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Chapter 1

Notices / News Releases

| 1.1 | Notices | | SCHEDULED O | SC HEARINGS |
|--------|---|-------------------|----------------------|--|
| 1.1.1 | Current Proceedings Befo Securities Commission | ore The Ontario | December 20, 2010 | Ameron Oil and Gas Ltd., MX-IV Ltd., Gaye Knowles, Giorgio Knowles, |
| | December 17, 2010 |) | 10:00 a.m. | Anthony Howorth, Vadim Tsatskin, Mark Grinshpun, Oded Pasternak, and Allan Walker |
| | CURRENT PROCEEDIN | NGS | | s. 37, 127 and 127.1 |
| | BEFORE | | | M. Boswell in attendance for Staff |
| | ONTARIO SECURITIES COM | IMISSION | | |
| | | | | Panel: MGC |
| Unless | s otherwise indicated in the date o | | December 20, 2010 | David M. O'Brien |
| | e place at the following location: | <i>,</i> , | 10:00 | s. 37, 127 and 127.1 |
| | The Harry S. Bray Hearing Roo Ontario Securities Commission | | 10:30 a.m. | M. Boswell in attendance for Staff |
| | Cadillac Fairview Tower | | | Panel: MGC |
| | Suite 1700, Box 55 20 Queen Street West Toronto, Ontario M5H 3S8 | | January 7, 2011 | North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and |
| Telenh | none: 416-597-0681 Telecopier: 4 | 16-593-8348 | 9:30 a.m. | Luigino Arconti |
| | | | | s. 127 |
| CDS | | TDX 76 | | M. Britton in attendance for Staff |
| Late M | lail depository on the 19 th Floor un | ntil 6:00 p.m. | | |
| | | | | Panel: CSP |
| | THE COMMISSIONER | <u>RS</u> | January 7, 2011 | York Rio Resources Inc., Brilliante Brasilcan Resources Corp., Victor York, Robert Runic, George |
| Howa | ard I. Wetston, Chair | — HIW | 2:30 p.m. | Schwartz, Peter Robinson, Adam |
| Jame | es E. A. Turner, Vice Chair | — JEAT | | Sherman, Ryan Demchuk, Matthew Oliver, Gordon Valde and Scott |
| Lawr | ence E. Ritchie, Vice Chair | — LER | | Bassingdale |
| | n O. Akdeniz | — SOA | | s. 127 |
| | es D. Carnwath | — JDC | | 5. 127 |
| - | G. Condon | — MGC | | H. Craig in attendance for Staff |
| - | ot C. Howard | — MCH | | Panel: CSP |
| | n J. Kelly ette L. Kennedy | — KJK — PLK | | |
| | Krishna | - PLK VK | | |
| | ck J. LeSage | VK PJL | | |
| | I S. Perry | - CSP | | |
| 0 | | | | |

CWMS

Charles Wesley Moore (Wes) Scott

| January 10, January 12-21, 2011 | Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Leverage Pro Inc., Prosporex | January 24, 2011 | Shaun Gerard McErlean and Securus Capital Inc. |
|--|---|---------------------|---|
| 10:00 a.m. | Investments Inc., Prosporex Ltd., | 10:00 a.m. | s. 127 |
| 10.00 a.m. | Prosporex Inc., Prosporex Etd., Prosporex Inc., Prosporex Forex SPV Trust, Networth Financial | | M. Britton in attendance for Staff |
| | Group Inc., and Networth Marketing Solutions | | Panel: TBA |
| | s. 127 and 127.1 | January 25, 2011 | Ciccone Group, Medra Corporation, 990509 Ontario Inc., Tadd Financial |
| | H. Daley in attendance for Staff | 2:00 p.m. | Inc., Cachet Wealth Management Inc., Vince Ciccone, Darryl |
| | Panel: JDC/MCH | | Brubacher, Andrew J. Martin., Steve Haney, Klaudiusz Malinowski and Ben Giangrosso |
| January 10, January 12-21, January 26 – February 1, 2011 | 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 P. Foy in attendance for Staff Panel: CSP |
| 10:00 a.m. | s. 127 | January 25, | Majestic Supply Co. Inc., Suncastle |
| | A. Perschy/C. Rossi in attendance for Staff | 2011 3:00 p.m. | Developments Corporation, Herbert Adams, Steve Bishop, Mary Kricfalusi, Kevin Loman and CBK Enterprises Inc. |
| | Panel: [TBA]/PLK | | s. 37, 127 and 127.1 |
| 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) | | D. Ferris in attendance for Staff Panel: CSP |
| | s. 127 | January 26, | Rezwealth Financial Services Inc., |
| | T. Center/D. Campbell in attendance | 2011 | Pamela Ramoutar, Chris Ramoutar, Justin Ramoutar, Tiffin Financial |
| | for Staff | 10:00 a.m. | Corporation, Daniel Tiffin, 2150129 Ontario Inc. and Sylvan Blackett |
| | Panel: JEAT | | s. 127(1) and (5) |
| January 14, 2011 | Paladin Capital Markets Inc., John David Culp and Claudio Fernando | | A. Heydon in attendance for Staff |
| 11:00 a.m. | Мауа | | Panel: CSP |
| | s. 127 | January 26, | Global Consulting and Financial |
| | C. Price in attendance for Staff | 2011 | Services, Crown Capital Management Corporation, Canadian |
| | Panel: CSP | 11:00 a.m. | Private Audit Service, Executive Asset Management, Michael |
| January 17-21, 2011 10:00 a.m. | Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin | | Chomica, Peter Kuti, Jan Chomica, and Lorne Banks |
| | s. 127 | | M. Boswell in attendance for Staff |
| | | | Panel: CSP |
| | H. Craig in attendance for Staff | | I ANCI. USF |
| | Panel: PJL/SA | | |

| January 26, 2011 | QuantFX Asset Management Inc., Vadim Tsatskin, Lucien Shtromvaser and Rostislav | February 8, 2011 | Ameron Oil and Gas Ltd. and MX-IV, Ltd. | |
|--|--|--|--|----------------------------------|
| 12:00 p.m. | Zemlinsky | 2:30 p.m. | s. 127 | |
| | s. 127 | | M. Boswell in attendance for Staff | |
| | H. Craig in attendance for Staff | | Panel: TBA | |
| | Panel: CSP | February 11, 2011 | Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh | |
| January 27, 2011 | Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiaints | 10:00 a.m. | Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman | |
| 2:00 p.m. | Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy | | s. 127(7) and 127(8) | |
| | Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., | | M. Boswell in attendance for Staff | |
| | Pharm Control Ltd., Cambridge Resources Corporation, | | Panel: TBA | |
| | Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group | 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 and 127.1 | | s. 127 | |
| | H. Craig in attendance for Staff | | P. Foy in attendance for Staff | |
| | Panel: MGC | | Panel: TBA | |
| January 27, 2011 2:30 p.m. | Helen Kuszper and Paul Kuszper | February 25, 2011 10:00 a.m. | Hillcorp International Services, Hillcorp Wealth Management, | |
| | s. 127 and 127.1 | | Suncorp Holdings, 1621852 Ontario Limited, Steven John Hill, and Danny De Melo | |
| | U. Sheikh in attendance for Staff | | s. 127 | |
| | Panel: MGC | | A. Clark in attendance for Staff | |
| January 31 – February 7, | Anthony lanno and Saverio Manzo | | Panel: TBA | |
| February 9-18, February 23, | s. 127 and 127.1 | March 1-7, | Paul Donald | |
| 2011 | A. Clark in attendance for Staff | March 9-11, March 21 and | s. 127 | |
| 10:00 a.m. | Panel: TBA | March 23-31, | | C. Price in attendance for Staff |
| 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 | 10:00 a.m. | Panel: TBA | |
| 10.00 a.III. | s. 37, 127 and 127.1 | | | |
| | 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 | April 4 and April 6-15, 2011 10:00 a.m. | L. Jeffrey Pogachar, Paola Lombardi, Alan S. Price, New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd., 2126375 Ontario Inc., 2108375 Ontario Inc., 2126533 Ontario Inc., 2152042 Ontario Inc., 2100228 Ontario Inc., and 2173817 Ontario Inc. |
|---|--|--|--|
| 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 | April 5, 2011 2:30 p.m. | s. 127 M. Britton in attendance for Staff Panel: TBA Lehman Brothers & Associates Corp., Greg Marks, Kent Emerson Lounds and Gregory William Higgins s. 127 H. Craig in attendance for Staff |
| March 30, 2011 10:00 a.m. April 4 and April 6-7, 2011 April 11-18 and April 20, 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 Uranium308 Resources Inc., Michael Friedman, George Schwartz, Peter Robinson, and Shafi Khan s. 127 M. Boswell in attendance for Staff | April 11-18, April 20-21 and April 26-29, 2011 10:00 a.m. | Panel: TBA 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 |
| | Panel: TBA | April 26-27, 2011 10:00 a.m. | s. 127 Y. Chisholm in attendance for Staff Panel: TBA Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling s. 127(1) and 127.1 J. Superina, A. Clark in attendance for Staff Panel: JEAT/PLK/MGC |

| May 2, May 4-16, 2011 | Innovative Gifting Inc., Terence Lushington, Z2A Corp., and Christine Hewitt | ТВА | Frank Dunn, Douglas Beatty, Michael Gollogly |
|----------------------------------|---|-----|--|
| 10:00 a.m. | s. 127 | | s. 127 |
| | M. Boswell in attendance for Staff | | K. Daniels in attendance for Staff |
| | Panel: TBA | | Panel: TBA |
| May 24-30, 2011 10:00 a.m. | Sunil Tulsiani, Tulsiani Investments Inc., Private Investment Club Inc., and Gulfland Holdings LLC | ТВА | MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric |
| 10.00 a.m. | s. 127 | | s. 127 and 127(1) |
| | J. Feasby/C. Rossi in attendance for Staff | | D. Ferris in attendance for Staff |
| | Panel: TBA | | Panel: TBA |
| June 6-8, 2011 10:00 a.m. | Lehman Brothers & Associates Corp., Greg Marks, Kent Emerson Lounds and Gregory William Higgins | ТВА | Goldpoint Resources Corporation, Lino Novielli, Brian Moloney, Evanna Tomeli, Robert Black, Richard Wylie and Jack Anderson |
| | s. 127 | | s. 127(1) and 127(5) |
| | H. Craig in attendance for Staff | | M. Boswell in attendance for Staff |
| | Panel: TBA | ТВА | Panel: TBA Goldbridge Financial Inc., Wesley |
| September 12-19 and September | FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun | | Wayne Weber and Shawn C. Lesperance |
| 21-30, 2011 | s. 127 | | s. 127 |
| 10:00 a.m. | C. Price in attendance for Staff | | C. Johnson in attendance for Staff |
| | Panel: TBA | | Panel: TBA |
| ТВА | Yama Abdullah Yaqeen | TBA | Borealis International Inc., Synergy Group (2000) Inc., Integrated |
| | s. 8(2) | | Business Concepts Inc., Canavista Corporate Services Inc., Canavista |
| | J. Superina in attendance for Staff | | Financial Center Inc., Shane Smith, Andrew Lloyd, Paul Lloyd, Vince |
| | Panel: TBA | | Villanti, Larry Haliday, Jean Breau, Joy Statham, David Prentice, Len |
| ТВА | Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell | | Zielke, John Stephan, Ray Murphy, Alexander Poole, Derek Grigor and Earl Switenky |
| | s. 127 | | s. 127 and 127.1 |
| | J. Waechter in attendance for Staff | | Y. Chisholm in attendance for Staff |
| | Panel: TBA | | Panel: TBA |

| ТВА | Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmoney, Harmoney Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale | ТВА | 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, |
|-----|--|-----|--|
| | s. 127 | | Nikola Bajovski, Bruce Cohen and Andrew Shiff |
| | H. Craig in attendance for Staff | | s. 37, 127 and 127.1 |
| | Panel: TBA | | H. Craig in attendance for Staff |
| ТВА | Lyndz Pharmaceuticals Inc., James Marketing Ltd., Michael Eatch and Rickey McKenzie | | Panel: TBA |
| | s. 127(1) and (5) | ТВА | TBS New Media Ltd., TBS New Media PLC, CNF Food Corp., |
| | J. Feasby in attendance for Staff | | CNF Candy Corp., Ari Jonathan Firestone and Mark Green |
| | Panel: TBA | | s. 127 |
| TBA | M P Global Financial Ltd., and | | H. Craig in attendance for Staff |
| | Joe Feng Deng | | Panel: TBA |
| | s. 127 (1) | ТВА | Brilliante Brasilcan Resources |
| | M. Britton in attendance for Staff Panel: TBA | | Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and |
| ТВА | Shane Suman and Monie Rahman | | Victor York |
| | s. 127 and 127(1) | | s. 127 |
| | C. Price in attendance for Staff | | H. Craig in attendance for Staff |
| | Panel: JEAT/PLK | | Panel: TBA |
| ТВА | Gold-Quest International, Health and Harmoney, Iain Buchanan and Lisa | ТВА | Howard Jeffrey Miller and Man Kin Cheng (a.k.a. Francis Cheng) |
| | Buchanan | | s. 127 |
| | s. 127 | | T. Center in attendance for Staff |
| | H. Craig in attendance for Staff | | Panel: TBA |
| | Panel: JEAT/CSP/SA | ТВА | 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 |

| ТВА | Abel Da Silva | ADJOURNED SINE DIE |
|-----|---|--|
| | s. 127 | Global Privacy Management Trust and Robert Cranston |
| | M. Boswell in attendance for Staff | Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, |
| | Panel: TBA | Gordon Eckstein, Robert Topol |
| ТВА | Richvale Resource Corp., Marvin Winick, Howard Blumenfeld, John Colonna, Pasquale Schiavone, and Shafi Khan | Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg |
| | s. 127(7) and 127(8) | Maitland Capital Ltd., Allen Grossman, Hanouch Ulfan, Leonard Waddingham, Ron Garner, Gord Valda, Marianna Hugaintha, Diana Capaidy, Ban |
| | H. Craig in attendance for Staff | Valde, Marianne Hyacinthe, Diana Cassidy, Ron Catone, Steven Lanys, Roger McKenzie, Tom Mezinski, William Rouse and Jason Snow |
| | Panel: TBA | LandPankara International MV S. A. Da C.V. |
| ТВА | Global Energy Group, Ltd. and New Gold Limited Partnerships | 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 |
| | s. 127 | Zacarias; Roger Fernando Ayuso Loyo, Alan Hemingway, Kelly Friesen, Sonja A. McAdam, Ed Moore, Kim Moore, Jason Rogers and Dave |
| | H. Craig in attendance for Staff | Urrutia |
| | Panel: TBA | Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson |
| 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 | |
| ТВА | 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 | |

1.1.2 Notice of Amendments to the Securities Act and the Commodity Futures Act

NOTICE OF AMENDMENTS TO THE SECURITIES ACT AND THE COMMODITY FUTURES ACT

On December 8, 2010, the Government's Bill 135 (*Helping Ontario Families and Managing Responsibly Act, 2010*) received Royal Assent. Amendments to the *Securities Act* and the *Commodity Futures Act* were included in Bill 135.

An explanation of these amendments is provided in Chapter 9.

Questions may be referred to:

Simon Thompson Senior Legal Counsel (416) 593-8261 sthompson@osc.gov.on.ca

1.1.3 OSC Staff Notice 11-742 (Revised) – Securities Advisory Committee

REVISED ONTARIO SECURITIES COMMISSION STAFF NOTICE 11-742

SECURITIES ADVISORY COMMITTEE

In a Notice published in the OSC Bulletin on September 24, 2010, the Commission invited applications for positions on the Securities Advisory Committee ("SAC"). SAC provides advice to the Commission and staff on a variety of matters including legislative and policy initiatives and important capital markets trends and brings various issues to the attention of the Commission and staff.

The members of SAC have staggered terms. Seven of the members will complete their terms in December 2010. The Commission would like to take this opportunity to thank the members of SAC, listed below, who have served on the Committee with great dedication over the last two years. Their advice and guidance on a range of issues has been very valuable to the Commission.

- John Ciardullo Stikeman Elliott LLP
- Pamela Hughes Blake, Cassels & Graydon LLP
- Charlie MacCready Heenan Blaikie LLP
- Vincent Mercier Davies Ward Phillips & Vineberg LLP
- Thomas Smee Royal Bank of Canada
- Jenny Chu Steinberg Gowling Lafleur Henderson LLP
- Jennifer Wainwright Aird & Berlis LLP

The remaining members of SAC will continue through January 2012.

- Georges Dubé
 Fasken Martineau DuMoulin LLP
- Glen R. Johnson Torys LLP
- Tracey Kernahan Ogilvy Renault LLP
- Jeff Davis
 Ontario Teachers' Pension Plan
- Rob Lando
 Osler, Hoskin & Harcourt LLP (New York)

The Commission was very impressed with the number of highly qualified practitioners who applied for positions on SAC. Unfortunately, there were far more applicants than there were positions available and selection from among the group was very difficult. The Commission would like to thank everyone who applied, for their interest in serving on SAC.

The Commission is pleased to publish the names of those individuals who will be participating on SAC for the next two/three years.

