include an introduction under the sub-heading "Sales charges" using wording similar to the following:

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

(2) Provide information about the sales charges payable by an investor under the available sales charge options in the form of the following table:

Sales charge option	**What you pay**		**How it works**
	in per cent (%)	**in dollars ($)**	
(see instruction 1)	(see instruction 2)	(see instruction 3)	(see instruction 4)

(3) If the mutual fund has only one sales charge option, replace the introductory statement required in paragraph (1) above with a statement highlighting the sales charge option applicable to the mutual fund.

(4) If the mutual fund does not have any sales charges, replace the introductory statement and the table required in paragraph (1) and paragraph (2) above with a general statement explaining that no sales charges apply.

INSTRUCTIONS:

(1) The mutual fund must disclose all sales charge options (e.g., initial sales charge, deferred sales charge) that apply to the class or series being described in the fund facts document. It is not necessary to disclose sales charge options that do not apply to the series or class to which the fund facts document relates.

(2) Specify each sales charge option as a percentage. For an initial sales charge, include a range for the amount that can be charged, if applicable. For a deferred sales charge, provide the full sales charge schedule.

(3) Specify each sales charge option in dollar terms. For an initial sales charge, include a range for the amount that can be charged on every $1,000 investment, if applicable. For a deferred sales charge, include a range for the amount that can be charged on every $1,000 redemption.

(4) Provide a brief overview of the key elements of how each sales charge option works including:

- *whether the amount payable is negotiable;*
- *whether the amount payable is deducted from the amount paid at the time of purchase or from the amount received at the time of sale;*
- *who pays and who receives the amount payable under each sales charge option.*

In the case of a deferred sales charge, the disclosure must also briefly state:

- *any amount payable as an upfront sales commission;*
- *who pays and who receives the amount payable as the upfront sales commission;*
- *any free redemption amount and key details about how it works;*
- *whether switches can be made without incurring a sales charge; and*
- *how the amount paid by an investor at the time of a redemption of securities is calculated, for example, whether it is based on the net asset value of those securities at the time of redemption or another time.*

1.3 Fund expenses

(1) Under the sub-heading “Fund expenses” include an introduction using wording similar to the following:

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

(2) Unless the mutual fund has not yet filed a management report of fund performance, provide information about the expenses of the mutual fund in the form of the following table:

	Annual rate (as a % of the fund’s value)
Management expense ratio (MER) This is the total of the fund’s management fee and operating expenses. (see instruction 1)	(see instruction 2)
Trading expense ratio (TER) These are the fund’s trading costs.	(see instruction 3)
Fund expenses	(see instruction 4)

(3) Unless the mutual fund has not yet filed a management report of fund performance, above the table required under subsection (2), include a statement using wording similar to the following:

> As of [see instruction 5], the fund's expenses were [insert amount included in table required under subsection (2)]% of its value. This equals $[see instruction 6] for every $1,000 invested.

(4) For a mutual fund that has not yet filed a management report of fund performance, include wording similar to the following:

> The fund's expenses are made up of the management fee, operating expenses and trading costs. The fund's annual management fee is [see instruction 7]% of the fund's value. Because this fund is new, its operating expenses and trading

(5) If the mutual fund pays an incentive fee that is determined by the performance of the mutual fund, provide a brief statement disclosing the amount of the fee and the circumstances where the mutual fund will pay it.

(6) If the manager of the mutual fund or another member of the mutual fund's organization pays trailing commissions, include a brief description of these commissions under the sub-heading "Trailing commission".

(7) The description of trailing commissions must include a statement in substantially the following words:

> The trailing commission is paid out of the management fee. The trailing commission is paid for as long as you own the fund.

INSTRUCTIONS:

(1) If any fees or expenses otherwise payable by the mutual fund were waived or otherwise absorbed by a member of the organization of the mutual fund, despite section 15.1(2) of National Instrument 81-106 Investment Fund Continuous Disclosure, only include a statement in substantially the following words:

> *[Insert name of the manager of the mutual fund] waived some of the fund's expenses. If it had not done so, the MER would have been higher.*

(2) Use the same MER that is disclosed in Item 2 of Part I of this Form.

(3) Use the trading expense ratio disclosed in the most recently filed management report of fund performance (MRFP) for the mutual fund.

(4) The amount included for fund expenses is the amount arrived at by adding the MER and the trading expense ratio. Use a bold font or other formatting to indicate that fund expenses is the total of all ongoing expenses set out in the chart and is not a separate expense charged to the fund.

(5) Insert the date of the most recently filed management report of fund performance.

(6) Insert the equivalent dollar amount of the ongoing expenses of the fund for each $1,000 investment.

(7) The percentage disclosed for the management fee must correspond to the percentage shown in the fee table in the simplified prospectus.

(8) The description of trailing commissions must briefly and concisely explain the purpose of the commission, how the commissions are paid and the range of the rates of the commission for each sales charge option. In addition to the percentage amount of the commission, this description must also set out the equivalent dollar amount for each $1,000 investment.

1.4 Other Fees

(1) Under the sub-heading "Other fees" provide an introduction using wording similar to the following:

> You may have to pay other fees when you sell or switch [units/shares] of the fund.

(2) Provide information about the amount of fees, other than sales charges, payable by an investor when they sell or switch units or shares of the mutual fund, substantially in the form of the following table:

Fee	What you pay
(see instruction 1)	(see instruction 2)

INSTRUCTIONS:

(1) Under this Item, it is only necessary to include fees that apply to the particular series or class of the mutual fund. Examples include short-term trading fee, switch fee and change fee. If there are no other fees associated with selling or switching units or shares of the mutual fund, replace the table with a statement to this effect.

(2) Provide a brief description of each fee disclosing the amount to be paid as a percentage (or, if applicable, a fixed dollar amount) and state who charges the fee.

Item 2: Statement of Rights

Under the heading "What if I change my mind?" state in substantially the following words:

> Under securities law in some provinces and territories, you have the right to:
>
> - *withdraw from an agreement to buy mutual fund units within two business days after you receive a simplified prospectus, or*
> - *cancel your purchase within 48 hours after you receive confirmation of the purchase.*
>
> In some provinces and territories, you also have the right to cancel a purchase, or in some jurisdictions, claim damages, if the simplified prospectus, annual information form or financial statements contain a misrepresentation. You must act within the time limit set by the securities law in your province or territory.
>
> For more information, see the securities law of your province or territory or ask a lawyer.

Item 3: More Information About the Fund

(1) Under the heading "For more information" state in substantially the following words:

> Contact [insert name of the manager of the mutual fund] or your adviser for the fund's simplified prospectus and other disclosure documents. These documents and the Fund Facts make up the fund's legal documents.

(2) State the name, address and toll-free telephone number of the manager of the mutual fund. If applicable, also state the e-mail address and website of the manager of the mutual fund.

22. Transition

(1) A mutual fund must, on or before July 8, 2011, file a fund facts document for each class or series of securities of the mutual fund that, on that date, are the subject of disclosure under a simplified prospectus.

(2) Subsection (1) does not apply in respect of a class or series of securities of a mutual fund for which a fund facts document was, on or before July 8, 2011, filed under section 2.1.

(3) The date of a fund facts document filed under subsection (1) must be the date on which it was filed.

(4) Until April 8, 2011,

(a) the requirement to file a fund facts document under subparagraph 2.1(1)(a)(ii), (b)(ii), (c)(ii), (d)(ii) or (iii) of National Instrument 81-101 Mutual Fund Prospectus Disclosure does not apply to a mutual fund, and

(b) section 2.3 applies to a mutual fund except to the extent that section imposes requirements relating to a fund facts document.

23. This Instrument comes into force on January 1, 2011.

5.1.2 Amendments to Companion Policy 81-101CP to NI 81-101 Mutual Fund Prospectus Disclosure

AMENDMENTS TO
COMPANION POLICY 81-101CP TO
NATIONAL INSTRUMENT 81-101
MUTUAL FUND PROSPECTUS DISCLOSURE

1. Companion Policy 81-101CP To National Instrument 81-101 Mutual Fund Prospectus Disclosure is amended by this Instrument.

2. Section 1.1 is amended by:

a. replacing the first instance of "Canadian securities regulatory authorities***" with "***Canadian Securities Administrators (CSA or we)***";***

b. replacing the second instance of "Canadian securities regulatory authorities" ***with "***CSA***".***

3. Section 2.1 is replaced with the following:

2.1 Purpose of the Instrument

(1) The purpose of the Instrument is to ensure that the offering disclosure regime for mutual funds provides investors with disclosure documents that clearly and concisely state information that investors should consider in connection with an investment decision about the mutual fund, while recognizing that different investors have differing needs in receiving disclosure.

(2) The disclosure regime for mutual funds is built on two main principles:

- providing investors with key information about a mutual fund; and
- providing the information in a simple, accessible and comparable format.

(3) We use the following approaches in the Instrument to achieve the principles referred to in subsection (2):

1. The Instrument has been designed so that fund companies prepare offering disclosure documents that investors would find helpful in making investment decisions.

2. The Instrument contemplates the use of three disclosure documents by a mutual fund:

   - a simplified prospectus;
   - an annual information form; and
   - a summary document called the 'fund facts', which contains key information about a mutual fund.

   Together with the financial statements, the management reports of fund performance and other documents incorporated by reference, these documents contain full, true and plain disclosure about the mutual fund.

3. Subsection 4.1(1) of the Instrument requires that the simplified prospectus, annual information form and fund facts document be prepared using plain language and in a format that assists in readability and comprehension. The Instrument and related forms provide detailed requirements on the content and format of these documents.

(4) Mutual funds, managers and participants in the mutual fund industry should prepare disclosure documents and carry out delivery in a manner that is consistent with the spirit and intent of the Instrument..

4. The following is added after section 2.1:

2.1.1 Fund Facts Document

(1) The Instrument requires that the fund facts document be in plain language, be no longer than 4 pages in length, and highlight key information important to investors, including performance, risk and cost. The fund facts document is incorporated by reference into the simplified prospectus.

(2) The Instrument and Form 81-101F3 set out detailed requirements on the content and format of a fund facts document, while allowing some flexibility to accommodate different kinds of mutual funds. The requirements are designed to ensure that the information in a fund facts document of a mutual fund is clear, concise, understandable and easily comparable with information in the fund facts document of other mutual funds.

(3) To help write the fund facts document in plain language, mutual fund companies can use the Flesch-Kincaid methodology to assess the readability of a fund facts document. The Flesch-Kincaid grade level scale is a methodology that rates the readability of a text to a corresponding grade level and can be determined by the use of Flesch-Kincaid tests built into commonly used word processing programs. The CSA will generally consider a grade level of 6.0 or less on the Flesch-Kincaid grade level scale to indicate that a fund facts document is written in plain language. For French-language documents, mutual fund companies may wish to consider using other appropriate readability tools.

(4) Although the Instrument does not require delivery of the fund facts document, the CSA encourages the use and distribution of the fund facts document as a key part of the sales process in helping to inform investors about mutual funds they are considering for investment..

5. Section 2.2 is replaced with the following:

2.2 Simplified Prospectus

(1) The Instrument contemplates that all investors in a mutual fund will receive a simplified prospectus, which is designed to provide an investor with the necessary information to make an informed investment decision. The Instrument requires the delivery only of a simplified prospectus to an investor in connection with a purchase, unless the investor also requests delivery of the annual information form or any of the other documents incorporated by reference into the simplified prospectus, including the fund facts document.

(2) The Instrument and Form 81-101F1 set out detailed requirements on the content and format of a simplified prospectus. The requirements enable the information about a mutual fund to be clear, concise, understandable, well-organized and to easily compare one mutual fund with another..

6. Section 2.3 is replaced with the following:

2.3 Annual Information Form

(1) The Instrument requires that a supplemental disclosure document, the annual information form, be provided to any person on request. The annual information form is incorporated by reference into the simplified prospectus.

(2) Information contained in the related simplified prospectus will generally not be repeated in an annual information form except as necessary to make the annual information form comprehensible as an independent document. In general, an annual information form is intended to provide disclosure about different matters than those discussed in the fund facts document and simplified prospectus, such as information concerning the internal operations of the manager of the mutual fund, which may be of assistance or interest to some investors.

(3) The Instrument and Form 81-101F2 allow for more flexibility in the preparation of an annual information form than is the case with a simplified prospectus and fund facts document. The requirements for the order of disclosing information are less stringent for an annual information form than for a fund facts document or a simplified prospectus. An annual information form may include information not specifically required by Form 81-101F2..

7. Section 2.4 is replaced with the following:

2.4 Financial Statements and Management Reports of Fund Performance – The Instrument requires that the mutual fund's most recently audited financial statements, any interim statements filed after those audited statements, the mutual fund's most recently filed annual management report of fund performance and any interim management report of fund performance filed after that annual management report be provided upon request to any person or company requesting them. Like the fund facts document and the annual information form, these financial statements and management reports of fund performance are incorporated by reference into the simplified prospectus. The result is that future filings of these documents will be incorporated by reference into the simplified prospectus, while superseding the financial statements and management reports of fund performance previously filed..

8. Section 2.5 is replaced with the following:

2.5 Filing and Delivery of Documents

(1) Section 2.3 of the Instrument distinguishes between documents that are required by securities legislation to be "filed" with the securities regulatory authority or regulator and those that must be "delivered" or "sent" to the securities regulatory authority or regulator. Documents that are "filed" are on the public record. Documents that are "delivered" or "sent" are not necessarily on the public record. All documents required to be filed under the Instrument must be filed in accordance with National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*.

(2) Section 1.1 of the Instrument defines "business day" as any day other than a Saturday, Sunday or a statutory holiday. In some cases, a statutory holiday may only be a statutory holiday in one jurisdiction. The definition of business day should be applied in each local jurisdiction in which a prospectus is being filed. For example, section 5.1.2 of the Instrument states that the date of the certificate in a simplified prospectus must be within 3 business days before the filing of the simplified prospectus. The certificates in the simplified prospectus are dated Day 1. Day 2 is a statutory holiday in Québec but not in Alberta. If the simplified prospectus is filed in both Alberta and Québec, it must be filed no later than Day 4 in order to comply with the requirement in section 5.1.2 of the Instrument, despite the fact that Day 2 was not a business day in Québec. If the simplified prospectus is filed only in Québec, it could be filed on Day 5..

9. Subsection 2.6(2) is replaced with the following:

(2) Subsection 2.3(6) of the Instrument permits certain material contracts to be filed with certain commercial or financial information deleted in order to keep this information confidential. For example, specific fees and expenses and non-competition clauses could be kept confidential under this provision. In these cases, the benefits of disclosing the information to the public are outweighed by the potentially adverse consequences to mutual fund managers and portfolio advisers. However, the basic terms of these agreements must be included in the contracts that are filed, such as provisions relating to the term and termination of the agreements and the rights and responsibilities of the parties to the agreements..

10. Section 2.7 is replaced with the following:

2.7 Amendments

(1) Paragraph 2.1(1)(d) of the Instrument requires an amendment to an annual information form to be filed whenever an amendment to a simplified prospectus is filed. Similarly, subsection 2.3(5.1) of the Instrument requires an amendment to an annual information form to be filed whenever an amendment to a fund facts document is filed. If the substance of the amendment to the fund facts document or to the simplified prospectus would not require a change to the text of the annual information form, the amendment to the annual information form would consist only of the certificate page referring to the mutual fund to which the amendment to the fund facts document or the simplified prospectus pertains.

(2) Paragraph 2.1(1)(e) of the Instrument requires a mutual fund to file an amendment to a fund facts document when a material change to the mutual fund occurs that requires a change to the disclosure in the fund facts document. This mirrors the requirement in paragraph 11.2(1)(d) of National Instrument 81-106 Investment Fund Continuous Disclosure. We would not generally consider changes to the top 10 investments, investment mix or year-by-year returns of the mutual fund to be material changes. We would generally consider changes to the mutual fund's investment objective or risk level to be material changes under securities legislation.

(3) A commercial copy of an amended and restated simplified prospectus and annual information form can be created by reprinting the entire document or by putting stickers on an existing document that provide the new text created by the amendment. If stickers are used, one sticker will be required for the substance of the amendments and a separate sticker will be required for the cover page of the document that describes the type and date of the document, as applicable.

(4) Subsection 2.2(4) of the Instrument requires that any amendment to a fund facts document can only take the form of an amended and restated fund facts document. Accordingly, the commercial copy of an amended and restated fund facts document can only be created by reprinting the entire document.

(5) The requirements in section 2.2 of the Instrument apply to an amendment to a full simplified prospectus and to an amendment only to a Part A or Part B section of a simplified prospectus in cases where the Part A and Part B sections are bound separately. Section 2.2 of the Instrument requires amendments to various parts of a multiple SP to be evidenced as follows:

1. Multiple SP with Part A and the Part B sections bound together. An amendment to either or both of the Part A or Part B sections could be in the form of a free standing amending instrument that would be delivered to investors with the rest of the multiple SP. The amending instrument would be identified, in accordance with subsection 2.2(3) of the Instrument, as "Amendment No. [insert number], dated [date of amendment] to the simplified prospectus document for the [name of funds] dated [date of original document]". Or, the amendment could be in the form of a restated and amended multiple SP document, identified as such in accordance with subsection 2.2(3).

2. Multiple SP with Part A and the Part B sections bound separately. If there is an amendment to the Part A section of the document but not to a Part B section, the amendment could be in the form of an amending document or an amended and restated Part A document. An amending document could be identified as "Amendment No. [insert number], dated [date of amendment], to the Part A section of the simplified prospectuses of the [name of funds] dated [original date of multiple SP]", and the amended and restated Part A document could be identified as "Amended and Restated Simplified Prospectuses dated [date of amendment] of the [name of funds], amending and restating the Simplified Prospectuses dated [original date of document].".

3. In the circumstances described in paragraph 2 above, no amendment is required to be made to the Part B sections of the multiple SP. The footer that is required by Item 1 of Part B of Form 81-101F1 to be on the bottom of each page of a Part B section will continue to show the date of the original Part A document. For this reason, the amended Part A document must be identified in a way that shows the date of the amendments and the original date of the document so that investors know that it relates to the corresponding Part B sections.

4. If there is an amendment to a Part B section of a multiple SP with Part A and Part B sections bound separately the amendment must be made by way of an amended and restated Part B document, whether or not an amendment is being made to the Part A section. If no amendment to the Part A section is being made, no amendment is required to the Part A document. The amended and restated Part B document will include a statement in the footer required by Item 1 of Part B of Form 81-101F1 that identifies the document as a document that amends and restates the original Part B document.

(6) Subsection 2.2(4) of the Instrument requires an amendment to a fund facts document to be in the form of an amended and restated fund facts document. An amended fund facts document does not have to be otherwise identified, except for the date of the amendment.

(7) An amendment to a prospectus of a mutual fund, even if it amends and restates the prospectus, does not change the date under Canadian securities legislation by which the mutual fund must renew the prospectus. That date, which is commonly referred to as the "lapse date" for the prospectus, remains that date established under securities legislation. An amendment to a fund facts document will also not change the lapse date for a prospectus.

(8) Securities legislation says that a person or company must not distribute securities, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued by the securities regulatory authority or regulator. This requirement also applies to mutual funds. If a mutual fund adds a new class or series of securities to a simplified prospectus that is referable to a new separate portfolio of assets, a preliminary simplified prospectus must be filed, together with a preliminary annual information form and preliminary fund facts document. However, if the new class or series of securities is referable to an existing

portfolio of assets, the new class or series may be added by an amendment to the simplified prospectus. In this case, a preliminary fund facts document for the new class or series must still be filed, as set out in subparagraph 2.1(1)(d)(iii) of the Instrument..

11. The following is added after section 2.7:

2.8 Websites – Section 2.3.1 of the Instrument requires a mutual fund to post its fund facts document to the website of the mutual fund, the mutual fund's family or the manager of the mutual fund, as applicable. A fund facts document should remain on the website at least until the next fund facts document for the mutual fund is posted. A fund facts document must be displayed in an easily visible and accessible location on the website. It should also be presented in a format that is convenient for both reading online and printing on paper..

12. Section 3.1 is replaced with the following:

3.1 Plain Language – Subsection 4.1(1) of the Instrument requires that a simplified prospectus, annual information form and fund facts document be written in plain language. The reason for using "plain language" is to communicate in a way that the audience could immediately understand what you tell them. The plain language approach focuses on the needs and abilities of the audience to ensure that the content of a communication is relevant, the organization of the information is logical, the language is appropriate and the presentation is visually appealing.

Mutual funds should consider the following plain language techniques in preparing their documents:

- Organize the document into clear, concise sections, paragraphs and sentences.
- Use:
  - common everyday words
  - technical, legal and business terms only when unavoidable and provide clear and concise explanations for them
  - the active voice
  - short sentences and paragraphs
  - a conversational and personal tone
  - examples and illustrations to explain abstract concepts.
- Avoid:
  - superfluous words
  - unnecessary technical, legal and business jargon
  - vague boilerplate wording
  - glossaries and defined terms unless they aid in understanding the disclosure
  - abstractions by using more concrete terms or examples
  - excessive detail
  - multiple negatives..

13. Section 3.2 is replaced with the following:

3.2 Presentation

(1) Subsection 4.1(1) of the Instrument requires that a simplified prospectus, annual information form and fund facts document be presented in a format that assists in readability and comprehension. The Instrument and related forms also set out certain aspects of a simplified prospectus, annual information form and fund facts

document that must be presented in a required format, requiring some information to be presented in the form of tables, charts or diagrams. Within these requirements, mutual funds have flexibility in the format used for simplified prospectuses, annual information forms and fund facts documents.

The formatting of documents can contribute substantially to the ease with which the document can be read and understood. Mutual funds should consider using the following formatting ideas when preparing their documents:

- reasonably-sized, easy-to-read typefaces
- headings that are clearly differentiated from the body text
- bulleted or numbered lists
- margins, boxes or shading to highlight information or for supplementary information
- tables, graphs and diagrams for complex information
- "question and answer" format to organize information
- sufficient white space on each page
- images, colour, lines and other graphical elements
- avoiding the use of upper-case, bold, italic or underlining in blocks of text
- avoiding full-justified margins.

(2) We think documents would be easier to read and understand with the use of the design features set out in subsection (1). The use of logos and pictures that accurately depict aspects of the mutual fund industry, the mutual fund or mutual fund family or products and services offered by the mutual fund family may also aid in comprehension and readability. However we think that an excessive use or crowding of design features might make the documents more difficult to read or understand.

(3) On occasion, we have seen amendments to simplified prospectuses prepared in highly legal and technical styles. For example, some amendments merely reference specific lines or sections of a simplified prospectus that are being amended, without providing the reader with a restated section or an explanation for the changes. In addition, some amendments have been presented in the form of photocopies of some other documents, such as meeting materials, with the word "amendment" written on the top of the photocopy. We think that these approaches are inappropriate ways of amending a simplified prospectus or annual information form under the Instrument.

Material changes to mutual funds must be described in a format that assists in readability and comprehension, as required by subsection 4.1(1) of the Instrument. Amendments should be expressed clearly, and in a manner that enables the reader to easily read and understand both the amendment and the revised sections of the relevant document. This manner of expression may require the preparation of either an amended and restated simplified prospectus or annual information form or a clearly worded amendment insert for the existing simplified prospectus or annual information form. Any amendment to a fund facts document must be in the form of an amended and restated fund facts document.**.**

14. Section 4.1 is amended

a. by replacing subsection (1) with the following:

(1) A consolidated "simplified prospectus" pertaining to a number of mutual funds is in law a number of separate simplified prospectuses, one simplified prospectus for each mutual fund. Further, a receipt issued by the securities regulatory authority or regulator in connection with a consolidated "simplified prospectus" in law represents a separate receipt for the simplified prospectus pertaining to each mutual fund. The Instrument and Form 81-101F1 make clear that a simplified prospectus under the Instrument pertains to one mutual fund and use the term "multiple SP" to refer to a document that contains more than one simplified prospectus.***;***

b. in subsection (3) by

i. replacing "shall***" with "***must***";***

ii. replacing "In the view of the Canadian securities regulatory authorities,***" with "***We think***";***

iii. replacing "between***" with "***among***"; and***

iv. replacing "the SP form***" with "***Form 81-101F1***";***

c. in subsection (4) by

i. inserting "mutual***" before "***fund-specific***"; and***

ii. inserting "mutual***" before "***funds in which the investor is interested***";***

d. by replacing subsection (5) with the following:

(5) The Instrument contains no restrictions on how many simplified prospectuses can be consolidated into a multiple SP.***;***

e. by deleting subsection (6).

15. Section 4.2 is amended

a. in subsection (1) by replacing "It is noted that, as with NP 36, mutual" with "Mutual***";***

b. by replacing subsection (2) with the following:

(2) A new mutual fund may be added to a multiple SP that contains final simplified prospectuses. In this case, an amended multiple SP and multiple AIF containing disclosure of the new mutual fund, as well as a new fund facts document for each class or series of the new mutual fund would be filed. The preliminary filing would constitute the filing of a preliminary simplified prospectus, annual information form and fund facts document for the new mutual fund, and a draft amended and restated simplified prospectus and annual information form for each existing mutual fund. The final filing of documents would include a simplified prospectus, annual information form and fund facts document for the new mutual fund, and an amended and restated simplified prospectus and annual information form for each previously existing mutual fund. An amendment to an existing fund facts document would generally not be necessary.***; and***

c. in subsection (3) by replacing "As noted under subsection 2.7(4) of this Policy, an***" with "***An***".***

16. The following part is added after Part 4:

PART 4.1 THE FUND FACTS DOCUMENT

4.1.1 General Purposes – The general purposes of the offering disclosure regime for mutual funds and of the fund facts document are described in section 2.1 of this Policy. This Part provides guidance to preparers of the fund facts document in meeting those purposes.

A sample fund facts document is set out in Appendix A to this Policy. The sample is provided for illustrative purposes only.

4.1.2 Multiple Class Mutual Funds – The purpose for the requirements on the content and format of a fund facts document is to give investors the opportunity to easily compare the key information of one mutual fund to another. For many mutual funds, the class or series may affect not only the management expense ratio and performance, but a number of other considerations as well, such as minimum investment amounts, distributions, suitability, dealer compensation and sales charge options. For this reason, the Instrument requires a fund facts document to be prepared for each class and each series of a mutual fund that is referable to the same portfolio of assets.

4.1.3 Filings

(1) Section 2.1 of the Instrument requires that a fund facts document for each class and series of the securities of a mutual fund be filed concurrently with the mutual fund's simplified prospectus and annual information form.

(2) The most recently filed fund facts document for a mutual fund is incorporated by reference into the simplified prospectus under section 3.1 of the Instrument, with the result that any fund facts document filed under the Instrument after the date of receipt for the simplified prospectus supersedes the fund facts document previously filed.

(3) Section 2.3.2 of the Instrument requires a fund facts document filed under Part 2 of the Instrument to be posted by the mutual fund to the website of the mutual fund, the mutual fund's family or the manager of the mutual fund. Only a final fund facts document filed under the Instrument should be posted to a website. A preliminary or pro forma fund facts document, for example, should not be posted.

4.1.4 Additional Information – Paragraph 4.1(3)(d) of the Instrument requires a fund facts document to include only information that is specifically mandated or permitted by the required Form 81-101F3.

4.1.5 Format – The Instrument requires a mutual fund to use the headings and sub-headings stipulated in the Instrument and Form 81-101F3..

17. Section 5.1 is replaced with the following:

5.1 General Purposes – The general purposes of a simplified prospectus are described in section 2.1 of this Policy. This Part provides guidance to preparers of simplified prospectuses in meeting those purposes..

18. Section 5.2 is replaced with the following:

5.2 Catalogue Approach – The Instrument requires that a multiple SP must present the fund-specific, or Part B, disclosure about each fund using a catalogue approach. That is, the disclosure about each mutual fund must be presented separately from the disclosure about each other mutual fund..

19. The following section is added after section 5.2:

5.2.1 Accessibility of a Simplified Prospectus – Mutual funds, managers, and dealers should encourage investors who want more information about a mutual fund to request and read the simplified prospectus and any of the documents incorporated by reference into the simplified prospectus. The Instrument requires that a simplified prospectus or any of the documents incorporated by reference be sent within three business days of a request..

20. Section 5.3 is amended

a. in subsection (1) by

i. replacing "shall***" with "***must***" wherever it occurs; and***

ii. replacing "the required form***" with "***Form 81-101F1***";***

b. by deleting subsection (2); and

c. by deleting "National***" in subsection (3).***

21. Section 5.4 is replaced with the following:

5.4 Inclusion of Educational Material

(1) Paragraph 4.1(2)(e) of the Instrument permits educational material to be included in a simplified prospectus. There are no requirements on the location of any educational material. However, the CSA thinks that educational material will be more useful if placed close to mandated disclosure to which it substantively relates.

(2) Educational material contained in a simplified prospectus is subject to the general requirements of the Instrument and should be presented in a manner consistent with the rest of the simplified prospectus. That is,

the educational material should be concise, clear and not detract from the clarity or presentation of the information in the simplified prospectus.

(3) The definition of "educational material" contained in section 1.1 of the Instrument excludes material that promotes a particular mutual fund or mutual fund family, or the products or services offered by the mutual fund or mutual fund family. A mutual fund, mutual fund family or those products or services may be referred to in educational material as an example if the reference does not promote those entities, products or services. Mutual funds should ensure that any material included within, attached to or bound with a simplified prospectus is educational material within the meaning of this definition.*.*

22. Section 5.5 is replaced with the following:

5.5 Format – A simplified prospectus must use the headings and specified sub-headings exactly as they are set out in the Instrument. If no sub-headings are specified, a simplified prospectus may include additional sub-headings under the required headings.*.*

23. Section 6.1 is replaced with the following:

6.1 General Purposes – The general purposes of an annual information form are described in section 2.1 of this Policy. This Part provides guidance to preparers of annual information forms in meeting those purposes.*.*

24. Section 6.2 is deleted.

25. Subsection 6.4(2) is replaced with the following:

(2) If a mutual fund includes additional information, such as educational material, in an annual information form, that material should not be included primarily for purpose of promotion. An annual information form is designed to be easily understandable to investors and less legalistic in its drafting than traditional prospectuses, but it still constitutes part of a prospectus under securities legislation.*.*

26. Section 7.1 is amended by

a. replacing subsection (1) with the following:

(1) The Instrument contemplates delivery to all investors of a simplified prospectus in accordance with the requirements in securities legislation. It does not require the delivery of the documents incorporated by reference into the simplified prospectus unless requested. However, the CSA encourages mutual funds and dealers to adopt the practice of also routinely providing investors or potential investors with the fund facts document. Mutual funds or dealers may also provide investors with any of the other documents incorporated by reference into the prospectus.*;*

b. replacing subsection (2) with the following:

(2) The CSA encourage mutual funds, managers, and dealers to make disclosure documents, particularly the fund facts document, available to potential investors as soon as possible in the sales process, in advance of any requirements contained in the Instrument or securities legislation, either directly or through dealers and others involved in selling mutual fund securities to investors.*;*

c. adding the following subsection after subsection (2):

(2.1) Nothing in the Instrument prevents the simplified prospectus, annual information form or fund facts document from being prepared in other languages, provided that these documents are delivered or sent in addition to any disclosure document filed and required to be delivered in accordance with the Instrument. We would consider such documents to be sales communications.*; and*

d. replacing subsection (3) with the following:

(3) We do not consider the requirements of section 3.4 of the Instrument to be exclusive. Mutual funds and managers of mutual funds are encouraged to inform investors about using their websites and e-mail addresses to request further information and additional documents.*.*

27. The following section is added after section 7.1:

7.1.1 Electronic Delivery

(1) A simplified prospectus, or any document incorporated by reference into the simplified prospectus, that is required to be delivered or sent under the Instrument may be delivered or sent by means of electronic delivery. Electronic delivery may include sending an electronic copy of the relevant document directly to the investor as an attachment or link, or directing the investor to the specific document on a website.