The new members who will join in January 2011 for a three-year term are:

- Grant McGlaughlin Goodmans LLP
- Tina M. Woodside Gowling Lafleur Henderson LLP
- Robert Wortzman Wildeboer Dellelce LLP
- Heather Zordel
 Cassels Brock & Blackwell LLP

The new members who will join in January 2011 for a two-year term are:

| Robert N. Black | Davis LLP |
|-------------------------------------|-----------|
|-------------------------------------|-----------|

- C. Steven Cohen
 Burnet, Duckworth & Palmer LLP
- Peter Hong Davies Ward Phillips & Vineberg LLP
- James McVicar Heenan Blaikie LLP

The Commission will publish a notice in Fall 2011 inviting applications for the next group of new SAC members, who will commence their terms in February 2012.

Reference: Krista Martin Gorelle Acting General Counsel Tel: (416) 593-3689 Fax: (416) 593-3681 kgorelle@osc.gov.on.ca

December 17, 2010

1.1.4 Alpha ATS LP – Notice of Completion of Staff Review of Proposed Changes

ALPHA ATS LP NOTICE OF COMPLETION OF STAFF REVIEW OF PROPOSED CHANGES SELF TRADE MANAGEMENT

Alpha ATS LP has announced its plans to implement changes to its Form 21-101F2 to offer the Self Trade Management feature (proposed changes). A notice describing the proposed changes was published in accordance with OSC Staff Notice 21-703 - *Transparency of the Operations of Stock Exchanges and Alternative Trading Systems* on July 30, 2010 in the OSC Bulletin. Pursuant to OSC Staff Notice 21-703, market participants were also invited by OSC staff to provide feedback on the proposed changes. Three comment letters were received. A summary of the comments and responses prepared by Alpha ATS LP may be found in Chapter 13 of this Bulletin.

OSC staff have completed their review of the proposed changes and have no further comment. Alpha ATS LP is expected to publish a notice indicating the intended implementation date of the proposed changes.

1.1.5 OSC Staff Notice 52-719 – Going Concern Disclosure Review

OSC Staff Notice 52-719 – *Going Concern Disclosure Review* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

OSC STAFF NOTICE 52-719 Going Concern Disclosure Review

Introduction

Staff of the Ontario Securities Commission conducted a review to assess the timeliness and adequacy of disclosures in financial statements and management's discussion and analysis related to the going concern assumption. The purpose of this Notice is to summarize our findings and to provide guidance to issuers on going concern disclosures to assist them in improving the disclosures and in providing robust information to investors. Smaller issuers and start-up operations often face more going concern uncertainties, and may therefore find this Notice of particular interest.

The going concern assumption is a fundamental principle in the preparation of financial statements. Under the going concern assumption it is presumed that an issuer will continue in operation and that there will be no need to liquidate or cease operating. Going concern disclosures are important to investors as they provide warnings about significant risks that the issuer is facing and may help investors avoid or minimize negative consequences when making investment decisions. It is important that the assessment issuers make with respect to the going concern assumption is rigorous and that the corresponding disclosure provides a balanced and transparent view of material uncertainties that may cast significant doubt on the issuer's ability to continue as a going concern.

Importance of going concern disclosure to investors

Going concern disclosures are important to investors as they provide warnings about significant risks that the issuer is facing and may help investors avoid or minimize negative consequences when making investment decisions. Each of an issuer's management, audit committee and auditors has a part to play in ensuring that investors are provided with timely and accurate information related to going concern risks.

Canadian Generally Accepted Accounting Principles (CGAAP)

require management to assess the issuer's ability to continue as a going concern. If management's assessment identifies material uncertainties related to events or conditions that may cast significant doubt upon the entity's ability to continue as a going concern (for ease of reference, we will refer to these uncertainties in this Notice as a going concern risk), the financial statements should disclose such risk. Disclosure in the management's discussion and analysis (MD&A) should complement and expand upon the financial statement disclosure to provide a complete discussion of the uncertainties and the effect that they have on the issuers' operations, liquidity and capital.

Overall, we found that there is need for improvement in both the timeliness and robustness of the going concern disclosures, particularly in the MD&A. As a result of our review, certain issuers were required to make prospective improvements in their disclosure, and in some cases were required to file material change reports. Disclosure of going concern risks will continue to be an area of focus in our continuous disclosure and prospectus reviews, and issuers should be aware that we will require refilings of documents where appropriate.

Management's responsibility

The assessment of an issuer's ability to continue as a going concern is the responsibility of its management. Management should satisfy themselves that it is reasonable for them to conclude that it is appropriate to prepare the financial statements on a going concern basis. If a material going concern risk exists, management should ensure that adequate disclosures are included in the issuer's continuous disclosure filings so that these filings fairly present the issuers financial condition, results of operations and cash flows.

Audit committee's responsibility

The audit committee of an issuer must review the issuer's financial statements, MD&A and earnings press releases before the information is publicly disclosed. An audit committee should ensure that management has made an appropriate assessment of the issuer's ability to continue as a going concern and has made the necessary disclosures in its continuous disclosure filings. An audit committee must also be satisfied that adequate procedures are in place for the review of the issuer's other financial information disclosure.

Findings

We reviewed a total of 105 issuers. These issuers comprised the following three main groups:

- 1. issuers with indications of financial difficulty that had no going concern disclosure (28);
- 2. issuers with indications of financial difficulty that had some going concern disclosure (48); and
- 3. issuers that had recently ceased operations (29).

1. Issuers with indications of financial difficulty that had no going concern disclosure

For the group of 28 issuers that had indicators suggesting financial difficulty where no going concern risk was disclosed, our review focused on the appropriateness of management's assessment to determine if a going concern risk should have been disclosed. Overall we were satisfied with management's assessment. The issuers reviewed provided sufficient evidence supporting management's belief that there were no material uncertainties creating a going concern risk. Generally, management's assessment of the issuer's ability to continue as a going concern included consideration of unusual or one-time charges, forecasts, and improvements in operations or changes in circumstances. A follow up review of these issuers found that all continue to operate, with only one issuer now disclosing a going concern risk in its financial statements.

Evidence supporting management's assessment

If events or conditions have been identified that may cast significant doubt on the entity's ability to continue as a going concern (such as the incidence of serious financial difficulty), sufficient appropriate evidence is required to demonstrate that a material uncertainty does not exist so that additional disclosures are not required. The following are two examples of situations where additional going concern disclosure was not required.

Examples:

Non-recurring charges

An issuer incurred a significant net loss in its most recent financial year. The issuer cited an unusual event – foreign currency restrictions in one of the primary markets in which the issuer operates – as the primary cause of the loss. The government restrictions had since been lifted and were not expected to recur in the foreseeable future. Absent such restrictions, the issuer was expected to return to profitability. This supported management's assessment that disclosure of a going concern risk was not necessary.

Amended financing arrangements and improvement in operations

An issuer had a significant working capital deficiency as a result of a violation of certain debt covenants. Subsequent to the year end, the issuer entered into an amended financing agreement with amended terms such that the risk of covenant violation was substantially reduced. In addition, the issuer obtained a new customer contract, and a revised forecast incorporating this new contract showed significant improvement in the issuer's results. This supported management's assessment that disclosure of a going concern risk was not necessary.

2. Issuers with going concern disclosure

For the group of 48 issuers with indications of financial difficulty where there was some going concern disclosure, we focused our review on assessing the quality and sufficiency of the going concern disclosure in both the financial statements and MD&A.

Financial statement going concern disclosure

CGAAP requires financial statements to disclose the material uncertainties related to events or conditions identified by management's assessment that may cast significant doubt upon an issuer's ability to continue as a going concern. In assessing whether the going concern assumption is appropriate, management should take into account all available information about the future, which is at least, but is not limited to, twelve months from the balance sheet date¹.

Overall, we found that issuers disclosed material uncertainties in the notes to their financial statements. However, 41% did not explicitly state that the disclosed uncertainties may cast significant doubt upon the entity's ability to continue as a going concern. This omission is significant because, absent such linking disclosure, the going concern risk is not highlighted for readers to assess the likelihood and impact of the uncertainties disclosed on the issuers' financial condition. During our review, we often found it difficult, based on the entity's public disclosures alone, to differentiate uncertainties that cast significant

Auditors' responsibility

We remind auditors of their responsibilities under Canadian generally accepted auditing standards to obtain sufficient appropriate audit evidence about the appropriateness of management's use of the going concern assumption in the preparation and presentation of the financial statements and to conclude whether there is a material uncertainty about the entity's ability to continue as a going concern. We also remind auditors that if a material uncertainty exists, they are responsible for determining whether the financial statements adequately disclose and describe the going concern risk, and, therefore, that the issuer may be unable to realize its assets and discharge its liabilities in the normal course of business. Beginning for audits of financial statements for periods ending on or after December 14, 2010, an auditor's report is required to include a paragraph that highlights the existence of the material going concern risk even when adequate disclosure is made in the financial statements.

doubt on an entity's ability to continue as a going concern from uncertainties that do not cast such doubt, and had to request additional information from the issuer for clarification. Investors do not have the ability to request this additional information and rely on the public disclosure record to make investment decisions. That is why clear robust disclosure is important. In order for the going concern disclosures to be useful to investors, the going concern disclosures should explicitly identify that the disclosed uncertainties may cast significant doubt upon the entity's ability to continue as a going concern.

Impact of transition to IFRS

The disclosure requirements for going concern under CGAAP are fully converged with the requirements in paragraph 25 of International Accounting Standards 1 *Presentation of Financial Statements* (IAS 1). The IFRS Interpretations Committee (the Committee) recently considered the need for further guidance on the going concern disclosure requirements in IAS 1. While the Committee decided not to add the issue to its agenda as they believe IAS 1 provides sufficient guidance, the Committee indicated that for the going concern disclosure required by IAS 1 to be useful, that disclosure must also identify that the uncertainties may cast significant doubt upon the entity's ability to continue as a going concern.

Below is an example of a financial statement disclosure that does not explicitly link the disclosed uncertainties to the fact that they may cast significant doubt upon the entity's ability to continue as a going concern:

At year-end the Company had cash of \$1,000,000 and a working capital deficiency of \$2,000,000. The Company's ability to continue operations and fund its expenditures is dependent on management's ability to secure additional financing. Management is actively pursuing such additional sources of financing, and while it has been successful in doing so in the past, there can be no assurance it will be able to do so in the future.

¹ See CICA Handbook Section 1400 *General Standards of Financial Statement Presentation*, paragraphs 1400.08A and 1400.08B.

The example below provides the link between the uncertainties and going concern that would be meaningful to investors:

The financial statements were prepared on a going concern basis. The going concern basis assumes that the Company will continue in operation for the foreseeable future and will be able to realize its assets and discharge its liabilities and commitments in the normal course of business.

The Company has incurred significant operating losses and negative cash flows from operations in recent years, and has a working capital deficiency. Whether and when the Company can attain profitability and positive cash flows is uncertain. These uncertainties cast significant doubt upon the Company's ability to continue as a going concern.

The Company will need to raise capital in order to fund its operations. This need may be adversely impacted by: a lack of normally available financing, the ongoing lawsuit, an accelerating loss of customers, and falling sales per customer. To address its financing requirements, the Company will seek financing through joint venture agreements, debt and equity financings, asset sales, and rights offerings to existing shareholders. The outcome of these matters cannot be predicted at this time.

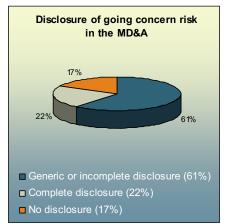
MD&A going concern disclosure

MD&A should clearly communicate, through the eyes of management, an issuer's financial condition and future prospects. Various disclosure requirements for MD&A are applicable to an issuer with a going concern risk².

Generally, we found that issuers' discussion in MD&A related to their going concern risk needed improvement. 17% of the MD&A reviewed contained no discussion of going concern risk, and 61% of the going concern disclosures that were included were generic or incomplete.

Most commonly, we noted deficiencies in the following areas of disclosure:

- the risks and uncertainties resulting from the doubt that an issuer would be able to continue as a going concern;
- the impact of the going concern risk on the issuer's financial condition; and



• the impact of the going concern risk on the issuer's liquidity requirements, including mitigating factors and plans.

A complete MD&A discussion of going concern risk should address:

- the financial position (as shown on the balance sheet) and other factors that may affect the issuer's liquidity, capital resources and solvency;
- trends or expected fluctuations in liquidity, taking into account demands, commitments, events or uncertainties;

² See Form 51-102F1 – *MD*&A, Part 1(a), sections 1.2, 1.4(g), 1.6, and 1.7.

- risks or uncertainties that management reasonably believes will materially affect the issuer's future performance, including the possibility of discontinuance of operations;
- mitigating factors, and management's evaluation of the impact of such factors on the issuer's going concern risk; and
- management's plans to mitigate the events and uncertainties, and management's evaluation of the effectiveness and likelihood of successful implementation of these plans.

Below is an example of an incomplete MD&A disclosure.

The Company is focusing on developing its technology and building its business. The Company has started to generate sales but has incurred significant losses to date. The Company's ability to continue is dependent on its ability to obtain sufficient funding to sustain operations, promote its products and achieve profitable operations.

Below is an example of a more robust MD&A discussion that addresses an issuer's going concern risk.

The Company has financed its operations through debt and equity issuances. During the period, sales funded 60% of operating costs (40% in the prior period).

The Company has a working capital deficiency of \$9,000,000 and an accumulated deficit of \$40,000,000. After adjusting working capital for the current related party debt of \$10,000,000, the Company expects it will have sufficient liquidity to finance its operations for no more than twelve months. The working capital deficiency limits the Company's ability to fund capital expenditures and operations. The Company is in breach of the minimum working capital and earnings covenants of its credit agreement, which resulted in the lender having the right to demand full repayment.

As a result there is significant doubt about the Company's ability to continue as a going concern. The continuation of the Company as a going concern is dependent on completing a short-term financing to make a \$1,000,000 payment to the Company's lender, raising sufficient working capital to maintain operations, reducing operating expenses, and increasing revenues. Subsequent to the year end, the Company has engaged a financial advisor to assist in seeking short-term financing to maintain operations and to work towards a long-term financial restructuring. The Company has also initiated an internal restructuring to sell redundant assets and reduce operating expenses. These plans are expected to be completed within nine months, and are expected to generate sufficient liquidity to finance operations until the launch of the Company's New Product. While management believes that the likelihood of completing these plans is high given the economic recovery and the rebound of the industry, a new financing has not yet been completed and there is no assurance that it will be. Without this financing the Company may be forced to cease operations.

3. Issuers that had recently ceased operations

For the 29 issuers that had ceased operations (i.e., filed for bankruptcy, entered receivership, became dormant) we reviewed the disclosure filed before they ceased operations to assess whether the financial statements and MD&A adequately disclosed their going concern risk. A significant number of these issuers did not draw attention to their going concern risk in the disclosure leading up to their ceasing operations. In some cases, the disclosure was boilerplate and did not clearly communicate the severity of the risk; in others, the disclosure was absent.

The following is a summary of the findings from a review of the continuous disclosure filings made by these issuers in

Timely disclosure of material change

Securities legislation generally requires a reporting issuer to issue and file a news release and a material change report on a timely basis where a material change occurs in the affairs of the reporting issuer. Sufficient disclosure must be provided to enable a reader to appreciate the significance and impact of the material change. Issuers are reminded to consider whether the occurrence of a going concern risk constitutes a material change. the period immediately before they ceased operations:

- 28% had no financial statement disclosure related to their going concern risk. An additional 20% had incomplete disclosure and did not explain that there was significant doubt about the issuer's ability to continue as a going concern.
- 21% had no MD&A discussion related to their going concern risk. An additional 52% provided incomplete or generic disclosure.

Given that CGAAP requires management to take into account all available information about the future, which is at least, but not limited to, twelve months from the balance sheet date, in assessing whether the going concern assumption is appropriate, it is important for issuers to consider all available information and assess the need for going concern disclosure on a timely basis. In addition to the financial statements and MD&A requirements, issuers should assess whether they have met their timely disclosure obligation under securities law, including the disclosure of a material fact and the reporting of a material change. We may require refiling of documents or may take additional actions in situations where issuers have not met their disclosure requirements or reporting obligations.

Going Concerns and Prospectus Offerings: Additional Concerns

Further attention to an issuer's going concern risk is necessary when the issuer undertakes to distribute securities under a prospectus.

Subsection 61(2)(c) of the *Securities Act* (Ontario) prohibits the Director from issuing a receipt for a prospectus if it appears that the proceeds from the prospectus offering, along with the issuer's other resources, will be insufficient to accomplish the purpose of the issue stated in its prospectus. A principal purpose of this provision is to protect the integrity of the capital markets, which would be harmed if an issuer ceased operations on account of insufficient funds shortly after completing a public securities offering.

The proceeds raised under a prospectus may be insufficient if they are raised:

- for a specific purpose but do not address the issuer's short-term liquidity requirements,
- through a best efforts offering without a minimum subscription, or a minimum subscription that does not appear to be sufficient to satisfy the issuer's short-term liquidity requirements, or
- through a shelf prospectus offering that can be drawn down in small increments that may not be sufficient to satisfy the issuer's short-term liquidity requirements.

A prospectus should clearly disclose an issuer's going concern risk to allow its readers to make an informed investment decision. The Director may not issue a receipt for a prospectus if it appears that the prospectus inadequately discloses an issuer's going concern risk. Additional requirements aimed at the disclosure of going concern risk may be found in both NI 41-101 *General Prospectus Requirements* and NI 44-101 *Short Form Prospectus Distributions*.

Section 21.1 of Form 41-101F1 *Information Required in a Prospectus* and section 17.1 of 44-101F1 *Short Form Prospectus* require disclosure of risk factors relating to an issuer and its business, such as cash flow and liquidity problems. The accompanying instructions require the risks to be disclosed in order of seriousness. An issuer with a going concern risk should disclose this risk in the prospectus. This disclosure should explain the uncertainties that may create a going concern risk and how the issuer is addressing it.