(2) In addition to the requirements in the Instrument and the guidance in this section, mutual funds, managers and dealers may want to refer to National Policy 11-201 *Delivery of Documents by Electronic Means* and, in Québec, *Notice 11-201 relating to the Delivery of Documents by Electronic Means* for additional guidance*..*

28. Section 7.2 is amended by replacing "Canadian securities regulatory authorities***" with "***CSA***".***

29. Section 7.4 is amended by:

a. replacing "or the***" with "***and***"; and***

b. replacing "and annual information form***" with "***or annual information form***".***

30. Section 8.1 is replaced with the following:

8.1 Investment Disclosure – Form 81-101F1 requires detailed disclosure concerning a number of aspects of the investment approach taken by a mutual fund, including disclosure concerning fundamental investment objectives, investment strategies, risk and risk management. Form 81-101F3 also contains a summarized form of this disclosure. For many mutual funds, the best persons to prepare and review the disclosure would be the portfolio advisers of the mutual fund and we think mutual funds should generally involve them in preparing and reviewing this disclosure*..*

31. Section 8.2 is replaced with the following:

8.2 Portfolio Advisers – Form 81-101F2 requires disclosure concerning the extent to which investment decisions are made by particular individuals employed by a portfolio adviser or by committee. Section 10.3(3)(b) requires certain information about the individuals principally responsible for the investment portfolio of the mutual fund. Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure* requires a simplified prospectus to be amended if a material change occurs in the affairs of the mutual fund that results in a change to the disclosure in the simplified prospectus and fund facts document. Section 7.1 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* discusses when a departure of a high-profile individual from a portfolio adviser of a mutual fund may constitute a material change for the mutual fund. If the departure is not a material change for the mutual fund, there is no requirement to amend a simplified prospectus, as long as the simplified prospectus contains full, true and plain disclosure about the mutual fund*..*

32. Section 9.1 is amended

a. in subsection (1) by

i. replacing "Canadian securities regulatory authorities***" with "***CSA***";***

ii. replacing "and***" with "***,***";***

iii. inserting "and fund facts document***" after "***annual information form***"; and***

i***v. inserting "***,***" after "***refiling***";***

b. in subsection (2) by

i. replacing "It should be noted that the***" with "***The***";***

ii. replacing "and***" with "***,***"; and***

iii. inserting "and fund facts document***" immediately after "***annual information form***".***

33. The following Part is added after Part 9:

PART 10 EXEMPTIONS

10.1 Applications Involving Novel or Substantive Issues – Section 6.2 of the Instrument allows exemptive relief from form and content requirements for a simplified prospectus, an annual information or a fund facts document to be evidenced by way of issuance of a receipt. In cases where the CSA thinks that an application for exemptive relief raises novel and substantive issues, or raises a novel policy concern, the CSA may request that such applications follow the process set out in National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*. This will likely be the case for applications seeking exemptive relief from the form and content requirements of the fund facts document..

34. The following Appendix is added after Part 10:

Appendix A – Sample Fund Facts Document

XYZ Mutual Funds

FUND FACTS

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

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

Quick facts

Date fund created:	January 1, 1996	**Portfolio manager:**	Capital Asset Management Ltd.
Total value on June 1, 20XX:	$1 billion	**Distributions:**	Annually, on December 15
Management expense ratio (MER):	2.25%	**Minimum investment:**	$500 initial, $50 additional

What does the fund invest in?

The fund invests in Canadian companies. They can be of any size and from any industry. The charts below give you a snapshot of the fund's investments on June 1, 20XX. The fund's investments will change.

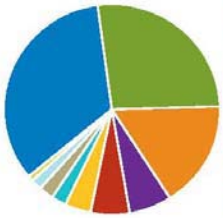
Top 10 investments (June 1, 20XX)

1. Royal Bank of Canada
2. Encana Corp.
3. Petro-Canada
4. Alcan Inc.
5. Canadian National Railway Company
6. Goldcorp Inc.
7. Extendicare Inc.
8. Husky Energy
9. Open Text
10. Thomson Reuters Corp.

Total investments	126

The top 10 investments make up 32% of the fund.

Investment mix (June 1, 20XX)



Industry	
Financial services	34.0%
Energy	26.6%
Industrial goods	16.5%
Business services	6.4%
Telecommunication	5.9%
Hardware	3.7%
Healthcare services	2.3%
Consumer services	2.1%
Media	1.9%
Consumer goods	0.6%

How has the fund performed?

This section tells you how the fund has performed over the past 10 years. Returns are after expenses have been deducted. These expenses reduce the fund's returns.

It's important to note that this doesn't tell you how the fund will perform in the future. Also, your actual after-tax return will depend on your personal tax situation.

Average return

A person who invested $1,000 in the fund 10 years ago now has $2,705. This works out to an annual compound return of 10.5%.

Year-by-year returns

This chart shows how the fund has performed in each of the past 10 years. The fund dropped in value in three of the 10 years.

How risky is it?

When you invest in a fund, the value of your investment can go down as well as up. XYZ Mutual Funds has rated this fund's risk as medium.

For a description of the specific risks of this fund, see the fund's simplified prospectus.

Low	Low to medium	**Medium**	Medium to high	High

Are there any guarantees?

Like most mutual funds, this fund doesn't have any guarantees. You may not get back the amount of money you invest.

XYZ Mutual Funds

XYZ Canadian Equity Fund – Series A

Who is this fund for?

Investors who:

- are looking for a long-term investment
- want to invest in a broad range of Canadian companies
- can handle the ups and downs of the stock market.

Don't buy this fund if you need a steady source of income from your investment.

Before you invest in any fund, you should consider how it would work with your other investments and your tolerance for risk.

A word about tax

In general, you'll have to pay income tax on any money you make on a fund. How much you pay depends on the tax laws where you live and whether or not you hold the fund in a registered plan, such as a Registered Retirement Savings Plan or a Tax-Free Savings Account.

Keep in mind that if you hold your fund in a non-registered account, fund distributions are included in your taxable income, whether you get them in cash or have them reinvested.

How much does it cost?

The following tables show the fees and expenses you could pay to buy, own and sell Series A units of the fund.

The fees and expenses are different for each series. Ask about other series that may be suitable for you.

1. Sales charges

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

Sales charge option	What you pay		How it works
	in per cent (%)	in dollars ($)	
Initial sales charge	0% to 4% of the amount you buy	$0 to $40 on every $1,000 you buy	• You and your adviser decide on the rate. • The initial sales charge is deducted from the amount you buy. It goes to your investment firm as a commission.
Deferred sales charge	**If you sell within:** 1 year of buying 6.0% 2 years of buying 5.0% 3 years of buying 4.0% 4 years of buying 3.0% 5 years of buying 2.0% 6 years of buying 1.0% After 6 years nothing	$0 to $60 on every $1,000 you sell	• The deferred sales charge is a set rate. It is deducted from the amount you sell. • When you buy the fund, XYZ Mutual Funds pays your investment firm a commission of 4.9%. Any deferred sales charge you pay goes to XYZ Mutual Funds. • You can sell up to 10% of your units each year without paying a deferred sales charge. • You can switch to Series A units of other XYZ Mutual Funds at any time without paying a deferred sales charge. The deferred sales charge schedule will be based on the date you bought the first fund.

XYZ Canadian Equity Fund – Series A

2. Fund expenses

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

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

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

Trailing commission

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

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

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

3. Other fees

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

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

What if I change my mind?

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

- withdraw from an agreement to buy mutual fund units within two business days after you receive a simplified prospectus, or
- cancel your purchase within 48 hours after you receive confirmation of the purchase.

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

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

For more information

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

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

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

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35. This Instrument becomes effective on January 1, 2011

5.1.3 Amendments to NI 81-102 Mutual Funds

AMENDMENTS TO
NATIONAL INSTRUMENT 81-102 MUTUAL FUNDS

1. National Instrument 81-102 Mutual Funds is amended by this Instrument.

2. Section 1.1 is amended by adding the following after paragraph (b)2 in the definition of "sales communication":

2.1. A fund facts document or preliminary or *pro forma* fund facts document.*.*

3. Section 3.3 is amended by adding "preliminary fund facts document***" after "***preliminary annual information form,***", by replacing "***or***" with "","***" after "***initial simplified prospectus***" and by adding "***or fund facts document***" after "***annual information form***".***

4. Section 5.6 is amended by

a. replacing subparagraph (1)(f)(ii) with the following:

(ii) the current simplified prospectus or the most recently filed fund facts document;

b. replacing subparagraph (1)(f)(iii) with the following:

(iii) a statement that securityholders may obtain, in respect of the reorganized mutual fund, at no cost a simplified prospectus, an annual information form, the most recently filed fund facts document, the most recent annual and interim financial statements, and the most recent management report of fund performance that have been made public, by contacting the reorganized mutual fund at an address or telephone number specified in the statement, or by accessing the documents at a website address specified in the statement;*.*

5. Section 5.7 is amended by replacing paragraph (1)(d) with the following:

(d) if the application relates to a matter that would constitute a material change for the mutual fund, a draft amendment to the simplified prospectus and, if applicable, to the fund facts document of the mutual fund reflecting the change; and*.*

6. Section 15.2 is amended by

a. replacing paragraph (1)(b) with the following:

(b) include a statement that conflicts with information that is contained in the preliminary simplified prospectus, the preliminary annual information form, the preliminary fund facts document, the simplified prospectus, the annual information form or the fund facts document

(i) of a mutual fund, or

(ii) in which an asset allocation service is described.*.*

7. This Instrument comes into force on January 1, 2011.

5.1.4 Amendments to Companion Policy 81-102CP to NI 81-102 Mutual Funds

AMENDMENTS TO
COMPANION POLICY 81-102CP TO
NATIONAL INSTRUMENT 81-102 MUTUAL FUNDS

1. Companion Policy 81-102CP To National Instrument 81-102 Mutual Funds is amended by this Instrument.

2. Section 13.1 is amended by

a. replacing subsection (3) with the following:

(3) An advertisement that presents information in a manner that distorts information contained in the preliminary prospectus or prospectus, or preliminary simplified prospectus, preliminary fund facts document and preliminary annual information form or simplified prospectus, fund facts document and annual information form of a mutual fund or that includes a visual image that provides a misleading impression will be considered to be misleading.***; and***

b. replacing subsection (5) with the following:

(5) Paragraph 15.2(1)(b) of the Instrument provides that sales communications must not include any statement that conflicts with information that is contained in, among other things, a simplified prospectus or fund facts document. The Canadian securities regulatory authorities are of the view that a sales communication that provides performance data in compliance with the requirements of Part 15 of the Instrument for time periods that differ from those shown in a prospectus, fund facts document or management report of fund performance does not violate the requirements of paragraph 15.2(1)(b) of the Instrument.**.**

3. This Instrument becomes effective on January 1, 2011.

5.1.5 Amendments to NI 81-106 Investment Fund Continuous Disclosure

AMENDMENTS TO
NATIONAL INSTRUMENT 81-106
INVESTMENT FUND CONTINUOUS DISCLOSURE

1. National Instrument 81-106 Investment Fund Continuous Disclosure is amended by this Instrument.

2. Section 11.2 is amended by replacing paragraph (1)(d) with the following:

(d) file an amendment to its prospectus, simplified prospectus or fund facts document that discloses the material change in accordance with the requirements of securities legislation.*.*

3. This Instrument comes into force on January 1, 2011.

5.1.6 Amendments to Companion Policy 81-106CP to NI 81-106 Investment Fund Continuous Disclosure

AMENDMENTS TO
COMPANION POLICY 81-106CP TO
NATIONAL INSTRUMENT 81-106
INVESTMENT FUND CONTINUOUS DISCLOSURE

1. Companion Policy 81-106CP To National Instrument 81-106 Investment Fund Continuous Disclosure is amended by this Instrument.

2. Subsection 10.1(1) is amended by replacing it with the following:

10.1 Calculation of Management Expense Ratio – (1) Part 15 of the Instrument sets out the method to be used by an investment fund to calculate its management expense ratio (MER). The requirements apply in all circumstances in which an investment fund circulates and discloses an MER. This includes disclosure in a sales communication, a prospectus, a fund facts document, an annual information form, financial statements, a management report of fund performance or a report to securityholders..

3. This Instrument comes into force on January 1, 2011.

5.1.7 Amendments to NI 13-101 System for Electronic Document Analysis and Retrieval (SEDAR)

AMENDMENTS TO
NATIONAL INSTRUMENT 13-101
SYSTEM FOR ELECTRONIC DOCUMENT ANALYSIS AND RETRIEVAL
(SEDAR)

1. National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) is amended by this Instrument.

2. Appendix A – Mandated Electronic Filings is amended

(a) in Part I A. by

(i) replacing Item 1 with the following:

1. Preliminary Simplified Prospectus, Annual Information Form and Fund Facts***;***

(ii) replacing Item 2 with the following

2. Pro Forma Simplified Prospectus, Annual information Form and Fund Facts***;***

(iii) replacing Item 3 with the following

3. Final Simplified Prospectus, Annual Information Form and Fund Facts***; and***

(iv) adding the following after Item 6

7. Initial Fund Facts**.**

3. This Instrument comes into force on January 1, 2011.

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities distributed
11/22/2010	57	Adira Energy Ltd. - Receipts	11,220,000.00	27,500,000.00
11/08/2010	15	Advanced Composite Technologies Inc. - Common Shares	753,600.00	1,884,000.00
11/30/2010	4	Advanced Composite Technologies Inc. - Common Shares	98,000.00	245,000.00
11/19/2010	7	Alberta Oilsands Inc. - Units	5,010,000.00	10,020,000.00
11/12/2010	2	Allen Systems Group Inc. - Notes	11,088,000.00	11,000.00
11/17/2010	2	Allscripts Healthcare Solutions, Inc. - Common Shares	12,816,300.00	700,000.00
11/01/2010	2	American Insurance Acquisition Inc. - Receipts	1,350,000.00	3,983,502.00
11/16/2010	16	Americas Petrogas Inc. - Common Shares	17,500,000.00	17,500,000.00
11/12/2010	58	Andean American Gold Corp - Common Shares	16,352,100.00	18,169,000.00
10/22/2010	73	AndeanGold Ltd. - Units	944,599.92	7,871,666.00
11/03/2010	71	Anfield Nickel Corp. - Common Shares	23,101,125.00	6,160,300.00
11/17/2010	170	Anglo Canadian Oil Corp. - Units	8,887,266.37	N/A
11/17/2010 to 11/24/2010	46	Anglo Canadian Oil Corp. - Units	2,249,999.26	N/A
11/16/2010	1	APO Energy Inc. - Debentures	4,615,385.00	N/A
11/15/2010	21	Aquarius Capital Corp - Common Shares	200,000.00	2,000,000.00
11/01/2010	1	Asbury Automotive Group, Inc. - Notes	101,360.00	101,360.00
11/01/2010	19	Augustine Ventures Inc. - Common Shares	263,929.00	N/A
11/18/2010	108	Avatar Energy Ltd. - Common Shares	4,496,051.65	8,500,900.00
11/10/2010	1	Avino Silver & Gold Mines Ltd. - Units	3,000,000.00	2,400,000.00
11/18/2010	1	Ball Corporation - Note	1,017,400.00	1.00
11/09/2010	48	Balmoral Resources Ltd. - Flow-Through Shares	3,050,000.00	3,812,500.00
11/09/2010	163	Balmoral Resources Ltd. - Units	14,949,960.00	24,916,600.00
11/23/2010	11	Belmont Resources Inc. - Common Shares	100,000.00	2,000,000.00
11/01/2010	1	Berry Petroleum Company - Notes	760,200.00	N/A

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities distributed
11/18/2010	3	Birch Hill Equity Partners IV, LP - Limited Partnership Interest	30,500,000.00	30,500,000.00
11/18/2010	5	Birch Hill Equity Partners (Entrepreneurs) IV, LP - Limited Partnership Interest	2,000,000.00	2,000,000.00
10/05/2010 to 10/07/2010	2	Bison Income Trust II - Trust Units	2,006,000.00	200,600.00
11/25/2010	10	Bitterroot Resources Ltd. - Common Shares	770,000.00	7,000,000.00
11/16/2010	1	BNP Paribas Arbitrage Issuance B.V. - Certificates	6,762.66	6.00
11/12/2010	1	Bond International Software PLC - Common Shares	10,054,612.27	8,225,641.00
11/16/2010	22	BonTerra Resources Inc. - Common Shares	720,000.12	3,428,572.00
11/16/2010	2	Booz Allen Hamilton Holding Corporation - Common Shares	11,305,255.00	650,000.00
11/12/2010	10	Brant Country Riverbend Development LP - Limited Partnership Units	589,030.00	58,903.00
11/12/2010	7	Brant Country Riverland Development Investment Corporation - Common Shares	114,030.00	11,403.00
11/05/2010	5	Brant County Riverbend Development Investment Corporation - Common Shares	61,240.00	6,124.00
11/26/2010	21	Brant County Riverbend Development Investment Corporation - Common Shares	533,360.00	53,336.00
11/05/2010	17	Brant County Riverbend Development LP - Limited Partnership Units	438,740.00	43,874.00
11/26/2010	13	Brant County Riverbend Development LP - Limited Partnership Units	848,360.00	84,836.00
11/10/2010	1	Cadence Pharmaceuticals, Inc. - Common Shares	8,013.60	1,000.00
11/03/2010	33	Caerus Resource Corporation - Common Shares	678,600.00	2,262,000.00
11/18/2010	106	Calfrac Holdings LP - Notes	457,830,000.00	N/A
11/01/2010	1	Calgary Scientific Inc. - Debentures	4,000,000.00	4,000,000.00
11/08/2010	1	Canadian Horizons Blended Mortage Investment Corporation - Preferred Shares	50,000.00	50,000.00
11/08/2010	5	Canadian Horizons First Mortgage Investment Corporation - Preferred Shares	476,575.00	476,575.00
11/18/2010	13	CareVest Capital Blended Mortgage Investment Corp. - Preferred Shares	470,039.00	470,039.00
11/08/2010	13	CareVest First Mortgage Investment Corporation - Preferred Shares	648,847.00	648,847.00
11/02/2010	2	Carrizo Oil & Gas, Inc. - Notes	5,516,226.10	N/A
11/19/2010	35	Central European Petroleum Ltd. - Units	14,109,802.00	4,703,267.00
11/10/2010	1	Centria Capital Development Fund, L.P. - Units	193,215.65	19,321.57

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities distributed
11/24/2010	15	Chestermere Lands Development Corporation - Common Shares	746,000.00	141,740.00
11/03/2010	1	Chimera Investment Corporation - Common Shares	574,500.00	150,000.00
11/03/2010	122	China Canadian Opportunity Limited Partnership - Limited Partnership Units	4,208,002.46	4,169,641.76
11/15/2010	23	Clear Energy Systems Inc - Debentures	2,392,470.00	2,160.00
11/15/2010	22	Clear Energy Systems Inc - Units	2,168,280.00	3,987,450.00
11/02/2010	37	Cobre Exploration Corp. - Units	937,750.00	N/A
11/10/2010	85	Coral Hill Energy Ltd. - Flow-Through Shares	7,000,000.00	2,000,000.00
11/04/2010	1	CORE BioFuel Inc. - Common Shares	150,000.00	100,000.00
11/23/2010	8	Cornerstone Capital Resources Inc. - Units	1,500,000.00	9,375,000.00
11/02/2010	29	Covenant Resources Ltd. - Units	502,000.00	2,510,000.00
11/24/2010	1	Coventry Resources Limited - Common Shares	232,408.80	900,000.00
11/19/2010	2	Cricket Communications, Inc. - Notes	5,018,405.92	2.00
11/05/2010	132	Dawson Gold Corp. - Units	2,486,824.00	16,578,829.00
11/08/2010	19	DB Mortgage Investment Corporation #1 - Common Shares	2,370,000.00	2,370.00
11/12/2010	28	Decade Resources Ltd. - Units	1,744,500.00	5,815,000.00
11/12/2010	26	Decade Resources Ltd. - Units	499,250.00	1,997,000.00
11/23/2010	7	Decade Resources Ltd. - Units	1,184,200.00	3,947,333.00
11/18/2010 to 11/24/2010	36	DeeThree Exploration Ltd. - Flow-Through Shares	16,500,001.70	3,626,374.00
11/02/2010	112	Delta Gold Corporation - Common Shares	920.79	9,207,900.00
11/15/2010	1	Diamond Technologies Inc - Common Shares	65,629.50	217,000.00
11/01/2010	1	Digital River Inc - Notes	506,800.00	500.00
11/19/2010	1	Dios Exploration Inc. - Common Shares	14,000.00	50,000.00
11/03/2010	1	DNI Metals Inc. - Flow-Through Shares	140,000.00	1,000,000.00
11/03/2010	1	DNI Metals Inc. - Units	14,000.00	100,000.00
11/23/2010	167	Doxa Energy Ltd. - Units	3,801,299.60	10,860,856.00
11/15/2010	4	Dunkin' Finance Corp. - Notes	5,948,415.00	4.00
11/10/2010	94	Ecosynthetix Inc. - Units	30,291,409.00	840,000.00
11/15/2010	1	Emeritus Corporation - Common Shares	18,368,625.00	5,000,000.00
11/18/2010	2	Endo Pharmaceuticals Holdings Inc. - Notes	2,520,735.68	2.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities distributed
11/04/2010	2	Enel Green Power S.p.A. - Common Shares	5,806,432.00	2,600,000.00
11/25/2010	53	EnerGulf Resources Inc. - Units	3,224,200.00	8,060,500.00
11/08/2010 to 11/12/2010	184	Eurasian Minerals Inc. - Units	17,500,000.00	7,000,000.00
11/09/2010	2	Exact Sciences Corporation - Common Shares	480,000.00	80,000.00
11/01/2010	21	Excel Gold Mining Inc. - Units	750,000.00	3,750,000.00
11/05/2010	53	Exploration Orbite VSPA Inc. - Units	12,150,000.00	27,000,000.00
11/23/2010	29	Exploration Orbite VSPA Inc. - Units	1,517,000.00	3,371,111.00
11/15/2010	1	Fallbrook Technologies Inc. - Preferred Shares	251,624.24	327,653.00
11/12/2010	5	First Mexican Resources Inc - Units	223,274.80	637,928.00
11/26/2010	5	Foundation Group Capital Trust - Trust Units	41,106.75	3,465.00
11/15/2010	2	Fusion Trust - Notes	5,000,000.00	N/A
11/12/2010	35	Gateway Casinos & Entertainment Limited - Notes	170,000,000.00	N/A
11/19/2010	2	General Growth Properties, Inc. - Common Shares	7,530,000.00	500,000.00
10/14/2010	90	Georox Resources Inc - Units	2,520,000.00	10,000,000.00
11/03/2010	51	GFC China Capital Inc. - Debentures	799,723.00	779.72
11/03/2010	51	GFC China Investment Inc. - Common Shares	799.72	779.72
11/09/2010 to 11/19/2010	58	Global Atomic Fuels Corporation - Units	5,550,350.00	3,700,228.00
11/05/2010	1	Gold Finder Explorations Ltd. - Non-Flow Through Units	10,800.00	30,000.00
11/08/2010	1	Gold Hawk Resources Inc. - Common Shares	7,500,000.00	6,000,000.00
11/16/2010	26	Goldcliff Resource Corporation - Units	1,330,000.00	13,300,000.00
10/31/2010	5	Goldman Sachs Structured International Equity Fund - Common Shares	2,973,390.25	335,096.75
11/05/2010	51	Goldrea Resources Corp. - Units	475,080.00	7,918,000.00
11/17/2010	16	Grayd Resource Corporation - Common Shares	6,000,000.00	4,800,000.00
11/23/2010	22	Greenangel Energy Corp. - Units	239,781.90	2,397,819.00
10/01/2010	42	Gryphon Minerals Limited - Common Shares	19,979,250.00	15,983,400.00
11/10/2010	20	GWR Resources Inc. - Flow-Through Units	363,200.00	2,270,000.00
11/10/2010	21	GWR Resources Inc. - Units	280,035.90	1,866,906.00
11/05/2010	17	Halifax International Airport Authority ("HIAA") - Bonds	134,997,300.00	N/A
11/09/2010	4	Hanesbrands Inc. - Notes	7,609,880.00	N/A

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities distributed
11/15/2010	1	Harbinger Group Inc. - Notes	995,728.70	N/A
11/01/2010 to 11/05/2010	19	IGW Real Estate Investment Trust - Units	929,868.93	N/A
11/12/2010 to 11/19/2010	28	IGW Real Estate Investment Trust - Units	929,002.86	925,727.94
11/18/2010	1	Interface, Inc. - Notes	3,052,200.00	3,000.00
11/04/2010	5	Interline Brands, Inc. - Notes	3,708,880.00	3,700.00
11/10/2010	1	IPICO Inc. - Debenture	500,000.00	1.00
11/02/2010	2	Jarden Corporation - Notes	445,590.00	N/A
11/10/2010	4	JinkoSolar Holding Co., Ltd. - Receipts	9,000,000.00	250,000.00
11/15/2010	1	Kalahari Resources Inc. - Common Shares	18,305.45	244,072.00
11/16/2010	39	Kaminak Gold Corporation - Common Shares	12,033,360.00	3,342,600.00
11/29/2010	1	Kodiak Exploration Limited - Common Shares	150,000.00	57,472.00
11/15/2010	2	Kodiak Exploration Limited - Common Shares	6,900.00	20,000.00
11/15/2010	22	Laurentian Goldfields Ltd. - Units	526,239.90	2,923,555.00
11/03/2010	25	LED Medical Diagnostics Inc. - Units	1,397,584.50	2,795,169.00
11/04/2010	123	Legend Power Systems Inc. - Units	3,352,549.80	22,350,332.00
11/09/2010	31	Livingston International Inc - Notes	135,000,000.00	31.00
11/02/2010	6	Lomiko Metals Inc. - Common Shares	150,000.00	3,000,000.00
11/23/2010	1	Lord Lansdowne Holdings Inc. - Units	200,000.80	200,080.00
11/16/2010	57	Magor Communications Corp. - Debentures	3,090,771.44	2,832,854.77
11/16/2010	57	Magor Communications Corp. - Warrants	3,090,771.44	1,686,778.00
11/10/2010	1	Mariah Re Ltd - Note	12,020,400.00	1.00
11/01/2010	9	Maxim Resources Inc. - Units	190,000.00	9,500,000.00
11/15/2010	79	MBPS Finance Company - Notes	322,080,000.00	N/A
11/12/2010	30	Messina Minerals Inc. - Units	549,700.00	4,784,167.00
11/05/2010	4	MetroPCS Wireless, Inc. - Notes	25,037,500.00	25,000.00
12/01/2010	1	Mill Creek Care Centre - Debenture	22,000,000.00	1.00
11/15/2010	13	Mingleverse Laboratories Inc - Preferred Shares	1,323,789.64	3,199,510.00
11/02/2010	3	Miocene Metals Limited - Flow-Through Units	25,000.00	100,000.00
11/23/2010 to 12/01/2010	20	Miocene Metals Limited - Flow-Through Units	397,500.00	N/A

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities distributed
11/12/2010 to 11/18/2010	11	Miocene Metals Limited - Flow-Through Units	355,000.00	1,420,000.00
11/23/2010 to 12/01/2010	1	Miocene Metals Limited - Units	5,000.00	N/A
11/12/2010 to 11/18/2010	2	Miocene Metals Limited - Units	49,500.00	220,000.00
11/03/2010	1	Miranda Gold Corp. - Units	500,000.00	1,000,000.00
11/15/2010	27	Mitec Telecom Inc. - Common Shares	786,125.00	55,166,667.00
11/17/2010	98	Muirfield Resources Ltd. - Common Shares	14,760,801.00	18,451,000.00
11/04/2010	1	NCL Corporation Ltd. - Notes	250,600.00	250,600.00
09/30/2010	129	New Moon Minerals Corp. - Units	561,100.00	5,545,500.00
11/26/2010	28	New Sage Energy Corp. - Units	495,000.00	9,900,000.00
11/15/2010	1	New Solutions Financial (II) Corporation - Debenture	170,000.00	1.00
11/23/2010	46	Newalta Corporation - Debentures	125,000,000.00	125,000,000.00
11/18/2010	12	Newmac Resources Inc. - Units	240,000.00	3,000,000.00
11/23/2010	22	Nordic Oil and Gas Ltd. - Units	321,625.00	4,288,331.00
11/10/2010	146	North Country Gold Corp. - Units	6,000,000.00	12,000,000.00
11/24/2010	37	Northern Lion Gold Corp. - Units	1,540,000.00	7,700,000.00
11/18/2010	6	Northern Oil & Gas, Inc. - Common Shares	23,280,655.50	1,130,000.00
11/05/2010	1	NQ Exploration Inc. - Common Shares	55,000.00	500,000.00
11/25/2010	11	Orca Power Corp - Common Shares	150,000.00	3,000,000.00
11/03/2010	18	Oryx Mining and Exploration Ltd. - Units	5,230,000.00	5,230,000.00
11/03/2010	20	Otis Gold Corp. - Units	2,491,500.00	4,530,000.00
11/19/2010	6	Pacific Bay Minerals Ltd - Units	535,000.00	N/A
11/17/2010	13	Pacific Link Mining Corp. - Common Shares	420,000.00	7,000,000.00
11/03/2010	2	Pathocept Corporation - Common Shares	50,000.00	50,000.00
11/19/2010	27	Pennant Energy Inc. - Common Shares	395,569.98	N/A
11/19/2010	7	Peraso Technologies Inc - Common Shares	3,566,716.00	N/A
11/10/2010	7	Pershimco Resources Inc. - Units	1,000,000.00	2,857,141.00
11/04/2010	65	PetroGlobe Inc. - Flow-Through Units	2,649,172.82	18,922,663.00
11/04/2010	55	PetroGlobe Inc. - Units	1,350,827.06	12,280,246.00
11/08/2010 to 11/12/2010	30	Playfair Mining Ltd. - Common Shares	1,533,000.00	15,330,000.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities distributed
11/29/2010	19	PMI Gold Corporation - Special Warrants	7,500,500.00	10,715,000.00
11/29/2010	3	Powerbase Inc. - Common Shares	20,700.00	207,000.00
11/19/2010	8	Pure Energy Visions Corporation - Debentures	500,000.00	N/A
11/02/2010	1	Quia Resources Inc. - Units	2,000,000.00	5,000,000.00
11/15/2010	2	Radian Group Inc - Notes	1,500,000.00	1,500.00
10/25/2010	1	REC Minerals Corp - Common Shares	14,250.00	150,000.00
11/22/2010	2	RightNow Technologies Inc. - Notes	765,000.00	N/A
11/02/2010	39	Rio Grande Mining Corp. - Units	612,000.00	2,720,000.00
10/29/2010 to 10/29/2014	2	Rockcliff Resources Inc. - Common Shares	135,000.00	1,000,000.00
11/08/2010	1	Roofing Supply Group, LLC and Roofing Supply Finance, Inc. - Notes	2,004,400.00	2,000.00
11/24/2010	1	Sandfire Resources NL - Common Shares	386,095.38	56,842.00
11/09/2010	21	Sarama Resources Limited - Common Shares	607,800.00	1,215,600.00
10/25/2010 to 11/05/2010	54	Scollard Energy Inc. - Common Shares	13,999,999.00	5,384,615.00
11/09/2010	7	Seminole Tribe of Florida - Bonds	3,507,700.00	3,507,700.00
11/18/2010	3	Seneca Gaming Corporation - Notes	3,764,380.00	N/A
11/17/2010	2	Service Corporation International - Notes	612,420.00	600.00
10/27/2010	1	Silvermet Inc. - Common Shares	2,000,000.00	16,000,000.00
11/18/2010	1	SmartHeat, Inc. - Common Shares	1,017,400.00	200,000.00
11/08/2010	3	SodaStream International Ltd - Common Shares	2,305,060.00	115,000.00
11/17/2010	42	Solid Resources Ltd. - Units	1,250,000.00	20,833,333.00
11/12/2010	15	Southern Hemisphere Mining Ltd. - Receipts	6,000,036.00	14,285,800.00
11/15/2010	2	Spirit AeroSystems, Inc. - Notes	6,039,000.00	6,000.00
11/02/2010	1	Star Team, LLC - Units	5,000.00	5,000.00
06/18/2008	2	Starwood Energy Infrastructure Co-Invest Fund, L.P. - Limited Partnership Interest	153,000,000.00	N/A
11/15/2010	42	Stellar Biotechnologies, Inc. - Units	3,727,800.00	62,130,000.00
11/12/2010	1	Stone Energy Corporation - Notes	2,016,000.00	1,990.00
11/08/2010	3	Stoneridge, Inc. - Common Shares	6,673,600.00	620,800.00
11/17/2010	32	Sunridge Gold Corp. - Units	16,650,000.00	18,500,000.00
11/15/2010	1	Sunstone Hotel Investors, Inc. - Common Shares	2,579,156.25	19,500,000.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities distributed
10/20/2010	364	Surge Energy Inc - Receipts	42,005,250.00	8,001,000.00
11/17/2010	1	Swift Energy Company - Common Shares	1,868,000.00	3,750,000.00
11/09/2010	36	Syneron Medical Ltd. - Units	1,999,999.96	9,523,810.00
11/02/2010	1	Tabcorp Holdings Limited - Common Shares	6,385,180.69	1,012,717.00
11/09/2010 to 11/19/2010	14	Tartisan Resources Corp. - Common Shares	253,250.00	1,000,000.00
11/09/2010 to 11/19/2010	14	Tartisan Resources Corp. - Units	253,250.00	905,000.00
11/17/2010	43	Tasman Metals Ltd. - Units	5,000,001.00	3,333,334.00
11/19/2010	28	Tatmar Ventures Inc. - Units	1,745,000.00	3,490,000.00
11/01/2010	84	Terreno Resources Corp. - Units	2,770,499.55	18,469,997.00
11/22/2010	1	Texalta Petroleum Ltd. - Units	2,100,000.00	3,000,000.00
11/10/2010	3	The Fresh Market, Inc. - Common Shares	3,195,423.00	145,000.00
11/01/2010	4	The New York Times Company - Notes	2,229,920.00	2,229,920.00
10/12/2010	51	Titan Trading Analytics Inc. - Units	1,982,450.00	19,824,500.00
11/18/2010	1	Torch River Resources Ltd. - Common Shares	100,000.00	1,250,000.00
11/12/2010	11	Trade Winds Ventures Inc. - Common Shares	2,882,380.00	9,298,000.00
11/05/2010	18	Trafina Energy Ltd. - Common Shares	1,545,000.00	3,900,000.00
11/01/2010	61	Troymet Exploration Corp. - Common Shares	2,219,374.78	7,690,277.00
11/03/2010	42	Tumi Resources Ltd. - Units	900,000.00	7,500,000.00
11/02/2010	2	Tuscany International Drilling Inc. - Warrants	0.00	2,400,000.00
11/09/2010	1	UBS AG, Jersey Branch - Notes	50,462.93	N/A
11/09/2010	1	UBS AG, Jersey Branch - Notes	50,507.50	N/A
11/03/2010	1	UBS AG, London Branch - Certificates	141,655.69	11.00
11/10/2010	1	UBS AG, London Branch - Units	99,003.52	700.00
11/29/2010	1	UC Resources Ltd. - Common Shares	123,525.00	1,235,250.00
11/26/2010	6	UC Resources Ltd. - Units	1,200,000.00	10,090,909.00
11/12/2010	1	VA Uranium Holdings, Inc. - Common Shares	6,000,000.00	16,752,523.00
10/21/2010	44	Vampt Beverage Corp. - Common Shares	693,028.00	270,000.00
11/17/2010	16	Vangold Resources Ltd. - Units	2,684,299.64	12,201,362.00
11/16/2010	69	VW Credit Canada, Inc. - Notes	549,290,500.00	N/A

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities distributed
11/19/2010	25	Walton AZ Vista Bonita Investment Corporation - Common Shares	536,260.00	53,626.00
11/26/2010	38	Walton AZ Vista Bonita Investment Corporation - Common Shares	913,750.00	91,375.00
11/12/2010	155	Walton AZ Vista Bonita Investment Corporation - Common Shares	3,046,790.00	304,679.00
11/05/2010	15	Walton AZ Vista Bonita Limited Partnership - Limited Partnership Units	482,923.30	48,220.00
11/26/2010	72	Walton DC Region Land LP 1 - Limited Partnership Units	1,909,752.63	187,396.00
11/05/2010	14	Walton Southern U.S. Land 2 Investment Corporation - Common Shares	531,930.00	53,193.00
11/19/2010	30	Walton Southern U.S. Land 2 Investment Corporation - Common Shares	729,720.00	72,972.00
11/26/2010	27	Walton Southern U.S. Land 2 Investment Corporation - Common Shares	759,200.00	75,920.00
11/05/2010	3	Walton Southern U.S. Land LP 2 - Limited Partnership Units	743,168.98	73,881.00
11/19/2010	7	Walton Southern U.S. Land LP 2 - Limited Partnership Units	1,070,497.80	104,449.00
11/04/2010 to 11/05/2010	3	Wesbrooke Retirement Limited Partnership - Units	95,000.00	95,000.00
09/01/2010	1	Zenyatta Ventures Ltd. - Units	250,000.00	1,000,000.00

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Chapter 9

Legislation

9.1.1 Ontario Regulation 437/10 Amending Reg. 1015 under the Securities Act

Note: A consolidated version of Reg. 1015, reflecting the amendments in Ontario Regulation 437/10, is expected to be available shortly on the Ontario e-laws site at www.elaws.

ONTARIO REGULATION 437/10
made under the
SECURITIES ACT
Amending Reg. 1015 of R.R.O. 1990
(General)

1. (1) Subsection 1 (3) of Regulation 1015 of the Revised Regulations of Ontario, 1990 is revoked.

(2) Subsection 1 (4) of the Regulation is amended by striking out "National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currencies*" and substituting "National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*".

2. Section 2 of the Regulation is revoked.

3. This Regulation comes into force on the later of,

(a) the day this Regulation is filed; and

(b) the day that the rule made by the Ontario Securities Commission entitled "National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*" comes into force.

Made by:

ONTARIO SECURITIES COMMISSION:

"Paulette L. Kennedy", Commissioner

"C.W. Scott", Commissioner

"Margot Howard", Commissioner

Dated on September 14, 2010

Note: The amending regulation was approved by the Minister of Finance on November 23, 2010 and filed on November 29, 2010. National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* comes into force on January 1, 2011.

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Alaris Royalty Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated December 2, 2010
NP 11-202 Receipt dated December 2, 2010
Offering Price and Description:
$25,000,500.00 - 2,381,000 Subscription Receipts, each representing the right to receive one Common Share Price: $10.50 per Subscription Receipt
Underwriter(s) or Distributor(s):
Acumen Capital Finance Partners Limited
CIBC World Markets Inc.
Raymond James Ltd.
Canaccord Genuity Corp.
Cormark Securities Inc.
Promoter(s):
-
Project #1672161

Issuer Name:
BMO 2013 Corporate Bond Target Maturity ETF
BMO 2015 Corporate Bond Target Maturity ETF
BMO 2020 Corporate Bond Target Maturity ETF
BMO 2025 Corporate Bond Target Maturity ETF
BMO Agriculture Commodities ETF
BMO Base Metals Commodities ETF
BMO Covered Call Canadian Banks ETF
BMO Energy Commodities ETF
BMO Monthly Income ETF
BMO Precious Metals Commodities ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 3, 2010
NP 11-202 Receipt dated December 6, 2010
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
BMO ASSET MANAGEMENT INC.
Project #1672590

Issuer Name:
Capital Power Corporation
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated December 1, 2010
NP 11-202 Receipt dated December 2, 2010
Offering Price and Description:
$125,000,000.00 - 5,000,000 Cumulative Rate Reset Preference Shares, Series 1 Price: $25.00 per Series 1 Share to yield initially 4.60% per annum
Underwriter(s) or Distributor(s):
TD Securities Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
HSBC Securities (Canada) Inc.
National Bank Financial Inc.
Canaccord Genuity Corp.
UBS Securities Canada Inc.
Promoter(s):
-
Project #1671905

Issuer Name:
CARRIE ARRAN RESOURCES INC.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 1, 2010
NP 11-202 Receipt dated December 2, 2010
Offering Price and Description:
$575,000.00 - 2,875,000 Units Price: $0.20 per Unit
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Thomas Pladsen
Project #1671798

Issuer Name:
D-Box Technologies Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated December 3, 2010
NP 11-202 Receipt dated December 3, 2010
Offering Price and Description:
$15,000,050.00 - 23,077,000 Common Shares Price: $0.65 per Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Canaccord Genuity Corp.
NCP Northland Capital Partners Inc.
Cormark Securities Inc.
Industrial Alliance Securities Inc.
Promoter(s):
-
Project #1672555

Issuer Name:
Dividend 15 Split Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 30, 2010
NP 11-202 Receipt dated December 1, 2010
Offering Price and Description:
$ * (Maximum) - Up to * Preferred Shares and * Class A Shares Price: $ * per Preferred and Class A Shares
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Desjardins Securities Inc.
National Bank Financial Inc.
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Manulife Securities Incorporated
Raymond James Ltd.
Promoter(s):
Quadravest Capital Management Inc.
Project #1671417

Issuer Name:
DMP Resource Class
Dynamic Advantage Bond Fund
Dynamic American Value Fund
Dynamic Aurion Total Return Bond Fund
Dynamic Canadian Bond Fund
Dynamic Canadian Dividend Fund
Dynamic Canadian Value Class
Dynamic Diversified Real Asset Fund
Dynamic Dividend Fund
Dynamic Dividend Income Fund
Dynamic Dollar-Cost Averaging Fund
Dynamic Energy Income Fund
Dynamic Equity Income Fund
Dynamic Financial Services Fund
Dynamic Focus+ Balanced Fund
Dynamic Focus+ Equity Fund
Dynamic Focus+ Resource Fund
Dynamic Global Discovery Fund
Dynamic Global Dividend Value Fund
Dynamic Global Value Fund
Dynamic High Yield Bond Fund
Dynamic Power Balanced Class
Dynamic Power Balanced Fund
Dynamic Power Canadian Growth Class
Dynamic Power Canadian Growth Fund
Dynamic Power Global Growth Class
Dynamic Power Small Cap Fund
Dynamic Precious Metals Fund
Dynamic Small Business Fund
Dynamic Strategic Gold Class
Dynamic Strategic Growth Portfolio
Dynamic Strategic Yield Class
Dynamic Strategic Yield Fund
Dynamic Value Balanced Class
Dynamic Value Balanced Fund
Dynamic Value Fund of Canada
DynamicEdge Balanced Class Portfolio
DynamicEdge Balanced Growth Class Portfolio
DynamicEdge Balanced Growth Portfolio
DynamicEdge Balanced Portfolio
DynamicEdge Equity Portfolio
DynamicEdge Growth Portfolio
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Simplified Prospectuses dated November 29, 2010
NP 11-202 Receipt dated December 1, 2010
Offering Price and Description:
Series F Units, Series G Securities
Underwriter(s) or Distributor(s):
Goodman & Company, Investment Counsel Ltd.
Promoter(s):
Goodman & Company, Investment Counsel Ltd.
Project #1651947

Issuer Name:
Dundee Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated December 3, 2010
NP 11-202 Receipt dated December 3, 2010
Offering Price and Description:
$100,296,000.00 - 3,360,000 REIT Units, Series A PRICE: $29.85 per Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Dundee Securities Corporation
Canaccord Genuity Corp.
Raymond James Ltd.
Brookfield Financial Corp.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
National Bank Financial Inc.
Promoter(s):
-
Project #1672552

Issuer Name:
Dynamic Power Global Growth Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated November 29, 2010
NP 11-202 Receipt dated December 1, 2010
Offering Price and Description:
Series O and OP Securities
Underwriter(s) or Distributor(s):
Goodman & Company, Investment Counsel Ltd.
Promoter(s):
Goodman & Company, Investment Counsel Ltd.
Project #1669182

Issuer Name:
Eaglewood Energy Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated December 3, 2010
NP 11-202 Receipt dated December 3, 2010
Offering Price and Description:
$10,125,000.00 - 13,500,000 Common Shares Price: $0.75 per Common Share
Underwriter(s) or Distributor(s):
FirstEnergy Capital Corp.
Cormark Securities Inc.
Macquarie Capital Markets Canada Ltd.
Paradigm Capital Inc.
Promoter(s):
Ray Antony
Project #1672580

Issuer Name:
Entourage Metals Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated December 2, 2010
NP 11-202 Receipt dated
Offering Price and Description:
Minimum of $3,750,000.00 to maximum of $5,000,000 .00 - Minimum of 7,500,000 Common Shares to maximum of 10,000,000 Common Shares Price: $0.50 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
Jeff Sundar
Adrain Fleming
John Florek
Robert McLeod
Michael Williams
Project #1672280

Issuer Name:
Fortuna Silver Mines Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated December 7, 2010
NP 11-202 Receipt dated December 7, 2010
Offering Price and Description:
$40,000,000.00 - 10,000,000 COMMON SHARES Price: $4.00 per Offered Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Cormark Securities Inc.
Promoter(s):
-
Project #1673643

Issuer Name:
GASFRAC Energy Services Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated December 6, 2010
NP 11-202 Receipt dated December 6, 2010
Offering Price and Description:
$95,003,350.00 - 11,243,000 Common Shares Price: $8.45 per Common Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Cormark Securities Inc.
BMO Nesbitt Burns Inc.
Macquarie Capital Markets Canada Ltd.
Promoter(s):
-
Project #1673213

Issuer Name:
Greater China Capital Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated November 26, 2010
NP 11-202 Receipt dated December 2, 2010
Offering Price and Description:
Minimum Offering: $9,000,000.00 (1,000,000 Common Shares / $7,500,000 Unsecured Convertible Debentures); Maximum Offering: $13,300,000.00 (1,200,000 Common Shares / $11,500,000 Unsecured Convertible Debentures) $1.50 per Common Share (post-Consolidation) $5,000 Principal Amount Unsecured Convertible Debentures
Underwriter(s) or Distributor(s):
PORTFOLIO STRATEGIES SECURITIES INC.
Promoter(s):
JIANMIN CHEN
CHANGLIN QIN
Project #1672162

Issuer Name:
Guardian Balanced Fund
Guardian Canadian Bond Fund
Guardian Canadian Equity Fund
Guardian Canadian Growth Equity Fund
Guardian Canadian Maple Equity Fund
Guardian Canadian Plus Equity Fund
Guardian Canadian Short-Term Investment Fund
Guardian Canadian Small/Mid Cap Equity Fund
Guardian Canadian Value Equity Fund
Guardian Equity Income Fund
Guardian Global Dividend Growth Fund
Guardian Global Equity Fund
Guardian High Yield Bond Fund
Guardian International Equity Fund
Guardian U.S. Equity Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated November 29, 2010
NP 11-202 Receipt dated December 1, 2010
Offering Price and Description:
Series I Units
Underwriter(s) or Distributor(s):
Guardian Capital LP
Promoter(s):
Guardian Capital LP
Project #1670665

Issuer Name:
Kimber Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated December 6, 2010
NP 11-202 Receipt dated December 6, 2010
Offering Price and Description:
$ * - * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
PI Financial Corp.
Promoter(s):
-
Project #1673013

Issuer Name:
Kimber Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated December 7, 2010
NP 11-202 Receipt dated December 7, 2010
Offering Price and Description:
$11,060,000.00 - 7,900,000 Units Price: $1.40 per Unit
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
PI Financial Corp.
Promoter(s):
-
Project #1673013

Issuer Name:
Orezone Gold Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated December 2, 2010
NP 11-202 Receipt dated December 2, 2010
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Desjardins Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Raymond James Ltd.
Promoter(s):
-
Project #1672047

Issuer Name:
Orezone Gold Corporation
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated December 2, 2010
NP 11-202 Receipt dated December 2, 2010
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Desjardins Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Raymond James Ltd.
Promoter(s):
-
Project #1672047

Issuer Name:
Partners Real Estate Investment Trust
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Prospectus dated December 2, 2010
NP 11-202 Receipt dated December 3, 2010
Offering Price and Description:
$ * - * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
TD Securities Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
Dundee Securities Corporation
Macquarie Capital Markets Canada Ltd.
Promoter(s):
-
Project #1665917

Issuer Name:
Pathway 2010 GORR Limited Partnership
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated December 6, 2010
NP 11-202 Receipt dated December 7, 2010
Offering Price and Description:
$15,000,000.00 (Maximum Offering); $2,500,000 (Minimum Offering); A Maximum of 1,500,000 and a Minimum of 250,000 Limited Partnership Units Minimum Subscription: 500 Limited Partnership Units
Subscription Price: $10 per Limited Partnership Unit
Underwriter(s) or Distributor(s):
Wellington West Capital Inc.
HSBC Securities (Canada) Inc.
Burgeonvest Bick Securities Limited
Canaccord Genuity Corp.
Dundee Securities Corporation
Mackie Research Capital Corporation
Desjardins Securities Inc.
Industrial Alliance Securities Inc.
Raymond James Ltd.
Laurentian Bank Securities Inc.
Macquarie Capital Markets Canada Ltd.
M Partners Inc.
Promoter(s):
Pathway 2010 GORR Inc.
Project #1645024

Issuer Name:
Prophecy Resource Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated December 2, 2010
NP 11-202 Receipt dated December 2, 2010
Offering Price and Description:
$ * - * Shares Price: $ * per Share
Underwriter(s) or Distributor(s):
Jacob Securities Inc.
Promoter(s):
-
Project #1671922

Issuer Name:
Prophecy Resource Corp.
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Short Form dated December 3, 2010
NP 11-202 Receipt dated December 3, 2010
Offering Price and Description:
$30,000,750.00 - 35,295,000 Shares Price: $0.85 per Common Share
Underwriter(s) or Distributor(s):
Jacob Securities Inc.
Promoter(s):
-
Project #1671922

Issuer Name:
SkyWest Energy Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated December 7, 2010
NP 11-202 Receipt dated December 7, 2010
Offering Price and Description:
$ Common Shares - issuable on the exercise of outstanding Special Warrants
Underwriter(s) or Distributor(s):
Wellington West Capital Markets Inc.
Haywood Securities Inc.
FirstEnergy Capital Corp.
Desjardins Securities Inc.
Promoter(s):
-
Project #1673613

Issuer Name:
Sparcap One Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated November 30, 2010
NP 11-202 Receipt dated December 6, 2010
Offering Price and Description:
MINIMUM OFFERING: $400,000.00 or 4,000,000 Common Shares; MAXIMUM OFFERING: $600,000 or 6,000,000 Common Shares Price: $ 0.10 per Common Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Promoter(s):
Kobi Dorenbush
Kelly Ehler
Project #1672579

Issuer Name:
Sterling Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated December 7, 2010
NP 11-202 Receipt dated December 7, 2010
Offering Price and Description:
$80,010,000.00 - 26,670,000 Common Shares Price: $3.00 per Common Share
Underwriter(s) or Distributor(s):
Wellington West Capital Markets Inc.
RBC Dominion Securities Inc.
Canaccord Genuity Corp.
Stifel Nicolaus Canada Inc.
Union Securities Ltd.
Promoter(s):
-
Project #1673536

Issuer Name:
Toronto Hydro Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated December 2, 2010
NP 11-202 Receipt dated December 2, 2010
Offering Price and Description:
$1,000,000,000.00 Debentures (unsecured)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1672031

Issuer Name:
Tuscany International Drilling Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated December 6, 2010
NP 11-202 Receipt dated December 6, 2010
Offering Price and Description:
$40,000,680.00 - 28,986,000 Common Shares Price: $1.38 per Common Share
Underwriter(s) or Distributor(s):
Wellington West Capital Markets Inc.
Jennings Capital Inc.
Stifel Nicolaus Canada Inc.
Raymond James Ltd.
Macquarie Capital Markets Canada Ltd.
Citigroup Global Markets Canada Inc.
Promoter(s):
-
Project #1673106

Issuer Name:
Western Copper Corporation
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated December 7, 2010
NP 11-202 Receipt dated December 7, 2010
Offering Price and Description:
$20,016,500.00 - 8,170,000 Units Price: 2.45 per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Cormark Securities Inc.
Dundee Securities Corporation
Promoter(s):
-
Project #1673608

Issuer Name:
Whitecap Resources Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated December 7, 2010
NP 11-202 Receipt dated December 7, 2010
Offering Price and Description:
$35,100,000 - 6,000,000 Common Shares
Price: $5.85 per Common Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Haywood Securities Inc.
National Bank Financial Inc.
Casimir Capital Ltd.
Cormark Securities Inc.
FirstEnergy Capital Corp.
Macquarie Capital Markets Canada Ltd.
Promoter(s):
-
Project #1673624

Issuer Name:
Wi-LAN Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated December 3, 2010
NP 11-202 Receipt dated December 3, 2010
Offering Price and Description:
$21,750,000.00 - 5,000,000 COMMON SHARES PRICE: $4.35 PER COMMON SHARE
Underwriter(s) or Distributor(s):
Paradigm Captial Inc.
Wellington West Capital Markets Inc.
CIBC World Markets Inc.
Fraser Mackenzie Limited
Promoter(s):
-
Project #1672534

Issuer Name:
ABCOURT MINES INC.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated December 6, 2010
NP 11-202 Receipt dated December 6, 2010
Offering Price and Description:
Minimum Offering: $2,531,250.00 or 18,750,000 Units; Maximum Offering: $4,050,000.00 or 30,000,000 Units
Price: $0.135 per Unit
Underwriter(s) or Distributor(s):
Industrial Alliance Securities Inc.
Promoter(s):
-
Project #1651937

Issuer Name:
Class A and Class F Units of:
Acuity Canadian Equity Fund
Acuity All Cap 30 Canadian Equity Fund
Acuity Canadian Small Cap Fund
Acuity Natural Resource Fund
Acuity Clean Environment Equity Fund
Acuity EAFE Equity Fund
Acuity Canadian Balanced Fund
Acuity Conservative Asset Allocation Fund
Acuity Diversified Income Fund
Acuity Growth & Income Fund
Acuity High Income Fund
Acuity Dividend Fund
Acuity Fixed Income Fund
Acuity Global High Income Fund
Acuity Global Dividend Fund
Acuity Money Market Fund
Acuity Social Values Canadian Equity Fund
Acuity Social Values Global Equity Fund
Acuity Social Values Balanced Fund
Alpha Global Portfolio
Alpha Growth Portfolio
Alpha Balanced Portfolio
Alpha Social Values Portfolio
Alpha Income Portfolio
and
Series A and Series F Shares of the following classes of Acuity Corporate Class Ltd.:
Acuity All Cap 30 Canadian Equity Class
Acuity Natural Resource Class
Acuity High Income Class
Acuity Diversified Income Class
Acuity Short Term Income Class
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated December 2, 2010 to the Simplified Prospectuses and Annual Information Form dated August 18, 2010
NP 11-202 Receipt dated December 6, 2010
Offering Price and Description:
Class A and Class F Units and Series A and Series F Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
ACUITY FUNDS LTD.
Project #1606775

Issuer Name:
BAM Split Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated December 3, 2010
NP 11-202 Receipt dated December 3, 2010
Offering Price and Description:
$125,000,000.00 - 5,000,000 Class AA Preferred Shares, Series 5
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets 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.
Desjardins Securities Inc.
Dundee Securities Corporation
Macquarie Capital Markets Canada Ltd.
Raymond James Ltd.
Promoter(s):
-
Project #1666317

Issuer Name:
BNK Petroleum Inc.
Principal Regulator - Alberta
Type and Date:
Final Shelf Prospectus dated December 6, 2010
NP 11-202 Receipt dated December 7, 2010
Offering Price and Description:
Cdn$200,000,000 .00:
Common Shares
Warrants
Debt Securities
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1644008

Issuer Name:
BNS Split Corp. II
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 30, 2010
NP 11-202 Receipt dated December 1, 2010
Offering Price and Description:
Warrants to Subscribe for up to 2,478,408 Capital Shares and 1,239,204 Series 1 Preferred Shares
at a Subscription Price of $50.84
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Promoter(s):
Scotia Managed Companies Administration Inc.
Project #1654930

Issuer Name:
Canadian Apartment Properties Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated December 3, 2010
NP 11-202 Receipt dated December 3, 2010
Offering Price and Description:
$125,425,000.00 - 7,250,000 Units Price: $17.30 per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Canaccord Genuity Corp.
Dundee Securities Corporation
Macquarie Capital Markets Canada Ltd.
Raymond James Ltd.
Promoter(s):
-
Project #1666291

Issuer Name:
CI Investments Inc.
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated December 6, 2010
NP 11-202 Receipt dated December 7, 2010
Offering Price and Description:
$1,000,000,000.00 - Debt Securities (unsecured) Fully and unconditionally guaranteed by CI FINANCIAL CORP.
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1669449

Issuer Name:
Claymore 1-5 Yr Laddered Government Bond ETF
Claymore 1-5 Yr Laddered Corporate Bond ETF
Claymore Premium Money Market ETF
Claymore Global Agriculture ETF
Claymore China ETF
Claymore Natural Gas Commodity ETF
Claymore Inverse Natural Gas Commodity ETF
Claymore Long-Term Natural Gas Commodity ETF
Claymore Broad Commodity ETF
Claymore Managed Futures ETF
Claymore Canadian Financial Monthly Income ETF
Claymore Equal Weight Banc & Lifeco ETF
Claymore Short Duration High Income ETF
(Units)
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated December 2, 2010
NP 11-202 Receipt dated December 3, 2010
Offering Price and Description:
Mutual Fund Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Claymore Investments, Inc.
Promoter(s):
Claymore Investments Inc.
Project #1654460

Issuer Name:
FRONT STREET RESOURCE FUND
FRONT STREET CANADIAN EQUITY FUND
FRONT STREET DIVERSIFIED INCOME FUND
FRONT STREET SMALL CAP FUND
FRONT STREET SPECIAL OPPORTUNITIES CANADIAN FUND
FRONT STREET MONEY MARKET FUND
of
FRONT STREET MUTUAL FUNDS LIMITED
(Series A, B, F and X shares)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated December 1, 2010
NP 11-202 Receipt dated December 7, 2010
Offering Price and Description:
(Series A, B, F and X shares)
Underwriter(s) or Distributor(s):
-
Promoter(s):
Front Street Capital 2004
Project #1651198

Issuer Name:
Gatorz Inc.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Prospectus dated November 25, 2010 (the amended prospectus) amending and restating the Final Prospectus dated November 1, 2010.
NP 11-202 Receipt dated December 1, 2010
Offering Price and Description:
C$2,000,000.00 - 2,500,000 Common Shares C$0.80 per Common Share (On a Post-Consolidation Basis)
Underwriter(s) or Distributor(s):
Octagon Capital Corporation
Promoter(s):
-
Project #1613155

Issuer Name:
Intrepid Mines Limited
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated December 3, 2010
NP 11-202 Receipt dated December 6, 2010
Offering Price and Description:
$112,218,000.00 - 63,400,000 Ordinary Shares Price: $1.77 per Ordinary Share
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Wellington West Capital Markets Inc.
Canaacord Genuity Corp.
Promoter(s):
-
Project #1666411

Issuer Name:
Maple Leaf Foods Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated December 7, 2010
NP 11-202 Receipt dated December 7, 2010
Offering Price and Description:
$362,388,127.50 - 34,513,155 Common Shares Price: $10.50 per Common Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
TD Securities Inc.
Promoter(s):
-
Project #1667841

Issuer Name:
Marquis Institutional Balanced Portfolio (Series A, Series G, Series I, Series O, Series T and Series V units)
Marquis Institutional Balanced Growth Portfolio (Series A, Series G, Series I, Series O, Series T and Series V units)
Marquis Institutional Growth Portfolio (Series A, Series I, Series O, Series T and Series V units)
Marquis Institutional Equity Portfolio (Series A, Series I, Series O, Series T and Series V units)
Marquis Institutional Canadian Equity Portfolio (Series A, Series I, Series O, Series T and Series V units)
Marquis Institutional Global Equity Portfolio (Series A, Series I, Series O Series T and Series V units)
Marquis Institutional Bond Portfolio (Series A, Series I Series O and Series V units)
Marquis Balanced Portfolio (Series A, Series G, Series I, Series O and Series T units)
Marquis Balanced Growth Portfolio (Series A, Series I, Series O and Series T units)
Marquis Growth Portfolio (Series A, Series G, Series I, Series O and Series T units)
Marquis Equity Portfolio (Series A, Series I, Series O and Series T units)
Marquis Balanced Income Portfolio (Series A, Series I and Series O units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated December 1, 2010
NP 11-202 Receipt dated December 2, 2010
Offering Price and Description:
Series A, Series G, Series I, Series O, Series T and Series V units.
Underwriter(s) or Distributor(s):
Goodman & Company, Investment Counsel Ltd.
Promoter(s):
Goodman & Company, Investment Counsel Ltd.
Project #1648184

Issuer Name:
Northland Resources S.A.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated December 3, 2010
NP 11-202 Receipt dated December 6, 2010
Offering Price and Description:
C$205,125,950.00 (Minimum Offering); C$256,510,000.00 (Maximum Offering) A Minimum of 90,363,854 Shares and a Maximum of 113,000,000 Shares Price: C$2.27 per Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
-
Project #1662493

Issuer Name:
Prosperata Capital Preservation Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated November 26, 2010
NP 11-202 Receipt dated December 2, 2010
Offering Price and Description:
Series A and Series F Units
Underwriter(s) or Distributor(s):
Global Prosperata Funds Inc.l
Promoter(s):
Global Growth Assets Inc.
Project #1536032

Issuer Name:
Prosperata Capital Preservation Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectus and Annual Information Form dated November 26, 2010 (the amended prospectus) amending and restating the Simplified Prospectus and Annual Information Form dated May 11, 2010.
NP 11-202 Receipt dated December 2, 2010
Offering Price and Description:
Series A and F Units
Underwriter(s) or Distributor(s):
Global Prosperata Funds Inc.l
Promoter(s):
Global Growth Assets Inc.
Project #1536032

Issuer Name:
Rio Novo Gold Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated December 1, 2010
NP 11-202 Receipt dated December 1, 2010
Offering Price and Description:
$40,020,000.00 - 17,400,000 Ordinary Shares: Price: Per Ordinary Share $2.30
Underwriter(s) or Distributor(s):
UBS Securities Canada Inc.
Canaccord Genuity Corp.
Clarus Securities Inc.
Dundee Securities Corporation
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Credit Suisse Securities (Canada), Inc.
Promoter(s):
-
Project #1664599

Issuer Name:
Sprott All Cap Fund
Sprott Global Equity Fund
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated December 1, 2010 to the Simplified Prospectuses and Annual Information Form dated May 6, 2010
NP 11-202 Receipt dated December 2, 2010
Offering Price and Description:
Series A, F and I Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Sprott Asset Management LP
Project #1552586

Issuer Name:
Sprott Tactical Balanced Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectus and Annual Information Form dated November 30, 2010 (the amended prospectus) amending and restating the Simplified Prospectus and Annual Information Form dated January 26, 2010.
NP 11-202 Receipt dated December 6, 2010
Offering Price and Description:
Series A, T, F, I and D Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Sprott Asset Management GP Inc.
Project #1526042

Issuer Name:
NEXX Systems, Inc.
Principal Jurisdiction - Ontario
Type and Date:
Preliminary prospectus dated April 6, 2010
Preliminary Prospectus and Amended and Restated Preliminary Prospectus dated May 14, 2010
Amended and Restated Preliminary Prospectus dated June 8, 2010
Amended and Restated Preliminary Prospectus dated June 29, 2010
Amended and Restated Preliminary Prospectus dated July 19, 2010
Amended and Restated Preliminary Prospectus dated August 23, 2010
Withdrawn on December 6, 2010
Offering Price and Description:
$ * - 5,424,955 SHARES OF COMMON STOCK PRICE $ * PER SHARE
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
CIBC World Markets Inc.
Macquarie Capital Markets Canada Ltd.
TD Securities Inc.
Promoter(s):
-
Project #1561419

Issuer Name:
Posera-HDX Inc. (formerly Hosted Data Transaction Solutions Inc.)
Type and Date:
Preliminary Short Form Prospectus dated August 4, 2010
Closed on December 7, 2010
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
D&D Securities Inc.
Promoter(s):
-
Project #1614127

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Reinstatement	Adilas Capital Limited	Exempt Market Dealer	December 1, 2010
Change in Registration Category	Roundtable Capital Partners Inc.	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	December 1, 2010
Consent to Suspension (Pending Surrender)	Max Capital Markets Ltd.	Exempt Market Dealer	December 1, 2010
Consent to Suspension (Pending Surrender)	Hill & Gertner Capital Corporation	Exempt Market Dealer	December 2, 2010
New Registration	Madison Peak Securities Ltd.	Exempt Market Dealer	December 2, 2010
Consent to Suspension (Pending Surrender)	LOM BioQuest Life Sciences Corporation	Exempt Market Dealer	December 2, 2010
Change in Registration Category	Gestion de Portefeuille Trasima Inc./Traisima Portfolio Management Inc.	From: Portfolio Manager To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	December 6, 2010

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Chapter 13

SROs, Marketplaces and Clearing Agencies

13.2 Marketplaces

13.2.1 OSC Notice and Request for Comment – NGX – Application to Amend Exemption Order

OSC NOTICE AND REQUEST FOR COMMENT

NATURAL GAS EXCHANGE INC.

APPLICATION TO AMEND EXEMPTION ORDER

A. Background

On March 1, 2011, subsection 21.2(0.1) of the *Securities Act* (Ontario) (OSA) will come into force prohibiting clearing agencies from carrying on business in Ontario unless they are recognised as a clearing agency or are exempt from the requirement to be recognised by order of the Ontario Securities Commission (Commission).

Natural Gas Exchange Inc. (NGX) is a wholly owned subsidiary of TMX Group Inc. that operates a trading system and a clearing system for contracts, both physical and financial, in natural gas, electricity and crude oil products. The Commission issued an order, dated March 31, 2009, exempting NGX from, among other things, the requirement to be recognised as a stock exchange under the OSA and registered as a commodity futures exchange under the *Commodity Futures Act* (2009 Order).

NGX has filed an application (Application) to amend the 2009 Order to explicitly acknowledge that it engages in certain clearing agency functions. NGX seeks to continue its exemption order on the basis that it is already subject to appropriate regulatory oversight by the Alberta Securities Commission (ASC). NGX is recognised as an exchange and a clearing agency by the ASC.

In assessing the Application, staff used as guidance the considerations and process set out in OSC Staff Notice 24-702 - *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*.

B. Draft Order

In its Application, NGX has addressed each of the criteria for exemption from recognition for clearing agencies. Subject to comments received, staff will recommend that the Commission grant an amended and restated exemption order with terms and conditions to NGX based on the proposed draft order (Draft Order) attached as Appendix ”A” to the Application.

The Draft Order requires NGX to comply with terms and conditions relating to:

1. Regulation of NGX,
2. Access,
3. Products,
3. Submission to Jurisdiction and Agent for Service,
4. Filing Requirements, and
5. Information Sharing

C. Comment Process

The Commission is publishing for public comment the Application and Draft Order. We are seeking comment on the Application and changes in the Draft Order.