In many circumstances an issuer with a going concern risk should also include the disclosure required by section 8.7 of Form 41-101F1 for junior issuers. This section requires disclosure of:

- the period of time the proceeds raised under the prospectus are expected to fund operations,
- the estimated total operating costs necessary for the issuer to achieve its stated business objectives during that period of time, and
- the estimated amount of other material capital expenditures during that period of time.

Similarly, section 4.3 of Companion Policy 41-101CP and section 4.4 of Companion Policy 44-101CP

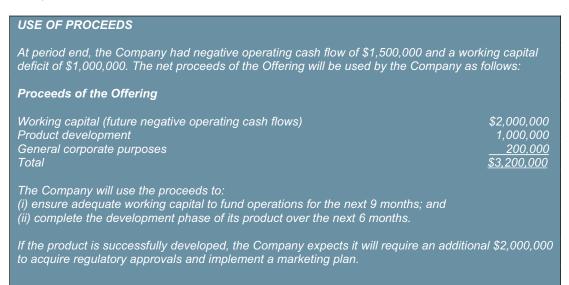
Material fact disclosure requirements

In addition to considering whether the occurrence of a going concern risk constitutes a material change, reporting issuers are reminded to also consider whether the presence of a going concern risk constitutes a material fact. If this is the case, to the extent that the issuer wishes to make a prospectus offering prior to general disclosure of this information, the issuer will be required to disclose the information in the prospectus in order to be able to certify that the prospectus contains full, true and plain disclosure of all material facts. Issuers should also note that persons in a "special relationship" with the reporting issuer with knowledge of a material fact will generally be prohibited from trading in securities of the issuer prior to disclosure of this information.

explain that an issuer with negative operating cash flow in its most recently completed financial year for which financial statements have been included in the prospectus should:

- prominently disclose that fact in the use of proceeds section of the prospectus,
- disclose whether, and if so, to what extent, it will use the proceeds of the distribution to fund any anticipated negative operating cash flow in future periods, and
- disclose negative operating cash flow as a risk factor.

Below is an example of a Use of Proceeds disclosure that adequately addresses the two above disclosure requirements.



Future Action

Our reviews identified areas where going concern disclosures need improvement. While the economic environment for issuers has begun to improve, many issuers still face a going concern risk and will need to provide clear disclosure about this risk. We will continue to focus on going concern risk disclosure as part of our continuous disclosure and prospectus reviews, and require issuers to enhance their disclosure prospectively or to refile their continuous disclosure documents, depending on the severity of the deficiency.

Questions

Questions may be referred to:

Lisa Enright Manager, Corporate Finance E-mail: <u>lenright@osc.gov.on.ca</u> Phone : 416-593-3686

Charlmane Wong Senior Accountant, Corporate Finance E-mail : <u>cwong@osc.gov.on.ca</u> Phone : 416-593-8151

1.1.6 Alpha ATS LP – Notice of Completion of Staff Review of Proposed Changes

ALPHA ATS LP

NOTICE OF COMPLETION OF STAFF REVIEW OF PROPOSED CHANGES

On July 16, 2010, Alpha ATS LP announced proposed changes to its Form 21-101F2 that would result in the implementation of its proposed IntraSpread facility – a set of new order types that would allow its subscribers to seek order matches within their firm without pre-trade transparency, while providing for guaranteed price improvement for active orders.

A notice describing the proposed IntraSpread facility was published for comment on July 16, 2010¹ in accordance with OSC Staff Notice 21-703 – *Transparency of the Operations of Stock Exchanges and Alternative Trading Systems*. Thirteen comment letters were received. A summary of the comments and a response prepared by Alpha ATS LP may be found in Chapter 13 of this Bulletin.

OSC staff have completed their review of the proposed changes.

OSC staff acknowledge that there is current precedent for a marketplace to offer internalize-only order types or features, that are similar to the order types and features contemplated in the proposed IntraSpread facility.² We note that the first time that these order types or features were formally offered or proposed to be offered by a marketplace following the introduction of NI 21-101 was in 2005. Since that time, the Canadian market has evolved dramatically, giving rise to new issues and concerns and providing for greater perspective. As the market has evolved, so have staff's views on various matters, including internalize-only order types and features.

In addition, the process under which an ATS now publishes for comment certain proposed operational changes has only recently been implemented. This process did not exist at the time that any other ATS proposed to offer internalize-only order types or features. In connection with our review of the proposed IntraSpread facility, which included consideration of the public comments received, we have had an opportunity to reconsider our position on these order types and features in the context of the fair access requirements set out in NI 21-101.³

It is our view that a marketplace that offers order types that allow for an order to be systematically restricted from interacting with the orders of other participants is operating in a manner that is inconsistent with the fair access requirements set out in NI 21-101.

Consequently, we have discussed our views with Alpha ATS LP and they do not intend to implement the IntraSpread facility as was proposed. Alpha ATS LP has amended its proposal and the proposal is being published for comment at the same time as this notice. We have also spoken with the marketplace currently offering a similar internalize-only order type, with the objective of facilitating the discontinuance of the use of this order type by February 1, 2011. The marketplace will issue a notice with further details on this matter.

Questions may be addressed to:

Kent Bailey Ontario Securities Commission (416) 595-8945 kbailey@osc.gov.on.ca

Jonathan Sylvestre Ontario Securities Commission (416) 593-2378 jsylvestre@osc.gov.on.ca

Tracey Stern Ontario Securities Commission (416) 593-8167 <u>tstern@osc.gov.on.ca</u>

¹ Published at (2010) 33 OSCB 6629.

An internalize-only order type or feature offered by a marketplace allows a marketplace participant to enter orders on that marketplace which will only execute against orders from the same marketplace participant – i.e., the interaction of the orders is restricted to same-firm order flow.

³ Paragraphs 5.1(b) and 6.13(b) of NI 21-101 (together, the fair access provisions) establish access requirements for both recognized exchanges and quotation and trade reporting systems (QTRSs), and alternative trading systems (ATSs). The fair access provisions state that exchanges, QTRSs, and ATSs: "shall not unreasonably prohibit, condition, or limit access by a person or company to services offered by it."

1.1.7 Notice of Commission Approval of List of Exchanges

NOTICE OF COMMISSION APPROVAL OF AN AMENDED LIST OF EXCHANGES, LEAD REGULATORS AND EXEMPTING REGULATORS IN RELATION TO THE MEMORANDUM OF UNDERSTANDING RESPECTING THE OVERSIGHT OF EXCHANGES AND QUOTATION AND TRADE REPORTING SYSTEMS

The Memorandum of Understanding respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems (MOU) sets out the responsibilities of a lead regulator when conducting its oversight of an exchange or quotation and trade reporting system (QTRS) and the rights of an exempting regulator. The List of Exchanges, Lead Regulators and Exempting Regulators in relation to the Memorandum of Understanding respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems (List of Exchanges) identifies each lead and exempting regulator for every exchange subject to the MOU. It is intended that the List of Exchanges be amended to reflect any changes concerning the status of recognition or exemption of exchanges and QTRSs and subsequently published by all regulators subject to the MOU.

The Autorité des marchés financiers has exempted ICE Futures Canada Inc. from recognition as an exchange and therefore has been added as an exempting regulator of ICE Futures Canada Inc. to the List of Exchanges. The amended List of Exchanges dated as of January 1, 2011 has been approved by the Commission. The amended List of Exchanges is found at Appendix A of this Notice and a marked version indicating the amendments is found at Appendix B.

December 17, 2010

Appendix A

List of Exchanges, Lead Regulators and Exempting Regulators in relation to the Memorandum of Understanding respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems As of January 1, 2011

| Exchange – QTRS | Lead Regulator(s) | Exempting Regulator(s) |
|---------------------------|---|--|
| Bourse de Montréal Inc. | Autorité des marchés financiers | Ontario Securities Commission |
| CNSX Markets Inc. | Ontario Securities Commission | Alberta Securities Commission Autorité des marchés financiers British Columbia Securities Commission Manitoba Securities Commission |
| ICE Futures Canada Inc. | Manitoba Securities Commission | Autorité des marchés financiers |
| Natural Gas Exchange Inc. | Alberta Securities Commission | Autorité des marchés financiers Manitoba Securities Commission Ontario Securities Commission |
| TSX Inc. | Ontario Securities Commission | Alberta Securities Commission Autorité des marchés financiers British Columbia Securities Commission |
| TSX Venture Exchange Inc. | Alberta Securities Commission British Columbia Securities Commission | Autorité des marchés financiers Manitoba Securities Commission Ontario Securities Commission |

Appendix B

List of Exchanges, Lead Regulators and Exempting Regulators in relation to the Memorandum of Understanding respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems As of January 1, 20102011

| Exchange – QTRS | Lead Regulator(s) | Exempting Regulator(s) |
|---------------------------|---|--|
| Bourse de Montréal Inc. | Autorité des marchés financiers | Ontario Securities Commission |
| CNSX Markets Inc. | Ontario Securities Commission | Alberta Securities Commission Autorité des marchés financiers British Columbia Securities Commission Manitoba Securities Commission |
| ICE Futures Canada Inc. | Manitoba Securities Commission | <u>Autorité des marchés financiers</u> |
| Natural Gas Exchange Inc. | Alberta Securities Commission | Autorité des marchés financiers Manitoba Securities Commission Ontario Securities Commission |
| TSX Inc. | Ontario Securities Commission | Alberta Securities Commission Autorité des marchés financiers British Columbia Securities Commission |
| TSX Venture Exchange Inc. | Alberta Securities Commission British Columbia Securities Commission | Autorité des marchés financiers Manitoba Securities Commission Ontario Securities Commission |

1.1.8 Notice of Ministerial Approval of Exchange of Letters with the China Insurance Regulatory Commission

On December 10, 2010, the Minister of Finance approved, pursuant to section 143.10 of the *Securities Act* (Ontario), the Exchange of Letters between the OSC and other provincial securities regulators, and the China Insurance Regulatory Commission (Exchange of Letters). The Exchange of Letters is intended to facilitate regulatory cooperation in connection with the overseas investment operations of Chinese insurance firms that involve registered Canadian firms and recognized markets.

The Exchange of Letters came into effect in Ontario on December 10, 2010. The Exchange of Letters signed by certain members of the Canadian Securities Administrators was published in the Bulletin on November 12, 2010. (See (2010) 33 OSCB 10355.)

December 17, 2010

1.2 Notices of Hearing

1.2.1 Shaun Gerard McErlean and Securus Capital Inc.

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

AND

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

AMENDED NOTICE OF HEARING

TAKE NOTICE that the Ontario Securities Commission will hold a hearing pursuant to section 127 and section 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), at the offices of the Commission located at 20 Queen Street West, Toronto, 17th Floor Hearing Room on January 24, 2011 at 10:00 a.m. or so soon thereafter as the hearing can be held to consider:

- (i) whether, in the opinion of the Commission, it is in the public interest, pursuant to ss. 127(1) and 127.1 of the Act to order that:
 - trading in any securities by Shaun Gerard McErlean ("McErlean") and Securus Capital Inc. ("Securus") (collectively the "Respondents") or trading in any securities of Securus cease permanently or for such period as is specified by the Commission;
 - (b) the acquisition of any securities by the Respondents is prohibited permanently or for such period as is specified by the Commission;
 - (c) any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such other period as is specified by the Commission;
 - (d) each Respondent disgorge to the Commission any amounts obtained as a result of non-compliance by that respondent with Ontario securities law;
 - (e) the Respondents be reprimanded;
 - (f) McErlean resign one or more positions that he holds as a director or officer of any issuer, registrant, and investment fund manager;
 - (g) McErlean be prohibited from becoming or acting as a director or officer of any issuer, registrant, and investment fund manager;
 - (h) the Respondents be prohibited from becoming or acting as a registrant, as an investment fund manager, and as a promoter;
 - (i) the Respondents each pay an administrative penalty of not more than \$1 million for each failure by that respondent to comply with Ontario securities law;
 - (j) the Respondents be ordered to pay the costs of the Commission investigation and the hearing; and
- (ii) whether to make such further orders as the Commission considers appropriate.

BY REASON OF the allegations set out in the Statement of Allegations of Staff of the Commission dated December 8, 2010 and such additional allegations as counsel may advise and the Commission may permit;

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

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

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

DATED at Toronto, this 8th day of December, 2010. "John Stevenson" Secretary to the Commission

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

AND

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

STATEMENT OF ALLEGATIONS OF STAFF OF THE ONTARIO SECURITIES COMMISSION

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

I. OVERVIEW

1. On January 22, 2009, the Respondent, Shaun Gerard McErlean ("McErlean") had his registration as a salesperson terminated. Between January 22, 2009, and August 12, 2010, without disclosing the termination of his registration, McErlean solicited over \$14 million from eight offshore investors and at least three Ontario investors through a sole proprietorship, Aquiesce Investments ("Aquiesce"), and a company, Securus Capital Inc. ("Securus"), that he incorporated. McErlean fraudulently represented to these investors that their funds would be used to enable him to trade securities and earn high returns without placing their funds at risk. In fact, he fraudulently used approximately \$8.7 of the funds for his own personal purposes including paying personal expenses, investing in companies in which he or his relatives had a personal interest, and repaying previous investors as well as using a portion of the funds to engage in discretionary equities trading.

II. THE RESPONDENTS

2. McErlean is an individual who resides in Newmarket, Ontario.

3. Securus is a company incorporated pursuant to the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 as amended (the "OBCA"). McErlean incorporated Securus on December 22, 2009. He is the sole director and directing mind of Securus. It has never been a registrant or a reporting issuer in Ontario.

III. ALLEGATIONS

- 4. Staff allege that McErlean and Securus (collectively "the Respondents"):
 - between January 22, 2009 and August 12, 2010, the Respondents engaged in or participated in an act, practice or course of conduct relating to securities that the Respondents knew, or reasonably ought to have known, perpetrated a fraud on any person or company, contrary to section 126.1(b) of the Securities Act, R.S.O. 1990, c. S.5, as amended (the "Act");
 - (b) between January 22, 2009 and September 28, 2009, McErlean traded securities without being registered to trade securities and without an exemption from the dealer registration requirement, contrary to section 25(1)(a) of the Act;
 - (c) between September 29, 2009 and August 12, 2010, without an exemption from the dealer registration requirement, the Respondents engaged in or held themselves out to be engaged in the business of trading securities without being registered in accordance with Ontario securities law, contrary to section 25(1) of the Act;
 - (d) between January 22, 2009 and September 28, 2009, McErlean acted as an adviser without registration and without an exemption from the adviser registration requirement, contrary to section 25(1)(c) of the Act;
 - (e) between September 29, 2009 and August 12, 2010, the Respondents, without an exemption from the adviser registration requirement, engaged in the business of, or held themselves out as engaging in the business of, advising with respect to investing in, buying or selling securities without being registered in accordance with Ontario securities law, contrary to section 25(3) of the Act; and
 - (f) between January 22, 2009 and August 12, 2010, the Respondents traded securities which was a distribution of securities without having filed a preliminary prospectus or a prospectus with the Director or having an exemption from the prospectus requirement, contrary to section 53(1).

5. Staff allege that McErlean, as a director of Securus, authorized, permitted or acquiesced in the conduct of Securus contrary to Ontario securities law.

IV. PARTICULARS OF ALLEGATIONS

(a) Background

6. McErlean was registered under the Act as a salesperson in the categories of investment dealer and futures commission merchant on October 8, 2004. His registration was sponsored by CIBC World Markets ("CIBC"). On January 16, 2009, McErlean's registration was suspended. On January 22, 2010, he resigned and his registration was terminated. During the term of his registration, he engaged in financial dealings with clients which were not disclosed to CIBC. He also deleted a client's online access to his account and created false documents.

(b) Aquiesce Investments

7. On December 19, 2008, McErlean registered the name of Aquiesce Investments ("Aquiesce") pursuant to the provisions of the *Business Names Registration Act*, R.S.O. 1990, c. B.17, as amended. Aquiesce was never a separate legal entity.

8. Between January 22, 2009 and September 11, 2009, McErlean was involved in efforts to raise funds for Aquiesce for investment. On behalf of Aquiesce, he sought to enter into, and did enter into, trade agreements with investors. These agreements provided that investors would advance funds that would be available to Aquiesce by way of a reserve of funds upon which Aquiesce would obtain a line of credit which would be invested in high yield investments. The agreements provided that Aquiesce would earn substantial profits which would be remitted directly into investors' accounts and that the invested funds would not be at risk. McErlean did not use the funds as provided for in the agreements.

9. In December 2008, McErlean opened a bank account with TD Bank in the name of Aquiesce. Over \$4 million was obtained pursuant to agreements with two offshore investors and at least three Ontario investors which was deposited into the Aquiesce account with TD Bank. On January 30, 2009, McErlean opened a trading account in the name of Aquiesce with TD Waterhouse. McErlean fraudulently represented to these investors that their funds would be used to enable him to trade securities and earn high returns without placing their funds at risk. In fact, he fraudulently used approximately \$2.1 million of the funds for his own personal purposes including paying personal expenses and repaying previous investors as well as using a portion of the funds to engage in discretionary equities trading.