You are asked to provide your comments in writing and delivered on or before January 10, 2011, addressed to:

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8
E-mail: jstevenson@osc.gov.on.ca

We request that you also submit an electronic copy of your submission. The confidentiality of submissions cannot be maintained as a summary of written comments received during the comment period will be published.

Questions may be referred to:

Winfield Liu
Senior Legal Counsel, Market Regulation Branch
Tel: 416-593-8250
wliu@osc.gov.on.ca

December 10, 2010

November 30, 2010

DELIVERED BY EMAIL AND COURIER

Attention: Winfield Liu

Ontario Securities Commission
20 Queen Street West, Suite 1903
Toronto, Ontario M5H 3S8

Dear Winfield:

Re: Natural Gas Exchange Inc. – Application for a variation order under the Ontario Securities Act

1. Introduction

Natural Gas Exchange Inc. ("**NGX**"), a Canadian corporation with its head office located in Calgary, Alberta, was granted an order pursuant to section 147 of the Ontario Securities Act (the "**OSA**") dated March 31, 2009 (the "**2009 Order**") exempting NGX from certain provisions of the Commodity Futures Act and the OSA, including the requirement to be registered as a commodity futures exchange in the province of Ontario. As of March 1, 2011, subsection 21.2(0.1) of the OSA will prohibit a clearing agency from carrying on business in Ontario unless it is recognized by the Ontario Securities Commission (the "**OSC**" or "**Commission**") as a clearing agency or is exempt from the requirement to be recognized by order of the Commission. NGX is an exchange that also engages in certain clearing agency functions. As such, NGX hereby applies to the OSC for an order under section 144 of the OSA, varying the 2009 Order to reflect that NGX's clearing agency functions meet the criteria for clearing agencies as set out in OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*.

2. Business Overview

NGX is a leading trading and clearing system for sophisticated entities transacting in energy products in the North American market. During calendar year 2009, NGX cleared 309,277 transactions with a total quantity of 15,000 Petajoules of natural gas (an aggregate notional value of approximately $C53 billion[1]) (approximately US$50.3 billion) and approximately 67 Terawatt-hours of electricity (an aggregate notional value of approximately $C4.2 billion (approximately US$4.0 billion)). NGX was incorporated in 1993 and has operated continuously since 1994.

Corporate Structure

NGX is currently a wholly owned subsidiary of TMX Group Inc. ("**TMX Group**"), which is also the parent company of TSX Inc., and which owns and operates the Toronto Stock Exchange. Historically, NGX was comprised of two related legal entities, Natural Gas Exchange Inc. ("**Market**") and its wholly owned subsidiary NGX Financial Inc. ("**Financial**"). Market and Financial were amalgamated on November 1, 2002 to form Natural Gas Exchange Inc. ("**NGX 2002**"). On March 1, 2004, TMX Group acquired 100% of the shares of NGX Canada Inc. from OMHEX AB (the "**Acquisition**"). Immediately following the Acquisition, 6182224 Canada Inc. (a wholly owned subsidiary of TMX Group) and its then wholly owned subsidiary, NGX Canada Inc., as well as its wholly owned subsidiary, NGX 2002, amalgamated under the Canada Business Corporations Act to form NGX. This amalgamation had the effect of consolidating all of the operations relating to NGX trading and clearing businesses into NGX.

In November 2005, NGX incorporated a Delaware company, NGX U.S. Inc. ("**NGX US**"), as a wholly owned subsidiary of NGX, to facilitate a planned expansion of its business into the United States. NGX may in the future conduct clearing operations for certain products, such as those with U.S. delivery points, through NGX US.

In September 2006, NGX acquired Alberta Watt Exchange Limited ("**Watt-ex**"). Watt-ex provides an automated procurement mechanism through which the local system operator procures electricity on a standby commitment basis to support the grid. This entity operates as a separate subsidiary and has not been integrated into NGX's trading or clearing businesses.

On September 6, 2007, NGX's parent company, TMX Group Inc., purchased an option to acquire NetThruPut Inc. ("**NTP**"), a Calgary, Alberta-based electronic exchange and clearing house for physically and financially settled crude oil commodity contracts. The option was exercised on April 1, 2009 (the "**Option Exercise Closing**"). NGX acquired NTP's trading platform and launched crude oil contracts on May 1, 2009 pursuant to NGX's standardized rules and using the NGX clearing model applicable to natural gas and electricity. NTP remained operative for the sole purpose of clearing and settling the legacy NTP contracts (transacted prior to the Option Exercise Closing). NTP legacy contracts were transacted pursuant to the terms and conditions of NTP rules, including its non-collateralized clearing model. The final legacy contracts expired in August 2009.

[1] Conversions of Canadian dollars to US dollars in this application have been made using the exchange rate for December 31, 2009 of $C0.9499/US$.

Summary of Business

Marketplace

NGX operates a non-intermediated electronic marketplace (the "**Marketplace**") based in Calgary, through which NGX contracting parties ("**Participants**"), which satisfy certain eligibility standards, may enter into the following types of transactions.[2]

- physically settled natural gas and crude oil contracts for delivery at various Canadian and U.S. locations or hubs ("**Physicals**"); and

- swap and/or option contracts relating to natural gas, electricity and referencing various Canadian pricing points ("**Financials**").

We refer to such Physicals and Financials as "**Contracts**". NGX plans to add additional contracts to the Marketplace from time to time, including Physicals and Financials relating to different pricing points or delivery hubs, auction matched contracts, contracts that may settle on a different schedule, and contracts for other physical energy commodities and their derivatives. NGX may expand into other non-energy physical commodities and their derivatives in the future. NGX currently operates the Marketplace pursuant to orders from applicable Canadian provincial regulatory authorities, as described below, and as an exempt commercial market ("**ECM**") under Section 2(h)(3) of the U.S. Commodity Exchange Act ("**CEA**"). Further information is described below under the heading "Regulatory Regime".

Clearing Services

NGX provides clearing services (the "**Clearing Services**") through which it acts as central counterparty for transactions in Contracts entered into on the Marketplace ("**Marketplace Transactions**"), transactions entered into on a third party marketplace ("**ICE Transactions**") and certain transactions in Contracts executed bilaterally over-the-counter ("**OTC Transactions**"), together with the Marketplace Transactions and ICE Transactions, these three categories of cleared transactions are referred to as "**Transactions**".[3]

- *Clearing of Marketplace Transactions.* Transactions may be automatically cleared through NGX. Individuals authorized to transact on behalf of Participants ("**Traders**") enter anonymous bids and offers for Contracts on the Marketplace. On matching with another party, each Trader/Participant is notified that it has bought or sold the relevant contract from or to NGX, which immediately becomes the counterparty to both sides of the trade. The identity of the other Participant is not disclosed. Concurrently with the launch of the NGX/IntercontinentalExchange Inc. alliance on February 9, 2008 (the "**ICE Alliance**"), Participants, if authorized by NGX, are also permitted to trade in an NGX product that is cleared by the Participants themselves as opposed to NGX. Such trades are referred to in the CPA (as defined below) as "**Bilateral Transactions**".

- *Clearing of Third-Party Marketplace Transactions*. NGX currently clears transactions executed on the ICE electronic trading platform and expects it may sometime in the future, clear transactions on other regulated or exempt marketplaces.[4]

- *Clearing of OTC Transactions.* Participants that have arranged trades in Contracts outside of the Marketplace on a bilateral OTC basis, including through an OTC broker, may submit these trades to NGX for clearing in accordance with NGX's rules.

NGX acts as a central counterparty for all NGX-cleared Transactions. NGX's clearing model does not provide for mutualization of credit risk among Participants, however. Performance is backed by Participants' margin and a clearing guarantee fund, as described below. All Participants are required to self-clear; Participants are currently not permitted to clear positions on behalf of other Participants.

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2 As discussed below, all Participants must enter into a Contracting Party's Agreement with NGX and must satisfy certain eligibility criteria to participate in NGX's principal to principal market.

3 NGX announced an alliance with IntercontinentalExchange Inc. ("**ICE**") on March 28, 2007, which involves an outsourcing by NGX of certain trading services from ICE, and the provision of clearing services by NGX for U.S. physically-settled natural gas contracts traded on the ICE platform. Operations officially commenced under the alliance on February 9, 2008. The operation of the trading platform has been fully outsourced to ICE on the terms and conditions described in the Services Agreement. NGX products are not currently available on any other third-party execution platforms.

4 Note, the passage of the U.S. Dodd-Frank Act on July 21, 2010 may require clearing agencies, such as NGX, to accept standardized swaps from other regulated execution platforms. NGX is awaiting CFTC rule-makings that may impact it as a derivatives clearing organization under U.S. laws.

All Contracts are currently modelled after and are similar to those utilized by market participants for OTC energy derivatives, such as the forms of documentation standardized by the North American Energy Standards Board ("**NAESB**") and the International Swaps and Derivatives Association ("**ISDA**"). The principal difference results from the fact that NGX acts as the central counterparty to all NGX-cleared Transactions, which requires the addition of certain provisions, such as NGX's standard collateral requirements and liquidation rights described below.

NGX provides for several types of settlement procedures depending on the type of contract. For Financials, final settlement takes place between NGX and each Participant. For all Physicals cleared by NGX, as the central counterparty, NGX guarantees the performance obligations of the parties, including physical and financial settlement. The delivery/receipt mechanisms vary at each hub depending on the rules established by the hub operator. At certain hubs, NGX will handle the required delivery/receipt arrangements directly with buyers and sellers.

3. Criteria for Recognition of Clearing Agencies

1. *Governance*

As previously mentioned, NGX is a wholly owned subsidiary of TMX Group Inc.

TMX Group is a corporation incorporated under the Business Corporation Act (Ontario) and has its head office in Toronto, Ontario. Its shares have been listed for trading on the Toronto Stock Exchange since November 2002. TMX Group is a reporting issuer in every province and territory of Canada and its financial information is available on Canada's SEDAR system for public company filings, located at www.sedar.ca. As of December 31, 2009, TMX Group's market capitalization was approximately$C2.6 billion. TMX Group operates Canada's two national stock exchanges serving the senior equity and public venture equity markets (Toronto Stock Exchange and TMX Venture Exchange) as well as other core equity operations. On May 1, 2008, the company completed its acquisition of the Montreal Exchange to become a combined equity and derivatives exchange. The combined entity was then rebranded from TSX Group under the name TMX Group Inc.

NGX's Board of Directors is composed of eight individuals, all of whom are members of management of TMX Group. As of November 30, 2010 the following individuals comprise the Board of Directors: Kevan Cowan, Brenda Hoffman, Thomas Kloet, Chief Executive Officer, TMX Group; Peter Krenkel, Alain Miquelon, Sharon Pel, Senior Vice President, Michael Ptasznik and Eric Sinclair.

NGX employs an executive management team with specialized expertise in energy markets and energy clearing and system operations. The current management team consists of the following persons: (1) President; (2) Chief Legal Counsel & Regulatory Compliance Officer; (3) Vice President of Sales & Marketing; (4) Vice President of Clearing & Development; (5) Vice President of U.S. Operations; (6) Vice President of Crude Oil; (7) Vice President of Finance & Administration; (8) Vice President of Information Technology; and (9) Vice President, Markets. The management team is subject to the supervision of the Board of Directors, which may change the structure and personnel of the management team from time to time.

In order to avoid conflicts of interest, NGX has established approval processes which govern internal decision-making for both exchange and clearing matters. Material clearing matters are also addressed through an internal risk management process. In addition, NGX staff must adhere to the internal corporate employee code of conduct and conflict of interest policies.

2. *Fees*

NGX clearing fees are set out in Schedule A to the CPA. Clearing fees are set by product (physical gas, physical oil, and swap transactions) and by delivery point. Prospective new products must be approved by NGX's senior management in consultation with risk management, legal and other relevant personnel. Prior to adding a new product, NGX must determine that a reliable source of daily settlement information is available and must establish initial margin requirements and market pricing information to allow the calculation of variation margin for the new product. To determine an appropriate fee, NGX will consider the risk associated with the product, whether the new product is similar to an existing product, and overall market conditions. Any updates to the fee schedule become effective six (6) business days following receipt of notice by the Participants of such revision.

3. *Access*

Participants must meet a number of eligibility requirements to access the NGX Trading System. They must be a validly organized corporation, partnership organization, trust or other business entity or have a majority of its voting shares owned directly or indirectly by one or more such entities with a net worth exceeding $5 million or total tangible assets exceeding $25 million as shown on its latest balance sheet. The applicant must have any necessary regulatory and business licenses. It must submit appropriate documentation that it has been duly authorized to enter into transactions on the NGX Trading Platform.

In addition a Participant must represent that it has access to a transportation system (to the extent that such Participant wishes to enter into Physical Transactions), will enter into each Transaction in conjunction with its line of business, is an "eligible swap participant", "eligible contract participant", and "eligible commercial entity" as defined by the *Commodity Exchange* Act (United States), is an accredited investor as defined in *National Instrument 45-106* if resident in Ontario, and will enter into all transactions as principal and not as agent for any other party.

NGX keeps records of each application, including a checklist of application criteria. Once all of the above-noted criteria have been met, as well as any other qualification requirements that NGX may impose, NGX will notify the applicant that it has been accepted as a Participant. The Participant will then be activated on the NGX Trading System and the NGX Clearing System. NGX may apply order size limits, or limit a Participant by product.

In the event that an applicant does not meet the all the criteria, NGX will notify the applicant of the reasons for the non-acceptance and keep appropriate records of the reasons.

Participants must additionally satisfy ICE's participant requirements and must have valid access rights to, and remain in good standing for its participation on, the ICE trading platform with respect to any products that are included in the ICE Alliance. NGX is responsible for verifying that a new NGX market Participant has fulfilled the criteria to be accepted as a trader on the ICE Platform.

Pursuant to its Risk Management Policy, NGX may impose additional conditions on applicants. NGX will initially determine a Margin Limit for each participant. If the Participant approaches, equals or exceeds the margin limit, NGX may call for additional collateral to be deposited, or may suspend the Participant's trading rights, or close-out and liquidate the Participant's outstanding contracts.

NGX does regular review of Participant financials to ensure compliance with the eligibility criteria (a net worth of $5 million or total tangible assets of $25 million). In addition, NGX subscribes to a Chapter 11-reporting site that allows us to monitor whether one of our Contracting Parties files for creditor protection in the US. NGX is not aware of any such service in Canada, however, NGX subscribes to Canada Newswire email alerts, which allow NGX to filter for news releases on our Contracting Parties, and automatically notify NGX's clearing staff of any relevant news releases.

Some Participants execute bilateral, non-cleared, transactions on NGX. Although NGX may perform certain types of clearance and settlement functions in connection with such transactions, it does not novate these bilateral contracts and does not become the universal counterparty. The credit risk of these transactions remains bilateral and is addressed through the standard credit arrangements that exist between the two parties.

4. *Rules and Rulemaking*

The relationship between NGX and Participants is set forth in a standard form contract (the Contracting Party's Agreement (the "**CPA**")) entered into between NGX and each Participant. The CPA governs access to the Marketplace and Clearing Services and specifies the terms and conditions of all traded and cleared contracts. The CPA also provides for a detailed framework of rules, including, without limitation, rules regarding Participant eligibility, risk management and default procedures. NGX also has documented policies and procedures pursuant to which the business operates.

Periodic amendments to the CPA must first be approved by NGX's clearing bank and by its insurer. After written approval has been received, pursuant to Section 1.1 of the CPA, Participants will receive six business days notice of pending amendments before such amendments become effective. Any Participant who disagrees with such amendments may give notice of termination pursuant to section 9.1 of the CPA.

All such rules are reviewed by NGX's regulators to ensure compliance with securities legislation. NGX is of the view that the rules set out in the CPA do not permit unreasonable discrimination among participants, nor impose any burden on competition that is not necessary or appropriate.

Article 6 of the CPA also sets out rules allowing NGX to monitor and investigate Participant conduct to ensure compliance with the CPA, and to impose penalties in the event of a breach.

5. *Due Process*

NGX ensures that for any decision that materially affects a Participant, that Participant is given a fair opportunity to be heard and/or make representations or submissions, and that NGX keeps a record of, gives reasons for and provides for a fair resolution mechanism regarding any disputes of its decisions in accordance with its rules. NGX's dispute resolution process is set out in Schedule "B" to the CPA.

6. *Risk Management*

NGX clears transactions executed on the NGX Trading Systems and specified OTC transactions. NGX acts as a CCP for all cleared transactions. NGX's clearing model does not provide for mutualization of credit risk among Participants. Performance is backed by Participants' margin and a clearing guarantee fund. All Participants are required to self-clear and may not clear positions on behalf of others. As discussed above, all cleared contracts are modeled after and are similar to those utilized by market participants for OTC energy derivatives, such as the forms of NAESB and ISDA documentation. The principal difference results from the fact that NGX acts as the central counterparty to all cleared contracts, which requires the addition of certain provisions, such as NGX's standard collateral requirements and liquidation rights described below.

NGX provides for several types of settlement procedures depending on the type of contract. For financially settled contracts, final settlement takes place between NGX and each Participant. Settlement on physical products takes place on or about the 25th day following the month of delivery; financial products settle on the 6th business day following month end and options premiums settle two business days after execution.[5] For all physically settled contracts, NGX, as the central counterparty, guarantees the performance obligations of the parties, including physical and financial settlement. The delivery/receipt mechanisms vary at each natural gas hub depending on the rules established by the hub operator. At certain hubs, NGX will handle the required delivery/receipt arrangements directly with buyers and sellers.

NGX settlement procedures vary slightly as between physical and financial contracts. As a predominantly physical clearing house, NGX plays a role in facilitating delivery of physical contracts. As such, NGX must work within the parameters set by each pipeline operator, such as rules for submitting nominations, and the manner in which over and under supply situations need to be managed. In addition to customer default risk, which is common to both physical and financial contracts, physical contracts carry the additional risk that physical supply may be disrupted or unavailable due to various logistical reasons (pipeline, production or storage related issues). Accordingly NGX's operations group manages this risk by monitoring delivery/supply positions and taking immediate action to remedy variances as they occur. In the event a customer is unable to correct a delivery/supply issue, NGX maintains physical supply backstop arrangements in its primary markets to allow for third party supply of product at current market prices. In the event that physical supply was ever unattainable, the CPA allows NGX to settle the obligations on a financial basis.

Clearing procedures

The clearing systems were developed internally by NGX and are electronically connected to the NGX Trading Systems. The clearing operations run on a platform and database called NGX Ts-2. NGX is in the process of replacing TS2 with NGX NCS, (collectively called the "**NGX Clearing System**") because NCS has been created to better handle the specific needs of a clearing agency.

The clearing process is initiated by the automated entry into the NGX Clearing System of the trade details. Trades are accepted by the clearinghouse and novated upon receipt by the NGX Clearing System, subject to a trade-in-error provision initiated within a 10 minute window of the ICE time stamp on the executed trade. Clearing takes place on a real time (2 minute delay) continuous basis with positions being managed to available collateral previously deposited by the Participant.

Because every Participant self-clears, NGX does not offer give-up or take-up procedures. Thus, there are no additional instructions that can be entered into the clearing system following acceptance of a trade by the clearing house.

Risk Management

NGX evaluates its credit and liquidity exposures on an ongoing basis. NGX engages in real-time risk monitoring through an electronic system that compares the amount of required collateral for each Participant's positions with the amount of collateral actually on deposit for that Participant.

Positions are marked-to-market on a continuous basis using the most recent traded prices for market values, and for less liquid instruments, end-of-day prices. NGX calculates an aggregate margin requirement for each Participant, which is composed of (a) initial margin for all positions, (b) variation margin for all positions, (c) net amounts payable to NGX in respect of Physicals in the delivery phase[6] and (d) net amounts payable to NGX in respect of the settlement of Financials.[7] Because Physicals have a long underlying settlement cycle, the accounts receivable margin is typically the largest factor in setting collateral requirements at NGX.

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5 NGX anticipates, in the near term, introducing "daily (futures-style) settlements" for its electricity swaps, and eventually its natural gas contracts.

6 Physicals are a contract for the purchase or sale of the commodity. *See*, CPA Article 1.2mmmmm.

7 Financials are financially-settled contracts for the purchase or sale of a commodity.

Initial margin protects NGX from adverse price movements within a defined confidence interval that would affect positions for an interval during liquidation of the portfolio. NGX calculates initial margin requirements for each contract based on its Risk Management Policy, taking into account different liquidation periods and historical price volatility. Initial margins are currently calculated using 2.7 standard deviations (a 99.7% confidence interval) from the last mark-to-market price (calculated using historical volatility data) over a minimum of a two-day liquidation period. Initial margin is typically the second largest factor in setting collateral requirements. Initial margin rates for Contracts are updated at least monthly and more often as needed.

Variation margin reflects the daily mark-to-market value of the relevant positions. Margin is calculated on a portfolio basis; that is, the risks of certain positions may be reduced or off-set by other positions in the portfolio. Participants must post sufficient collateral to cover the overall risk of the account in a form acceptable to NGX. Acceptable collateral is in the form of a letter of credit from an A-rated bank or better, or cash, which NGX values at full face value without any haircut.

NGX performs periodic stress testing to identify market prices at which the potential loss exceeds the total collateral held. The results of these stress tests are reviewed by management in order to evaluate the adequacy of initial margin rates. In conducting the stress testing, NGX assumes adverse price movements of the relevant Contracts and then calculates the required variation margin for the positions in each Participant's portfolio using the real-time risk monitoring system described below. An exception report is created when NGX's uncollateralized exposure to a Participant under the assumptions (the amount of any required margin over the amount posted as collateral) would exceed the Participant's initial margin. The results of the stress testing are used to determine if the initial margin rates should be increased or decreased to ensure that NGX holds adequate collateral amounts in the context of changing market conditions.

In addition, NGX has implemented a program of on-going backtesting, including regular backtesting to validate the volatility assumptions for various key products. Daily price changes through the quarter are compared to those assumed for purposes of determining initial margin to determine the number of cases in which market movements exceeded those assumed and to ensure that the number of exceptions in a dataset is not larger than expected or pose a material risk.

To use the Clearing Services, a Participant must post collateral or sell and deliver sufficient quantities of the underlying commodity to generate a receivable from NGX that covers margin requirements. The minimum amount of collateral required varies by commodity and instrument type, but in any event is no less than $C500,000 (approximately US$480,000). In the event a Participant's available margin was to fall below the minimum threshold, NGX may request additional collateral. In the case of Financials, the amount of posted collateral must cover initial and variation margins until the day of settlement price or index publication and determination of accounts payable/receivable.[8] Financials generally settle on the sixth business day of the month of delivery. In the case of Physicals, the amount of posted collateral must cover initial and variation margin until released on each day during the delivery month with respect to the portion of the contract settled on that day. Margin is thereafter required to the extent of any amounts payable to NGX.

Credit Limits

NGX sets an aggregate margin or credit limit for each Participant in accordance with the Risk Management Policy based on each Participant's collateral on deposit.[9] NGX has instituted a series of margin triggers that, if breached, will cause NGX to request additional collateral from the Participant. If the Participant does not deposit additional collateral as requested, or if it believes a position would be too large to liquidate in an orderly fashion in the event of Participant default, NGX may restrict that Participant from entering into additional transactions on the trading platforms or to use the clearing services. In certain circumstances, if the Participant is unable or unwilling to provide additional collateral as determined by NGX, NGX will provide notice of "Failure to Provide Collateral" and may invoke liquidation procedures pursuant to Section 5.6 of the CPA.

Default remedies and procedures

As noted above, NGX does not mutualize risk among its Participants. Rather, each Participant provides collateral covering its own positions. As discussed below, NGX alone bears the risk of loss in the unlikely event of a default. In no event would another clearing Participant be required to make additional contributions to NGX to cover losses associated with the default of another Participant. The steps that NGX would take in the event of a default and the financial resources that NGX maintains to address potential losses are discussed below.

A Participant will be deemed to be in default under the CPA if it fails to make or take delivery when required under a contract, fails to make payments required under a contract, fails to deposit collateral when required or an "Event of Default" as defined in the CPA is continuing. Under Section 3.9 of the CPA, an Event of Default includes a number of events, including, failure of the Participant or any credit support provider to comply or perform in respect of any collateral-related agreement, the withdrawal or lapse of any credit support document related to the CPA, a material misrepresentation by the participant or its guarantor,

[8] See footnote 5; daily settlement will provide Participants with the ability to settle variations marked to market amounts T+2 and for offsets to close out obligations in advance of final settlement.

[9] The Risk Management Policy is Schedule C of the CPA.

bankruptcy of the participant or its guarantor and merger of the participant or its guarantor without the assumption by the surviving entity of the Participant's obligations or the obligations of such credit support provider under the CPA or any credit support document.

In response to a default, NGX may take the following actions:[10]

- Request additional collateral.
- Suspend the Participant's rights to enter into Transactions through NGX until the default is remedied.
- Accelerate, terminate and net existing Transactions.
- Enter into liquidation or close out Transactions to offset obligations of the defaulting Participant.
- Realize upon the Participant's collateral.
- Terminate the CPA with the Participant.

Upon NGX's exercise of any of these remedies, any amount payable under any contract by the defaulting Participant becomes immediately due and payable. If NGX determines to offset, in whole or in part, obligations of the defaulting Participant, it may enter into liquidation or close out Transactions for the account of the defaulting Participant and offset these against other outstanding positions.[11] Following such allocation, NGX determines a net settlement amount owing to or by such Participant, which becomes due and payable immediately. If any net settlement amount is owed to the defaulting Participant, NGX pays such amount and assumes all of the rights of such Participant under the offsetting Transactions.

NGX guarantees deliveries and financial settlement. Therefore, NGX is entitled to specified damages in the case of a failure to make or take delivery or a failure to pay under physically settled contracts.[12] In the event of a failure to deliver by a seller, for example, the seller is obligated to pay to NGX an amount equal to the reasonable direct costs and damages incurred by NGX as a result of the seller's failure to deliver, including the cost of purchasing a replacement quantity of the relevant commodity, costs imposed by the pipeline or hub as a result of the failure, interest and, in certain cases, for example during a system constraint period (defined as a potential constraint at a particular hub, determined by NGX in its sole discretion), additional liquidated damages. Similar damage calculations apply in the event of a failure to pay or a failure to take by the buyer. In the event that NGX defaults on any of its obligations, Participants may recoup damages as specified in the CPA.[13] These are similar to those described above.

In the event of a failure to pay by NGX which is not rectified within one business day, NGX will file a direction to pay with its escrow agent (currently CIBC Mellon Trust), and the escrow agent shall immediately draw down on the Guarantee Fund and pay the failure amount to the Participant.

If NGX has not performed by the fifth day following a failure to deliver or failure to take, the Participant may make a demand upon the Guarantee Fund. Either party may initiate mediation or arbitration proceedings which will stay an award from the Guarantee Fund for specified periods. In the case of NGX's insolvency, the Participant is entitled to accelerate, terminate and net all outstanding Transactions under procedures specified in the CPA.

Since 2001, NGX has experienced four material Participant defaults in response to which NGX successfully exercised its available remedies. Several other Participant defaults were successfully addressed short of liquidating their positions.

7. *Systems and Technology*

NGX uses its own custom-built software and some third party technology solutions to support the NGX Clearing System. Ownership or control of hardware and software, as well as responsibility for storage and management of data, resides with NGX with respect to clearing and settlement.

TMX system and technology policies and standards are used as a guideline in the creation of NGX policies and procedures. Development standards are generated by NGX in accordance with industry standards and subject to review by TMX and third-party audits.

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[10] NGX's rights exercisable upon the occurrence of a default with respect to a physically settled contract are provided for in Section 5.5 of the CPA and in Section 8.2 of the CPA with respect to financials.

[11] *See* CPA, Article 5.6 and 8.3.

[12] CPA Articles 5.1-5.3.

[13] CPA Articles 5.1- 5.3.

NGX's internal IT staff address any issues that arise with the NGX Clearing System, including any necessary enhancements, in accordance with NGX policies and procedures. Annual TMX and third-party audits are conducted to assess whether changes to technology have been properly authorized and documented, including a review of relevant polices and standards for compliance purposes.

NGX has established an oversight and risk analysis program for its clearing systems to ensure proper functioning and the maintenance of adequate capacity and security. NGX conducts periodic testing of key system functions and has emergency procedures and a disaster recovery plan. If a material systems failure were to occur, and impact NGX's ability to comply with the Recognition Orders (as defined below), NGX is required to immediately report such an event to the ASC. NGX reports systems availability to the ASC in its annual self-assessment report to the ASC.

Oversight/Risk Analysis Program

NGX has designed its computer systems with target availability in excess of 99% during trading hours.

NGX has developed and maintains its automated systems in a manner consistent with the principles set forth in the Commodity Futures Trading Commission's Policy Statement Concerning the Oversight of Screen-Based Trading Systems. NGX notes in particular, as these principles relate to the clearing services, that:

(a) The system meets all applicable legal standards, regulatory policies and/or market custom.

(b) The system is designed to operate in a manner that is equitable for all Participants. As noted above, there is only one class of Participants, and all Participants have equal access to the system.

(c) NGX has analyzed, and continues to analyze, the system to address vulnerabilities (including risks of unauthorized access, internal failures, attacks and natural catastrophes).

(d) Applicable procedures under the CPA have been established to ensure the competence, integrity and authority of system users and to ensure that access is not arbitrarily denied. In particular, NGX has established procedures for Participants to designate persons entitled to access the system (CPA, Section 3.1).

(e) The CPA contains detailed statements and disclaimers concerning the status of the electronic systems and the limitations on NGX's liability to Participants for system failures.

Under the CPA, NGX undertakes to use commercially reasonable efforts to implement and maintain security systems and procedures designed to prevent unauthorized access to its electronic systems through any network connections between the Participant and NGX. NGX monitors the system and has agreed to take commercially reasonable steps to prevent fraud and breaches of security. Upon discovering any fraud or breach of security, NGX has agreed to notify the affected Participant and take all commercially reasonable measures to remedy the situation, including halting the Participant's access to the system. In accordance with this undertaking, NGX has implemented a number of security measures. Electronic communications between client software and NGX host software are protected by an encryption protocol. Virtual and direct remote access to NGX's system is permitted only through NGX's password-protected business network and requires an additional level of authentication. Network devices such as firewalls and routers are strictly controlled through secure protocols and can only be accessed from within the network or over a secure VPN (Virtual Private Network) connection. In addition, NGX performs regular vulnerability threat assessments.

Emergency Procedures and Disaster Recovery

NGX operates a parallel, duplicate network in a separate physical location that is updated on a real-time basis. As a result, in the event of a malfunction in one network, NGX can continue to operate its clearing services with a minimum of interruption and loss of data. As a general matter, the system is designed so that in the event of a network failure, the system can be switched to an alternate network in a reasonable period of time. The primary server and the duplicate network are connected. Each site has an independent internet connection, supplied by different internet providers. Either site can fully support the NGX trading and clearing system.

NGX also performs regular backups of data in the automated systems. A complete back up is produced once a week, with incremental backups being carried out on a daily basis. The back ups are removed and stored off-site on a weekly basis.

NGX has developed a Business Continuity Plan and a Disaster Recovery Plan designed to ensure the continued functioning of the clearing services in the event of certain disasters and emergencies, such as inaccessibility to the NGX premises or office, power outages, illness or evacuation. NGX has a "BCP Team" designed to handle all crucial business functions for the immediate period following a disaster. Employees have been issued company laptops, that are updated regularly, to use during

disaster scenarios, and an alternative work site has been established to accommodate employees if NGX is not accessible. NGX employees can also access the NGX network over either one of two VPN connections; one being located at the primary NGX office site and the other being located at the off-site data centre location, each running on connections supplied by different internet providers. TMX Group provides independent oversight of NGX's BCP and conducts an annual internal audit. Pursuant to the BCP and in conjunction with NGX's ongoing reporting obligations to TMX Group relating to internal controls, NGX engages in regular testing of its BCP and reviews and updates the BCP each quarter.

Testing

NGX has established procedures for quality assurance and system testing that relate to system connectivity, order volumes, trade volumes and the overall integrity of the automated aspects of the clearing services. NGX conducts quality assurance and system testing for both the clearing services.

8. *Financial Viability and Reporting*

The primary financial resources that NGX uses to support its activities consist of (a) the collateral NGX collects from its participants (the "Participants") in accordance with its risk management policy, as described in the CPA, (b) a credit facility maintained by NGX, and (c) a guarantee fund maintained by NGX. With the acquisition of NetThruPut Inc ("NTP") by NGX's parent company TMX Inc. ("TMX"), NGX added crude oil products to its product list, however, these new products did not require amendments to NGX's financial resource management.

Collateral

Participants are required to post and maintain with NGX an aggregate amount of collateral sufficient to cover the margin requirement applicable to their NGX positions. The margin requirement is calculated as the sum of initial margin, variation margin and accounts receivable margin, which represents the net potential exposure of the Participant to NGX at any given time. The margin methodology utilized by NGX continues to evolve as market conditions change, new risk measurement techniques are developed and new products become eligible for the Clearing Services. The accounts receivable margin is typically the largest factor in setting collateral requirements at NGX.