(c) Securus

10. On December 22, 2009, McErlean incorporated Securus under the provisions of the OBCA. On or about the same date, on behalf of Securus, he opened a bank account with the Royal Bank of Canada ("RBC"). Between December 2009 and August 12, 2010, six offshore clients advanced a cumulative amount of over \$10 million into the Securus account with RBC. These funds were advanced pursuant to agreements that provided that investors would advance funds that would be available by way of a reserve of funds upon which McErlean would engage in trading. Pursuant to the terms of these agreements, the profits earned from trading would be remitted monthly to the investors and the invested funds would not be at risk. The clients were told that they would be provided with account statements confirming the invested funds remained in their individual accounts. Investors were provided with false RBC account statements which purported to show that their invested funds remained in their RBC accounts.

11. McErlean did not use the funds deposited into the Securus account to trade securities and the funds advanced to Securus did not remain in its account with RBC. Instead, McErlean used approximately \$6.6 million of the funds for his own personal purposes, to provide capital to private companies in which he or his relatives have a financial interest, and to repay previous clients including an individual who was an investor in Aquiesce and an individual who had been a client while he was employed with CIBC and with whom he had financial dealings which was not disclosed to CIBC.

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

12. By engaging in an act, practice or course of conduct relating to securities which they knew, or reasonably ought to have known, perpetrated a fraud upon investors, the Respondents acted contrary to Ontario securities law and contrary to the public interest.

13. By engaging in registrable conduct without being registered as dealers or advisers and without exemptions from the dealer registration requirement and adviser registration requirement, the Respondents acted contrary to Ontario securities law and contrary to the public interest.

14. By trading securities which was a distribution of securities without a preliminary prospectus or prospectus having been filed with the Director and without an exemption from the prospectus requirement, the Respondents acted contrary to Ontario securities law and contrary to the public interest.

15. Staff may make additional allegations as the Commission may permit.

Dated at the City of Toronto, this "8th" day of December, 2010.

1.2.2 David M. O'Brien – ss. 37, 127, 127.1

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

AND

IN THE MATTER OF DAVID M. O'BRIEN

NOTICE OF HEARING (Sections 37, 127 and 127.1)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 37, 127, and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on December 20th, 2010 at 10:30 a.m., or as soon thereafter as the hearing can be held, to consider:

- (i) whether, in the opinion of the Commission, it is in the public interest, pursuant to subsections 127(1), (4), (5), (6) and (7) of the Act, to issue a temporary order that:
 - (a) David O'Brien ("O'Brien") shall cease trading in any securities for a prescribed period or until the conclusion of the hearing on the merits in this matter;
 - (b) O'Brien is prohibited from acquiring securities for a prescribed period or until the conclusion of the hearing on the merits in this matter; and
 - (c) Any exemptions contained in Ontario securities law do not apply to O'Brien for a prescribed period or until the conclusion of the hearing on the merits in this matter.
- (ii) whether, in the opinion of the Commission, it is in the public interest, pursuant to sections 127 and 127.1 of the Act to order that:
 - (a) trading in any securities by O'Brien cease permanently or for such period as is specified by the Commission;
 - (b) the acquisition of any securities by O'Brien is prohibited permanently or for such other period as is specified by the Commission;
 - (c) any exemptions contained in Ontario securities law do not apply to O'Brien permanently or for such period as is specified by the Commission;
 - (d) O'Brien disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law;
 - (e) O'Brien be reprimanded;
 - (f) O'Brien resign one or more positions that he holds as a director or officer of any issuer, registrant, or investment fund manager;
 - (g) O'Brien be prohibited from becoming or acting as a director or officer of any issuer, registrant, and investment fund manager;
 - (h) O'Brien be prohibited from becoming or acting as a registrant, as an investment fund manager and as a promoter;
 - (i) O'Brien pay an administrative penalty of not more than \$1 million for each failure by O'Brien to comply with Ontario securities law; and,
 - (j) O'Brien be ordered to pay the costs of the Commission investigation and the hearing.

- (iii) whether, in the opinion of the Commission, an order should be made pursuant to section 37 of the Act that O'Brien cease permanently to telephone from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities; and
- (iv) whether to make such further orders as the Commission considers appropriate.

BY REASON OF the allegations as set out in the Statement of Allegations of Staff of the Commission dated December 7, 2010 and such further additional allegations and evidence as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 8th day of December, 2010.

"John Stevenson" Secretary to the Commission

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

AND

IN THE MATTER OF DAVID M. O'BRIEN

STATEMENT OF ALLEGATIONS OF STAFF OF THE ONTARIO SECURITIES COMMISSION

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

I. OVERVIEW

- This proceeding involves alleged fraudulent acts in furtherance of a trade by David M. O'Brien ("O'Brien"). Furthermore, Staff allege that O'Brien was trading in securities or holding himself out as engaging in the business of trading in securities without being registered to do so.
- 2. Staff allege that O'Brien's course of conduct regarding the trading of securities occurred during the time period between and including July 1, 2009 and December 17, 2009 (the "Material Time").

II. THE RESPONDENT

3. O'Brien is a resident of Ontario.

III. BACKGROUND

- 4. Platinum International Investments Inc. ("Platinum") is an Ontario corporation that was incorporated on June 12, 2007 with a registered address of 4325 Steeles Avenue West, Suite 215, Toronto, Ontario.
- 5. Peter Robinson ("Robinson") is listed as the sole Director of Platinum.
- 6. David M. O'Brien Professional Legal Corporation ("DOPLC") is a Canadian corporation registered under the *Canada Business Corporations Act.* O'Brien is the sole registered director of DOPLC.
- 7. This matter is related to proceedings, initiated by Staff, against Robinson and Platinum.

IV. TRADING IN SECURITIES BY O'BRIEN, PLATINUM, AND ROBINSON

- 8. Staff allege that O'Brien traded in securities during the Material Time.
- 9. Throughout the Material Time, O'Brien was not registered in any capacity with the Commission.
- 10. Residents of the United Kingdom (the "U.K. Residents") received unsolicited phone calls from representatives of Platinum, including O'Brien, and were told that Platinum could sell securities held by the U.K. Residents on behalf of the U.K. Residents.
- 11. The representatives of Platinum, including O'Brien, told the U.K. Residents that they would be able to obtain significant amounts of money for the U.K. Residents when Platinum arranged for the sale of the securities in question.
- 12. The U.K. Residents were then told that they would have to pay "performance bonds" and "non-resident taxes" to Platinum before Platinum could complete the sale of the securities.
- 13. The U.K. Residents were given instructions to send their funds for the "performance bonds" and the "non-resident taxes" to a bank account held in the name of Platinum and located in Toronto at the Royal Bank of Canada (the "Platinum RBC Accounts").
- 14. The U.K. Residents sent their "performance bond" and "non-resident tax" funds via wire transfer to the Platinum RBC Accounts.

- 15. The U.K. Residents were subsequently approached and advised they would have to pay further fees so that the transactions could proceed. When the U.K. Residents refused to send further funds to the Platinum RBC Accounts they stopped receiving communications from representatives of Platinum.
- 16. None of the transactions for which the U.K. Residents wired funds to the Platinum RBC Accounts have been completed. At least one of the U.K. Residents has been unable to contact Platinum since the Material Time.
- 17. Platinum also had a bank account at TD Canada Trust (the "Platinum TD Account").
- 18. During the Material Time, approximately \$118,667 was paid directly to DOPLC from the Platinum RBC Accounts and the Platinum TD Account.
- 19. O'Brien participated in acts, solicitations, conduct, or negotiations directly or indirectly in furtherance of the sale or disposition of securities for valuable consideration, in circumstances where there were no exemptions available to O'Brien under Act.

V. FRAUDULENT CONDUCT

- 20. During the Material Time, O'Brien and other employees, representatives or agents of Platinum provided information to the U.K. Residents that was false, inaccurate and misleading, including, but not limited to, the following:
 - (a) that Platinum could sell securities held by the U.K. Residents for significant premiums over the current market value of the securities;
 - (b) that Platinum had received funds from the purported purchasers of the securities held by the U.K. Residents and that these funds were being held under "escrow conditions";
 - (c) that within seven business days of the U.K. Residents providing a "performance bond" they would receive all of the funds for the sale of their securities;
 - (d) that certain U.K. Residents were offered a five percent discount on a "non-resident tax" because the U.K. Residents were over sixty-five years old; and
 - (e) one of the U.K. Residents was provided with an address that did not correspond with Platinum's registered address and was, in fact, a United Parcel Service store; and
 - (f) telephone numbers provided to the U.K. Residents were registered as cellular phones from addresses in the State of Florida, United States.
- 21. The false, inaccurate and misleading representations were made with the purported intention of effecting trades in the securities belonging to the U.K. Residents.
- 22. Once funds were wire transferred from the U.K. Residents to the Platinum RBC Accounts the funds were almost immediately withdrawn as cash or cheques. Approximately 82% of the funds received from the U.K. Residents were paid to DOPLC.
- 23. O'Brien and other employees, representatives or agents of Platinum engaged in a course of conduct relating to securities that they knew or reasonably ought to have known would result in a fraud on persons.

VI. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND CONTRARY TO THE PUBLIC INTEREST

- 24. The specific allegations advanced by Staff are:
 - (a) During the Material Time, O'Brien engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to section 126.1(b) of the Act and contrary to the public interest; and
 - (b) During the Material Time, O'Brien traded in securities or held himself out as engaging in the business of trading in securities without being registered to trade in securities, contrary to section 25(1) of the Act and contrary to the public interest.
- 25. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto, this 7th day of December, 2010.

1.2.3 Helen Kuszper and Paul Kuszper – ss. 127, 127.1

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

AND

IN THE MATTER OF HELEN KUSZPER AND PAUL KUSZPER

NOTICE OF HEARING (Sections 127 and 127.1)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the Ontario Securities Act, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission located at 20 Queen Street West, Toronto, 17th Floor, on January 27, 2011 at 2:30 p.m., or as soon thereafter as the hearing can be held,

AND TAKE NOTICE that the purpose of the hearing is to consider whether it is in the public interest for the Commission to make an order, pursuant to sections 127 and 127.1 of the Act, that:

- a) trading in any securities by the respondents cease permanently, or for such period as is specified by the Commission, pursuant to clause 2 of section 127(1);
- b) the acquisition of any securities by the respondents is prohibited permanently, or for such period as is specified by the Commission, pursuant to clause 2.1 of section 127(1);
- c) any exemptions contained in Ontario securities law do not apply to the respondents permanently, or for such period as is specified by the Commission, pursuant to clause 3 of section 127(1);
- d) the respondents be reprimanded, pursuant to clause 6 of section 127(1);
- e) the respondents resign one or more positions that he holds as a director or officer of any issuer, pursuant to clause 7 of section 127(1);
- f) the respondents be prohibited permanently from becoming or acting as a director or officer of an issuer, or for such period as is specified by the Commission, pursuant to clause 8 of section 127(1);
- g) the respondents be prohibited permanently from becoming or acting as a director or officer of a registrant, or for such period as is specified by the Commission, pursuant to clause 8.2 of section 127(1);
- h) the respondents be prohibited permanently from becoming or acting as a director or officer of a investment fund manager, or for such period as is specified by the Commission pursuant to clause 8.4 of section 127(1);
- i) the respondents be prohibited permanently from becoming a registrant, investment fund manager or promoter, or for such period as is specified by the Commission, pursuant to clause 8.5 of section 127(1);
- j) the respondents pay an administrative penalty of not more than \$1 million for each failure to comply with Ontario securities law, pursuant to clause 9 of section 127(1);
- k) the respondents disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to clause 10 of section 127(1);
- I) the respondents pay the costs of the investigation and any hearing, pursuant to section 127.1; and
- m) such other orders as the Commission may deem appropriate;

BY REASON OF the allegations as set out in the Statement of Allegations of Staff of the Commission dated December 13, 2010 and such additional allegations as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 13th day of December, 2010.

"John Stevenson " Secretary to the Commission

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

AND

IN THE MATTER OF HELEN KUSZPER AND PAUL KUSZPER

STATEMENT OF ALLEGATIONS OF STAFF OF THE ONTARIO SECURITIES COMMISSION

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

1. OVERVIEW

- 1. This is a case of insider trading and tipping by a mother and her son. Between April 29 and May 7, 2008, Helen and Paul Kuszper traded with knowledge that Kingsway Financial Services Inc. ("Kingsway") would report a material net loss for its Q1 2008 financial results before the information was publicly disclosed.
- 2. Helen acquired the information in her capacity as a Senior Accountant within Kingsway's Investment Reporting Group and had tipped the information to her son.
- 3. Commencing on April 29 and until the material loss was publicly disclosed (May 7), the Kuszpers traded strategically and deceptively in Kingsway puts and calls with knowledge that Kingsway's share price would decline. To profit during this period, the Kuszpers purchased hundreds of Kingsway put options and also sold Kingsway call options short. To avoid loss in respect of their existing Kingsway investments, the Kuszpers also divested their accounts of Kingsway call options and also covered open Kingsway put options which had been previously sold short.
- 4. The Kuszpers often discussed their illegal trading in code.
- 5. Helen and Paul Kuszper collectively realized over \$300,000 in profits after Kingsway publicly announced the material loss. Through their loss avoidance transactions, the Kuszpers had also managed to avert considerable loss.

II. BACKGROUND

(a) Kingsway Financial Services Inc.

- 6. Kingsway Financial Services Inc. ("Kingsway") is a reporting issuer in Ontario with shares listed on the Toronto Stock Exchange and the New York Stock Exchange under the trading symbol "KFS".
- 7. Kingsway is a property and casualty insurance company which specializes in providing non-standard automobile and trucking insurance throughout North America.

(b) The Respondents

- 8. Helen Kuszper ("Helen") is a resident of Mississauga, Ontario. At the material time, Helen was employed as a Senior Accountant in the Investment Reporting Group of Kingsway.
- 9. Paul Kuszper ("Paul") is also a resident of Mississauga, Ontario and is Helen's son. During the material period, Paul was employed as an Accountant in St. John's, Antigua.

THE UNDISCLOSED MATERIAL INFORMATION

10. The material information in this case relates to the negative financial results for Kingsway's first quarter ended March 31, 2008 ("Q1 2008").

(a) The Press Release (May 7, 2008)

11. On May 7, 2008 (after the close of trading), Kingsway reported a net loss of \$34.4 million for its Q1 2008 financial results. In Kingsway's press release (the "Press Release"), the company stated that the results were "unacceptable" and were primarily attributable to a \$52.8 million reserve increase at its American subsidiary, Lincoln General (the "Lincoln Reserve Increase").

(b) Draft Quarterly Financial Statements (April 29, 2008)

12. The material loss for Q1 2008 first came to be reflected in Kingsway's draft quarterly financial statements on April 29, 2008. On this day, the draft financials were revised to incorporate the Lincoln Reserve Increase which caused Kingsway's income to dramatically decline and reflect a net loss of \$26.4 million.¹

THE INSIDER TRADING AND TIPPING

(a) The Insider Trading and Tipping

- 13. On April 29, 2008 (the same day Kingsway's draft Q1 2008 financial statements were revised to reflect the \$26.4 million loss), the Kuszpers began to trade with the benefit of Kingsway's undisclosed material loss.
- 14. Helen had become aware of the information in her capacity as a Senior Accountant in Kingsway's Investment Reporting Group. Among other things, her duties required her to review Kingsway's Q1 2008 financials prior to their public release and reconcile these against quarterly investment reporting schedules which she had prepared. A comparison of Kingsway's Q1 2008 financials and Helen's Q1 2008 schedules confirm that Helen reconciled her schedules, prior to the Press Release, against Kingsway financials which had incorporated the Lincoln Reserve Increase and reflected a material loss.
- 15. With knowledge that Kingsway's loss would cause the share price to decline, the Kuszpers engaged in strategic trading in Kingsway puts² and calls³ designed to maximize profit and avoid loss. To profit:
 - (a) Purchased Kingsway Puts: the Kuszpers purchased hundreds of Kingsway put contracts prior to the issuance of the Press Release. Helen began to purchase these puts on April 29. She purchased them first through her son's account (she later denied having made these trades, as set out below). She continued to accumulate put contracts on almost every trading day from April 29 until the Press Release was issued, in small increments, and on an alternating basis through Paul and her own trading accounts. By May 7, the Kuszpers had acquired over 980 Kingsway put contracts at considerable cost (\$31,574), all with a short expiration date of May 16.

| Date | Helen Kuszper | Paul Kuszper |
|----------------|---------------------|---------------------|
| April 29, 2008 | | Bought 10 KFS Puts |
| April 29, 2008 | | Bought 100 KFS Puts |
| April 30, 2008 | | Bought 100 KFS Puts |
| April 30, 2008 | | Bought 100 KFS Puts |
| April 30, 2008 | Bought 100 KFS Puts | |
| May 1, 2008 | | Bought 100 KFS Puts |
| May 1, 2008 | Bought 100 KFS Puts | |
| May 2, 2008 | Bought 28 KFS Puts | |
| May 2, 2008 | Bought 100 KFS Puts | |
| May 2, 2008 | | Bought 50 KFS Puts |
| May 5, 2008 | Bought 100 KFS Puts | |
| May 7, 2008 | Bought 50 KFS Puts | |
| May 7, 2008 | Bought 50 KFS Puts | |
| Total = | 528 Puts | 460 Puts |

¹ On May 1, Kingsway's draft financials were further revised to reflect a larger net loss of \$34.4 million, which was ultimately reported in the Press Release, as noted above.