Credit Facility

NGX maintains a daylight overdraft credit facility with its clearing and settlement bank to facilitate movements of funds on settlement days, and a line of credit from the bank to cover overnight imbalances.[14]

As part of its obligation under the Credit Agreement, NGX must meet financial viability standards by maintaining at all times a certain asset to liability ratio, as well as a minimum net worth.

Guarantee Fund

NGX maintains a $U.S.100 million fund which only Participants may access in the event of NGX defaults on its obligations under the CPA. The Guarantee Fund is in the form of a letter of credit issued by its clearing and settlement bank under the Credit Facility and deposited with an independent trustee (currently CIBC Mellon Trust) pursuant to a deposit agreement. NGX's reimbursement obligation to its clearing and settlement bank with respect to the letter of credit is supported by an unsecured guarantee from TMX Group in the amount of $U.S.100 million. NGX also maintains credit insurance on the backstop fund with Export Development Canada which insures TMX Group for any draw downs on the fund in excess of $U.S.30 million resulting from a failure to pay by a Participant.

9. *Operational Reliability*

NGX employs a team of Margin and Risk Analysts overseen by a Clearing Manager and a Vice-President of Clearing (the "Clearing Group"). The Clearing Group is responsible for oversight of day-to-day clearing operations, including tracking of current market price information, used to resolve trades in error and assist with end-of-day settlement prices in NGX contracts, and monitoring for Participant compliance with NGX's Risk Management Policy.

10. *Protection of Assets*

As discussed above, all Participants are self-clearing. Accordingly, no Participants have customers for whom funds must be segregated.

[14] This facility is in the amount of $U.S.300 million.

NGX itself segregates the collateral of Participants from its own proprietary funds and there is no mutualization of risk among clearing Participants. Moreover, there is no commingling of the cash collateral of the respective Participants, such amounts are deposited and maintained in separate accounts.

The Bank Collateral Agreement between NGX and its clearing and settlement bank provides that the property of the relevant Participant may only be applied in accordance with the terms of the CPA and confirms that the clearing and settlement bank may only have access to and use the collateral (a) for the purpose of carrying out NGX instructions with respect to the acceptance or release of collateral under the CPA, (b) for the processing and payment of amounts owing under the CPA, and (c) as a permitted assignee of NGX's rights under the CPA (as security for NGX's obligations under the Credit Facility), subject to the terms of the CPA.

NGX holds cash collateral in segregated NGX bank accounts for the relevant Participant. Such cash collateral remains the Participant's property unless applied by or on behalf of NGX in accordance with CPA, Section 3.2(d). Cash posted as collateral is deposited in an interest-bearing account at its clearing and settlement bank, and the interest earned on such cash collateral is remitted to the Participant quarterly.[15]

11. *Outsourcing*

NGX does not outsource any of its key clearing functions.

12. *Information Sharing and Regulatory Cooperation*

NGX is required by its Recognition Orders (as defined below) to enter into and abide by the terms of all appropriate information sharing agreements. As such, NGX has mechanisms in place to ensure that it is able to, and will cooperate, by sharing information or otherwise, with the OSC and its staff, and other appropriate regulatory bodies. Pursuant to Schedule "D" of the 2009 Order, NGX provides the OSC with copies of all notices and reports it provides to or files with the ASC.

13. *Regulatory Regime*

NGX is a recognized clearing agency by the Alberta Securities Commission (the "**ASC**") and is a registered U.S. derivatives clearing organization ("**DCO**"). It was registered by the Commodity Futures Trading Commission ("**CFTC**") as a DCO on December 12, 2008.[16]

Alberta Recognition and Variation Orders

In 2008, NGX applied to the ASC for a change in its status from an exempt exchange to recognition under the *Securities Act* (Alberta) both as an exchange and a clearing agency with respect to its trading, clearing and settlement of natural gas, electricity and related contracts and received such recognition pursuant to an exchange recognition order and a clearing recognition order issued by the ASC as of October 9, 2008 (the "**Recognition Orders**"). Subsequently, NGX applied to the ASC for and, on April 14, 2009, received a variation of such Recognition Orders to allow NGX to offer crude oil commodity contracts on the NGX Trading and Clearing Systems as those terms are defined therein, and, in turn, allow NGX's Participants to transact in crude oil contracts on the NGX Trading and Clearing Systems (the "**Variation Order**").

ASC oversight is generally comprised of extensive reporting requirements and periodic oversight audits assessing NGX compliance with the operating principles and terms and conditions of NGX's exchange and clearing recognition orders. Pursuant to the Recognition Orders, NGX has undertaken (1) to comply with applicable securities legislation, (2) to operate the NGX Trading System and Clearing System in accordance with specified "Operating Principles", (3) to operate the NGX Clearing System in accordance with specified "Clearing Principles," (4) to report to the ASC in accordance with specified "Reporting Requirements," (5) to take reasonable steps to ensure the fitness and reasonable conduct of its officers and directors, (6) to maintain proper conflicts of interest policies, (7) to notify the ASC in advance of (a) its outsourcing any key Trading System functions or key Clearing System functions, (b) any significant change in the operating of the Trading System or the Clearing System and (c) any change in the beneficial ownership of NGX, (8) to seek the ASC's prior approval of any significant changes to the NGX Sophistication Thresholds, (9) to seek the ASC's acceptance of, or any exemption for, any new or revised contract that differs significantly from the contracts that have already been exempted by the ASC, (10) to notify the ASC immediately upon NGX becoming aware that any of its representations in the Recognition Orders are no longer true and accurate or if NGX becomes unable to fulfill any of its undertakings set out in the Recognition Orders; and (11) to comply with any request from the

[15] *See* CPA, Article 3.2(g).

[16] The DCO registration order was conditioned on NGX clearing physically delivered or financially settled contracts based on energy products that could qualify as exempt commodities under section 1(a)(14) of the Act, contracts that are over-the-counter derivative instruments, as that term is defined in section 408(2) of the Federal Deposit Insurance Corporation Act, 12 U.S.C. 4421(2) and spot contracts not subject to the Act. Further information describing NGX's regulatory structure is provided under "Regulatory Regime" below.

Executive Director of the ASC for electronic or any other form of access to the NGX Trading System or the NGX Clearing System to assist the ASC in its oversight of NGX as an exchange and/or as a clearing agency.

Operating Principles

NGX as part of its exchange Recognition Order is required to meet on a continuing basis eight Operating Principles that are similar to the Core Principles with which U.S. Designated Contract Markets must comply. These Operating Principles establish the basic regulatory requirements that NGX as an exchange must meet. They include all of the material requirements applicable to U.S. designated contract markets. The Operating Principles mandate that NGX meet the following requirements:

- Financial Resources – the exchange must maintain financial, operational and managerial resources to operate the Trading System and support its trade execution functions.
- Operational Information – the exchange must disclose to participants information about contract terms and conditions, trading conventions, trading volume and other relevant information.
- Market Oversight – the exchange must establish minimum standards for participants and a program for on-going monitoring of financial status or credit worthiness of participants, monitoring trading to ensure an orderly market; maintain authority to collect or capture all necessary information; and to intervene in the market as necessary to ensure an orderly market.
- Rule enforcement – the exchange shall monitor the market and enforce its rules.
- System safeguards – the exchange must establish a program to oversee the integrity and proper functioning of its systems, including adequate capacity and security and a disaster recovery plan, and a risk review of every significant new service or enhancement.
- Record keeping – the exchange must maintain books and records.
- Risk management – the exchange shall identify and manage risks through risk analysis.
- Governance and conflict of interest – the exchange must have rules to minimize conflict of interest in its decision-making process.

As part of its clearing Recognition Order, NGX is required to meet on a continuing basis thirteen Clearing Principles, which are similar in substance and effect to the core principles which apply to NGX under its registration as a U.S. DCO. They include immediate reporting to ASC of the following:

- Financial Resources – The clearing agency shall demonstrate on an ongoing basis that it has adequate financial, operational, and managerial resources to discharge the responsibilities of a clearing agency.
- Participant and Product Eligibility – The clearing agency shall maintain: (i) appropriate admission and continuing eligibility standards (including appropriate minimum financial requirements) for its members or participants: and (ii) appropriate standards for determining eligibility of products, agreements, contracts or transactions submitted to the clearing agency.
- Risk Management – The clearing agency shall maintain the ability to manage the risks associated with discharging the responsibilities of a clearing agency through the use of appropriate tools and procedures.
- Settlement Procedures – The clearing agency shall maintain the ability to: (i) complete settlements on a timely basis under varying circumstances; (ii) maintain an adequate record of the flow of funds associated with each transaction cleared; and (iii) comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations.
- Treatment of Funds – The clearing agency shall maintain standards and procedures designed to protect and ensure the safety of member or participant funds.
- Default Rules and Procedures – The clearing agency shall maintain rules and procedures designed to allow for the efficient, fair, and safe management of events of member or participant insolvency or default by the member or participant with respect to its obligations to the clearing agency.

- Rule Enforcement – The clearing agency shall: (i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with the rules of the clearing agency and for resolution of disputes; and (ii) maintain the authority and ability to discipline, limit, suspend, or terminate a member's or participant's activities for violations of rules of the clearing agency.

- System Safeguards – The clearing agency shall (i) maintain a program of oversight and risk analysis to ensure that the automated systems of the clearing agency function properly and have adequate capacity and security (ii) maintain emergency procedures and a plan for disaster recovery and (iii) ensure that its systems including back-up facilities, are annually tested by a qualified professional, sufficient to ensure timely processing, clearing and settlement of transactions.

- Reporting – The clearing agency shall provide to the Commission all information necessary for the Commission to conduct its oversight function of the clearing agency with respect to the activities of the clearing agency.

- Recordkeeping – The clearing agency shall maintain records of all activities related to its business as a clearing agency, in a form and manner acceptable to the Commission, for a period of 5 years. The clearing agency shall also maintain a record allegations or complaints it receives concerning instances of suspected fraud or manipulation in clearing activity.

- Public Information – The clearing agency shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) available to its market participants.

- Information Sharing – The clearing agency shall: (i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and (ii) use relevant information obtained from the agreements in carrying out the clearing agency's risk management program.

- Restraint of Trade – The clearing agency shall avoid: (i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or (ii) imposing any material anticompetitive burden on trading in the regulated markets.

NGX must comply with a significant number and variety of reporting requirements. These are an important tool by which the ASC ensures its ability to carry out its oversight functions, oversees the continued operations of NGX and ensures that NGX complies with NGX's regulatory obligations. These reporting requirements are applicable to NGX through the clearing Recognition Order. They include immediate reporting to ASC of the following:

- Any event, circumstance or situation that renders, or is likely to render, NGX unable to comply with applicable securities legislation or the ASC order

- Any default by NGX, including details of the default and an explanation of its impact on NGX

- Any order, sanction or directive from a regulatory or governmental body

- Any investigation of NGX by a regulatory or governmental body

- Any criminal or quasi government charges brought against NGX

- Any civil suits brought against NGX that are likely to have a significant impact on NGX

ASC requires that other events be reported to it within two days. These include changes of directors, changes to senior management, any significant change to the CPA (which acts in many instances as the rules of the exchange and clearing agency), and any default under the terms of the CPA. In addition, NGX is required to provide the ASC on a quarterly basis with a list of Participants, a description of any significant margin requirement exceptions during the quarter, and interim financial statements.

On an annual basis, NGX must provide audited financial statements and a self- assessment which includes a summary of new products introduced and expansion plans, a report detailing the testing undertaken to ensure adequacy of system safeguards, including risk management methodologies, emergency procedures and disaster recovery plans, and a summary of staffing changes.

The Executive Director of the ASC may require further information from NGX as provided under the securities legislation.

Memorandum of Understanding

Pursuant to a Memorandum of Understanding among the ASC and the Securities Commissions of the Provinces of Saskatchewan, Manitoba, Ontario, Quebec and British Columbia (the "Exempting Regulators") which became effective on January 1, 2010 (the "MOU"), the ASC serves as the lead regulator for the NGX exchange, responsible for its oversight. The "Oversight Program" required to be carried out by ASC with respect to NGX pursuant to the MOU is required to include the following items, at a minimum: (1) review of information filed by NGX on critical financial and operational matters, risk management and significant changes to operations, including information filed that relates to corporate governance, rules, systems and operations, access, listing criteria and/or financial instrument development, fees, financial viability and regulation; (2) review and approval, if necessary of the bylaws, rules, policies and other similar instruments of NGX under the procedures established by the ASC from time to time; and (3) periodic oversight of NGX's (a) corporate finance policies, (b) policies with respect to trading suspensions and de-listings, (c) coordination with the markets of the underlying securities, (d) monitoring of trading and position limits, (e) surveillance and enforcement, (f) access, (g) information transparency, (h) corporate governance, (i) risk management and (j) systems and technology.

The ASC has discretion concerning the manner in which to carry out the Oversight Program, but must review the aforementioned functions of NGX at least every three years. The ASC is required to send the final report of any oversight review that it performs with respect to NGX and any responses thereto from NGX to each Exempting Regulator. An Exempting Regulator is permitted, pursuant to the MOU, to require that NGX provide it with copies of filings that it makes with the ASC as well as any bylaws, rules, policies or other similar instruments that it is required to provide to the ASC and other similar documentation. An Exempting Regulator is also permitted to request that the ASC perform an oversight review of NGX specifically related to the jurisdiction of the Exempting Regulator, in which circumstance the ASC could determine to conduct a review of the office of NGX in the jurisdiction of the applicable Exempting Regulator or of a specific function performed by NGX in such jurisdiction. If the ASC determines not to perform any review after being requested to do so by an Exempting Regulator, the Exempting Regulator shall have the authority to perform such a review on its own.

Other Provinces

NGX has obtained exemptive relief from regulators in extra-provincial jurisdictions in which it has a Participant located, including Ontario.

Manitoba

NGX applied for exemptive relief in Manitoba pursuant to Sections 36(3), 38(4) and 66(1) of the Commodity Futures Act (Manitoba). Order #5897 was granted on April 22, 2009. The order exempts NGX from the requirement to be recognized as an extraprovincial commodity futures exchange in Manitoba, to have the form of contracts approved and exempts NGX Contracting Parties from applicable registration requirements. This order superseded an earlier MRRS Order No. 1662761 dated December1, 2004 granting NGX exemptive relief as an exchange from applicable laws in Alberta, Saskatchewan and Manitoba.

British Columbia and Quebec

NGX has exemptive orders in both British Columbia and Quebec. The British Columbia Securities Commission (the "**BSCS**") issued Exemption Order COR #01102 on September 18, 2001 pursuant to Sections 48 and 60 of the Securities Act (British Columbia) (the "**B.C. Act**"). This order provides that trades in physical (natural gas) or financial (natural gas or electricity) contracts conducted through NGX are exempt from the requirements under Section 34(1)(a) of the B.C. Act (relating to the registration requirement) and Section 59(1) of the B.C. Act (relating to trading contracts on an exchange located outside of British Columbia which has not been recognized by the BCSC).

The Autorité des marches financiers in Québec (the "**AMF**") issued Decision No. 2002-C-0439 on November 29, 2002 (as revised on July 27, 2004 to include trades relating to swap agreements based on notional amounts of electricity and to electricity futures contracts, and as further revised on April 29, 2009, to include crude oil products), pursuant to Section 263 of the Securities Act (Québec) (the "**Quebec Act**"). This order provides exemptions from: (i) the registration requirements under Sections 148 and 149 of the Quebec Act; (ii) the obligations in Section 1.3 of the Regulation to the Quebec Act to deliver the disclosure document defined in the schedule to Policy Statement No. Q-22; and (iii) the application of Section 1.4 of the Regulation to allow trading in futures contracts that do not appear on the list established by the AMF.

Ontario

The OSC granted NGX exemptive relief pursuant to Sections 38 and 80 of the Commodity Futures Act (Ontario) and pursuant to Section 147 of the OSA on March 31, 2009. The order exempts NGX from the requirement to be recognized as an extra-provincial commodity futures exchange and stock exchange and exempts NGX Contracting Parties located in Ontario from applicable registration requirements.

U.S.

NGX operates the Marketplace pursuant to an exemption under Section 2(h)(3) of the U.S. Commodity Exchange Act ("**CEA**") ("**Exempt Commercial Market**" or "**ECM**" status). NGX became a registered derivatives clearing organization ("**DCO**") with the Commodity Futures Trading Commission pursuant to the CEA. NGX constitutes a DCO as defined in Section 1a(9) of the CEA and was eligible for voluntary registration under CEA Section 5b(b). Specifically, NGX acts as a central counterparty for cleared Transactions and in that capacity enables each Participant that is a party to a Transaction to substitute the credit of NGX for the credit of the parties. The DCO order is attached hereto as Appendix "P". In order to be registered as a DCO, a clearing organization must demonstrate that it complies with the thirteen core principles set forth in Section 5b(c)(2) of the CEA, which relate to the following subjects: (1) financial, operational and managerial resources, (2) member and product eligibility, (3) risk management, (4) settlement procedures, (5) treatment of funds, (6) default rules and procedures, (7) rule enforcement, (8) system safeguards, (9) reporting, (10) recordkeeping, (11) public information, (12) information sharing, and (13) antitrust considerations. NGX conducts its operations in compliance with each of these core principles.

4. OSC Orders Sought

NGX is seeking an order under Section 144 of the OSA varying the 2009 Order to reflect that NGX's clearing agency functions meet the criteria for clearing agencies as set out in OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*.

5. Specific Relief Requested

Based on this Application, recognition by the ASC of NGX as a clearing agency and the materials attached hereto, NGX submits that it would not be contrary to the public interest for the Commission to grant an order pursuant to section 144 of the OSA, varying the 2009 Order to reflect that NGX's clearing agency functions meet the criteria set out in OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*.

6. Enclosures

Attached are the following:

A. Draft exemptive relief order; and

B. a cheque payable to the Ontario Securities Commission in the amount of $5,000 representing the filing fees for this Application.

Please do not hesitate to contact the undersigned or Peter Krenkel (403-974-1705) for any further information the Commission or its staff might require in connection with this Application. Thank you for your consideration of this matter. We would be happy to provide further explanation or elaboration of any of the above points.

Respectfully submitted,

Cheryl Graden, Chief Legal Counsel & Regulatory Compliance Officer
Natural Gas Exchange Inc.

Enclosures
cc. Peter Krenkel, President, Natural Gas Exchange Inc.

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

AND

IN THE MATTER OF
NATURAL GAS EXCHANGE INC. (NGX)

VARIATION TO EXEMPTION ORDER
(Section 144 of the Act)

WHEREAS the Commission issued an order dated March 31, 2009 (2009 Order), exempting:

(a) NGX from the requirement to be registered as a commodity futures exchange under section 15 of the Commodity Futures Act (CFA);

(b) certain trades by NGX participants in Ontario in contracts on NGX from the registration requirement under section 22 of the CFA;

(c) certain trades by participants in Ontario in contracts from the requirements under section 33 of the CFA; and

(d) NGX from the requirement to be recognized as a stock exchange under section 21 of the OSA;

AND WHEREAS NGX is an exchange that also engages in certain clearing agency functions;

AND WHEREAS subsection 21.2(0.1) of the Act will, commencing on March 1, 2011, prohibit a clearing agency from carrying on business in Ontario unless it is recognized by the Commission as a clearing agency or is exempt from the requirement to be recognized by order of the Commission;

AND WHEREAS the Commission has determined that it is not prejudicial to the public interest to issue this order that varies and restates the 2009 Order to confirm that NGX satisfies the criteria applicable to exchanges and clearing agencies;

IT IS ORDERED, pursuant to section 144 of the Act, that the 2009 Order be varied and restated as follows:

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C.20,
AS AMENDED (CFA)

AND

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

AND IN THE MATTER OF
NATURAL GAS EXCHANGE INC. (NGX)

ORDER
(Sections 38 and 80 of the CFA and Section 147 of the OSA)

WHEREAS NGX ~~has~~ had filed an application dated January 9, 2009 (2009 Application) with the Ontario Securities Commission (Commission) requesting:

(a) an order pursuant to section 80 of the Commodity Futures Act (CFA) exempting NGX from the requirement to be registered as a commodity futures exchange under section 15 of the CFA;

(b) an order pursuant to section 38 of the CFA exempting trades by NGX participants (Participants) in Ontario (Ontario Participants) in contracts on NGX (Contracts) from the registration requirement under section 22 of the CFA;

(c) an order pursuant to section 38 of the CFA exempting trades by Ontario Participants in Contracts from the requirements under section 33 of the CFA; and

(d) an order pursuant to section 147 of the OSA exempting NGX from the requirement to be recognized as a stock exchange under section 21 of the OSA.; and

and the Commission had granted such order dated March 31, 2009 (2009 Order);

AND WHEREAS NGX has filed an application dated November 30, 2010 (2010 Application) pursuant to section 144 of the OSA requesting an amendment to the 2009 Order confirming that it engages in certain clearing agency functions and satisfies the criteria for clearing agencies attached as Schedule "E" to this order;

AND WHEREAS Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario* exempts trades of commodity futures contracts or commodity futures options made on a commodity futures exchange not registered with or recognized by the Commission under the CFA from sections 25 and 53 of the OSA;

AND WHEREAS NGX has represented to the Commission as follows.

1. NGX is a private company and is a wholly-owned subsidiary of TMX Group Inc., a public company governed by the laws of Ontario and listed on the Toronto Stock Exchange.

2. NGX operates an electronic trading system (Trading System), and a clearing and settlement system (Clearing System), based in Calgary, Alberta, for the trading, and/or clearing and settlement, respectively, of Contracts in natural gas, electricity, and heat rate and crude oil products related to the gas and electricity markets, and anticipates introducing Contracts in oil and renewable energy certificates in the future.

3. NGX developed the Trading System to provide an electronic platform for trading of energy related commodities by sophisticated parties in a principal to principal market, and as such, the timing of settlement for Contracts aligns with either standard over-the-counter market settlement conventions for settlementor with futures-style settlement conventions.

4. NGX is recognized by the Alberta Securities Commission (ASC) under the Alberta Securities Act (ASA) as an exchange and a clearing agency by orders dated October 9, 2008, varied by an order dated April 9, 2009 (Exchange Recognition Order, and Clearing Agency Recognition Order, and Variation Order, set out in Schedules "A", and "B" and "C", respectively) and is subject to regulatory oversight by the ASC pursuant to the ASA.

5. The ASC is NGX's lead regulator pursuant to the Memorandum of Understanding respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems.

5.6. NGX is registered as a Derivatives Clearing Organization by the Commodity Futures Trading Commission (CFTC) under the Commodity Exchange Act (CEA) and is subject to oversight by the CFTC pursuant to the CEA.

6. NGX operates the Trading System as an exempt commercial market under the CEA.

7. Access to the Trading System and the Clearing System for the purpose of trading in Contracts is restricted to Participants, each of which:

   a. has entered into a Contracting Party's Agreement; and

   b. has, or has a majority of its voting shares owned by one or more entities each of which has, a net worth exceeding $5,000,000 or total assets exceeding $25,000,000 (NGX Sophistication Thresholds); and

   c. uses the Trading System and Clearing System (if applicable) only as principal.

8. NGX applies its qualification criteria by subjecting each applicant to a due diligence process, which includes: review of constituent documentation and financial statements, conducting searches of relevant financial services information databases and conducting other know-your-client procedures.

9. NGX is required under its regulations to provide to the ASC, on request, access to all records and to cooperate with any other regulatory authority, including making arrangements for information-sharing.

10. Contracts traded on the Trading System are ~~either~~ cleared and settled either through NGX's central counterparty clearing house or by the Participants themselves, independent of NGX.

11. The ASC discharges its regulatory oversight over NGX as an exchange and clearing agency through ongoing reporting requirements and by conducting periodic oversight assessments of NGX's operations to confirm that NGX is in compliance with the operating and clearing principles set out in the Exchange Recognition Order and Clearing Agency Recognition Order, respectively.

12. Contracts fall under the definitions of "commodity futures contract" or "commodity futures option" set out in section 1 of the CFA. NGX is therefore considered a "commodity futures exchange" as defined in section 1 of the CFA and is prohibited from carrying on business in Ontario unless it is registered or exempt from registration as an exchange under section 15 of the CFA.

13. NGX has been, and seeks to continue, providing Ontario market participants with access to trading in Contracts and as a result, is considered to be "carrying on business as a commodity futures exchange" in Ontario.

14. NGX is not registered with or recognized by the Commission as a commodity futures exchange under the CFA and no Contracts have been accepted by the Director as contemplated under clause 33(a) the CFA, therefore, Contracts are considered "securities" under paragraph (p) of the definition of "security" in subsection 1(1) of the OSA and NGX is considered a "stock exchange" under the OSA and is prohibited from carrying on business in Ontario unless it is recognized or exempt from recognition under section 21 of the OSA.

~~15. NGX has been operating in Ontario pursuant to interim exemptive relief orders granted by the Commission on November 17, 2006, as extended on November 16, 2007 and May 13, 2008.~~

~~16.~~15. Ontario Participants may be (i) utilities and other commercial enterprises that are exposed to risks attendant upon fluctuations in the price of a commodity and, to the extent applicable, (ii) investment banking arms of banks and (iii) hedge funds and other proprietary trading firms.

AND WHEREAS subsection 21.2(0.1) of the OSA will, commencing on March 1, 2011, prohibit a clearing agency from carrying on business in Ontario unless it is recognized by the Commission as a clearing agency or is exempt from the requirement to be recognized by order of the Commission;

AND WHEREAS the definition of clearing agency in the OSA does not include a stock exchange;

AND WHEREAS NGX is an exchange that also engages in certain clearing agency functions;

AND WHEREAS based on the 2009 Application and the 2010 Application and the representations NGX has made to the Commission, the Commission has determined that NGX satisfies the criteria set out in Schedule "~~C~~D" relating to its activities as an exchange and the criteria set out in Schedule "E" relating to its clearing agency activities and that the granting of exemptions from recognition and registration to NGX would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that:

(a) pursuant to section 80 of the CFA, NGX is exempt from registration as a commodity futures exchange under section 15 of the CFA;

(b) pursuant to section 38 of the CFA, trades in Contracts by Ontario Participants are exempt from the registration requirement under section 22 of the CFA;

(c) pursuant to section 38 of the CFA, trades in Contracts by Ontario Participants are exempt from the requirements under section 33 of the CFA; and

(d) pursuant to section 147 of the OSA, NGX is exempt from recognition as a stock exchange under section 21 of the OSA;

PROVIDED THAT NGX complies with the terms and conditions attached hereto as Schedule "~~D~~F".

DATED ~~March 31, 2009.~~

SCHEDULE "A"

ALBERTA SECURITIES COMMISSION

RECOGNITION ORDER
EXCHANGE

Natural Gas Exchange Inc.

Background

1. Natural Gas Exchange Inc. (**NGX**) has applied to the Alberta Securities Commission (the **Commission**), pursuant to the *Securities Act* (Alberta), R.S.A. 2000, c. S-4 (the **Act**), for the following:

   (a) recognition as an exchange for the trading of Contracts (as defined below);

   (b) an exemption of NGX's form of exchange contracts;

   (c) a registration exemption for the contracting parties (the **Contracting Parties**) who enter into NGX's standard form trading agreement with NGX (the **Contracting Party's Agreement**) (the **Registration Relief**); and

   (d) revocation of the Current Decision (as defined below) in Alberta.

2. NGX has concurrently applied to the Commission for recognition as a clearing agency as it also provides clearing and settlement services to Contracting Parties.

Interpretation

3. Unless otherwise defined, terms used in this order have the same meaning as in the Act or in National Instrument 14-101 *Definitions.*

Representations

4. NGX represents as follows:

   (a) NGX operates an electronic trading system (the **Trading System**) based in Calgary, Alberta, for the trading of natural gas, electricity and related contracts (the **Contracts**).

   (b) NGX has operated the Trading System since 1993 in accordance with the terms and conditions of a series of exemptive relief orders granted by the Commission and other Canadian securities regulatory authorities, the most recent of which is MRRS decision #1662761 dated December 1, 2004 (the **Current Decision**).

   (c) Access to the Trading System in respect of exchange contracts is restricted to Contracting Parties, each of which:

      (i) has entered into a Contracting Party's Agreement; and

      (ii) has, or has a majority of its voting shares owned by one or more entities each of which has, a net worth exceeding $5 000 000 or total assets exceeding $25 000 000 (the **NGX Sophistication Thresholds**).

   (d) The Contracting Parties use the Trading System only as principals.

Undertakings

5. NGX undertakes:

   (a) to comply with applicable securities legislation;

   (b) to operate the Trading System in accordance with the operating principles set out in Appendix A to this order (the **Operating Principles**);

(c) to report to the Commission in accordance with the reporting requirements set out in Appendix B to this order (the **Reporting Requirements**);

(d) not to enter into any contract, agreement or arrangement that may limit its ability to comply with applicable securities legislation or this order;

(e) to take reasonable steps to ensure that each officer or director of NGX is a fit and proper person for that role and that the past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity;

(f) to have appropriate conflict of interest provisions for all directors, officers and employees;

(g) to notify the Commission at least 10 business days in advance of entering into any agreement to outsource key Trading System functions;

(h) to notify the Commission at least 10 business days in advance of any significant change in the operation of the Trading System;

(i) to notify the Commission at least 10 business days in advance of any change in the beneficial ownership of NGX;

(j) to use its best efforts to provide the information required in paragraphs 5(g) to (i) above earlier than specified, when possible;

(k) to seek the Commission's prior approval of any significant changes to the NGX Sophistication Thresholds;

(l) to seek the Commission's acceptance of, or an exemption for, any new or revised Contract that differs significantly from the exchange contracts that have already been exempted by the Commission;

(m) to notify the Commission immediately upon NGX becoming aware that any of its representations in this order are no longer true and accurate or that it becomes unable to fulfil any of its undertakings set out in this order; and

(n) to comply with any request from the Executive Director of the Commission for electronic or any other form of access to the Trading System to assist the Commission in its oversight of NGX as an exchange.

Decision

6. Based on the above representations and undertakings the Commission, being satisfied that it would not be prejudicial to the public interest, recognizes NGX as an exchange pursuant to section 62 of the Act, exempts NGX from section 106(b), which requires the Commission's acceptance of the form of NGX's Current Contracts as exchange contracts, pursuant to section 213 and grants the Registration Relief pursuant to section 144(1) of the Act, provided that:

   (a) subject to paragraph 5(m) above, the representations made by NGX remain true and accurate; and

   (b) NGX fulfils the undertakings given above.

7. Pursuant to section 214 of the Act, the Current Decision is revoked in Alberta.

"original signed by"
Glenda A. Campbell, QC
Alberta Securities Commission

"original signed by"
Stephen R. Murison
Alberta Securities Commission

APPENDIX A

Operating Principles

1. ***Financial Resources –*** The exchange shall maintain adequate financial, operational and managerial resources to operate the Trading System and support its trade execution functions.

2. ***Operational Information Relating to Trading System and Contracts –*** The exchange shall provide disclosure to its participants of information about contract terms and conditions, trading conventions, mechanisms and practices, trading volume and other information relevant to participants.

3. ***Market Oversight –*** The exchange shall establish appropriate minimum standards for participants and programs for on-going monitoring of the financial status or credit-worthiness of participants; monitor trading to ensure an orderly market; maintain authority to collect or capture and retrieve all necessary information; and to intervene as necessary to ensure an orderly market.

4. ***Rule Enforcement –*** The exchange shall maintain adequate arrangements and resources for the effective monitoring and enforcement of its rules and for resolution of disputes and shall have the capacity to detect, investigate and enforce those rules (including the authority and ability to discipline, limit, suspend or terminate a participant's activities for violations of system rules).

5. ***System Safeguards –*** The exchange shall establish and maintain a program of oversight and risk analysis to ensure systems function properly and have adequate capacity and security, including emergency procedures and a plan for disaster recovery to ensure daily processing of transactions; and a program of periodic objective system testing and risk review to assess the adequacy and effectiveness of the Trading System's internal control systems, including a risk review of every new service and significant enhancement to existing services.

6. ***Record keeping –*** The exchange shall maintain records of all activities related to the Trading System's business in a form and manner acceptable to the Commission for a period of five years and provide an undertaking to make books and records available for inspection by Commission representatives on request.

7. ***Risk management –*** The exchange shall identify and manage the risks associated with exchange operations through the use of appropriate tools and procedures such as risk analysis tools and procedures.

8. ***Governance and Conflicts of Interest –*** Establish and enforce rules to minimize conflict of interest in the exchange's decision-making process and appropriate limitations on the use or disclosure of significant non-public information gained through the performance of official duties by board members, committee members or exchange employees or gained through an ownership interest in the exchange.

APPENDIX B

Reporting Requirements

In addition to fulfilling any reporting requirements in applicable securities legislation, the exchange will report as follows to the Commission:

Immediate Reporting

1. NGX will report immediately upon occurrence or upon becoming aware of the existence of:

   (a) any event or circumstance or situation that renders, or is likely to render, NGX unable to comply with applicable securities legislation or this order;

   (b) any default by NGX that affects its financial resources or its ability to meet its obligations as an exchange, including the particulars of the default and the resolution proposed. NGX shall also provide the Commission with information regarding the impact of the default on the adequacy of NGX's financial resources;

   (c) any order, sanction or directive received from, or imposed by, a regulatory or government body;

   (d) any investigations of NGX by a regulatory or government body;

   (e) any criminal or quasi-criminal charges brought against NGX, any of its subsidiaries, or any of the officers or directors of NGX or its subsidiaries; and

   (f) any civil suits brought against NGX, any of its subsidiaries, or any of the officers or directors of NGX or its subsidiaries, that would likely have a significant impact on NGX's business.