Put: An option contract giving the owner the right, but not the obligation, to sell a specified amount of an underlying asset at a set price within a specified time. The buyer of a put option estimates that the underlying asset will drop below the exercise price before the expiration date.

³ *Call*: An option contract giving the owner the right, but not the obligation, to buy a specified amount of an underlying security at a specified price within a specified time. The buyer of a call option estimates that the underlying asset will increase above the exercise price before the expiration date.

(b) Sold Calls Short: On May 1, Paul also sold short4 50 Kingsway call options.

| Date Helen Kuszper | | Paul Kuszper | |
|--------------------|--|-------------------|--|
| May 1, 2008 | | Sold 50 KFS Calls | |

- 16. Further, to avoid future loss on their existing Kingsway holdings:
 - (a) **Sold Existing Calls:** Helen divested her account of 75 Kingsway call options on April 29. She had been holding these calls since February and sold them at a loss.

| Date | Helen Kuszper | Paul Kuszper | |
|----------------|-------------------|--------------|--|
| April 29, 2008 | Sold 75 KFS Calls | | |

(b) **Closed Existing Open Puts:** On May 1, Paul also closed 57 open Kingsway put options which he had sold short in February.

| Date | Helen Kuszper | Paul Kuszper |
|-------------|---------------|--------------------|
| May 1, 2008 | | Bought 30 KFS Puts |
| May 1, 2008 | | Bought 27 KFS Puts |

- 17. The Kuszpers were in regular contact during the above trading period and would often discuss the insider trading in code language. For example:
 - (a) on April 30, 2008, while accumulating Kingsway put contracts prior to the issuance of the Press Release, Helen e-mailed Paul and stated: "still watching the potatos [sic], just like tinky wait and watch and then pounce." To which Paul responded: "good metaphor... just don't go too wild!" Staff allege that the term "potatos" was a metaphor for "Kingsway options". Helen was indicating to her son that she was continuing to monitor the Kingsway options market, waiting for further opportunities to purchase Kingsway options; and
 - (b) on May 1, six days prior to the issuance of the Press Release, Helen sent an urgent e-mail to Paul instructing him to "sell to open 50 jun 12 call for barabola a 2.40". To which Paul responded: "i sold at 2.45". To which Helen replied: "that will net us 10 g's". Staff allege that the term "barabola" was code for "Kingsway". Helen was instructing Paul on May 1 to sell as an opening transaction (that is, short) 50 Kingsway calls expiring in June with a strike price of \$12 at a price of \$2.40. As noted below, Paul did sell 50 Kingsway calls short on May 1 at \$2.45, as he indicated in his reply to his mother, and covered the position on May 12, resulting in a net profit of \$11,292.

(b) Profit and Loss Avoided

- 18. After the Press Release was issued (May 7, after the close of trading) and the material loss was publicly disclosed, Kingsway's share price fell dramatically. The stock price closed the next trading day (May 8) at \$9.97, which represented a one day decline of 30% from the closing price of \$14.26 the day before.
- 19. The Kuszpers proceeded to immediately sell their Kingsway puts for considerable profit:

| Date | Helen Kuszper | Paul Kuspzer | Proceeds |
|-------------|-------------------|-------------------|-------------|
| May 8, 2008 | | Sold 150 KFS Puts | \$44,852.51 |
| May 8, 2008 | | Sold 140 KFS Puts | \$55,815.01 |
| May 8, 2008 | | Sold 10 KFS Puts | \$3,987.50 |
| May 8, 2008 | Sold 150 KFS Puts | | \$60,557.53 |
| May 8, 2008 | Sold 150 KFS Puts | | \$59,057.52 |
| May 9, 2008 | | Sold 100 KFS Puts | \$29,365.01 |
| May 9, 2008 | | Sold 60 KFS Puts | \$18,815.01 |

⁴ Short Selling: The selling of a security that the seller does not own, or any sale that is completed by the delivery of a security borrowed by the seller. Short sellers assume that they will be able to buy the security at a lower amount than the price at which they sold short.

| Date | Helen Kuszper | Paul Kuspzer | Proceeds |
|-------------|-------------------|--------------|--------------|
| May 9, 2008 | Sold 128 KFS Puts | | \$29,870.64 |
| May 9, 2008 | Sold 100 KFS Puts | | \$39,734.41 |
| | · | TOTAL = | \$342,055.14 |

20 Paul also later purchased Kingsway calls in order to cover his earlier open short position in these options and profited more than \$11,000 from this trade:

| Date | Transaction | Total | |
|--------------|-------------------------------|------------------------|--|
| May 1, 2008 | Sold 50 KFS Calls - Opening | \$12,115.00 (Proceeds) | |
| May 12, 2008 | Bought 50 KFS Calls - Closing | \$822.49 (Cost) | |
| TOTAL = | | \$11,292.51 | |

- 21. The Kuszpers remained in regular contact during this period and would continue to discuss their trading in code. For example:
 - (a) on May 8, the day after the Press Release had been issued and while selling the Kingsway puts which they had purchased earlier, Paul e-mailed his mother asking: "Whats [sic] going on JERK!" To which Helen responded: "NOTHIng since we last spoke, just watching barabola wondering when to pounce next, what about you". Paul: "so 16gs tomorrow?\$\$\$\$\$\$ in my chequing?" Helen: "3 days to settle. So early next week" Paul: "How many potatoes for meeeee?" Helen: "15 or 16" Paul: "huhhh... thats [sic] just from today... more potatoes to come?" Helen: "fuffalo, talk to you tonight". Staff allege that the term "barabola" was once again being used as a code word for "Kingsway" and that Helen was monitoring the Kingsway option market waiting for further opportunities to now sell previously purchased Kingsway puts. Staff further allege that the term "potatoes" now meant "money" and that Helen was being requested by Paul to transfer trading proceeds to his chequing account. The next morning, trading profits were transferred to Paul's chequing account in the amount of \$35,000.
- 22. The total profit realized by the Kuszpers from their trading (after accounting for commissions) is at least \$321,772. Of this amount, Helen Kuszper realized \$173,080 and Paul Kuszper realized profits of \$148,692. As noted above, the Kuszpers also avoided considerable loss through their loss avoidance transactions.

V. FALSE AND MISLEADING STATEMENTS TO STAFF

- 23. During separate compelled examinations, Helen and Paul Kuszper each misled Staff by denying that Helen had access to Paul's trading account and that she had executed the Kingsway put option trades on his behalf.
- 24. Internet and trading records indicate that all put option trading originated from a computer located at Kingsway's head office in Mississauga, Ontario and at a time when Paul was living abroad in Antigua.
- 25. Only after being confronted with evidence to the contrary did Paul admit to Staff that he had instructed his mother to execute the put option trades in his account on his behalf.

VI. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

- 26. Pursuant to subsection 76(6) of the Act, the Kuszpers' trading in puts and calls constitutes trading in securities of Kingsway.
- 27. Throughout the relevant trading period, each of Helen and Paul were in a special relationship with Kingsway. Helen was an employee of Kingsway and was, accordingly, a person deemed to be in a special relationship with Kingsway within the meaning of subsection 76(5)(c) of the Act. Paul had learned material information with respect to Kingsway from his mother who he knew to be an employee of Kingsway and was, accordingly, also deemed to be in a special relationship with the issuer pursuant to subsection 76(5)(e).
- 28. Staff allege that by purchasing and selling securities of Kingsway with knowledge of Kingsway's undisclosed material loss, Helen and Paul contravened subsection 76(1) of the Act and acted contrary to the public interest.
- 29. Staff further allege that by informing Paul of the material non-public information regarding Kingsway, Helen contravened subsection 76(2) of the Act and acted contrary to the public interest.

- 30. Staff further allege that both Helen and Paul Kuszper made misleading and untrue statements to Staff contrary to subsection 122(1) of the Act and the public interest.
- 31. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED AT TORONTO this 13th day of December, 2010.

1.2.4 Shallow Oil & Gas Inc. et al. - ss. 37, 127

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

AND

IN THE MATTER OF SHALLOW OIL & GAS INC., ERIC O'BRIEN, ABEL DA SILVA, GURDIP SINGH GAHUNIA also known as MICHAEL GAHUNIA, ABRAHAM HERBERT GROSSMAN also known as ALLEN GROSSMAN, MARCO DIADAMO, GORD McQUARRIE, KEVIN WASH, and WILLIAM MANKOFSKY

NOTICE OF HEARING (Sections 37 and 127)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 37 and 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), at the offices of the Commission located at 20 Queen Street West, Toronto, 17th Floor, on December 16, 2010 at 1:30 p.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve a settlement agreement entered into between Staff of the Commission and Gurdip Singh Gahunia also known as Michael Gahunia;

BY REASON OF the allegations set out in the Statement of Allegations of Staff of the Commission dated June 10th, 2008 and such additional allegations as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 14th day of December, 2010.

"John Stevenson" Secretary to the Commission 1.3 News Releases

1.3.1 OSC Review Shows Issuers Must Improve Disclosure of Going Concern Risks

> FOR IMMEDIATE RELEASE December 14, 2010

OSC REVIEW SHOWS ISSUERS MUST IMPROVE DISCLOSURE OF GOING CONCERN RISKS

TORONTO – The OSC today published Staff Notice 52-719 *Going Concern Disclosure Review*, which provides results of a review on the adequacy and timeliness of disclosure to investors of an issuer's ability to continue business operations in the face of significant risks.

OSC Staff reviewed going concern disclosure within regulatory filings of 105 reporting issuers, most of which were junior issuers. The review is a result of the OSC's response to developments in the markets in 2008-09. Among the issuers reviewed for going concern disclosure, 76 were operating with an elevated risk of financial difficulty, while 29 issuers had recently ceased operations.

Of the operating issuers, the OSC found:

- In their notes to financial statements, operating issuers disclosed material uncertainties. However, 41 per cent did not state these uncertainties may cast significant doubt upon their ability to continue as a going concern;
- In their management's discussion and analysis (MD&A), 17 per cent of operating issuers did not discuss going concern risk. Another 61 per cent provided generic or incomplete disclosure;

Of the issuers which had recently ceased operations, the OSC found:

- In financial statements, 28 per cent had not disclosed any going concern risk, while another 20 per cent had provided incomplete disclosure;
- Within the MD&A, 21 per cent had not discussed going concern risk, while another 52 per cent provided incomplete disclosure.

"Issuers must provide transparency of the uncertainties which may affect their ability to continue as a going concern," said Leslie Byberg, Director, Corporate Finance at the OSC. "By providing timely and robust disclosure on going concern matters such as operations, liquidity and capital, issuers can help investors make decisions that potentially avoid or minimize negative consequences."

The OSC notice provides additional guidance and examples to help issuers improve going concern disclosure in future filings. The OSC will continue to monitor continuous disclosure and prospectus filings for disclosure of going concern risks. If disclosure is deficient, issuers should expect requests for prospective enhancements or requests for refilings. The notice is available on the OSC Website.

For media Inquiries:

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

Theresa Ebden Senior Communications Specialist 416-593-8307

Dylan Rae Media Relations Specialist 416-595-8934 1.4 Notices from the Office of the Secretary

1.4.1 Mega-C Power Corporation 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 MEGA-C POWER CORPORATION, RENE PARDO, GARY USLING, LEWIS TAYLOR SR., LEWIS TAYLOR JR., JARED TAYLOR, COLIN TAYLOR AND 1248136 ONTARIO LIMITED

TORONTO – Following the hearing held on November 25, 2010, the Commission issued an Endorsement in the above named matter.

A copy of the Endorsement dated November 30, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY JOHN P. STEVENSON SECRETARY

For media inquiries:

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

Dylan Rae Media Relations Specialist 416-595-8934

Theresa Ebden Senior Communications Specialist 416-593-8307

For investor inquiries:

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

FOR IMMEDIATE RELEASE December 9, 2010

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

AND

IN THE MATTER OF ROBERT JOSEPH VANIER (a.k.a. CARL JOSEPH GAGNON)

TORONTO – On August 9, 2010 the Commission had issued an Order approving the Settlement Agreement reached between Staff of the Commission and the Respondent, Robert Joseph Vanier in the above named matter.

On August 9, 2010 the Commission had also issued an Order which provided that the requirement to post the Settlement Agreement dated August 5, 2010 between Staff of the Ontario Securities Commission and Robert Joseph Vanier be delayed for a period of four (4) months from the date of the Order.

A copy of the Settlement Agreement dated August 5, 2010 is now available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY JOHN P. STEVENSON SECRETARY

For media inquiries:

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

Dylan Rae Media Relations Specialist 416-595-8934

Theresa Ebden Senior Communications Specialist 416-593-8307

For investor inquiries:

OSC Contact Centre 416-593-8314 1-877-785-1555 (Toll Free) 1.4.3 Shaun Gerard McErlean and Securus Capital Inc.

FOR IMMEDIATE RELEASE December 9, 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 AND SECURUS CAPITAL INC.

TORONTO – The Office of the Secretary issued an Amended Notice of Hearing on December 8, 2010 setting the matter down to be heard on January 24, 2011 at 10:00 a.m. or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Amended Notice of Hearing dated December 8, 2010 and Statement of Allegations of Staff of the Ontario Securities Commission dated December 8, 2010 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY JOHN P. STEVENSON SECRETARY

For media inquiries:

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

Dylan Rae Media Relations Specialist 416-595-8934

Theresa Ebden Senior Communications Specialist 416-593-8307

For investor inquiries:

1.4.4 David M. O'Brien

FOR IMMEDIATE RELEASE December 13, 2010

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

AND

IN THE MATTER OF DAVID M. O'BRIEN

TORONTO – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on December 20, 2010 at 10:30 a.m. or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated December 8, 2010 and Statement of Allegations of Staff of the Ontario Securities Commission dated December 7, 2010 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY JOHN P. STEVENSON SECRETARY For media inquiries:

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

Dylan Rae Media Relations Specialist 416-595-8934

Theresa Ebden Senior Communications Specialist 416-593-8307

For investor inquiries:

OSC Contact Centre 416-593-8314 1-877-785-1555 (Toll Free) 1.4.5 Helen Kuszper and Paul Kuszper

FOR IMMEDIATE RELEASE December 14, 2010

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

AND

IN THE MATTER OF HELEN KUSZPER AND PAUL KUSZPER

TORONTO – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on January 27, 2011 at 2:30 p.m. or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated December 13, 2010 and Statement of Allegations of Staff of the Ontario Securities Commission dated December 13, 2010 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY JOHN P. STEVENSON SECRETARY

For media inquiries:

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

Dylan Rae Media Relations Specialist 416-595-8934

Theresa Ebden Senior Communications Specialist 416-593-8307

For investor inquiries:

1.4.6 Paladin Capital Markets Inc. et al.

FOR IMMEDIATE RELEASE December 14, 2010

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

AND

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

TORONTO – The Commission issued an Order in the above named matter which provides that pursuant to subsections 127(7) and 127(8) of the Act, that the Temporary Order is extended until the close of business on January 14, 2011 with respect to Maya only; and that the hearing is adjourned to January 14, 2011 at 11:00 a.m.

A copy of the Order dated December 13, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY JOHN P. STEVENSON SECRETARY

For media inquiries:

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

Dylan Rae Media Relations Specialist 416-595-8934

Theresa Ebden Senior Communications Specialist 416-593-8307

For investor inquiries:

OSC Contact Centre 416-593-8314 1-877-785-1555 (Toll Free) 1.4.7 Shallow Oil & Gas Inc. et al.

FOR IMMEDIATE RELEASE December 14, 2010

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

AND

IN THE MATTER OF SHALLOW OIL & GAS INC., ERIC O'BRIEN, ABEL DA SILVA, GURDIP SINGH GAHUNIA also known as MICHAEL GAHUNIA, ABRAHAM HERBERT GROSSMAN also known as ALLEN GROSSMAN, MARCO DIADAMO, GORD McQUARRIE, KEVIN WASH, and WILLIAM MANKOFSKY

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Gurdip Singh Gahunia a.k.a. Michael Gahunia in the above named matter. The hearing will be held on December 16, 2010 at 1:30 p.m. in Hearing Room C on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated December 14, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY JOHN P. STEVENSON SECRETARY

For media inquiries:

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

Dylan Rae Media Relations Specialist 416-595-8934

Theresa Ebden Senior Communications Specialist 416-593-8307

For investor inquiries:

1.4.8 Sunil Tulsiani et al.

FOR IMMEDIATE RELEASE December 15, 2010

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

AND

IN THE MATTER OF SUNIL TULSIANI, TULSIANI INVESTMENTS INC., PRIVATE INVESTMENT CLUB INC., and GULFLAND HOLDINGS LLC

TORONTO – The Commission issued an Order in the above named matter which provides that that the hearing on the merits is scheduled to commence on May 24, 2011 at 10:00 a.m. and to continue on May 25, 26, 27, and 30, 2011, or such further or other dates as to be agreed to by the parties and fixed by the Office of the Secretary.

A copy of the Order dated December 14, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY JOHN P. STEVENSON SECRETARY

For media inquiries:

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

Dylan Rae Media Relations Specialist 416-595-8934

Theresa Ebden Senior Communications Specialist 416-593-8307

For investor inquiries:

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Theratechnologies Inc.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions - National Instrument 52-107, s. 9.1 Acceptable Accounting Principles, Auditing Standards and Reporting Currency - A reporting issuer wants to early adopt IFRS for purposes of preparing its financial statements - The issuer has assessed the readiness of its staff, board, audit committee, auditors and investors; the issuer will provide detailed disclosure regarding its early adoption of IFRS as set out in CSA Staff Notice 52-320 in a news release or in restated and re-filed MD&A for its most recent interim period to be disseminated or re-filed within seven days of the decision; the issuer will restate and re-file any financial statements prepared in accordance with Canadian GAAP for interim periods for the fiscal year in which they intend to adopt IFRS together with related interim MD&A and certificates required by NI 52-109.

Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency, s. 9.1.

[Translation]

December 1, 2010

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

AND

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

AND

IN THE MATTER OF THERATECHNOLOGIES INC. (the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement in section 3.1 of Regulation 52-107 respecting Acceptable Accounting Principles, Auditing Standards and Reporting Currency (Regulation 52-107) that financial statements be prepared in accordance with Canadian generally accepted accounting principles (Canadian GAAP) (the Exemption Sought) in order that the Filer may prepare financial statements for periods beginning on or after December 1, 2009 in accordance with in Part I of the Handbook of the Canadian Institute of Chartered Accountants, that is International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IFRS-IASB).

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

- (a) the Autorité des marchés financiers is the principal regulator for this application,
- (b) the Filer has provided notice that section 4.7(1) of Regulation 11-102 respecting Passport System (Regulation 11-102) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador (the Passport Jurisdictions), and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions* and Regulation 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 incorporated under Part IA of the *Companies Act* (Québec).
- The head office of the Filer is located at 2310, boulevard Alfred-Nobel, Montréal, Québec, H4S 2B4.

- 3. The Filer is a Canadian biopharmaceutical company that discovers and develops innovative therapeutic products, with an emphasis on peptides, for commercialization.
- 4. The Filer is a reporting issuer in the Jurisdictions and each of the Passport Jurisdictions.
- 5. The Filer is not in default of its reporting issuer obligations under the Legislation or the securities legislation of the Passport Jurisdictions.
- 6. The Filer's authorized share capital currently consists of an unlimited number of common shares, without par value, and an unlimited number of preferred shares, without par value, issuable in series, of which 60,511,598 common shares and no preferred shares were outstanding as of November 3, 2010.
- 7. The Filer's shares are listed for trading on the Toronto Stock Exchange under the symbol "TH".
- 8. The Filer's financial year end is November 30 of each year.
- 9. The Filer currently prepares its financial statements in accordance with Canadian GAAP.
- 10. The Filer has not previously prepared financial statements that contain an explicit and unreserved statement of compliance with IFRS-IASB.
- 11. 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.
- 12. Regulation 52-107 sets out acceptable accounting principles for financial reporting under the legislation by domestic issuers, foreign issuers, registrants and other market participants; under Regulation 52-107, a domestic issuer must use Canadian GAAP, with the exception that a SEC registrant may use US GAAP; under Regulation 52-107, only foreign issuers may use IFRS-IASB.
- 13. In CSA Staff Notice 52-321 Early Adoption of International Financial Reporting Standards, Use of US GAAP and Reference to IFRS-IASB, staff of the Canadian Securities Administrators recognized that some issuers may wish to prepare their financial statements in accordance with IFRS-IASB for periods beginning prior to January 1, 2011 and indicated that staff were prepared to recommend exemptive relief on a case by case basis to permit a domestic issuer to do so, despite section 3.1 of Regulation 52-107.
- 14. Subject to obtaining the Exemption Sought, the Filer intends to adopt IFRS-IASB with a transition

date of December 1, 2008 and a changeover date of December 1, 2009.

- 15. The Filer believes that the adoption of IFRS-IASB will be in its best interests and will provide a greater benefit to the Filer and users of its financial information and avoid significant costs and complexity during the financial statement preparation process.
- 16. The Filer has implemented a comprehensive IFRS-IASB conversion plan, including getting its staff to attend training, examining the internal control over financial reporting and disclosure controls and procedures surrounding the adoption of IFRS-IASB, and reviewing the related working papers and skeleton IFRS-IASB financial statements for the period beginning December 1, 2009.
- 17. The board of directors of the Filer has approved early adoption of IFRS-IASB.
- 18. The Filer has evaluated, and is satisfied as to, its overall readiness to transition from Canadian GAAP to IFRS-IASB effective at the start of its financial year beginning on December 1, 2009, including the readiness of its staff, board of directors, and audit committee, to deal with the change.
- 19. The Filer has considered the implication of adopting IFRS-IASB for financial periods beginning on or after December 1, 2009 on its obligations under securities legislation and the securities legislation of the Passport Jurisdictions including, but not limited to, those relating to CEO and CFO certificates, business acquisition reports, offering documents, and previously released material forward-looking information.
- 20. The most significant financial reporting difference under IFRS-IASB to the Filer's Canadian GAAP statements is with respect to IFRS 2 *Share-based payments* (IFRS 2). This standard encourages application of IFRS 2 provisions to equity instruments granted on or before November 7, 2002, but permits the application only to equity instruments granted after November 7, 2002 that had not vested by the transition date. The Filer will apply IFRS 2 only to equity instruments granted after November 7, 2002 that had not vested by the date of transition.
- 21. The Filer's financial statements are available to users via the System for Electronic Document Analysis and Retrieval (SEDAR) website at www.sedar.com.
- 22. The Filer has communicated its intention to early adopt IFRS-IASB with its external auditors, KPMG LLP (KPMG); KPMG has significant experience with companies that have already transitioned to

IFRS-IASB or have been reporting under IFRS-IASB.

- 23. The Filer will communicate its IFRS-IASB implementation plan to investors as contemplated by CSA Staff Notice 52-320 *Disclosure of Expected Changes in Accounting Policies Relating to Changeover to International Financial Reporting Standards* by disclosing relevant information about its changeover to IFRS-IASB in a news release not more than seven days after the date of the decision approving such early adoption application, including:
 - (a) the key elements and timing of the Filer's changeover plan;
 - (b) the accounting policy and implementation decisions the Filer has made or will have to make;
 - (c) the exemptions available under IFRS 1 First-time Adoption of International Financial Reporting Standards that the Filer expects to apply in preparing financial statements in accordance with IFRS-IASB;
 - (d) major identified differences between the Filer's current accounting policies and those the Filer is required or expects to apply in preparing its financial statements in accordance with IFRS-ASB; and
 - (e) the impact of adopting IFRS-IASB on the key line items in the Filer's financial statements.

Decision

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

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

- the Filer prepares its financial statements for financial periods ending on or after December 1, 2009 in accordance with IFRS-IASB;
- provides (b) the Filer all of the communication and information as described and in the manner set out in paragraph 23 above and has also provided the information in its interim management's discussion and analysis including quantitative information regarding the impact of adopting IFRS-IASB on key line items in the Filer's interim financial statements for the thirdquarter ended August 31, 2010 and will

update the information in its annual management's discussion and analysis and annual financial statements for the year ending November 30, 2010;

- (c) the Filer's first IFRS-IASB financial statements for an interim period include an opening statement of financial position as at the date of transition to IFRS-IASB that is presented with equal prominence to the other statements that comprise those interim financial statements; and
- if the Filer files interim financial (d) statements prepared in accordance with Canadian GAAP for one or more interim periods in the year that the Filer adopts IFRS-IASB, the Filer will, at or prior to the time of filing its first IFRS-IASB financial statements, restate and refile those interim financial statements originally prepared in accordance with Canadian GAAP in accordance with IFRS-IASB together with the related restated interim management's discussion and analysis as well as the certificates required by Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filinas.

"Louis Morisset" Superintendent Securities Markets Autorité des marchés financiers

2.1.2 Red Back Mining Inc. – s. 1(10)

Headnote

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

Applicable Legislative Provisions

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

October 25, 2010

Red Back Mining Inc. c/o 25 York Street 17th Floor Toronto, ON M5J 2V5

Dear Sirs/Mesdames:

Re: Red Back Mining Inc. (the Applicant) – application for a decision under the securities legislation of the Provinces of Ontario, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (collectively, the Jurisdictions).

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

As the Applicant has represented to the Decision Makers that:

- 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 not a reporting issuer. "Jo-Anne Matear" Assistant Manager, Corporate Finance Ontario Securities Commission

2.1.3 Drive Products Income Fund and 2256479 Ontario Inc.

Headnote

NP 11-203 – MI 61-101 – take-over bid and subsequent business combination – MI 61-101 requires sending of information circular and holding of meeting in connection with second step business combination – target's declaration of trust to be amended to provide that a resolution in writing executed by unitholders holding more than 66 2/3% of the outstanding units valid as if such voting rights had been exercised at a meeting of unitholders – relief granted from requirement that information circular be sent and meeting be held – minority approval to be obtained albeit in writing rather than at a meeting of unitholders.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System. National Policy 11-203 Process for Exemptive Relief

Applications in Multiple Jurisdictions. Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions.

November 10, 2010

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

AND

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

AND

IN THE MATTER OF THE TAKE-OVER BID FOR DRIVE PRODUCTS INCOME FUND BY 2256479 ONTARIO INC. (the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer, in connection with a take-over bid (the **Offer**) for Drive Products Income Fund (the **Fund**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the following requirements of Section 4.2 of Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**) be waived (the **MI 61-101 Exemption Sought**):

(a) a Compulsory Acquisition or Subsequent Acquisition Transaction (each as defined below),

as applicable, be approved at a meeting of the holders of units and special voting units of the Fund (the **Voting Unitholders**); and

(b) an information circular be sent to the Voting Unitholders in connection with either a Compulsory Acquisition or Subsequent Acquisition Transaction, as applicable.

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

- (a) the Ontario Securities Commission (the **OSC**) is the principal regulator for this application; and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (MI 11-102) is intended to be relied upon in Quebec,

Interpretation

Terms defined in National Instrument 14-101 - Definitions and M1 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

- 1. The Filer was incorporated under the laws of the Province of Ontario on September 10, 2010 and is controlled by Gregory Edmonds, Chief Executive Officer of the Fund, and Russell Bilyk, President of Drive Products, the operating partnership (the Operating Partnership) owned by the Fund (collectively, the Insiders). The Filer has not carried on any business prior to the date hereof other than in connection with the Offer, including the entering into of lock-up agreements, the Support Agreement (defined below) and the letter of intent dated September 17, 2010 among the Fund and the Filer. The Filer is not a reporting issuer in any of the provinces or territories of Canada. The registered office of the Filer is 1665 Shawson Drive, Mississauga, Ontario L4W 1T7. The Filer is not in default of securities legislation in any jurisdiction.
- 2. All information contained herein relating to the Fund and its affiliates is based solely upon information provided by the Fund or upon the Fund's publicly available documents.
- 3. The Fund is an unincorporated, open-ended, limited purpose trust formed under the laws of the Province of Ontario pursuant to a declaration of trust (the **Declaration of Trust**) dated May 1, 2006 (as amended and restated on August 25, 2006). The Fund's head office is located at 1665 Shawson Drive, Mississauga, Ontario L4W 1T7. The Fund is a reporting issuer in all of the

provinces and territories of Canada. The Fund is authorized to issue:

- an unlimited number of trust units (Units), which are listed on the Toronto Stock Exchange (the TSX) under the trading symbol "DPI.UN" and held by CDS Clearing and Depository Services Inc. in non-certificated inventory; and
- an unlimited number of special voting units (the Special Voting Units and, together with the Units, the Voting Units). Special Voting Units may only be issued to holders of Class B LP Units (defined below) for the purpose of providing voting rights with respect to the Fund to the holders of such securities. Special Voting Units are attached to the Class B LP Units to which they relate and are not transferable separately from such Class B LP Units.
- 4. As at October 8, 2010, there were issued and outstanding 6,889,365 Units and 6,360,418 Special Voting Units. As at the date hereof, the Filer and its affiliates, together with the Insiders and Michael Edmonds, Robert Edmonds, 1257727 Alberta Ltd. (a company controlled by Russell Bilyk), Daniel Bostrom, Falynn Bostrom and Ryan Bilyk (collectively, the Excluded Parties) own or control 874,100 Units and 6,185,418 Class B LP Units representing approximately 13% of the currently outstanding Units and approximately 53% of the outstanding Units on a fully-diluted basis.
- 5. Drive Products Limited Partnership, a subsidiary of the Fund, is authorized to issue an unlimited number of Class B limited partnership units (the Class B LP Units). The Class B LP Units are indirectly exchangeable into Units on a one-forone basis and are non-transferable, except in connection with an exchange for Units. As at October 8, 2010, there were issued and outstanding 6,360,418 Class B LP Units.
- 6. The Insiders, along with Christopher Boudreau, the Chief Financial Officer of the Operating Partnership, and Bradley Fleming, a Vice-President of the Operating Partnership, own or control all of the outstanding Class B LP Units.
- 7. On October 8, 2010, the Filer and the Fund entered into a support agreement (the **Support Agreement**) pursuant to which the Filer agreed to make the Offer to purchase all of the issued and outstanding Units, other than any Units owned and/or controlled, directly or indirectly, by the Filer, its affiliates, the Insiders, and the Excluded Parties and the Fund agreed to recommend that Unitholders accept the Offer. The Support Agreement also provides that the Offer shall

remain open for acceptance for not less than 35 days following the mailing of the Circular. The Filer currently intends to take up and pay for Units deposited under the Offer on or before November 15, 2010.

- 8. The Filer's offer and take-over bid circular (the **Circular**), together with the related letter of transmittal and the related Trustees' Circular, was mailed to registered holders of Units (the **Unitholders**) and registered holders of Class B LP Units, respectively, on October 8, 2010.
- 9. Pursuant to the Circular;
 - the Filer has made an offer (the Offer), subject to certain terms and conditions as set out in the Circular, to purchase at a price of \$2.50 cash per Unit all of the Units other than any Units owned directly or indirectly by the Filer, its affiliates, the Insiders and the Excluded Parties, including all Units issued or conditionally issued before the expiry of the Offer upon the exercise, conversion or exchange of Class B LP Units. The Offer is made only for Units, and not for any Class B LP Units;
 - the Offer will be open for acceptance until 5:00 p.m. (Toronto time) on Friday, November 12, 2010, unless the Offer is extended or withdrawn;
 - iii. the Offer is conditional upon, among other things, there having been validly deposited under the Offer and not withdrawn at the expiry of the Offer (i) such number of Units which constitutes, together with the Units owned by the Filer, its affiliates, the Insiders and the Excluded Parties, at least 66 2/3% of the outstanding Voting Units and (ii) at least a majority of the Units, the votes attached to which would be included in the minority approval of a second step business combination under MI 61-101 (together, the Deposit Conditions);
 - iv. section 13.12 of the Declaration of Trust currently permits the Filer to acquire the Units held by Unitholders who do not accept the Offer (including a subsequent Unitholder who acquires such Units upon the conversion or exchange of Class B LP Units) (the Dissenting Unitholders) if, within 120 days after the date the Offer is made, the Offer is accepted by Unitholders who in aggregate hold at least 90% of the Units (on a fully-diluted basis, assuming the exchange of all Class B LP Units for Units), other than Units beneficially owned, or over which

control or direction is exercised, on the date of the Offer, by the Filer. If the Filer has taken up and paid for the Units held by such accepting Unitholders, then the Filer is entitled to (i) acquire all the Units that are held by the Dissenting Unitholders on the terms on which the Filer acquired the Units of Unitholders who accepted the Offer and (ii) require the automatic exchange of Class B LP Units to Units and acquire such Units issued as a result of such automatic exchange on the same terms as the Units acquired pursuant to (i) above ((i) and above, collectively, (ii) а Compulsory Acquisition);

- assuming the Deposit Conditions are V. met, the Filer currently intends to amend the provisions of Section 13.12 of the Declaration of Trust to provide that (i) a Compulsory Acquisition may be effected if, within 120 days after the date the Offer is made, the Offer is accepted by the holders of such number of Units which constitutes, together with the Units owned by the Filer, its affiliates, the Insiders and the Excluded Parties, at least 66 2/3% of the outstanding Voting Units, and (ii) if a Compulsory Acquisition is effected, Units held by Dissenting Unitholders will be deemed to have been transferred to the Filer immediately upon the sending of an Filer's notice (Filer's Notice) to Dissenting Unitholders (as opposed to upon the transfer by the Fund of the Units held by the Dissenting Unitholders to the Filer referred to above) and that the Dissenting Unitholders will cease to have any rights as Unitholders from and after that time, other than the right to be paid the consideration that the Filer would have paid to Dissenting Unitholders had they accepted the Offer. If the Filer elects to effect a Compulsory Acquisition, the Filer currently intends to send the Filer's Notice to Dissenting Unitholders immediately following the take-up of Units deposited under the Offer with the result that the Filer would acquire all of the Units at that time, other than any Units owned and/or controlled, directly or indirectly, by the Filer, its affiliates, the Insiders and the Excluded Parties. The Filer does not intend to send the Filer's Notice to any holders of Class B LP Units or require the automatic exchange of any Class B LP Units pursuant to a Compulsory Acquisition;
- vi. assuming the Deposit Conditions are met, if the Filer takes up and pays for Units validly deposited under the Offer

and the right of Compulsory Acquisition is not available to the Filer or the Filer chooses not to avail itself of such right, the Filer currently intends to take such action as is necessary or advisable to acquire all Units not acquired under the Offer (a Subsequent Acquisition Transaction). A Subsequent Acquisition Transaction may take the form of one or more amendments to the Declaration of Trust to provide for the redemption of all outstanding Units (other than any Units owned and/or controlled, directly or indirectly, by the Filer, its affiliates, the Insiders and the Excluded Parties) or the purchase of such Units by the Filer, in either case for a price equal to, and payable in the same form as, the consideration paid for Units taken up under the Offer. The timing and details of any Subsequent Acquisition Transaction will necessarily depend on a variety of factors, including the number of Units acquired under the Offer. The Filer does not intend to require the automatic exchange of any Class B LP Units pursuant to a Subsequent Acquisition Transaction; and

- vii. in order to effect either a Compulsory Acquisition or a Subsequent Acquisition Transaction, in accordance with the foregoing, rather than seeking the approval of the holders of Voting Units (the Voting Unitholders) at a special meeting of Voting Unitholders to be called for such purpose, the Filer intends to rely on section 12.10 of the Declaration of Trust, which specifies that a written resolution circulated to all Unitholders and executed by Unitholders holding more than 66 2/3% of the votes attached to the outstanding Units required to vote in favour thereof at a meeting of Unitholders to approve that resolution, if such resolution is a special resolution, shall be as valid and binding for all purposes of the Declaration of Trust as if such Unitholders had exercised at that time all of their voting rights in favour of such resolution at a meeting of Unitholders duly called for that purpose, which written resolution (the Written Resolution) will approve, among other things, the Compulsory Acquisition and the Subsequent Acquisition Transaction.
- 10. Notwithstanding that section 12.10 of the Declaration of Trust permits certain actions of the Fund, including the Compulsory Acquisition and the Subsequent Acquisition Transaction, to be authorized by the Written Resolution, section 4.2

of MI 61-101 requires in certain circumstances that transactions, such as the Compulsory Acquisition and the Subsequent Acquisition Transaction, be approved at a meeting of Voting Unitholders called for such purpose and, in connection therewith, that an information circular containing certain prescribed disclosure be sent to Voting Unitholders.