Key Event Reporting

2. NGX will report no later than 2 business days of the date of occurrence:

   (a) the appointment or resignation of one or more directors of NGX's board of directors,

   (b) a change to the senior management team;

   (c) any significant changes to the Contracting Party's Agreement.

   In the event that a default by a Contracting Party under the Contracting Party's Agreement is not resolved within 2 business days, NGX will report:

   (a) such default including particulars of the default, the parties involved in the default, and the method of resolution proposed.

Quarterly Reporting

3. NGX will provide, within 60 days of the end of each fiscal quarter:

   (a) an up-to-date list of Contracting Parties; and

   (b) interim financial statements.

Annual Reporting

4. NGX will provide, within 90 days of the end of each fiscal year:

   (a) audited financial statements; and

   (b) a self-assessment of the accomplishments and the challenges faced during the year which will include, but is not limited to:

      (i) a summary of NGX's business activity for the year;

(ii) a report of NGX's market share throughout the year;

(iii) a summary of new products introduced and expansion plans that were implemented during the year;

(iv) a report detailing the testing undertaken to ensure the adequacy of system safeguards, including, but not limited to, risk management methodologies, emergency procedures and disaster recovery plans, business continuity and proper functionality of backup facilities;

(v) a summary of staffing changes at NGX during the year; and

(vi) any additional information that NGX considers important.

Other

5. The Executive Director may direct the form of the reporting required and may, pursuant to applicable securities legislation, require further information from NGX.

SCHEDULE "B"

RECOGNITION ORDER
CLEARING AGENCY

Natural Gas Exchange Inc.

Background

1. Natural Gas Exchange Inc. (**NGX**) has applied to the Alberta Securities Commission (the **Commission**) for recognition under the *Securities Act* (Alberta), R.S.A. 2000, c. S-4 (the **Act**) as a clearing agency.

2. NGX has concurrently applied to the Commission for recognition under the Act as an exchange because it also operates an electronic trading system.

3. The definition of "clearing agency" in the Act does not contemplate an entity that is also an exchange (the **Definition Limitation**).

Interpretation

4. Unless otherwise defined, terms used in this order have the same meaning as in the Act or in National Instrument 14-101 *Definitions.*

Representations

5. NGX represents as follows:

   (a) NGX operates an electronic clearing system (the **Clearing System**) based in Calgary, Alberta, for clearing and settlement of natural gas, electricity and related commodity contracts, certain of which constitute exchange contracts, futures contracts or options under the Act (the **Contracts**).

   (b) NGX has operated an electronic trading system (the **Trading System**) since 1993 in accordance with the terms and conditions of exemptive relief granted by the Commission and other Canadian securities regulatory authorities.

   (c) NGX provides clearing and settlement services for Contracts traded through the Trading System and on third party marketplaces.

   (d) NGX also provides clearing services for certain over-the-counter transactions that are entered into the Clearing System.

   (e) Access to the Clearing System is restricted to entities **(Contracting Parties**) each of which:

      (i) has entered into a contractual agreement (the **Contracting Party's Agreement**) with NGX; and

      (ii) has, or has a majority of its voting shares owned by one or more entities each of which has, a net worth exceeding $5 000 000 or total assets exceeding $25 000 000 (the **NGX Sophistication Thresholds**).

   (f) The Contracting Parties use the Clearing System only as principals.

Undertakings

6. NGX undertakes:

   (a) to comply with applicable securities legislation;

   (b) to operate the Clearing System in accordance with the clearing principles set out in Appendix A to this order (the **Clearing Principles**);

   (c) to report to the Commission in accordance with the reporting requirements set out in Appendix B to this order (the **Reporting Requirements**);

(d) not to enter into any contract, agreement or arrangement that may limit its ability to comply with applicable securities legislation or this order;

(e) to take reasonable steps to ensure that each officer or director of NGX is a fit and proper person for that role and that the past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity;

(f) to notify the Commission at least 10 business days in advance of entering into any agreement to outsource key Clearing System functions;

(g) to notify the Commission at least 10 business days in advance of any significant change in the operation of the Clearing System;

(h) to notify the Commission at least 10 business days in advance of any change in the beneficial ownership of NGX;

(i) to use its best efforts to provide the information required in paragraphs 6(f) to (h) above earlier than specified, when possible;

(j) to seek the Commission's prior approval of any significant changes to the NGX Sophistication Thresholds;

(k) to notify the Commission immediately upon NGX becoming aware that any of its representations in this order are no longer true and accurate or that it becomes unable to fulfil any of its undertakings set out in this order; and

(l) to comply with any request from the Executive Director of the Commission for electronic or any other form of access to the NGX Clearing System to assist the Commission in its oversight of NGX as a clearing agency.

Decision

7. Based on the above representations and undertakings and notwithstanding the Definition Limitation, the Commission, being satisfied that it would not be prejudicial to the public interest, recognizes NGX as a clearing agency pursuant to sections 67 and 213 of the Act, provided that:

(a) subject to paragraph 6(k) above, the representations made by NGX remain true and accurate; and

(b) NGX fulfils the undertakings given above.

"original signed by"
Glenda A. Campbell, QC
Alberta Securities Commission

"original signed by"
Stephen R. Murison
Alberta Securities Commission

APPENDIX A

Clearing Principles

1. **Core Principle 1: Financial Resources** – The clearing agency shall demonstrate on an ongoing basis that it has adequate financial, operational, and managerial resources to discharge the responsibilities of a clearing agency.

2. **Core Principle 2: Participant and Product Eligibility** – The clearing agency shall maintain: (i) appropriate admission and continuing eligibility standards (including appropriate minimum financial requirements) for its members or participants; and (ii) appropriate standards for determining eligibility of products, agreements, contracts or transactions submitted to the clearing agency.

3. **Core Principle 3: Risk Management** – The clearing agency shall maintain the ability to manage the risks associated with discharging the responsibilities of a clearing agency through the use of appropriate tools and procedures.

4. **Core Principle 4: Settlement Procedures** – The clearing agency shall maintain the ability to: (i) complete settlements on a timely basis under varying circumstances; (ii) maintain an adequate record of the flow of funds associated with each transaction cleared; and (iii) comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations.

5. **Core Principle 5: Treatment of Funds** – The clearing agency shall maintain standards and procedures designed to protect and ensure the safety of member or participant funds.

6. **Core Principle 6: Default Rules and Procedures** – The clearing agency shall maintain rules and procedures designed to allow for the efficient, fair, and safe management of events of member or participant insolvency or default by the member or participant with respect to its obligations to the clearing agency.

7. **Core Principle 7: Rule Enforcement** – The clearing agency shall: (i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with the rules of the clearing agency and for resolution of disputes; and (ii) maintain the authority and ability to discipline, limit, suspend, or terminate a member's or participant's activities for violations of rules of the clearing agency.

8. **Core Principle 8: System Safeguards** – The clearing agency shall: (i) maintain a program of oversight and risk analysis to ensure that the automated systems of the clearing agency function properly and have adequate capacity and security; (ii) maintain emergency procedures and a plan for disaster recovery; and (iii) ensure that its systems, including back-up facilities, are annually tested by a qualified professional, sufficient to ensure timely processing, clearing and settlement of transactions.

9. **Core Principle 9: Reporting** – The clearing agency shall provide to the Commission all information necessary for the Commission to conduct its oversight function of the clearing agency with respect to the activities of the clearing agency.

10. **Core Principle 10: Recordkeeping** – The clearing agency shall maintain records of all activities related to its business as a clearing agency, in a form and manner acceptable to the Commission, for a period of 5 years. The clearing agency shall also maintain a record of allegations or complaints it receives concerning instances of suspected fraud or manipulation in clearing activity.

11. **Core Principle 11: Public Information** – The clearing agency shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) available to its market participants.

12. **Core Principle 12: Information Sharing** – The clearing agency shall: (i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and (ii) use relevant information obtained from the agreements in carrying out the clearing agency's risk management program.

13. **Core Principle 13: Restraint of Trade** – The clearing agency shall avoid: (i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or (ii) imposing any material anticompetitive burden on trading in the regulated markets.

APPENDIX B

Reporting Requirements

In addition to fulfilling any reporting requirements in applicable securities legislation, the clearing agency will report as follows to the Commission:

Immediate Reporting

1. NGX will report immediately upon occurrence or upon becoming aware of the existence of:

   (a) any event or circumstance or situation that renders, or is likely to render, NGX unable to comply with applicable securities legislation or this order;

   (b) any default by NGX that affects its financial resources or its ability to meet its obligations as a clearing agency, including the particulars of the default and the resolution proposed. NGX shall also provide the Commission with information regarding the impact of the default on the adequacy of NGX's financial resources;

   (c) any order, sanction or directive received from, or imposed by, a regulatory or government body;

   (d) any investigations of NGX by a regulatory or government body;

   (e) any criminal or quasi-criminal charges brought against NGX, any of its subsidiaries, or any of the officers or directors of NGX or its subsidiaries; and

   (f) any civil suits brought against NGX, any of its subsidiaries, or any of the officers or directors of NGX or its subsidiaries, that would likely have a significant impact on NGX's business.

Key Event Reporting

2. NGX will report no later than 2 business days of the date of occurrence:

   (a) the appointment or resignation of one or more directors of NGX's board of directors;

   (b) a change to the senior management team;

   (c) any significant changes to the Contracting Party's Agreement.

   In the event that a default by a Contracting Party under the Contracting Party's Agreement is not resolved within 2 business days, NGX will report:

   (a) such default including particulars of the default, the parties involved in the default, and the method of resolution proposed.

Quarterly Reporting

3. NGX will provide, within 60 days of the end of each fiscal quarter:

   (a) a description of any significant margin requirement exceptions that NGX allowed during that quarter;

   (b) an up-to-date list of Contracting Parties; and

   (c) interim financial statements.

Annual Reporting

4. NGX will provide, within 90 days of the end of each fiscal year:

   (a) audited financial statements; and

   (b) a self-assessment of the accomplishments and the challenges faced during the year, which will include, but is not limited to:

(i) a summary of NGX's business activity for the year;

(ii) a summary of new products introduced and expansion plans that were implemented during the year;

(iii) a report detailing the testing undertaken to ensure the adequacy of system safeguards including, but not limited to, risk management methodologies, emergency procedures and disaster recovery plans, business continuity and proper functionality of backup facilities;

(iv) a summary of staffing changes at NGX during the year; and

(v) any additional information that NGX considers important.

Triennial Reporting

5. Every three years NGX will provide a report of a review conducted by an independent party, assessing NGX's clearing operations risk and controls.

Other

6. The Executive Director may direct the form of the reporting required and may, pursuant to applicable securities legislation, require further information from NGX.

SCHEDULE "C"

ALBERTA SECURITIES COMMISSION

VARIATION ORDER

Natural Gas Exchange Inc.

Background

1. Natural Gas Exchange Inc. (**NGX**) has applied to the Alberta Securities Commission (**Commission**) for an order under sections 63(1)(b) and 67(3)(b) of the *Securities Act* (Alberta) (**Act**) to vary two orders dated October 9, 2008 recognizing NGX as a clearing agency and as an exchange (the **Recognition Orders**, cited respectively as *Natural Gas Exchange Inc.*, 2008 ABASC 583 and *Natural Gas Exchange Inc.*, 2008 ABASC 584).

Interpretation

2. Unless otherwise defined, terms used in this order have the same meaning as in the Act, in National Instrument 14-101 *Definitions*, or in the Recognition Orders.

Representations

3. NGX represents that:

   (a) the variation would allow NGX to offer crude oil commodity contracts (**Crude Oil Contracts**) on the NGX Trading and Clearing Systems and, in turn, allow NGX's Contracting Parties to transact in Crude Oil Contracts on the NGX Trading and Clearing Systems;

   (b) the addition of Crude Oil Contracts will not impact NGX's ability to comply with the terms and conditions of the Recognition Orders; and

   (c) NGX will continue to comply with all terms and conditions of the Recognition Orders, including the Operating Principles and Clearing Principles.

Decision

4. Based on the above representations, the Commission, considering that it would not be prejudicial to the public interest to do so, orders pursuant to section 214(1) of the Act that paragraph 5(a) of the clearing agency Recognition Order and paragraph 4(a) of the exchange Recognition Order are varied by deleting "natural gas, electricity and related contracts" and substituting "natural gas, electricity, crude oil and related contracts".

"original signed by"
Glenda A. Campbell, QC

"original signed by"
Stephen R. Murison

SCHEDULE "~~C~~D"

Criteria for Exemption from Recognition of a Derivatives Exchange Recognized in Another CSA Jurisdiction

PART 1 REGULATION OF THE EXCHANGE

1.1 Regulation of the Exchange

The Exchange is recognized or authorized by another securities commission or similar regulatory authority in Canada and, where applicable, is in compliance with National Instrument 21-101 – *Marketplace Operation* and National Instrument 23-101 – *Trading Rules*, each as amended from time to time.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the Exchange ensure:

(a) effective oversight of the Exchange,

(b) the Exchange's business and regulatory decisions are in keeping with its public interest mandate,

(c) fair, meaningful and diverse representation on the governing body (Board) and any committees of the Board, including a reasonable proportion of independent directors,

(d) a proper balance among the interests of the different persons or companies accessing the facilities and/or services of the Exchange,

(e) the Exchange has policies and procedures to appropriately identify and manage conflicts of interest,

(f) each director or officer of the Exchange, and each person or company that owns or controls, directly or indirectly, more than 10 percent of the Exchange is a fit and proper person, and

(g) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors and officers.

PART 3 FEES

3.1 Fees

(a) All fees imposed by the Exchange are equitably allocated and do not have the effect of creating unreasonable barriers to access.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 4 REGULATION OF PRODUCTS

4.1 Approval of Products

The products traded on the Exchange are approved by the appropriate authority.

4.2 Product Specifications

The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

4.3 Risks Associated with Trading Products

The Exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the Exchange including, but not limited to, margin requirements, intra-day margin calls, daily trading limits, price limits, position limits, and internal controls.

PART 5 ACCESS

5.1 Fair Access

(a) The Exchange has established appropriate written standards for access to its services including requirements to ensure

(i) participants are appropriately registered as applicable under Ontario securities laws or Ontario commodity futures laws, or exempted from these requirements,

(ii) the competence, integrity and authority of systems users, and

(iii) systems users are adequately supervised.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

PART 6 REGULATION OF PARTICIPANTS ON THE EXCHANGE

6.1 Regulation

The Exchange has the authority, capacity, systems and processes to undertake its regulation functions by setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of Exchange requirements.

PART 7 RULEMAKING

7.1 Purpose of Rules

(a) The Exchange's rules, policies and other similar instruments (Rules) are designed to govern the operations and activities of participants.

(b) The Rules are not contrary to the public interest and are designed to

(i) ensure compliance with securities legislation,

(ii) prevent fraudulent and manipulative acts and practices,

(iii) promote just and equitable principles of trade,

(iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities,

(v) provide a framework for disciplinary and enforcement actions, and

(vi) ensure a fair and orderly market.

(c) The Exchange shall not

(i) permit unreasonable discrimination among participants, or

(ii) impose any burden on competition that is not reasonably necessary and appropriate.

PART 8 DUE PROCESS

8.1 Due Process

For any decision made by the Exchange that affects a participant, including a decision in relation to access, exemptions, or discipline, the Exchange ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) the Exchange keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

PART 9 SYSTEMS AND TECHNOLOGY

9.1 Systems and Technology

Each of the Exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the Exchange to properly carry on its business. Critical systems are those that support the following functions:

(a) order entry,

(b) order routing,

(c) execution,

(d) trade reporting,

(e) trade comparison,

(f) data feeds,

(g) market surveillance,

(h) trade clearing, and

(i) financial reporting.

9.2 Information Technology Risk Management Procedures

The Exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.

PART 10 FINANCIAL VIABILITY AND REPORTING

10.1 Financial Viability

The Exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 11 CLEARING AND SETTLEMENT

11.1 Clearing Arrangements

The Exchange has appropriate arrangements for the clearing and settlement of transactions through a clearing house.

11.2 Regulation of the Clearing House

The clearing house is subject to acceptable regulation.

11.3 Access to the Clearing House

(a) The clearing house has established appropriate written standards for access to its services.

(b) The access standards for clearing members and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

11.4 Sophistication of Technology of Clearing House

The Exchange has assured itself that the information technology used by the clearing house has been adequately reviewed and tested and provides at least the same level of safeguards as required of the Exchange.

11.5 Risk Management of Clearing House

The Exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

PART 12 TRANSPARENCY

12.1 Transparency

The Exchange has adequate arrangements to record and publish accurate and timely trade and order information. This information is provided to all participants on an equitable basis.

PART 13 RECORD KEEPING

13.1 Record Keeping

The Exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the Exchange, audit trail information on all trades, and compliance with, and/or violations of Exchange requirements.

PART 14 OUTSOURCING

14.1 Outsourcing

Where the Exchange has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

PART 15 INFORMATION SHARING AND REGULATORY COOPERATION

15.1 Information Sharing and Regulatory Cooperation

The Exchange has mechanisms in place to ensure that it is able to cooperate, by sharing information or otherwise, with the Commission and its staff, self-regulatory organizations, other exchanges, investor protection funds, and other appropriate regulatory bodies.

SCHEDULE "E"

Criteria for Recognition and Exemption from Recognition as a Clearing Agency

PART 1 GOVERNANCE

1.1 The governance structure and governance arrangements of the clearing agency ensures:

(a) effective oversight of the clearing agency;

(b) the clearing agency's activities are in keeping with its public interest mandate;

(c) fair, meaningful and diverse representation on the governing body (Board) and any committees of the Board, including a reasonable proportion of independent directors;

(d) a proper balance among the interests of the owners and the different entities seeking access (participants) to the clearing, settlement and depository services and facilities (settlement services) of the clearing agency;

(e) the clearing agency has policies and procedures to appropriately identify and manage conflicts of interest;

(f) each director or officer of the clearing agency, and each person or company that owns or controls, directly or indirectly, more than 10 percent of the clearing agency is a fit and proper person; and

(g) there are appropriate qualifications, limitation of liability and indemnity provisions for directors and officers of the clearing agency.

PART 2 FEES

2.1 All fees imposed by the clearing agency are equitably allocated. The fees do not have the effect of creating unreasonable barriers to access.

2.2 The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 3 ACCESS

3.1 The clearing agency has appropriate written standards for access to its services.

3.2 The access standards and the process for obtaining, limiting and denying access are fair and transparent. A clearing agency keeps records of

(a) each grant of access including, for each participant, the reasons for granting such access, and

(b) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.

PART 4 RULES AND RULEMAKING

4.1 The clearing agency's rules are designed to govern all aspects of the settlement services offered by the clearing agency, and

(a) are not inconsistent with securities legislation,

(b) do not permit unreasonable discrimination among participants, and

(c) do not impose any burden on competition that is not necessary or appropriate.

4.2 The clearing agency's rules and the process for adopting new rules or amending existing rules should be transparent to participants and the general public.

4.3 The clearing agency monitors participant activities to ensure compliance with the rules.

4.4 The rules set out appropriate sanctions in the event of non-compliance by participants.

PART 5 DUE PROCESS

5.1 For any decision made by the clearing agency that affects an applicant or a participant, including a decision in relation to access, the clearing agency ensures that:

(a) an applicant or a participant is given an opportunity to be heard or make representations; and

(b) the clearing agency keeps a record of, gives reasons for, and provides for appeals or reviews of, its decisions.

PART 6 RISK MANAGEMENT

6.1 The clearing agency's settlement services are designed to minimize systemic risk.

6.2 The clearing agency has appropriate risk management policies and procedures and internal controls in place.

6.3 Without limiting the generality of the foregoing, the clearing agency's services or functions are designed to achieve the following objectives:

1. Where the clearing agency acts as a central counterparty, it rigorously controls the risks it assumes.

2. The clearing agency minimizes principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.

3. Final settlement occurs no later than the end of the settlement day. Intraday or real-time finality is provided where necessary to reduce risks.

4. Where the clearing agency extends intraday credit to participants, including a clearing agency that operates net settlement systems, it institutes risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.

5. Assets used to settle the ultimate payment obligations arising from securities transactions carry little or no credit or liquidity risk. If central bank money is not used, steps are to be taken to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose.

6. If the clearing agency establishes links to settle cross-border trades, it designs and operates such links to reduce effectively the risks associated with cross-border settlements.

6.4 The clearing agency engaging in activities not related to settlement services carries on such activities in a manner that prevents the spillover of risk to the clearing agency that might affect its financial viability or negatively impact any of the participants in the settlement service.

PART 7 SYSTEMS AND TECHNOLOGY

7.1 For its settlement services systems, the clearing agency:

(a) develops and maintains,

(i) reasonable business continuity and disaster recovery plans,

(ii) an adequate system of internal control,

(iii) adequate information technology general controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support;

(b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,

(i) makes reasonable current and future capacity estimates,

(ii) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,

(iii) tests its business continuity and disaster recovery plans; and

(c) promptly notifies the regulator of any material systems failures.

7.2 The clearing agency ensures a qualified party conducts an independent systems review and prepares a report regarding its compliance with section 7.1(a).

PART 8 FINANCIAL VIABILITY AND REPORTING

8.1 The clearing agency has sufficient financial resources for the proper performance of its functions and to meet its responsibilities and allocates sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with any regulatory requirements.

PART 9 OPERATIONAL RELIABILITY

9.1 The clearing agency has procedures and processes to ensure the provision of accurate and reliable settlement services to participants.

PART 10 PROTECTION OF ASSETS

10.1 The clearing agency has established accounting practices, internal controls, and safekeeping and segregation procedures to protect the assets that are held by the clearing agency.

PART 11 OUTSOURCING

11.1 Where the clearing agency has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices. The outsourcing arrangement provides regulatory authorities with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight of the agency.

PART 12 INFORMATION SHARING AND REGULATORY COOPERATION

12.1 For regulatory purposes, the clearing agency cooperates by sharing information or otherwise with the Commission and its staff, self-regulatory organizations, exchanges, quotation and trade reporting systems, alternative trading systems, other clearing agencies, investor protection funds, and other appropriate regulatory bodies.

SCHEDULE "~~D~~F"

Terms and Conditions

REGULATION OF NGX

1. NGX will maintain its recognition as an exchange and a clearing agency with the ASC and will continue to be subject to the regulatory oversight of the ASC.

2. NGX will continue to comply with its ongoing requirements set out in the ASC Exchange Recognition Order and Clearing Agency Recognition Order, as amended from time to time, or any successor order to such orders.

3. NGX will continue to meet the ~~criteria for exemption from registration as an exchange~~ *Criteria for Exemption from Recognition of a Derivatives Exchange Recognized in Another CSA Jurisdiction*, as set out in Schedule "~~C~~D".

4. NGX will continue to meet the *Criteria for Recognition and Exemption from Recognition as a Clearing Agency*, as set out in Schedule "E".

ACCESS

~~4.~~5. Each Participant is a sophisticated party that meets the NGX Sophistication Thresholds.

~~5.~~6. All orders for Contracts transmitted to the Trading System by an Ontario Participant pursuant to the relief herein will be solely as principal.

PRODUCTS

~~6.~~7. Contracts traded on the Trading System are only for natural gas, electricity, oil, heat rate products related to the gas and electricity markets, and renewable energy certificates.

SUBMISSION TO JURISDICTION AND AGENT FOR SERVICE

~~7.~~8. For greater certainty, NGX submits to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario, in a proceeding arising out of, related to or concerning or in any other manner connected with the activities of NGX in Ontario.

~~8.~~9. For greater certainty, NGX will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities of NGX in Ontario.

~~**REGULATION OF PARTICIPANTS**~~

~~9. NGX will provide for adequate arrangements and resources to effectively monitor trading by Participants on the Trading System to ensure an orderly market and to enforce its rules.~~

FILING REQUIREMENTS

ASC Filings

10. NGX will provide to staff of the Commission, concurrently, all notices and reports it is required to provide to or file with the ASC pursuant to the undertakings given by NGX in the Exchange Recognition Order and Clearing Agency Recognition Order, except:

    (a) reports on defaults by a contracting party not resolved within 2 days;

    (b) with respect to the self-assessment to be provided on an annual basis;

        i. the summary of NGX's business activities,

        ii. the report on NGX's market share,

iii. the summary of new products and expansion plans implemented during the year, and

iv. the summary of staffing changes; and

(c) the description of significant margin exceptions.

Prompt Notice

11. NGX will promptly notify staff of the Commission of any of the following:

(a) any material change to the business or operations of NGX as provided in the Application;

(b) any change in the NGX Sophistication Thresholds;

(c) any change or proposed change to the Exchange Recognition Order or the Clearing Agency Recognition Order; ~~and~~

(d) any change to the regulatory oversight of NGX by the ASC~~.~~; and

(e) any material problem with the clearance and settlement of transactions in contracts cleared by NGX that could materially affect the financial viability of NGX.

Quarterly Reporting

12. NGX will maintain the following updated information and submit such information to the Commission on at least a quarterly basis, and at any time promptly upon the request of staff of the Commission:

(a) a current list of all Ontario Participants;

(b) a list of all Ontario Participants against whom disciplinary action has been taken in the last quarter by NGX or the ASC with respect to activities on NGX;

(c) a list of all investigations by NGX relating to Ontario Participants; and

(d) a list of all Ontario applicants who have been denied membership to NGX.

INFORMATION SHARING

13. Upon request from staff of the Commission to the ASC, NGX will provide to staff of the Commission through the ASC, subject to applicable laws, any information within the possession or control of NGX and otherwise co-operate wherever reasonable with the Commission or its staff.

13.3 Clearing Agencies

13.3.1 OSC Notice and Request for Comment – ICE Clear Canada, Inc. and ICE Futures Canada, Inc. – Application for Exemption from Recognition as a Clearing Agency

OSC NOTICE AND REQUEST FOR COMMENT

ICE CLEAR CANADA, INC. AND ICE FUTURES CANADA, INC.

APPLICATION FOR EXEMPTION FROM RECOGNITION AS A CLEARING AGENCY

A. Background

On March 1, 2011, subsection 21.2(0.1) of the *Securities Act* (Ontario) (OSA) will come into force which will prohibit clearing agencies from carrying on business in Ontario unless they are recognized as a clearing agency or are exempt from the requirement to be recognized by order of the Ontario Securities Commission (Commission).

ICE Clear Canada, Inc. (ICE Clear Canada) and ICE Futures Canada, Inc. (ICE Futures Canada) have jointly applied (the Application) to the Commission for an exemption for ICE Clear Canada from the requirement to be recognized as a clearing agency pursuant to subsection 21.2(0.1) of the OSA on the basis that ICE Clear Canada is already subject to appropriate regulatory oversight by the Manitoba Securities Commission (MSC).

ICE Clear Canada is a wholly owned subsidiary of ICE Futures Canada which facilitates the trading in futures contracts and options on futures contracts in canola and western barley (collectively, ICE Futures Canada Contracts) on an electronic trading platform. All ICE Futures Canada Contracts are cleared and settled by ICE Clear Canada.

ICE Futures Canada is recognized as a self-regulatory organization and is registered as a commodity futures exchange and ICE Clear Canada is designated as a recognized clearing house by the MSC.

In assessing the Application, staff followed the process set out in OSC Staff Notice 24-702 - *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*.

B. Draft Order

In their Application, ICE Futures Canada and ICE Clear Canada have addressed each of the criteria for exemption from recognition. Subject to comments received, staff will recommend that the Commission grant an exemption order with terms and conditions to ICE Clear Canada based on the proposed draft order attached as Appendix A (Draft Order) to the Application.

The Draft Order requires ICE Clear Canada to comply with terms and conditions relating to:

1. Regulation of ICE Clear Canada
2. Governance
3. Submission to Jurisdiction
4. Filing Requirements
5. Information Sharing

ICE Futures Canada, the parent of ICE Clear Canada, is also required to comply with certain terms and conditions in relation to the exemption of ICE Clear Canada as it is responsible for performing key functions on behalf of ICE Clear Canada.

C. Comment Process

The Commission is publishing for public comment the Application and Draft Order. We are seeking comment on all aspects of the Application and Draft Order.

You are asked to provide your comments in writing and delivered on or before January 10, 2011, addressed to:

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8
E-mail: jstevenson@osc.gov.on.ca

We request that you also submit an electronic copy of your submission. The confidentiality of submissions cannot be maintained as a summary of written comments received during the comment period will be published.

Questions may be referred to:

Leslie Pearson
Legal Counsel, Market Regulation
Tel.: 416-593-8297
lpearson@osc.gov.on.ca

Emily Sutlic
Senior Legal Counsel, Market Regulation
Tel.: 416-593-2362
esutlic@osc.gov.on.ca

December 10, 2010

November 25, 2010

Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, ON M5H 3S8

Attention: Ms. Antoinette Leung, Manager, Market Regulation

Dear Madam:

Re: ICE Clear Canada, Inc. – Application for Exemption from Recognition as a clearing agency under subsection 21.2(0.1) of *The Securities Act (Ontario).*

This application is filed with the Ontario Securities Commission (the "OSC") by ICE Clear Canada, Inc. (the "Applicant" or "ICE Clear Canada") and ICE Futures Canada, Inc. (the "Exchange" or "ICE Futures Canada"), seeking the following relief;

> An order, pursuant to section 147 of *The Securities Act* (*Ontario*) (the "OSA"), exempting ICE Clear Canada from the requirement to be recognized by the OSC as a clearing agency pursuant to section 21.1(0.1) of the OSA.

The OSA, and all regulations, rules, policies and notices of the OSC made hereunder are collectively referred to as the "Legislation".

Approval Criteria

OSC Staff has prescribed criteria that it will apply when considering applications for recognition or exemption from recognition by clearing agencies under section 21.1(0.1) of the OSA, which criteria is contained in OSC Staff Notice 24-702 "*Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies."* This application follows that criteria.

Part I Background

Part II Application of Approval Criteria to the Exchange

1. Governance
2. Fees
3. Access
4. Rules and Rulemaking
5. Due Process
6. Risk Management
7. Systems and Technology
8. Financial Viability and Reporting
9. Operational Reliability
10. Protection of Assets
11. Outsourcing
12. Information Sharing and Regulatory Cooperation

Part III Submissions

Part IV Other Matters

Part I – Background

ICE Clear Canada, Inc. is the designated clearinghouse for ICE Futures Canada (formerly Winnipeg Commodity Exchange Inc.) It was designated as the Clearinghouse by board resolution in June, 1998. ICE Clear Canada was formed under *The Corporations* Act *(Manitoba*) on May 12, 1998 as WCE Clearing Corporation and subsequently changed its name on January 2, 2008 to ICE Clear Canada, Inc.

ICE Futures Canada is the only agricultural derivatives exchange in Canada. It has been in continuous operation since 1887. Its canola contract is the pre-eminent price discovery mechanism in the world for canola. During calendar year 2009, ICE Futures Canada facilitated trading in 3,594,775 contracts in canola with an aggregate notional underlying value of CDN. $29,527,911,392.

ICE Futures Canada and ICE Clear Canada maintain an office in Winnipeg, Manitoba.

Up until 2001 the Exchange operated as a not-for-profit, membership organization. In November 2001 the Exchange demutualized and each membership certificate was exchanged for 100 Class A Common shares of a new entity named WCE Holdings Inc. which was the parent for both the Exchange and the clearinghouse.

Subsequent to the demutualization, equity ownership and the rights to trade on the Exchange were divided and it was possible to register as a participant and utilize the facilities of the Exchange without owning any shares in WCE Holdings Inc. In order to register as a Clearing Participant of the designated clearinghouse, WCE Clearing Corporation, it was necessary to be registered as a participant with the Exchange.

On August 27, 2007, 5509794 Manitoba Inc. (5509794), an indirect, wholly-owned subsidiary of IntercontinentalExchange, Inc. ("ICE"), acquired all of the outstanding Class A Common Shares of WCE Holdings Inc. This acquisition was completed upon approval of the shareholders, the Manitoba Securities Commission and court approval by the Court of Queen's Bench, Manitoba. Effective January 1 and 2, 2008, the corporate structure of WCE was reorganized and the companies renamed ICE Futures Canada, Inc. and ICE Clear Canada, Inc.

ICE is a corporation subsisting under the laws of Delaware. ICE is authorized to issue two classes of common shares: common stock and Class A common stock, as well as preferred stock. The common stock of ICE trades on the New York Stock Exchange (the "NYSE") under the ticker symbol "ICE", and is widely held. ICE operates leading regulated exchanges, trading platforms, and clearinghouses, serving global markets for agricultural, credit, currency, emissions, energy and equity markets. ICE operates three futures exchanges, including London-based ICE Futures Europe, which facilitates trading in half of the world's crude and refined oil futures contracts traded each day. ICE Futures U.S. lists agricultural, currency, and Russell Index futures and options. ICE Futures Canada lists agricultural futures and options. ICE also provides trade execution, processing, and clearing services for the Over-The-Counter energy and credit derivatives markets. ICE is primarily subject to the jurisdiction of regulatory authorities in the United States and the United Kingdom.

Current Regulatory Status

Regulation by the Manitoba Securities Commission

The Manitoba Securities Commission ("MSC") is the primary regulator of ICE Futures Canada and ICE Clear Canada. The MSC is a provincial securities commission mandated by *The Securities Act (Manitoba)* and *The Commodity Futures* Act *(Manitoba)* (the "CFA MB"), among other statutes. The MSC is an independent agency of the Government of Manitoba that protects investors and promotes fair and efficient capital markets throughout the province.

ICE Futures Canada is recognized by the MSC as a self-regulatory organization and registered as a commodity futures exchange under Sections 14(1) and 15(1) of *The Commodity Futures Act (Manitoba)* pursuant to Order No. 5718.

ICE Clear Canada is recognized by the MSC as a clearinghouse under Section 16(1) of the CFA MB pursuant to Order No. 5719 of the MSC (the "Recognition Order").

As a recognized clearinghouse, ICE Clear Canada is subject to direct supervisory oversight by the MSC and has reporting, recordkeeping and other regulatory obligations. The MSC is advised of, and kept updated on, all rule and risk initiatives. In addition, ICE Clear Canada is required to provide the MSC with information relating to its governance, personnel and business activities, and all amendments to its rules and operating procedures. The information that ICE Clear Canada provides to the MSC includes the following:

a) its annual audited financial statements, and monthly unaudited statements;

b) the institution of any legal proceeding against it;

c) the presentation of a petition for winding up, the appointment of a receiver or the making of any voluntary arrangement with creditors;

d) changes in its articles of incorporation, bylaws, rules, operations manual, participant application/agreements, fees and charges, key personnel, and clearing participant registrants;

e) admissions or deletions from clearing participant status;

f) any disciplinary action respecting a clearing participant;

g) any third party service agreements that ICE Clear Canada enters into;

h) evidence that any person or entity is carrying on any activities that would constitute a violation of the rules and operations manual of the clearinghouse or of the provisions of *The Commodity Futures Act (Manitoba).*

Québec Autorité des marchés financiers

On February 23, 2010 the Québec Autorité des marchés financiers (AMF) issued Decision No. 2010-PDG-0035.

In Decision No. 2010-PDG-0035, the AMF granted ICE Clear Canada an exemption from the requirements in the *Derivatives Act (Quebec)* to be recognized as a clearinghouse and to be qualified to create or market a derivative, before that derivative can be offered to the public.

The Decision is subject to a number of conditions, all as set out in the document, including maintaining recognition with the MSC, providing all notices of proposed rule amendments, filing annual and monthly financial information, and promptly communicating with the AMF on all issues which the AMF may raise from time to time.

ICE Clear Canada confirms its understanding that staff of the OSC will contact staff at the MSC and AMF to discuss such matters it determines relevant to this application.

Part II Application of Approval Criteria to the Exchange

1. Governance

1.1 The governance structure and governance arrangements of the clearing agency ensures:

(a) effective oversight of the clearing agency;

(b) the clearing agency's activities are in keeping with its public interest mandate;

(c) fair, meaningful and diverse representation on the governing body (board) and any committees of the board, including a reasonable proportion of independent directors;

(d) a proper balance among the interests of the owners and the different entities seeking access (participants) to the clearing, settlement and depository services and facilities of the clearing agency;

(e) the clearing agency has policies and procedures to appropriately identify and manage conflicts of interest;

(f) each director or officer of the clearing agency, and each person or company that own or controls, directly or indirectly, more than 10 percent of the clearing agency is a fit and proper person; and

(g) there are appropriate qualification, limitation of liability and indemnity provisions for directors and officers of the clearing agency.

(a) effective oversight of the clearing agency;

It is the duty of the Board of Directors to serve as a prudent fiduciary and to oversee the management of ICE Clear Canada. The board is the ultimate decision making body of the company, except with respect to matters that are required, by law, to be reserved to the shareholders. In fulfilling its obligations, the board of ICE Clear Canada is responsible for reviewing and approving any long-range plans, approving significant transactions and any new material contracts or amendments to material contracts, reviewing the performance of management, setting fees, and ensuring that the operations of ICE Clear Canada meet the regulatory requirements set out in the Recognition Order.

The board of ICE Clear Canada is required to meet at least quarterly. There are detailed minutes maintained of each board meeting held. It may, and does, have additional meetings as appropriate. The board receives written materials in advance of each meeting, usually one week prior. This allows for the board to prepare and be ready to conduct a thorough discussion of the agenda items. Board members also receive monthly financial information, a detailed report on all of the operations of ICE Clear Canada, an update on regulatory and legislative initiatives, and other information designed to keep them well informed about the clearinghouse, industry news, and the status of regulatory initiatives in Canada as well as the United States. Each board member has been appointed on the basis of certain specific expertise and knowledge that they bring to a critical aspect of the operations of ICE Clear Canada. There is a further expectation that each board member will keep himself or herself updated on the business of the clearinghouse, the regulatory initiatives in the derivatives area, as well as understanding fully the legal requirements and risk management processes and procedures inherent in operating a clearinghouse. Board members are also expected to have an understanding of the regulatory requirements of all entities that have registered and obtained clearing participant status ("Clearing Participants") with ICE Clear Canada, in particular the registered Futures Commission Merchant community.

Board members are required to be fully committed to the work of the board of ICE Clear Canada and in that respect regular attendance at board meetings is required. Records of attendance are maintained and the nominating committee of the ICE board reviews these records, which among other factors, will be considered in selecting appropriate board members on an annual basis.

Board members are compensated at a fair and reasonable rate, commensurate with the custom of the business. ICE Clear Canada's board is covered by the ICE Directors & Officers insurance policy.

(b) clearing agency's activities are in keeping with its public interest mandate;

The primary purpose and mandate of a derivatives clearinghouse is to ensure the integrity of the marketplace and the contracts it clears. ICE Clear Canada maintains a set of rules and operates on a basis consistent with best practices of other derivative clearinghouses in North America. The activities of ICE Clear Canada are designed and focused on ensuring that it maintains best practices and fulfills its public interest mandate.

(c) fair, meaningful and diverse representation on the governing body (board) and any committees of the board, including a reasonable proportion of independent directors;

The board of directors is comprised of seven individuals, three of whom are independent from the ICE group of companies. These independent board members have expertise in the areas of finance and banking, legal and regulatory, and business operations. The Recognition Order requires that two (2) members of the board be independent.

ICE Clear Canada defines an independent director as an individual who is not an employee of a Clearing Participant and is not on the board of directors of a Clearing Participant. In addition, this individual may not be an employee of ICE or any of its subsidiaries.

The MSC has imposed the following requirement on ICE Futures Canada in Recognition Order No. 5718, Appendix "A" which reads:

> **3. b. the appointment of no less than two of its directors shall consist of individuals who are not associated with a participant…**

There is no requirement in the Recognition Order for the clearinghouse, Order No. 5719, to have any of the board members be independent directors. However, as the Boards of ICE Futures Canada and ICE Clear Canada are the same, there are three independent board members on the clearinghouse board.

The board of directors is responsible, under the By-laws, for amending the Rules, subject to the requirements of the CFA MB and the processes on rule review and oversight agreed to with the MSC.

The board delegates certain of the operating requirements of the company to management, which is responsible for the day to day operations.

There is a Clearing Advisory Committee made up of senior executives employed by registered Clearing Participants. This committee participates in discussions on any new initiatives, including financial reporting requirements, and margining and settlement processes, and provides advice and feedback to the board.

The governance processes of ICE Clear Canada are readily available and transparent. ICE Clear Canada publishes its Rules and Operations Manual and Application/Agreement forms on its website. In addition, as a subsidiary of a publicly traded company (ICE), a significant amount of information on the governance practices and procedures of ICE Clear Canada are

available to the public. In this respect, the Code of Business Conduct and Ethics, which is binding upon all employees, officers and directors in the ICE group of companies, including the board of ICE Clear Canada, is available on the website. In addition to the very detailed requirements of the Code, the By-laws of ICE Clear Canada also have detailed conflict of interest provisions (Article 4).

(d) a proper balance among the interests of the owners and the different entities seeking access (participants) to the clearing, settlement and depository services and facilities of the clearing agency;

There is no conflict between the interests of the owners and the entities seeking to become Clearing Participants. Both the owner and entities seeking access have an interest in a clearinghouse that operates in a manner consistent with best practices of North American derivatives clearinghouses to preserve the integrity of the marketplace and contracts cleared. It is in the interest of both the owners and Clearing Participants to ensure stable, effective risk management processes.

ICE Clear Canada's board, made up of four ICE executive members and three independent board members, ensures that the interests of all participants are addressed. The board's focus is on operating a clearinghouse that conforms to best practices and ensures the security and protection of the market.

The board is not constituted from participant groups, as was the case in the previous, mutualized, membership-based clearinghouse that existed in the 1990s and prior. The board of ICE Clear Canada is a professional board that includes executive and independent members only. It ensures that both participant categories; Futures Commission Merchants and General, are treated fairly and consistently except in those rare instances where the issue is one that requires different treatment. There are very few instances of different treatment at ICE Clear Canada; one is the initial collection of a clearing fund deposit (at Operations Manual Section 9) and another is the criteria of minimum capital requirements (for FCMs, the IIROC RAC is utilized while for General, the Exchange's adjusted net capital calculation is utilized). In all other respects all Clearing Participants are required to adhere to the same rules and obligations.

(e) the clearing agency has policies and procedures to appropriately identify and manage conflicts of interest;

Article 4.21 of the By-laws deals with Conflict of Interest situations. The provisions of Article 4.21 prohibit a Board member from participating in deliberations, or voting in any manner, in a matter in which they have a conflict of interest. The possibility of a significant and/or direct financial position in a matter constitutes a conflict of interest and where a conflict exists a board member must recuse himself and not be involved in the deliberation and/or voting on the issue. The minutes of all meetings must document the procedures followed to show compliance with these By-law provisions. The board of ICE Clear Canada is the same as the board of ICE Futures Canada, and is cognizant of, and ensures that, there are no conflicts between the operations of the Exchange that could impact negatively on the risk management processes of ICE Clear Canada.

(f) each director or officer of the clearing agency, and each person or company that own or controls, direct or indirectly, more than 10 percent of the clearing agency is a fit and proper person, and

(g) there are appropriate qualification, limitation of liability and indemnity provisions for directors and officers of the clearing agency.

ICE Clear Canada is ultimately a wholly owned subsidiary of ICE. At the time of the acquisition of the Exchange in August 2007, the MSC was required to review and approve the acquisition transaction, which included a review of ICE, its board members, officers and employees, and its ability to operate a regulated exchange and clearinghouse. The MSC also reviewed the board members of ICE Clear Canada. The board members of ICE Futures Canada and ICE Clear Canada have been the same since August 2007. Three members of the seven person board of ICE Clear Canada are senior ICE executives, including the Chairman, Chief Financial Officer ("CFO"), and Senior Vice President Business Development. These individuals all have extensive expertise in the business of exchange and clearinghouse operations.

The three independent board members are Canadian residents with expertise in the areas of banking and finance, law and regulation, and business and corporate governance, respectively. The seventh board member is the President, on an ex officio basis.

The process of nominating new board members would be subject to the review and vetting process performed by the Nominating Committee of ICE. This committee is comprised of independent board members. ICE, as a publicly-traded company subject to U.S. Securities & Exchange Commission (SEC) oversight and regulation, has a Nominating and Corporate Governance Committee. That committee is responsible for the review of any proposed new director for any of the ICE subsidiary companies, including ICE Clear Canada. The ICE Nominating and Corporate Governance Committee has ratified a policy regarding the qualification and nomination of a director candidate (the "Policy"). The Committee would utilize the principles of the Policy in reviewing any new proposed board members.

The Policy includes direction on;

- The necessary qualifications of board candidates, which includes: persons who possess personal attributes of leadership, an ethical nature, a contributing nature, independence, interpersonal skills, and effectiveness. In addition, the experience attributes include financial acumen, general business experience, industry knowledge, diversity of views and special or unique business expertise. With respect to independent directors, the committee seeks to ensure a cross section of candidates with unique expertise in areas that the relevant board requires strength in, examples include legal & regulatory, financial & accounting expertise, business development and similar.

- The process to be utilized by the Committee in identifying and evaluating director candidates, which process includes input from committee members, other directors of the Company, management of the company and shareholders of the company. Where appropriate, outside consultants and search firms are utilized. Once identified, the candidates are interviewed by the Chairman of the board, the Chief Executive Officer ("CEO") and one committee member. The full board is advised and kept updated.

- The evaluation of existing directors, which is performed by the committee on an annual basis.

The remuneration of the directors and the senior officer (President) of ICE Clear Canada is reviewed on an annual basis by the Compensation Committee of ICE which committee is comprised entirely of directors that are independent of ICE and of ICE Clear Canada.

The officers of ICE Clear Canada have been the same since the date that ICE acquired the clearinghouse, with the exception of the President who was appointed in April 30, 2008. The review and appointment of the President was conducted by senior management of ICE, including the CEO, the Chief Operating Officer ("COO"), and the CFO after an initial review and assistance from an external head hunting firm. Were the current officers to resign or be removed, their replacement would be retained after a similar review, although likely by the President and with the input of the senior employee of ICE in the department at issue (i.e. legal counsel to have the input of the ICE General Counsel, the Vice President Information Technology position would have input from the senior IT officer at ICE, etc.) The Board of ICE Clear Canada is required to review and approve, by resolution, the appointment of any new officer of ICE Clear Canada.

The ICE Group's global insurance program provides professional indemnity and directors and officers coverage to all directors and executive officers of ICE Clear Canada.

2. Fees

2.1 All fees imposed by the clearing agency are equitably allocated. The fees do not have the effect of creating unreasonable barriers to access.

2.2 The process for setting fees is fair and appropriate, and the fee model is transparent.

All fees are established by the Board. There are essentially three types of fees charged by ICE Clear Canada:

1) Clearing transactions fees which are charged on each contract cleared and which are ultimately borne by the beneficial owner of the contract. (They are collected by the Clearing Participant). Transaction fees are applied equally by category of participant registration with the Exchange.

2) The annual Clearing Participant fee which is only charged to registered Clearing Participants. This charge is fair and reasonable, and at Cdn $5,000 per annum does not have the effect of creating any barriers to access.

3) Assorted clerical and administrative fees charged to clearing participants for such things as banking charges, stamp fees, etc. Which fees are very nominal.

All clearing fee charges are set out on the website and are located in the Operations Manual.

With respect to the process involved in setting and amending fees, only the board has the jurisdiction to set or amend clearing fees. Proposed fee changes for ICE Clear Canada are brought to the Board by management for review and resolution. If approved by the Board, fee amendments are provided to the MSC for non-disapproval. Once non-disapproval has been granted, a notice would be sent to participants of the clearinghouse to inform them of the change. Fees would never be charged retroactively and would rarely be charged without some advance notice.

All clearing fees, including annual Clearing Participant fees, clearing transaction fees, and administrative fees, are set out in the Operations Manual which is available on the website and is fully transparent. Fees must be approved and set by the Board of

Directors, and do not discriminate. The fees are not uncompetitive and are reasonable in terms of fees at other North American clearing agencies.

3. Access

3.1 The clearing agency has appropriate written standards for access to its services.

3.2 The access standards and the process for obtaining, limited and denying access are fair and transparent. The clearing agency keeps records of

(a) each grant of access including, for each participant, the reasons for granting such access, and

(b) each denial or limitation of access, including the reasons for denying or limited access to an applicant.

The admission criteria for Clearing Participant status is transparent and provides for fair and equitable access.

Clearing Participant status in ICE Clear Canada is open to any registered Direct Access Trading Participant of ICE Futures Canada which meets the criteria. The criteria, which is applicable to all Clearing Participants is set out in the Rules and in Form 3-C2010 Clearing Participant application/agreement. The criteria is designed to ensure that Clearing Participants are sophisticated, well financed companies with the ability to meet and maintain the financial and operational requirements necessary to support the obligations of Clearing Participant status. ICE Clear Canada reviews the admission requirements from time to time and may, if appropriate, modify them or adopt additional or alternative requirements with board approval.

Any applicant whose request for Clearing Participant status is denied is entitled to an explanation and reasons for the decision, the opportunity to make representations and be heard, and the right to appeal the decision to the Board of ICE Clear Canada. ICE Clear Canada maintains records of its Clearing Participant application reviews and any resulting hearings or appeals. Complete records are maintained for each Clearing Participant. From the time that ICE Clear Canada was incorporated and designated as the clearinghouse for ICE Futures Canada in 1998, no entity which has properly completed the application/agreement forms and submitted same has been granted conditional access or has been denied Clearing Participant status.

There are two categories of Clearing Participants; Futures Commission Merchants and General. All applicants for Clearing Participant status complete the same form of application/agreement. Clearing Participants registered in the category of Futures Commission Merchant must be a member of an organization which is a member of the Canadian Investor Protection Fund (CIPF), such as the Investment Industry Regulatory Organization of Canada (IIROC).

All Clearing Participants must meet financial and operational standards and must file annual audited financial statements and monthly unaudited financial statements.

4. Rules and Rulemaking

4.1 The clearing agency's rules are designed to govern all aspects of the settlement services offered by the clearing agency, and

(a) are not inconsistent with securities/derivatives legislation,

(b) do not permit unreasonable discrimination among participants, and

(c) do not impose any burden on competition that is not necessary or appropriate.

ICE Clear Canada maintains a set of written Rules and an Operations Manual. The Rules, and the processes and procedures contained in the Operations Manual are designed to fulfill all of the requirements of Recognition Order 5719 and to provide for the integrity of the market. All of the documentation, including the form of Participant Application/Agreement, is available on an unrestricted basis to the public, on the website of the clearinghouse, www.theice.com

The Rules and Operations Manual were reviewed and received non-disapproval from the MSC at the time that the Recognition Order was received. Since that date, all amendments to the Rules and to the Operations Manual are submitted to the MSC for receipt of non-disapproval prior to the implementation of same. The Rules are not inconsistent with applicable derivatives legislation.

ICE Clear Canada Rules apply equally to all registered Clearing Participants. The Rules do not unreasonably discriminate against any category of Clearing Participant and do not impose unnecessary or inappropriate burdens on competition.

4.2 The clearing agency's rules and the process for adopting new rules or amending existing rules should be transparent to participants and the general public.

ICE Clear Canada's rules are transparent and available to the public. They are maintained on the website, as are the Operations Manual and the General By-laws of ICE Clear Canada. It is noted on the website that all amendments to the By-laws, Rules, and Operations Manual are submitted to the MSC.

Rule amendments follow a process that includes Staff review and analysis, work by ad hoc or mandated committees, and recommendations to the Board by resolution or at meetings. Legal counsel must review all proposed rule amendments to ensure they are consistent with relevant legislation, prior to the rule amendments going to the Board. Subsequent to Board approval, rule amendments are submitted to the MSC for receipt of non-disapproval.

4.3 The clearing agency monitors participant activities to ensure compliance with the rules.

ICE Clear Canada has a number of processes to ensure that Clearing Participants meet their ongoing obligations. As detailed in the ICE Clear Canada Operations Manual (previously provided), there are deadlines applicable to many aspects of ICE Clear Canada operations. Daily deadlines can be found in Section 2 of the Operations Manual, as well as other sections that pertain to specific processes. ICE Clear Canada monitors these deadlines closely, as part of their daily procedures. As certain deadlines approach, staff are in contact with Clearing Participant firms that are at risk of not meeting the required timeframe. Furthermore, system-based checks exist for many processes and to alert staff of potential issues. Finally, the Rules and Operations Manual of ICE Clear Canada give the clearinghouse the ability to impose disciplinary sanctions on Clearing Participants for failure to comply with their obligations.

4.4 The rules set out appropriate sanctions in the event of non-compliance by participants.

The Rules provide the board with a broad range of options in the event of non-compliance with the Rules. The sanctions available are designed first and foremost to protect the integrity of the marketplace and deal with risk, rather than discipline or otherwise deal with the Clearing Participant at issue. However, in the event of a matter necessitating discipline for non-compliance, Rule A-5 sets out the processes and procedures. Rule A-3, deals with the procedures and sanctions relative to not maintaining minimum capital requirements and Rule A-4 deals with various matters pertaining to the Supervision of a Clearing Participant and the options available to the Board.

5. Due Process

5.1 For any decision made by the clearing agency that affects an applicant or a participant, including a decision in relation to access, the clearing agency ensures that:

(a) an applicant or a participant is given an opportunity to be heard or make representations; and

(b) the clearing agency keeps a record of, gives reasons for, and provides for appeals or review of, its decisions.

ICE Clear Canada's Rule A-5 provides for disciplinary processes. Due process and an opportunity to be heard, make representations and be assisted by counsel, is accorded in all situations other than emergency actions that the board may be required to take as a result of a default. As noted previously, the first and most important focus of the board is on the protection of the marketplace. In a default scenario, it may not be appropriate or prudent to provide a defaulting Clearing Participant with the opportunity to be heard and make representations.

Any disciplinary sanctions would be determined after a hearing and after the Clearing Participant had the right to be heard and make representations, including by counsel if the Clearing Participant chooses, all as set out in Rule A-5.

Clearing Participants have a right to appeal a decision of ICE Clear Canada to the Manitoba Securities Commission under the provisions of section 21 of *The Commodity Futures Act (Manitoba)* and Part IV of *The Securities Act (Manitoba).* This right of appeal includes a further appeal from a decision of the MSC to the Manitoba Court of Appeal all pursuant to the specific requirements set out in Part IV.

6. Risk Management

6.1 The clearing agency's settlement services are designed to minimize systemic risk.

ICE Clear Canada marks all futures positions to market, and collects original, variation, and options premium margin from each Clearing Participant on a daily basis. During periods of increased market volatility, ICE Clear Canada has the ability to make Intra-Day Margin calls. Intra-Day Margin payments must be made within one (1) hour from the time that ICE Clear Canada sent

notice of an Intra-Day Margin call. For Clearing Participants with additional risk in their capital to position risk, additional Position Risk Margin is called. These payment requests are made each morning, where applicable, and must be paid by 12:00 noon (CT). All margin deposits must be made in secure, liquid deposits as set out in the Operations Manual, which provide the clearinghouse with the ability to rapidly convert the deposits to cash in the event of a default.

In combination with the monies collected and held in the Clearing Fund, these measures ensure that systemic risk is minimized.

6.2 The clearing agency has appropriate risk management policies and procedures and internal controls in place.

The primary role of a derivatives clearinghouse is to ensure the protection and integrity of the marketplace and the contracts it clears. ICE Clear Canada acts as the central counterparty to all trades cleared. The counter party financial guarantee provided by ICE Clear Canada is fundamental to the proper functioning of the ICE Futures Canada marketplace. ICE Clear Canada has set up multi-layered processes and sound internal management practices to ensure the proper operation of the clearinghouse and its ability to meet its central counterparty obligations, which processes include appropriate risk management processes, margining and financial protections, sound information systems, comprehensive internal controls, ongoing monitoring, and appropriate oversight by the Board of Directors. ICE Clear Canada has implemented processes aimed at ensuring that Clearing Participants do not default in their obligations. These processes consist of multiple lines of defense, including the following:

- Clearing Participants are required to maintain well-defined capital adequacy standards as a requirement of continued membership.
- ICE Clear Canada settles all trades and marks all futures positions to market on a daily basis.
- ICE Clear Canada processes all cash settlements through an irrevocable electronic payment processing system.
- ICE Clear Canada requires Clearing Participants to deposit margin to cover the projected risks associated with their derivative positions. This margin is designed to provide the Corporation with sufficient resources, based on industry-accepted margin methodologies, to ensure an orderly liquidation of each Clearing Participant's positions in the event that a default should occur and a liquidation becomes necessary.
- ICE Clear Canada monitors intra-day positions for trading activity exceeding certain thresholds, and when appropriate, requires Clearing Participants to post additional margin, known as "intra-day margin" during periods of increased market volatility.
- ICE Clear Canada stipulates the acceptable forms of deposits for margin and clearing fund purposes.
- ICE Clear Canada requires each Clearing Participant to contribute to a Clearing Fund. This fund is a shared obligation of all Clearing Participants, providing coverage for residual risks. This includes the risk that in certain situations market conditions may prevent an orderly liquidation of a defaulting Clearing Participant's positions within the time frame contemplated in the calculation of margin requirements.
- ICE Clear Canada defines default procedures to ensure that a Clearing Participant's obligations are satisfied in the unlikely event of a Clearing Participant default.

ICE Clear Canada has ensured that its service providers have hot computer backup sites to ensure continued operations in the event that the primary sites become unavailable.

6.3 Without limiting the generality of the foregoing, the clearing agency's services or functions are designed to achieve the following objectives:

1. Where the clearing agency acts as a central counterparty, it rigorously controls the risks it assumes.

2. The clearing agency minimizes principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.

3. Final settlement occurs no later than the end of the settlement day. Intraday or real-time finality is provided where necessary to reduce risks.

4. Where the clearing agency extends intraday credit to participants, including a clearing agency that operates net settlement systems, it institutes risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.

Objective 4 does not apply to ICE Clear Canada, as intra-day credit is not extended to Clearing Participants.

5. **Assets used to settle the ultimate payment obligations arising from securities transactions carry little or no credit or liquidity risk. If central bank money is not used, steps are to be taken to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose.**

6. **If the clearing agency establishes links to settle cross-border trades, it designs and operates such links to reduce effectively the risks associated with cross-border settlement.**

Objective 6 does not apply to ICE Clear Canada, as ICE Clear Canada does not settle cross-border trades.

ICE Clear Canada manages risk through multi-layered risk management processes as set out above.

Margin

Clearing Participants are required to make margin deposits in accordance with the requirements set out in the Rules and the Operations Manual. The margin methodology utilized by ICE Clear Canada is consistent with that of other North American clearinghouses.

Daily margin requirements are comprised of three components. First, premium margin represents the cost of liquidating all options contracts at their current market prices. Second, additional margin represents the difference between the current market value of all options contracts and their projected market value. Third, margin is calculated for futures positions, based upon the expected price movement of each contract month, and between contract months for spread positions.

ICE Clear Canada's daily margin system analyzes all positions (futures, and options on futures) held in each account of every Clearing Participant. It then projects a liquidating value for each account, based on multiple projected market moves. Using this projection, ICE Clear Canada collects daily margin to cover potential losses in the event that such a liquidation became necessary.

In order to calculate projected liquidating values of a portfolio of options, ICE Clear Canada establishes a theoretical value for each option, based on the option's implied volatility and several projected underlying prices. The maximum change in the underlying price is the margin rate. The calculation of theoretical projected option values is based upon an accepted pricing model.

Margin rates are calculated separately for each commodity. Generally, the margin rate for each commodity is established by a historical analysis of daily futures price changes occurring in the prior 20, 60, 120, and/or 250 trading days. Margin rates are designed to cover 96 percent of price changes over a one-day period. From time to time, the Corporation may alter the margin rates due to relevant market considerations, including, but not limited to, current price volatility, anticipated price volatility, and the price volatility in related markets.

Position Risk Margin

In June 2008 ICE Clear Canada instituted a margin requirement, known as position risk margin. The purpose of this form of margin is to ensure that there is a reasonable correlation between the risk that a Clearing Participant assumes with the clearinghouse to Capital (Risk Adjusted Capital for FCMs and net adjusted capital for General).

The Rules for position risk margin establish Allowable Position Risk Levels and Maximum Position Risk Levels for each Clearing Participant, which is based on a calculation of daily margin as a ratio to that Clearing Participant's Capital. In calculating the ratio, the clearinghouse utilizes the most recent financial statements filed or reported by a Clearing Participant. Clearing Participants that exceed Allowable Position Risk Levels will be required to deposit Position Risk Margin. For the purposes of determining and calculating Allowable Position Risk Levels and Maximum Position Risk Levels, no Clearing Participant shall be deemed to have Capital greater than One Hundred Million ($100,000,000.).

Intra-Day Margin

During periods of increased market volatility, ICE Clear Canada maintains appropriate levels of margin by making intra-day margin calls. These calls are made at 8:00 a.m., 11:00 a.m., and 1:30 p.m., each Trade Date. The clearinghouse continuously monitors price changes through data derived from the trading system.

Intra-Day margin calls are made whenever market volatility is such that the price movement of a particular contract or commodity is greater than 75% of its respective margin interval. The additional margin required is equivalent to the percentage

of the price movement, rounded down to the nearest 25% interval, reduced by 50% of the margin interval (eg. If the market has moved 130% of margin interval, the nearest 25% interval would be 125%, and the Intra-Day margin required would be 125% - 50% = 75% of the margin interval).

Under no circumstances will the margin deposits of one Clearing Participant be used to cover a default of another Clearing Participant. The Clearing Fund, on the other hand, is a shared obligation of all Clearing Participants that may be used to cover any excess losses not covered by a particular Clearing Participant's margin deposits.

Acceptable Margin Deposits

Margin deposits must be made in an acceptable form of deposit which ensure the ability of the clearinghouse to convert such deposits to cash if necessary. The acceptable forms of deposit are:

a) Cash;

b) Bankers' Acceptances;

c) Bank Letter of Credit (in the form required by ICE Clear Canada) Letters of Credit may be used to satisfy no more than 50% (fifty percent) of a Clearing Participant's total Margin payment obligations (including daily margin, Intra-Day Margin and Position Risk Margin). In addition, no more than ten million dollars ($10,000,000) total may be deposited in the form of Letters of Credit. Canadian Treasury Bills are valued at 95% of face value and Canadian and provincial bonds are valued at 90% of face value. Bankers' Acceptances are valued at 85% of face value.

d) Government of Canada Treasury Bills and Bonds (excluding Canada Savings Bonds); and

e) Provincial Government Bonds.

Settlement and Collateral Collection Schedule

As noted earlier, final settlement occurs at the end of each Trading Session.

At the end of each trading session, total margin requirements are re-assessed and all open positions are settled (marked-to-market) using settlement prices provided by the Exchange. Margin settlement payments and any additional Daily Margin required are collected the following morning. These payments are due, via SWIFT bank wire, no later than 9:30 am (CT). The clearinghouse employs a process by which all oversight pay/collect monies are collected before the payments are made.

It is at 10:30 am (CT) that all ties between the original buyer and seller are severed and ICE Clear Canada assumes the financial obligation for fulfillment of the contract of every Exchange traded Option and Future.

Additional Position Risk Margin, if any, is due by 12:00 noon, and Intra-Day Margin payments must be paid within one hour of the request being made. Clearing Fund contributions are due by 4:00 p.m. on the day they are called for.

Clearing Fund

All Clearing Participants are required to make contributions to a Clearing Fund which is the facility that would be utilized to cover the unlikely situation where a defaulting Clearing Participant's obligations to the clearinghouse are not adequately covered by the margin deposits it has made. All Clearing Participants are required to put up an initial deposit to the Clearing Fund upon admission. For Clearing Participants in the category of Futures Commission Merchant that amount is $250,000 and for Clearing Participants in the category of General that amount is $500,000. Thereafter, and calculated within the first week of Clearing Participant status, Clearing Participants are assessed an amount to be deposited to the Clearing Fund in accordance with Rule A-602 which is an amount which is the greater of:

a. The Base Deposit, which is $500,000 for a Clearing Participant in the category of General or $250,000 for a Clearing Participant in the category of FCM; or

b. An amount based on 35% of the Clearing Participant's required original margin the prior Trading Day.

Acceptable deposits for the Clearing Fund are cash, Bankers Acceptances or Government Securities which are freely negotiable.

All forms of acceptable deposits received from Clearing Participants to settle margin and clearing fund deposits, are assets that carry little or no credit or liquidating risk. Bank Letters of Credit are in an irrevocable form and acceptable from Canadian banks

and certain credit unions. The acceptable securities are all highly liquid. All cash payments are effected solely through the SWIFT Large Value Transfer System ("LVTS") or other acceptable bank wire facility. There are detailed procedures covering the substitutions or withdrawal of acceptable deposits.

ICE Clear Canada registers financing statements in Manitoba and in the home jurisdiction of the head office of each Clearing Participant, which financing statements evidence the security interest of ICE Clear Canada in Margin Deposits (as that term is defined in the financing statements). These security interests are a vital component of ensuring the integrity of the clearinghouse's processes and protections.

Process for Collection and Payment of Funds

Payments to and from ICE Clear Canada, including daily settlements, position risk margin calls, and intra-day margin calls, are collected utilizing LVTS via SWIFT bank transfers. All Clearing Participants are required to set up and provide details on the bank accounts through which they can pay/receive from ICE Clear Canada. The central clearing settlement bank for ICE Clear Canada is the Royal Bank of Canada.

The LVTS system is an electronic wire system that facilitates the transfers of irrevocable payments. It was first introduced in Canada in February 1999. Each payment made is final and settlement is assured immediately, even though the actual settlement occurs at the end of the day on the books of the Bank of Canada. The legal foundation for LVTS is provided for in the *Payments Clearing and Settlements Act (Canada)*. The Bank of Canada is responsible for monitoring the flow of payments through LVTS and the settlement positions of the LVTS participants.