- 11. Immediately upon completion of the Offer, it is intended that the Units held by the Insiders and the Excluded Parties and all of the outstanding Class B LP Units will be exchanged for Class B common shares of the Filer on a tax deferred basis under section 85(1) of the Income Tax Act (Canada).
- 12. The Filer intends, if permitted by applicable laws, to cause the Fund to: (a) apply to delist the Units from the TSX as soon as practicable after completion of the Offer and any Compulsory Acquisition or Subsequent Acquisition Transaction; and (b) cease to be a reporting issuer under the securities laws of each province and territory of Canada in which it is a reporting issuer.
- 13. Neither the Filer nor the Fund is in default of any requirement under applicable securities laws in any province or territory of Canada.
- 14. It is a condition of the Offer that minority approval (as contemplated in Part 8 of MI 61-101) shall have been obtained. Minority approval (as contemplated in Part 8 of MI 61-101) will be obtained by the Written Resolution rather than at a meeting of Voting Unitholders.
- 15. The Circular contains all the disclosure required by applicable securities laws, including the takeover bid provisions and form requirements of the Legislation and the provisions of MI61-101 relating to the disclosure required to be included in an information circular distributed in respect of an insider bid and a business combination under MI 61-101.
- 16. The Circular contains the text of the Written Resolution.

Decision

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

The decision of the principal regulator under the Legislation is that the MI 61-101 Exemption Sought is granted provided that minority approval (as contemplated in Part 8 of MI 61-101) shall have been obtained by the Written Resolution. "Naizam Kanji" Deputy Director, Corporate Finance Ontario Securities Commission

2.1.4 Bank of Montreal

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from the insider reporting requirement in respect of the acquisition and disposition of the Filer's holdings in special trust securities of various trust entities – Filer is a significant shareholder and management company of various trusts entities and as such is required to file insider reports in respect of the special trust securities over which it has control or direction – any increases or reductions in the Filer's holdings of such voting securities of these trust entities has not been, and will not be, based on any material undisclosed information regarding the Filer or the applicable trust entity - relief from the insider reporting requirements granted, subject to conditions.

Applicable Legislative Provisions

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

November 9, 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 BANK OF MONTREAL (the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the Filer be exempt from the Primary Insider Reporting Requirement (as defined below) and the Supplemental Insider Reporting Requirement (as defined below) in respect of the acquisition or disposition of each of:

- the Special Trust Securities (as defined below) of BMO Capital Trust (Capital Trust) (including any Special Trust Securities of the Capital Trust that may be issued, purchased, redeemed or otherwise acquired, from time to time in the future),
- (ii) the Voting Trust Units (as defined below) of BMO Capital Trust II (Capital Trust II) (including any Voting Trust Units of the Capital Trust II that may be issued, purchased, redeemed or otherwise acquired, from time to time in the future), and
- (iii) the BSN Voting Trust Units (as defined below) of BMO Subordinated Notes Trust (BSN Trust) (including any BSN Voting Trust Units of the BSN Trust that may be issued, purchased, redeemed or otherwise acquired, from time to time in the future).

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

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

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

Interpretation

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

"Primary Insider Reporting Requirement" means relief from the requirement to file:

- i. insider reports under section 107 of the Securities Act (Ontario) and Part 3 of NI 55-104 Insider Reporting Requirements and Exemptions (NI 55-104); and
- ii. insider reports under any provisions of Canadian securities legislation substantially similar to section 107 of the Securities Act (Ontario) and Part 3 of NI 55-104.

"Supplemental Insider Reporting Requirement" means relief from the requirement to file:

- i. insider reports under Part 4 of NI 55-104;
- ii. insider reports under any provisions of Canadian securities legislation substantially similar to Part 4 of NI 55-104; and
- iii. an insider profile under National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI) (NI 55-102) in respect of Capital Trust and Capital Trust II.

Representations

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

1. The Filer is a Schedule I bank under the *Bank Act* (Canada), which constitutes its charter. The principal executive offices are located at Bank of Montreal, 100 King Street West, 1 First Canadian Place, Toronto, Ontario, Canada M5X 1A1. The Filer's head office is located at 129 Rue St. Jacques, Montreal, Québec, Canada H2Y 1L6.

The Capital Trust

- 2. The Capital Trust is a trust established under the laws of the Province of Ontario. The Capital Trust was established solely for the purpose of offering securities to the public in order to provide the Filer with a cost-effective means of raising capital for Canadian bank regulatory purposes. The Capital Trust does not and will not carry on any operating activity other than in connection with the offering of its securities to the public.
- 3. The beneficial interests of the Capital Trust are divided into units issued in one or more classes and one or more series of each such class, as determined by the trustee of the Capital Trust from time to time, including classes of units designated as Trust Capital Securities (the **BMO BOaTS**) and units designated as Special Trust Securities (collectively, the **Special Trust Securities**).
- 4. The Capital Trust has previously issued five series of BMO BOaTS (being Series A, Series B, Series C, Series D and Series E). In connection with the issuance of each series of BMO BOaTS and on October 28, 2004, the Capital Trust issued Special Trust Securities to the Filer. On June 30, 2010, the Capital Trust redeemed BMO BOaTS Series A. In order to ensure that the Capital Trust did not exceed the overcollateralization limit of 40% mandated by the Office of Superintendent of Financial Institutions Canada, the Capital Trust also redeemed \$140 million of Special Trust Securities in connection with the redemption of BMO BOaTS Series A.
- 5. The Capital Trust may from time to time offer for sale and issue to the public subsequent series of BMO BOaTS and issue additional Special Trust Securities to the Filer.
- 6. The BMO BOaTS have been distributed pursuant to prospectuses and are held by the public and the Special Trust Securities are held by the Filer. The Filer has covenanted that all of the outstanding Special Trust Securities will be owned at all times by the Filer.
- 7. The BMO BOaTS are non-voting except in limited circumstances. The Special Trust Securities entitle the Filer to vote with respect to certain matters regarding the Capital Trust.

- 8. The Special Trust Securities may only be held by the Filer and are not traded securities. Pursuant to agreements entered into by the Filer in connection with the offering of BMO BOaTS, the Filer will maintain 100% ownership of the outstanding Special Trust Securities.
- 9. Pursuant to an administrative agreement entered into between BNY Trust Company of Canada, as trustee of the Capital Trust (the **Capital Trust Trustee**) and the Filer, the Capital Trust Trustee has delegated to the Filer certain of its obligations in relation to the administration of the Capital Trust. The Filer, as administrative agent, provides advice and counsel with respect to the administration of the day-to-day operations of the Capital Trust and other matters as may be requested by the Capital Trust Trustee from time to time.
- 10. The Capital Trust has received an exemption (the Capital Trust CD Relief) from the requirements contained under the Legislation and under the legislation of other applicable jurisdictions to: (a) file interim financial statements and audited annual financial statements with the applicable securities authorities or regulators and deliver such statements to the security holders of the Capital Trust; (b) make an annual filing in lieu of filing an information circular, where applicable; (c) file an annual report and an information circular and deliver such report or information circular to the security holders of the Capital Trust resident in Quebec; and (d) prepare and file an annual information form, including management's discussion and analysis (MD&A) of the financial condition and results of operation of the Capital Trust and send such MD&A to security holders of the Capital Trust.

The Capital Trust II

- 11. The Capital Trust II is a trust established under the laws of the Province of Ontario. The Capital Trust II was established solely for the purpose of effecting the offering of \$450,000,000 principal amount of 10.221% BMO Tier 1 Notes Series A due December 31, 2107 (the **Tier 1 Notes**) and other offerings of debt securities that the Filer may offer from time to time in order to provide the Filer with a cost-effective means of raising capital for Canadian bank regulatory purposes. The Capital Trust II does not and will not carry on any operating activity other than in connection with the offering of its securities to the public.
- 12. The capital of Capital Trust II is divided into the Tier 1 Notes and voting trust units (the **Voting Trust Units**). The Tier 1 Notes are debt securities of the Capital Trust II. The Voting Trust Units are voting securities of the Capital Trust II.
- 13. The Capital Trust II may from time to time offer for sale and issue to the public additional series of debt securities and issue additional Voting Trust Units to the Filer.
- 14. The Tier 1 Notes have been distributed pursuant to a prospectus and are held by the public and all outstanding Voting Trust Units are held by the Filer. The Filer has covenanted that all of the outstanding Voting Trust Units will be owned at all times by the Filer.
- 15. The Tier 1 Notes are non-voting. The Voting Trust Units entitle the Filer to vote with respect to certain matters regarding the Capital Trust II.
- 16. The Voting Trust Units may only be held by the Filer and are not traded securities. Pursuant to agreements entered into by the Filer in connection with the offering of Tier 1 Notes, the Filer will maintain 100% ownership of the outstanding Voting Trust Units.
- 17. Pursuant to an administration agreement entered into between Montreal Trust Company of Canada, as trustee of the Capital Trust II (the **Capital Trust II Trustee**), and the Filer, the Capital Trust II Trustee has delegated to the Filer certain of its obligations in relation to the administration of the Capital Trust II. The Filer, as administrative agent, provides advice and counsel with respect to the administration of the day-to-day operations of the Capital Trust II and other matters as may be requested by the Capital Trust II Trustee from time to time.
- 18. The Capital Trust II has received an exemption (the Capital Trust II CD Relief) from the requirements contained under the Legislation and under the legislation of other applicable jurisdictions to: (a) file interim financial statements and audited annual financial statements and deliver same to the security holders of the Capital Trust II, pursuant to sections 4.1, 4.3 and 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102); (b) file interim and annual MD&A and deliver same to the security holders of the Capital Trust II pursuant to sections 5.1 and 5.6 of NI 51-102; (c) file an annual information form pursuant to section 6.1 of NI 51-102; and (d) comply with any other provisions of NI 51-102. The Capital Trust II also received an exemption from the requirements contained under the Legislation and under the legislation of other applicable jurisdictions to file interim and annual certificates pursuant to Parts 4 and 5 of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Capital Trust II Certification Relief).

The BSN Trust

- 19. The BSN Trust is a trust established under the laws of the Province of Ontario. The BSN Trust was established solely for the purpose of effecting an offering of \$800,000,000 principal amount of 5.75% trust subordinated notes due September 26, 2022 (the **BMO TSNs**) and other offerings of debt securities in order to provide the Filer with a cost-effective means of raising capital for Canadian regulatory purposes. The BSN Trust does not and will not carry on any operating activity other than in connection with the offering of its securities to the public.
- 20. The capital of the BSN Trust is divided into the BMO TSNs and voting securities of the Trust (the **BSN Voting Trust Units**).
- 21. The BSN Trust may from time to time offer for sale and issue to the public additional series of debt securities and issue additional BSN Voting Trust Units to the Filer.
- 22. The BMO TSNs have been distributed pursuant to a prospectus and are held by the public and all outstanding BSN Voting Trust Units are held by the Filer. The Filer has covenanted that all of the outstanding BSN Voting Trust Units will be owned at all times by the Filer.
- 23. The BMO TSNs are non-voting. The BSN Voting Trust Units entitle the Filer to vote with respect to certain matters regarding the BSN Trust.
- 24. The BSN Voting Trust Units may only be held by the Filer and are not traded securities. Pursuant to agreements entered into by the Filer in connection with the offering of Tier 1 Notes, the Filer will maintain 100% ownership of the outstanding BSN Voting Trust Units.
- 25. Pursuant to an administration agreement entered into between Computershare Trust Company of Canada, as trustee of the BSN Trust (the **BSN Trustee**), and the Filer, the BSN Trustee has delegated to the Filer certain of its obligations in relation to the administration of the BSN Trust. The Filer, as administrative agent, offers advice and counsel with respect to the administration of the day-to-day operations of the BSN Trust and other matters as may be requested by the BSN Trustee from time to time.
- 26. The BSN Trust has received an exemption (the BSN CD Relief) from the requirements contained in the Legislation and under the legislation of other applicable jurisdictions to: (a) file interim financial statements and audited annual financial statements and deliver same to the security holders of the BSN Trust, pursuant to Sections 4.1, 4.3 and 4.6 of NI 51-102; (b) file interim and annual MD&A of the financial conditions and results of operations and deliver same to the security holders of NI 51-102; (b) file interim and annual MD&A of the financial conditions and results of operations and deliver same to the security holders of the BSN Trust pursuant to Section 5.1 and 5.6 of NI 51-102; and (c) file an annual information form pursuant to Section 6.1 of NI 51-102. The BSN Trust also received an exemption from the requirements contained under the Legislation and the legislation of other applicable jurisdictions to file interim and annual certificates contained in Sections 2.1 and 3.1 of Multilateral Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings* (the BSN Certification Relief).
- 27. Section 107 of the *Securities Act* (Ontario) and Parts 3 and 4 of NI 55-104 impose certain reporting requirements on insiders and "reporting insiders", respectively, (including management companies that provide significant management or administrative services to a reporting issuer).
- 28. The Filer holds the Special Trust Securities of the Capital Trust, the Voting Trust Units of the Capital Trust II and the BSN Voting Trust Units of the BSN Trust and therefore, the Filer is considered a "significant shareholder" and a "reporting insider", of each of the Capital Trust, Capital Trust II and the BSN Trust within the meaning of NI 55-104.
- 29. Because the Filer, as administrative agent of each of the Capital Trust, Capital Trust II and the BSN Trust provides advice and counsel with respect to the administration of the day-to-day operations of each of the Capital Trust, Capital Trust II and the BSN Trust, and other matters as may be requested by the applicable trustee from time to time, the Filer is considered a "management company" of each of the Capital Trust, Capital Trust II and the BSN Trust within the meaning of NI 55-104.
- 30. Because the Filer is a "significant shareholder" and a "management company" of each of the Capital Trust, Capital Trust II and the BSN Trust, the insider reporting requirements require the Filer to file insider reports in respect of each of the Special Trust Securities, Voting Trust Units and the BSN Voting Trust Units over which it has control or direction.
- 31. Prior to NI 55-104 coming into effect, under the predecessor Canadian securities legislation, the Filer, by virtue of holding more than 10% of the voting securities of the Capital Trust, Capital Trust II and the BSN Trust, respectively, was required to file insider reports in respect of each of the Special Trust Securities, Voting Trust Units and the BSN Voting Trust Units.

32. Through inadvertence, the Filer has not filed any insider reports in respect of the Special Trust Securities of the Capital Trust or the Voting Trust Units of the Capital Trust II.