The LVTS system fulfills the two most important criteria required by ICE Clear Canada with respect to payments from Clearing Participants; (1) finality / irrevocability of payment; and (2) the ability to receive payment within the one hour time stipulated by the Rules.

Section 10 of the Operations Manual states:

> The Corporation provides the mechanism for the settlement of all Options and Futures trades. It marks all futures positions to market, and collects margin for new Futures and Options on a daily basis. Clearing Participants are able to make a single payment or receive a single payment.
>
> Settlement of trades for the purpose of daily margin procedures takes place the morning of the Banking Day following the trade date. All payments to and from the Clearinghouse are collected via an irrevocable payment processing system; the SWIFT –Large Value Transfer System or other acceptable bank wire facility. Clearing Participants are required to ensure that they have staffing sufficient to ensure that all requests for payments made by the Corporation will be dealt with on an expeditious basis within the time frames herein set out. All payments must be initiated by each Clearing Participant no later than 8:30 a.m. (CT) and the Clearing Participant must email to ICE Clear Canada the Reference number or Confirmation number (the number provided to the Clearing Participant by their financial institution confirming that the payment directions has been received by the financial institution) no later than 9:00 a.m. (CT). Daily Margin Requirement payments due to the Corporation must be made by the financial institution for each Clearing Participant to the Settlement Bank by no later than 9:30 a.m. (CT) Failure to meet the time frames set out herein will result in a default.

1) Clearing Participants who owe a payment for Daily Margin Requirement to the Corporation must settle before 9:30 a.m. (CT) (Settlement Time) on the Banking Day, using the SWIFT –Large Value Transfer System/ or other acceptable bank wire facility.

2) Clearing Participants who are owed money will be credited by the Corporation once all debits are received.

6.4 The clearing agency engaging in activities not related to settlement services carries on such activities in a manner that prevents the spillover of risk to the clearing agency that might affect its financial viability or negatively impact any of the participants in the settlement service.

ICE Clear Canada does not engage in any activities other than that of the clearinghouse for ICE Futures Canada.

7. Systems and Technology

7.1 For its settlement services systems, the clearing agency:

(a) develops and maintains,

(i) reasonable business continuity and disaster recovery plans,

(ii) an adequate system of internal control;

(iii) adequate information technology general controls, including controls relating to information systems operations, information security, change management, problem management, network support, and systems software support.

(b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,

(i) makes reasonable current and futures capacity estimates;

(ii) conducts capacity stress tests to determine the ability of those systems to process

(iii) tests its business continuity and disaster recovery plans; and

(c) promptly notifies the regulator of any material systems failures.

The primary back office clearing settlement systems are outsourced by a written Clearing Services Agreement, (the "CS Agreement") to Kansas City Board of Trade Clearing Corporation (KCBTCC) which is a Designated Clearing Organization (DCO) registered with the U.S. Commodity Futures Trading Commission (CFTC). KCBTCC is the designated clearinghouse for Kansas City Board of Trade ("KCBT"). Under the terms of the CS Agreement KCBTCC provides back office clearing settlement systems for ICE Clear Canada.

KCBTCC runs a separate version of its clearing systems software for ICE Clear Canada. ICE Clear Canada has full control over any changes to the system functionality. Clearing Participants manage risk associated with their customers through their own internal systems and through systems provided to clearing firms through the ICE trading system. ICE Clear Canada monitors risk associated with Clearing Participants using internal systems separate from the KCBTCC systems.

To obtain and maintain registration as a DCO, KCBTCC must comply with the following Core Principles which are established in Section 5b, 7 USC §7a-1, of *the Commodity Exchange Act (United States)*;

1. Adequate financial, operational, and managerial resources;

2. Appropriate standards for participant and product eligibility;

3. Adequate and appropriate risk management capabilities;

4. Ability to complete settlements on a timely basis under varying circumstances;

5. Standards and procedure to protect member and participant funds;

6. Efficient and fair default rules and procedures;

7. Adequate rule enforcement and dispute resolution procedures;

8. Adequate and appropriate systems safeguards, emergency procedures, and plan for disaster recovery;

9. Obligation to provide necessary reports to allow the CFTC to oversee clearinghouse activities;

10. Maintenance of all business records for five years in a form acceptable to the CFTC;

11. Publication of clearinghouse rules and operating procedures;

12. Participation in appropriate domestic and international information-sharing agreements;

13. Avoidance of actions that are unreasonable restraints of trade or that impose anti-competitive burdens on trading.

KCBTCC utilizes the latest technologies and best practices in regards to information security, change management, hardware support, software support, and network support. Change management is handled through QA processes to ensure full and proper testing of all systems before being placed into production. Adequate internal controls on all of these processes are managed by KCBTCC staff to ensure that any change or enhancement to the clearing system will not impact the daily operations and the production environment. KCBTCC also ensures that a disaster will not affect the production clearing environment, by maintaining and managing a remote data center that is used to transfer each or all systems to in the event of a disaster at the primary data center. All systems in the remote data center are monitored in real-time and tested periodically. KCBTCC participates in the annual Futures Industry Association (FIA) business continuity and disaster recovery test. This process is used to test all systems used by ICE Clear Canada's Clearing Participants and the systems used by KCBTCC.

KCBTCC monitors all systems located in the primary and remote data centers in real-time. KCBTCC IT staff is alerted of any network outage or system failure in real-time. If in the event of a failure to the systems in either location, KCBTCC staff activates best-practice procedures to either transfer systems to the remote data center and repair and recover any failed systems. Since KCBTCC monitors all its systems in real-time, failover capacity is continually monitored as well. When upgrading systems, any future capacities are calculated to the best ability of KCBTCC IT staff to ensure that capacity will not be reached before the next system upgrade.

KCBTCC notifies the CFTC of any significant system failures that KCBTCC deems to be other than a minor failure.

7.2 The clearing agency ensures a qualified party will conduct an independent systems review and prepare a report regarding its compliance with section 7.1(a).

The CFTC conducts regular reviews of KCBT and KCBTCC regarding compliance with the standards applicable to DCOs.

The last CFTC Rule Enforcement Review of Kansas City Board of Trade (KCBT) included a review of KCBTCC, and it was published on the CFTC website at: http://www.cftc.gov/files/tm/tmrer-kcbt061606-14final.pdf

8. Financial Viability and Reporting

8.1 The clearing agency has sufficient financial resources for the proper performance of its functions and to meet its responsibilities and allocates sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with any regulatory requirements.

ICE Clear Canada has adequate financial and staff resources to carry on its activities in full compliance with its regulatory requirements and with best practices of clearinghouses. There are no specific financial requirements in terms of ratios between capital, liquid financial assets and operating costs; however the obligation under the requirements of MSC Recognition Order No. 5719 to maintain adequate resources to discharge its responsibilities is a continuing obligation. ICE Clear Canada files regular financial information with the MSC.

ICE Clear Canada has and maintains adequate systems for the keeping of books and records, including, but not limited to, those concerning the operations of ICE Clear Canada, audit trail information on all cleared trades, all pay/collect information, all settlement information, and participants application/agreements and filings. All information is maintained for a minimum of seven (7) years.

9. Operational Reliability

9.1 The clearing agency has procedures and processes to ensure the provision of accurate and reliable settlement services to participants.

The processes and procedures utilized by ICE Clear Canada are designed to ensure that it fulfills its necessary reporting and operational requirements.

ICE Clear Canada has rules, procedures, schedules and deadlines for all processes related to settlement services. Clearing Participants are required to meet these deadlines as set out in pages 2 and 3 in the Operations Manual. Clearing Participants are required to follow the rules and procedures for the daily reporting trade activity and collateral management as set out in sections 3 to13 in the Operations Manual.

KCBTCC verifies to ICE Clear Canada that the Daily Settlement is balanced each trading day. KCBTCC ensures that the calculations of all variation margin to be paid out equals the variation margin to be collected, and that the option premium to be paid equals the option premium to be collected. ICE Clear Canada verifies all of these calculations on a daily basis.

ICE Clear Canada verifies that all payments that have been received from Clearing Participants who owe money to the clearinghouse have been collected before it makes payments out to Clearing Participants who are owed money.

10. Protection of Assets

10.1 The clearing agency has established accounting practices, internal controls, and safekeeping and segregation procedures to protect the assets that are held by the clearing agency.

ICE Clear Canada maintains rigorous procedures and processes to safeguard the assets that are held by it. All Clearing Participant assets are segregated and are not co-mingled with any of the assets of the clearinghouse. ICE Clear Canada maintains all pledged securities in an account with the Canadian Depository for Securities Limited (CDS). As a limited member of CDS, ICE Clear Canada holds pledged assets in a separate account and does not make use of such assets other than in strict accordance with the Rules.

Cash deposits are maintained in the central settlement bank and are not comingled with the monies of ICE Clear Canada.

The transfer of assets, including cash, for purposes of pay/collect is dealt with in accordance with a multi-layered system of safeguards which includes double checks, dual approval system and passwords and bank security tokens to ensure the integrity of the funds.

With respect to accounting practices, all financial reporting is dealt with by Atlanta based ICE accounting personnel pursuant to the terms of a written Service Agreement. All clearing deposits are included in the overall financial reporting of the clearinghouse and are reviewed by management and the independent board members on a monthly basis. All financial information of ICE, including all of its subsidiary companies is also consolidated and reported in the 10Q and 10K filings submitted to the US S.E.C.

11. Outsourcing

11.1 Where the clearing agency has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices. The outsourcing arrangement provides regulatory authorities with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight of the agency.

ICE Clear Canada has three outsourcing agreements; the Clearing Services Agreement referenced earlier in this application, a services agreement with ICE and a management agreement with ICE Futures Canada, Inc.

Pursuant to the terms of the Clearing Services Agreement, KCBTCC is responsible for the following:

i. Administering certain of ICE Clear Canada's risk management procedures including SPAN margining and marking to market all positions to calculate certain of the required payments to ICE Clear Canada. KCBTCC is not responsible for setting or determining any of these risk management processes, but performs the necessary work to ensure they are carried out;

ii. Having in place and providing all technical infrastructure necessary to process trades (telecommunications, routers, computer systems, software applications and so forth). KCBTCC has in place and operational all communications protocol and all communication lines required in order to accept trade data from the ICE Platform.

iii. Processing and providing certain data file information. All processes are private labeled for ICE Clear Canada; and

iv. Providing systems to ICE Clear Canada Clearing Participants to enable them, via internet application, to edit certain data files, including conducting transfer trades and give up trades.

The services agreement provides that ICE will provide certain financial and accounting services, which include the review of Clearing Participants' monthly and annual financial filings.

The management agreement provides for staffing and management services to be performed for ICE Clear Canada by staff of ICE Futures Canada.

12. Information Sharing and Regulatory Cooperation

12.1 For regulatory purposes, the clearing agency cooperates by sharing information or otherwise with the Commission and its staff, self-regulatory organizations, exchanges, quotation and trade reporting systems, alternative trading systems, other clearing agencies, investor protection funds, and other appropriate regulatory bodies.

In compliance with Order No. 5719 issued by the MSC, ICE Clear Canada and ICE Futures Canada are required to share relevant information with other regulatory bodies, including the Canadian Investor Protection Fund and other Canadian exchanges, recognized self-regulatory organizations and statutory regulatory authorities responsible for the supervision of clearing activities. ICE Clear Canada is a signatory to the Declaration on Co-operation and Supervision of International Futures Exchange and Clearing Organizations as amended, March 1998, commonly known as the "BOCA Declaration".

Submissions

ICE Clear Canada submits that it meets the criteria set out for recognition as a clearing agency, all as outlined in Appendix "A" to Staff Notice 24-702. ICE Clear Canada further submits that it would be appropriate and would not be contrary to the public interest for the Commission to exempt ICE Clear Canada from recognition due to the fact that:

a) it is primarily regulated by the Manitoba Securities Commission;

b) it reports to the AMF (Quebec) and provides all requested information to the AMF; and

c) it has operated consistently, and without default or issue since it was incorporated in 1998 and designated as the clearinghouse for ICE Futures Canada.

If you would like to discuss any aspect of this application, or require any further information, please do not hesitate to contact the undersigned at (204) 925-5009 or Linda.Vincent@theice.com. Thank you.

Yours truly,

Linda Vincent
General Counsel

Appendix A

IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5,
AS AMENDED ("OSA")

AND

IN THE MATTER OF
ICE CLEAR CANADA, INC.
AND ICE FUTURES CANADA, INC.

ORDER
(Section 147 of the OSA)

WHEREAS ICE Clear Canada, Inc. ("ICE Clear Canada") and ICE Futures Canada, Inc. (ICE Futures Canada) have filed an application dated November 25, 2010 (the "Application") with the Ontario Securities Commission (the "Commission" or "OSC") requesting:

i. An order, pursuant to section 147 of *The Securities Act (*Ontario*)* (the "OSA") exempting ICE Clear Canada from the requirement to be recognized by the OSC as a clearing agency pursuant to subsection 21.2(0.1) of the OSA;

AND WHEREAS ICE Futures Canada and ICE Clear Canada have represented to the Commission that:

1. ICE Clear Canada is a share capital corporation incorporated under the provisions of *The Corporations Act* (Manitoba) and situate in Winnipeg, Manitoba. It has been the designated clearinghouse of ICE Futures Canada, Inc. since it was incorporated in 1998 and operated under the name WCE Clearing Corporation up to January 1, 2008.

2. ICE Clear Canada is a wholly owned subsidiary of ICE Futures Canada which is Canada's only agricultural derivatives exchange and which has been in continual operation since 1887.

3. ICE Futures Canada is a private corporation and is an indirect and wholly-owned subsidiary of IntercontinentalExchange, Inc. ("ICE"), a public company governed by the laws of the State of Delaware and listed on the New York Stock Exchange.

4. ICE Futures Canada facilitates trading in futures contracts and options on futures contracts in canola and western barley (collectively, the "ICE Futures Canada Contracts"), on an electronic trading platform (the "ICE Platform"), which is owned and operated by ICE.

5. ICE Clear Canada is a recognized clearinghouse under section 16(1) of *The Commodity Futures Act* (Manitoba*) (*the CFA Manitoba*)* pursuant to Order No. 5719 of the Manitoba Securities Commission ("MSC"). Order No. 5719 (the "MSC Recognition Order") is set out in Schedule "C". All ICE Futures Canada Contracts are cleared and settled by ICE Clear Canada. ICE Clear Canada acts as the counterparty and financial guarantor to each ICE Futures Canada Contract that is cleared.

6. The MSC is ICE Clear Canada's primary regulator. As part of its regulatory oversight of ICE Clear Canada, the MSC reviews, assesses and enforces the on-going compliance by ICE Clear Canada with the requirements set out in the MSC Recognition Order including financial resources, the financial and operational requirements for Clearing Participants, systems and controls, rule-making, and ICE Clear Canada's practices and procedures.

7. ICE Clear Canada is required to provide to the MSC, on request, access to all records and to cooperate with other regulatory authorities, including making arrangements for information-sharing.

8. ICE Clear Canada maintains rigorous clearing participant criteria that all applicants must satisfy before their applications are accepted, including fitness criteria, review of corporate constating documentation, financial standards, operational standards, appropriate registration qualifications with applicable statutory regulatory authorities, and ICE Clear Canada applies a due diligence process to ensure that all applicants meet the required criteria. Applicants can register with ICE Clear Canada in one of two categories: Futures Commission Merchant or General (collectively, "Clearing Participants").

9. ICE Clear Canada utilizes multi-layered processes to minimize systemic risk, which processes include operational and financial criteria for all Clearing Participants, margining and financial protections, the maintenance of a

clearing/guarantee fund, sound information systems, comprehensive internal controls, ongoing monitoring of Clearing Participants, and appropriate oversight by the Board of Directors.

10. ICE Clear Canada permits Ontario residents who meet the criteria set out in its Rules to become registered as Clearing Participants, and as a result, is considered by the Commission to be "carrying on business as a clearing agency" in Ontario. ICE Clear Canada cannot carry on business in Ontario as a clearing agency unless it is recognized by the OSC as a clearing agency under subsection 21.2(0.1) of the OSA or exempted from such recognition under s. 147.

11. Based on the facts and representations set out in the Application, ICE Clear Canada satisfies the criteria set out in Schedule "A" to this order.

AND WHEREAS based on the Application and the representations of ICE Futures Canada and ICE Clear Canada have made to the Commission, the Commission has determined that ICE Clear Canada satisfies the criteria set out in Schedule "A" and that the granting of exemption from recognition as a clearing agency would not be prejudicial to the public interest;

AND IT IS HEREBY ORDERED by the Commission that pursuant to section 147 of the OSA, ICE Clear Canada is exempt from recognition as a clearing agency under subsection 21.2(0.1) of the OSA.

PROVIDED THAT ICE Futures Canada and ICE Clear Canada comply with the terms and conditions attached hereto as Schedule "B".

DATED at Toronto this _____ day of _____

_____ _____

SCHEDULE "A"

Criteria for Exemption from Recognition by the OSC as a clearing agency pursuant to section 21.2(0.1) of the OSA

PART 1 Governance

1.1 The governance structure and governance arrangements of the clearing agency ensures:

(a) effective oversight of the clearing agency;

(b) the clearing agency's activities are in keeping with its public interest mandate;

(c) fair, meaningful and diverse representation on the governing body (board) and any committees of the board, including a reasonable proportion of independent directors;

(d) a proper balance among the interests of the owners and the different entities seeking access (Clearing Participants) to the clearing, settlement and depository services and facilities of the clearing agency;

(e) the clearing agency has policies and procedures to appropriately manage conflicts of interest;

(f) each director or officer of the clearing agency, and each person or company that own or controls, direct or indirectly, more than 10 percent of the clearing agency is a fit and proper person, and

(g) there are appropriate qualification, limitation of liability and indemnity provisions for directors and officers of the clearing agency

PART 2 Fees

2.1 All fees imposed by the clearing agency are equitably allocated. The fees do not have the effect of creating unreasonable barriers to access.

2.2 The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 3 Access

3.1 The clearing agency has appropriate written standards for access to its services.

3.2 The access standards and the process for obtaining, limiting and denying access are fair and transparent. The clearing agency keeps records of

(a) each grant of access including, for each participant, the reasons for granting such access, and

(b) each denial or limitation of access, including the reasons for denying or limited access to an applicant.

PART 4 Rules and Rulemaking

4.1 The clearing agency's rules are designed to govern all aspects of the settlement services offered by the clearing agency, and

(a) are not inconsistent with securities/derivatives legislation,

(b) do not permit unreasonable discrimination among participants, and

(c) do not impose any burden on competition that is not necessary or appropriate.

4.2 The clearing agency's rules and the process for adopting new rules or amending existing rules should be transparent to participants and the general public.

4.3 The clearing agency monitors participant activities to ensure compliance with the Rules.

4.4 The rules set out appropriate sanctions in the event of non-compliance by participants.

PART 5 Due Process

5.1 For any decision made by the clearing agency that affects an applicant or a participant, including a decision in relation to access, the clearing agency ensures that:

(a) an applicant or a participant is given an opportunity to be heard or make representations; and

(b) the clearing agency keeps a record of, gives reasons for, and provides for appeals or review of, its decisions.

PART 6 Risk Management

6.1 The clearing agency's settlement services are designed to minimize systemic risk.

6.2 The clearing agency has appropriate risk management policies and procedures and internal controls in place.

6.3 Without limiting the generality of the foregoing, the clearing agency's services or functions are designed to achieve the following objectives:

1. Where the clearing agency acts as a central counterparty, it rigorously controls the risks it assumes.

2. The clearing agency minimizes principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.

3. Final settlement occurs no later than the end of the settlement day. Intraday or real-time finality is provided where necessary to reduce risks.

4. Where the clearing agency extends intraday credit to participants, including a clearing agency that operates net settlement systems, it institutes risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.

5. Assets used to settle the ultimate payment obligations arising from securities transactions carry little or no credit or liquidity risk. If central bank money is not used, steps are to be taken to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose.

6. If the clearing agency establishes links to settle cross-border trades, it designs and operates such links to reduce effectively the risks associated with cross-border settlement.

6.4 The clearing agency engaging in activities not related to settlement services carries on such activities in a manner that prevents the spillover of risk to the clearing agency that might affect its financial viability or negatively impact any of the participants in the settlement service.

PART 7 Systems and Technology

7.1 For its settlement services systems, the clearing agency:

(a) develops and maintains,

(i) reasonable business continuity and disaster recovery plans,

(ii) an adequate system of internal control,

(iii) Adequate information technology general controls, including controls relating to information systems operations, information security, change management, problem management, network support, and systems software support.

(b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,

(i) makes reasonable current and futures capacity estimates,

(ii) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner, and

(iii) tests its business continuity and disaster recovery plans; and

(c) promptly notifies the regulator of any material systems failures.

7.2 The clearing agency ensures a qualified party will conduct an independent systems review and prepare a report regarding its compliance with section 7.1(a).

PART 8 Financial Viability and Reporting

8.1 The clearing agency has sufficient financial resources for the proper performance of its functions and to meet its responsibilities and allocates sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with any regulatory requirements.

PART 9 Operational Reliability

9.1 The clearing agency has procedures and processes to ensure the provision of accurate and reliable settlement services to participants.

PART 10 Protection of Assets

10.1 The clearing agency has established accounting practices, internal controls, and safekeeping and segregation procedures to protect the assets that are held by the clearing agency.

PART 11 Outsourcing

11.1 Where the clearing agency has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices. The outsourcing arrangement provides regulatory authorities with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight of the agency.

PART 12 Information Sharing and Regulatory Cooperation

12.1 For regulatory purposes, the clearing agency cooperates by sharing information or otherwise with the Commission and its staff, self-regulatory organizations, exchanges, quotation and trade reporting systems, alternative trading systems, other clearing agencies, investor protection funds, and other appropriate regulatory bodies.

SCHEDULE "B"

Terms and Conditions

REGULATION OF ICE Clear Canada, Inc.

1. ICE Clear Canada will maintain its recognition as a clearinghouse with the MSC and will continue to be subject to the regulatory oversight of the MSC as described in the MSC Recognition Order, as amended and restated on June 16, 2008, and attached to this order as Schedule “C”.

2. ICE Clear Canada will continue to comply with its ongoing requirements as set out in the MSC Recognition Order.

3. ICE Clear Canada will continue to meet the Criteria for Exemption from Recognition as a Clearing Agency as set out in Schedule "A".

GOVERNANCE

4. ICE Futures Canada and ICE Clear Canada will promote a corporate governance structure that minimizes the potential for any conflict of interest between ICE Futures Canada and ICE Clear Canada that could adversely effect the clearance and settlement of trades in contracts or the effectiveness of ICE Clear Canada’s risk management policies, controls, and standards.

SUBMISSION TO JURISDICTION AND AGENT FOR SERVICE

5. For greater certainty, ICE Clear Canada submits to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario, in a proceeding arising out of, related to or concerning or in any other manner connected with the activities of ICE Clear Canada in Ontario.

6. For greater certainty, ICE Clear Canada will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities of ICE Clear Canada in Ontario.

FILING REQUIREMENTS

MSC Filings

7. ICE Clear Canada will provide staff of the Commission, concurrently, the following information that it is required to provide to or file with the MSC:

    (a) the annual audited financial statements of ICE Futures Canada and the annual financial statements of ICE Clear Canada which may be unaudited;

    (b) the institution of any legal proceeding against it;

    (c) the presentation of a petition for winding up, the appointment of a receiver or the making of any voluntary arrangement with creditors; and

    (d) changes and proposed changes to its bylaws, rules, operations manual, participant agreements and other similar instruments or documents of ICE Clear Canada which contain any contractual terms setting out the respective rights and obligations between ICE Clear Canada and Clearing Participants or among Clearing Participants

Prompt Notice

8. ICE Clear Canada will promptly notify staff of the Commission of any of the following:

    (a) any material change to the information provided in the Application;

    (b) any material problems with the clearance and settlement of transactions in contracts cleared by ICE Clear Canada, including any failure by a Clearing Participant of ICE Clear Canada to promptly fulfill its settlement obligations, that could materially affect the operations or financial situation of ICE Clear Canada;

(c) a default of a Clearing Participant which results in the liquidation of the Clearing Fund (as defined in the ICE Clear Canada Rules) in whole or in part;

(d) any change or proposed change to the MSC Recognition Order;

(e) any change to the regulatory oversight by the MSC.

Quarterly Reporting

9. ICE Clear Canada will maintain the following updated information and submit such information to the Commission on at least a quarterly basis, and at any time promptly upon the request of staff of the Commission:

(a) a current list of all Ontario resident Clearing Participants;

(b) a list of all Ontario resident Clearing Participants against whom disciplinary action has been taken in the last quarter by ICE Clear Canada or the MSC with respect to activities on ICE Clear Canada;

(c) a list of all investigations by ICE Clear Canada relating to Ontario resident Clearing Participants; and

(d) a list of all Ontario applicants who have been denied Clearing Participant status in ICE Clear Canada.

INFORMATION SHARING

10. ICE Clear Canada and ICE Futures Canada will provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws governing the sharing of information and the protection of personal information.

ADDITIONAL REQUIREMENT

11. ICE Futures Canada shall not take any action that has the effect, either directly or indirectly, of interfering with the ability of ICE Clear Canada to comply with the terms and conditions of this order and will take such actions as are within its ability to assist ICE Clear Canada in meeting the terms and conditions of this order.

SCHEDULE "C"

MANITOBA SECURITIES COMMISSION

THE COMMODITY FUTURES ACT	)	Order No. 5719
	)	
Subsection 16(1)	)	June 16, 2008

ICE CLEAR CANADA, INC. AND ICE FUTURES CANADA, INC.

WHEREAS:

(A) ICE Futures Canada, Inc. and ICE Clear Canada, Inc. (ICE Clear Canada) through predecessor corporations WCE Holdings Inc. and WCE Clearing Corporation applied to The Manitoba Securities Commission (the "Commission") pursuant to Subsection 16 (1) of *The Commodity Futures Act*, S.M. 1996, c. 73 C152 (as amended) (the "Act") for an order that WCE Clearing Corporation ("WCECC") be designated as a recognized clearing house pursuant to Subsection 16(1) of the Act and that order was granted on May 31, 2002 by Order No. 3766 which order was amended and replaced on December 21, 2006 by Order No. 5265;

(B) It was represented to the Commission by WCECC in the applications that were filed with respect to Orders No. 3766 and 5265 that:

1. WCECC was incorporated as a Manitoba corporation in May 1998 and has operated as a clearing house continuously since that time;

2. WCECC was a share capital corporation wholly owned by Holdings;

3. WCECC was designated as the clearing house for Winnipeg Commodity Exchange Inc. pursuant to the rules of Winnipeg Commodity Exchange Inc.;

4. WCECC met world recognized standards for clearing houses in terms of its written rules, policies and procedures, the setting and maintaining of standards of financial requirements for all Clearing Participants.

(C) On August 27, 2007 all of the shares of WCE Holdings Inc. were acquired by 5509794 Manitoba Inc.;

(D) The ultimate parent company of 5509794 Manitoba Inc. is IntercontinentalExchange, Inc. a corporation subsisting under the laws of the state of Delaware, whose common stock is listed on the New York Stock Exchange and are widely held;

(E) WCECC was part of a corporate reorganization and re-branding whereby WCECC became a wholly owned subsidiary of ICE Futures Canada, Inc., and WCECC was renamed 'ICE Clear Canada, Inc., and the reorganization and renaming relative to ICE Clear Canada, Inc., was completed on January 2, 2008.

(F) The Commission is of the opinion that it is in the public interest to grant the order requested.

IT IS ORDERED:

1. **THAT**, subject to the terms and conditions set out in Appendix "A" to this order, ICE Clear Canada be designated as a recognized clearing house pursuant to Subsection 16(1) of the Act.

2. **THAT**, effective January 2, 2008, this Order replaces Commission Order No. 5265 dated December 21, 2006.

BY ORDER OF THE COMMISSION

"original signed by"

Doug Brown, Director – Legal

Appendix "A" to Order Number 5719 effective the 2nd day of January 2008.

Terms and Conditions

Notice of Share Ownership

1. In the event that ICE Clear Canada intends to amend its Articles of Incorporation, the Commission will be given notice prior to any amendment being approved by the shareholder(s).

2. ICE Clear Canada shall provide the Commission with a minimum of 21 days notice respecting the acquisition of voting shares of ICE Clear Canada by any entity other than ICE Futures Canada.

Corporate Governance

3. The governance structure of ICE Clear Canada shall provide for:

    a. fair and meaningful representation on its governing body, in the context of the nature and structure of ICE Clear Canada;

    b. appropriate qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of ICE Clear Canada generally.

4. ICE Clear Canada shall maintain conflict of interest rules and/or policies for the Board, all committees and ICE Clear Canada staff. Such rules and/or policies shall extend to anyone in a position to affect the outcome of a decision and shall provide for all such persons to be required to declare their interests and to foresee the possibility that a person may withdraw from a matter.

Regulation

5. The Board of Directors of the ICE Clear Canada shall be responsible, for all matters relating to surveillance matters and ensuring compliance by the Clearing Participants with the provisions of the Rules.

6. ICE Clear Canada shall advise the Commission in writing of the names and background of each person appointed to the Board of Directors.

7. ICE Clear Canada shall promptly provide a written report to the Commission detailing any misconduct or fraud on the part of a Clearing Participant, or such other circumstances that may result in material loss or damage to ICE Clear Canada or its operations, including all situations where the solvency of a Clearing Participant is at risk.

Systems

8. For each of its systems that support the operations of ICE Clear Canada, ICE Clear Canada shall, or in the case where such systems are owed by third parties, ICE Clear Canada shall ensure that those third parties shall:

    (a) Make reasonable current and future capacity estimates;

    (b) Conduct necessary stress tests of critical systems on a reasonably frequent basis to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;

    (c) Develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems;

    (d) Review the vulnerability of those systems and computer operations to internal and external threats including physical hazards and natural disasters;

    (e) Establish reasonable contingency and business continuity plans; and

    (f) Notify the Commission, in writing, of any material systems failures or changes that impact clearing operations.

Purpose of Rules

9. ICE Clear Canada shall, subject to the terms and conditions of this Order and the jurisdiction and oversight of the Commission in accordance with the laws of the Province of Manitoba, establish such rules, regulations, policies,

procedures, practices or other similar instruments as are necessary or appropriate to govern and regulate all aspects of its business and internal affairs and shall in so doing specifically govern and regulate so as to:

a. seek to ensure compliance with the Act; and

b. seek compliance with the terms and conditions of this order as well as any regulations, rules, policies or orders issued by the Commissions.

Due Process

10. ICE Clear Canada shall ensure that its rules shall ensure that the requirements of ICE Clear Canada relating to its facilities, the imposition of limitations on conditions of access, and denial of access are fair and reasonable.

Information Sharing

11. ICE Clear Canada and ICE Futures Canada shall cooperate by the sharing of necessary and reasonably relevant information, with the Canadian Investor Protection Fund and other Canadian exchanges, recognized self-regulatory organizations and regulatory authorities responsible for the supervision of clearing activities, subject to the applicable laws concerning the sharing of information and the protection of personal information.

Additional Requirements

12. ICE Clear Canada shall notify the Commission prior to providing any regulatory duties or regulatory operations to other exchanges, self- regulatory organization, or other persons.

13. ICE Futures Canada shall obtain prior written approval from the Commission before subcontracting a portion of its regulatory duties or regulatory functions to other self-regulatory organizations.

14. ICE Clear Canada shall provide the Commission and its staff with such information as it may, from time to time, request.

ICE Futures Canada to facilitate ICE Clear Canada in its compliance requirements

15. ICE Futures Canada shall not take any action that has the effect, either directly or indirectly, of interfering with the ability of ICE Clear Canada to comply with the terms and conditions of this order or with any other requirement applying to a recognized clearing house under the Act.

ALL OF WHICH ARE INCORPORATED AS TERMS AND CONDITIONS OF THE ORDER ISSUED BY THE COMMISSION

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Chapter 25

Other Information

25.1 Approvals

25.1.1 SW8 Asset Management Inc. – s. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager, with no prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be established and managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

November 30, 2010

Ogilvy Renault LLP
Suite 3800, Toyal Bank Plaza, South Tower
200 Bay Street, P.O. Box 84
Toronto Ontario M5J 2Z4

Attention: Ron Kugan

Dear Sir/Madam:

Re: SW8 Asset Management Inc. (the "Applicant")
Application pursuant to clause 213(3)(b) of the *Loan and Trust Corporations Act* (ON)

Application No. 2010/0779

Further to your application dated October 26, 2010 (the "Application") filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that the assets of the mutual fund trusts as the Applicant may establish from time to time (the "Funds") will be held in the custody of a bank listed in Schedule I, II or III of the *Bank Act* (Canada) or an affiliate of such bank, the Ontario Securities Commission (the "Commission") makes the following order:

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of the Funds that may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to a prospectus exemption.

Yours truly,

"Carol S. Perry"

"James D. Carnwath"

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Index