Decision

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

The decision of the principal regulator under the Legislation is that the Filer is exempt from the Primary Insider Reporting Requirement from and after the date of this decision in respect of the acquisition or disposition of:

- a) the Special Trust Securities of the Capital Trust (including any Special Trust Securities of the Capital Trust that may be issued, purchased, redeemed or otherwise acquired, from time to time in the future),
- b) the Voting Trust Units of the Capital Trust II (including any Voting Trust Units of the Capital Trust II that may be issued, purchased, redeemed or otherwise acquired, from time to time in the future), and
- c) the BSN Voting Trust Units of the BSN Trust (including any BSN Voting Trust Units of the BSN Trust that may be issued, purchased, redeemed or otherwise acquired, from time to time in the future),

provided that:

- i. the acquisition or disposition of the Special Trust Securities, Voting Trust Units and BSN Voting Trust Units (A) is incidental to the administration of the Filer or the applicable trust entity or is for the purpose of complying with the applicable Canadian banking regulatory requirements or guidelines, and (B) does not otherwise involve a discrete investment decision;
- ii. any increases or reduction in the Filer's holdings of the Special Trust Securities, Voting Trust Units and BSN Voting Trust Units has not been, and will not be, based on any material undisclosed information regarding the Filer or the applicable trust entity, and has not, and will not reflect, any change in the Filer's views of the prospects of the applicable trust entity;
- iii. the Capital Trust, the Capital Trust II and the BSN Trust do not and will not carry on any operating activity other than in connection with the offering of its securities to the public;
- iv. the Filer continues to comply with all other continuous disclosure and insider reporting requirements under the Legislation and files all other documents required to be filed by the Legislation except if the Filer is otherwise exempted from complying with such requirements;
- v. the Filer keeps its insider profile under NI 55-102 accurate and up to date except if the Filer is otherwise exempted from complying with this requirement under NI 55-102;
- vi. the relief from the Primary Insider Reporting Requirement only relieves the Filer from its obligations to file insider reports under section 107 of the *Securities Act* (Ontario) and Part 3 of NI 55-104 and any provisions of Canadian securities legislation substantially similar to section 107 of the *Securities Act* (Ontario) and Part 3 of NI 55-104, in each case, in respect of the Special Trust Securities, Voting Trust Units and BSN Voting Trust Units, respectively, of the Capital Trust, the Capital Trust II and the BSN Trust, as applicable, and will not apply to any other insider transactions of the Filer, including any transactions involving the BMO BOaTS, Tier 1 Notes or BMO TSNs;
- vii. the relief from the Supplemental Insider Reporting Requirement only relieves the Filer from its obligations (A) to file insider reports under Part 4 of NI 55-104 and any provisions of Canadian securities legislation substantially similar to Part 4 of NI 55-104, and (B) under NI 55-102, in each case, in respect of the Special Trust Securities, Voting Trust Units and BSN Voting Trust Units of the Capital Trust, the Capital Trust II and the BSN Trust, as applicable, and will not apply to any other insider transactions of the Filer, including any transactions involving the BMO BOaTS, Tier 1 Notes or BMO TSNs;
- viii. the Filer and the Capital Trust continue to satisfy all of the conditions contained in the Capital Trust CD Relief;
- ix. the Filer and the Capital Trust II continue to satisfy all of the conditions contained in the Capital Trust II CD Relief and Capital Trust II Certification Relief; and

x. the Filer and the BSN Trust continue to satisfy all of the conditions contained in the BSN CD Relief and BSN Certification Relief.

"Margot C. Howard" Commissioner Ontario Securities Commission

"James Carnwath" Commissioner Ontario Securities Commission

It is the further decision of the principal regulator under the Legislation that the Filer is exempt from the Supplemental Insider Reporting Requirement from and after the date of this decision in respect of the entities and securities referred to in paragraphs a), b) and c) above and subject to the same conditions set out in paragraphs (i) to (x) above.

"Michael Brown" Assistant Manager, Corporate Finance Branch

2.1.5 Consumers' Waterheater Income Fund and Consumers' Waterheater Operating Trust

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.

National Instrument 51-102, s. 13.1 Continuous Disclosure Obligations – Information circular – The Applicants want relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation – The Applicants are only internally restructuring, not adding or removing any assets or changing the shareholders' proportionate interest in the issuer's operations; the Fund and the Trust will provide sufficient information about the transaction for securityholders to understand the restructuring.

National Instrument 44-101, s. 8.1 Short Form Prospectus Distributions – Qualification – The Applicants want relief from the qualification criteria in NI 44-101 so they can file a short form prospectus – The Issuers are new reporting issuers that are the continuation of existing businesses; the issuers satisfy all the criteria for the exemption in s. 2.7 except that the audited comparative annual financial statements incorporated in their respective final prospectuses are not their own, but are the financial statements of the existing businesses.

National Instrument 44-101, s. 8.1 Short Form Prospectus Distributions. - 10 day notice - The Applicants want to file their short form prospectus less then 10 days after they file their notice of intention to file a short form prospectus - The Issuers are successor issuers resulting from the conversion of an income fund and trust under a plan of arrangement; the issuers would be entitled to rely on the exemption for successor issuers in s. 2.7(2) except that the financial statements incorporated into the information circular are not their own but are those of the existing businesses; the issuers are otherwise gualified to file a short form prospectus; the existing business are not required to file a notice of intention by virtue of s. 2.8(4); the relevant continuous disclosure for investors under the offerings are the continuous disclosure of the fund or trust, which will be incorporated by reference into the short form prospectuses.

Applicable Legislative Provisions

| National | Instrument | 51-102Conti | inuous | Disclosure |
|--|------------|-------------|--------|------------|
| Obligations, s. 13.1 – Information circular. | | | | ılar. |
| National | Instrument | 44-101Short | Form | Prospectus |
| Distributions, s. 8.1 – Qualification. | | | | |
| National | Instrument | 44-101Short | Form | Prospectus |
| Distributions, s. 8.1 – 10 day notice. | | | | |
| | | - | | |

IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO, BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, QUEBEC, NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND, NEWFOUNDLAND AND LABRADOR, YUKON, NORTHWEST TERRITORIES AND NUNAVUT (THE JURISDICTIONS)

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

AND

IN THE MATTER OF THE CONSUMERS' WATERHEATER INCOME FUND (THE FUND)

AND

THE CONSUMERS' WATERHEATER OPERATING TRUST (THE TRUST) (TOGETHER, THE APPLICANTS)

DECISION

Background

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

- exempting the Fund and the Trust from the (a) requirements of Item 14.2 of Form 51-102F5 -Information Circular (Form 51-102F5) of the Legislation to include in the management information circular (the Information Circular) to be prepared by the Fund and delivered to holders (Unitholders) of trust units (Units) in connection with the special meeting (the Meeting) of Unitholders expected to be held on November 18. 2010 for the purposes of considering a proposed conversion of the Fund from an income trust structure to a corporation (the Conversion Transaction) to be effected by way of a plan of arrangement under the Canada Business Corporations Act (the CBCA) the Subject Financial Statements (as defined herein) and the Subject MD&A (as defined herein) (the Circular Relief):
- (b) provided the Circular Relief is granted, exempting New Consumers (defined herein) from (i) the qualification criteria for short form prospectus eligibility contained in Subsection 2.2(d) of National Instrument 44-101 – Short Form Prospectus Distributions (NI 44-101) following completion of the Conversion Transaction; and (ii)

from the requirement for New Consumers to file a qualification certificate in connection with the filing of a preliminary short form prospectus in the form required by Subsection 4.1(a)(ii) of NI 44-101, until the earlier of: (a) March 31, 2011; and (b) the date upon which New Consumers has filed both its annual financial statements and annual information form for the year ended December 31. 2010 pursuant to National Instrument 51-102 -Continuous Disclosure Obligations (NI 51-102) (the Relief Period), provided that: (A) any short form prospectus filed by New Consumers pursuant to NI 44-101 during the Relief Period specifically incorporates by reference the Information Circular and any financial statements and related management's discussion and analysis of the Fund and the Trust incorporated by reference into the Information Circular; and (B) New Consumers files a qualification certificate with any preliminary short form prospectus filed by it pursuant to NI 44-101 during the Relief Period which specifically mentions its exemption from the qualification criteria contained in Subsection 2.2(d) of NI 44-101 and otherwise complies with Subsection 4.1(a)(ii) of NI 44-101 (the Fund Short Form Qualification Relief);

(c) provided that the Circular Relief is granted, exempting New Consumers' Holdco from (i) the qualification criteria for short form prospectus eligibility contained in Subsection 2.3(1)(d) of NI 44-101 following completion of the Conversion Transaction; and (ii) from the requirement for New Consumers' Holdco to file a gualification certificate in connection with the filing of a preliminary short form prospectus in the form required by Subsection 4.1(a)(ii) of NI 44-101 until the expiry of the Relief Period, provided that: (A) any short form prospectus filed by New Consumers' Holdco pursuant to NI 44-101 during the Relief Period specifically incorporates by reference the Information Circular (other than the description of the Fund and New Consumers, any financial statements of New Consumers, the description of New Consumers' shareholder rights plan and the description of New Consumers' share (and similar) based compensation arrangements contained therein and other than the financial statements, management's discussion and analysis, annual information form and material change reports of the Fund incorporated by reference therein (collectively, the Excluded Information)), including any financial statements and related management's discussion and analysis of the Trust incorporated by reference into the Information Circular; (B) New Consumers' Holdco files a qualification certificate with any preliminary short form prospectus filed by it pursuant to NI 44-101 during the Relief Period which specifically mentions its exemption from the qualification criteria contained in Subsection 2.3(1)(d) of NI 44-101 and otherwise complies with Subsection 4.1(a)(ii) of NI 44-101; and (C) New Consumers'

Holdco files the Information Circular and the documents incorporated by reference therein that are incorporated by reference into New Consumers' Holdco's short form prospectus on SEDAR under New Consumers' Holdco's profile (the **Trust Short Form Qualification Relief** and together with the Fund Short Form Qualification Relief); and

(d) exempting the Applicants from the requirement of Subsection 2.8(1) of NI 44-101 for the applicable Applicant 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 respective first preliminary short form prospectus after the notice (the Short Form Notice Relief).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

Interpretation

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

Representations

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

The Fund Entities

- 1. The Fund is an unincorporated open-ended investment trust established on October 28, 2002 under the laws of the Province of Ontario.
- The Fund's head office is located at 2 East Beaver Creek Road, Building 2, Richmond Hill, Ontario, L4B 2N3.
- 3. The Fund is a reporting issuer (or the equivalent thereof) in each of the Jurisdictions and, to its knowledge, is currently not in default of any applicable requirements under the securities legislation thereof.
- The Fund is authorized to issue an unlimited number of Units and an unlimited number of special trust units (Special Trust Units). As of September 23, 2010, the Fund had 54,734,092

Units and no Special Trust Units issued and outstanding. Each Special Trust Unit represents voting rights in the Fund that accompany class B exchangeable limited partnership units of Waterheater Holding Limited Partnership (**HLP**).

- 5. In addition, the Fund has outstanding \$27,883,000 aggregate principal amount of 6.25% convertible unsecured subordinated debentures, due June 30, 2017 (the **Convertible Debentures**).
- 6. The Units and the Convertible Debentures are listed and posted for trading on the Toronto Stock Exchange (the **TSX**) under the symbols "CWI.UN" and "CWI.DB", respectively.
- 7. The Fund has filed a "current AIF" and has "current annual financial statements" (as such terms are defined in NI 44-101) for the financial year ended December 31, 2009.
- 8. The Fund owns all of the trust units of the Trust, an unincorporated open-ended investment trust established on November 18, 2002 under the laws of the Province of Ontario.
- The Trust's head office is located at 2 East Beaver Creek Road, Building 2, Richmond Hill, Ontario, L4B 2N3.
- 10. The Trust is a reporting issuer (or the equivalent thereof) in each of the Jurisdictions and, to its knowledge, is currently not in default of any applicable requirements under the securities legislation thereof.
- 11. The Trust has outstanding to the public \$60,000,000 aggregate principal amount of 6.20% series 2009-1 senior notes, due April 30, 2012 (the Series 2009-1 Notes), \$270,000,000 aggregate principal amount of 6.75% series 2009-2 senior notes, due April 30, 2014 (the Series 2009-2 Notes) and \$240,000,000 aggregate principal amount of 5.25% series 2010-1 senior unsecured notes, due March 15, 2013 (the Series 2010-1 Notes and together with the Series 2009-1 Notes and the Series 2009-2 Notes, the Senior Notes).
- 12. The Trust also has outstanding certain subordinated indebtedness, all of which is owned by the Fund.
- 13. The Trust has filed a "current AIF" and has "current annual financial statements" (as such terms are defined in NI 44-101) for the financial year ended December 31, 2009.
- 14. The Trust does not have any securities listed or posted for trading on any exchange or quotation and trading system.

- 15. The Fund also owns all of the issued and outstanding common shares of 6814867 Canada Limited (Lendco), a corporation incorporated under the CBCA. The common shares of Lendco are not listed or posted for trading on any exchange or quotation and trading system and Lendco is not a reporting issuer (or the equivalent thereof) in any jurisdiction.
- 16. HLP is a limited partnership existing under the laws of the Province of Ontario. HLP is authorized to issue an unlimited number of limited partnership units, comprised of class A preferred units and class B exchangeable units, and general partnership units. The Trust owns all of the class A preferred units of HLP and 4113152 Canada Limited (WGP Inc.) owns all of the general partnership units of HLP. There are no class B exchangeable units of HLP outstanding. The class A preferred units and general partnership units of HLP are not listed or posted for trading on any exchange or quotation and trading system and HLP is not a reporting issuer (or the equivalent thereof) in any jurisdiction.
- 17. WGP Inc. is a corporation existing under the CBCA. WGP Inc. is authorized to issue an unlimited number of common shares (the **WGP Shares**), all of which are owned by the Trust. The WGP Shares are not listed or posted for trading on any exchange or quotation and trading system and WGP Inc. is not a reporting issuer (or the equivalent thereof) in any jurisdiction.
- 18. Direct Waterheater Rentals Inc. (Rentco) is a corporation existing under the CBCA. Rentco is authorized to issue an unlimited number of common shares (the Rentco Shares), all of which are owned by HLP. The Rentco Shares are not listed or posted for trading on any exchange or quotation and trading system and Rentco is not a reporting issuer (or the equivalent thereof) in any jurisdiction.
- 19. Waterheater Operating Limited Partnership (OLP) is a limited partnership existing under the laws of the Province of Ontario. OLP is authorized to issue an unlimited number of limited partnership units and general partnership units. Rentco owns all of the limited partnership units of OLP and WGP Inc. owns all of the general partnership interests of OLP. The limited partnership units and general partnership units of OLP are not listed or posted for trading on any exchange or quotation and trading system and OLP is not a reporting issuer (or the equivalent thereof) in any jurisdiction.

The Conversion Transaction

20. The Conversion Transaction will be effected by way of a plan of arrangement under the CBCA pursuant to an arrangement agreement to be

entered into between, among others, the Fund, the Trust, HLP and two newly formed corporations (New Consumers and New Consumers' Holdco).

- 21. New Consumers will be a direct wholly-owned subsidiary of the Fund and will have conducted no business prior to the effective date (the **Effective Date**) of the Conversion Transaction.
- 22. Prior to the Effective Date, New Consumers will not be a reporting issuer in any jurisdiction and its shares will not be listed or posted for trading on any exchange or quotation and trade reporting system.
- 23. New Consumers' Holdco will be a direct whollyowned subsidiary of the Trust and will have conducted no business prior to the Effective Date.
- 24. Prior to the Effective Date, New Consumers' Holdco will not be a reporting issuer in any jurisdiction and its shares will not be listed or posted for trading on any exchange or quotation and trade reporting system.
- 25. Prior to the Effective Date, HLP will transfer the Rentco Shares and debt to the Trust and WGP Inc. and HLP will subsequently be dissolved.
- 26. On the Effective Date, among other things:
 - a. Unitholders will receive one common share of New Consumers (a **New Consumers Share**) for each Unit held;
 - the Trust will transfer the WGP Shares, the Rentco Shares and certain intercompany debt owing from Rentco to New Consumers' Holdco in return for common shares and debt of New Consumers' Holdco and the assumption by New Consumers' Holdco of the Senior Notes;
 - c. the Trust will be dissolved and will distribute the common shares and debt of New Consumers' Holdco to the Fund;
 - d. the Fund will be dissolved and will distribute the shares and debt of Lendco and New Consumers' Holdco to New Consumers; and
 - e. New Consumers will assume the Convertible Debentures, which will become convertible for New Consumers Shares (the **New Consumers Convertible Debentures**).
- 27. New Consumers will continue the business of the Fund following the Effective Date and it is intended that New Consumers will be a reporting issuer (or equivalent thereof) in all provinces and

territories of Canada and that the New Consumers Shares and the New Consumers Convertible Debentures will be listed and posted for trading on the TSX.

- 28. New Consumers' Holdco will continue the business of the Trust following the Effective Date and it is intended that New Consumers' Holdco will be a reporting issuer (or equivalent thereof) in all provinces and territories of Canada.
- 29. Pursuant to the Fund's and Trust's constating documents, the CBCA and applicable securities laws, the Conversion Transaction must be approved by not less than two-thirds of the votes cast by Unitholders at the Meeting.
- 30. The Conversion Transaction will be a "restructuring transaction" of the Fund and the Trust for the purposes of NI 51-102 and therefore will require compliance with Item 14.2 of Form 51-102F5.

The Information Circular

- 31. The following documents of the Fund and the Trust will be incorporated by reference into the Information Circular:
 - a. the current AIF of the Fund dated March 29, 2010;
 - b. the audited consolidated financial statements of the Fund and the notes thereto for the financial years ended December 31, 2009 and 2008, together with the report of the auditors thereon, and related management's discussion and analysis;
 - c. the unaudited interim consolidated financial statements of the Fund and the notes thereto for the second quarter ended June 30, 2010, together with the related management's discussion and analysis;
 - d. all material change reports of the Fund filed since December 31, 2009;
 - e. the management information circular of the Fund dated March 19, 2010, prepared in connection with the annual and special meeting of Unitholders held on April 30, 2010;
 - f. the current AIF of the Trust dated April 29, 2010;
 - g. the audited consolidated financial statements of the Trust and the notes thereto for the financial years ended December 31, 2009 and 2008, together with the report of the auditors thereon,

and related management's discussion and analysis;

- h. the unaudited interim consolidated financial statements of the Trust and the notes thereto for the second quarter ended June 30, 2010, together with the related management's discussion and analysis; and
- i. all material change reports of the Trust filed since December 31, 2009.
- Item 14.2 of Form 51-102F5 requires, amongst 32. other things, that the Information Circular contain (including financial statements) disclosure prescribed under securities legislation and described in the form of prospectus that New Consumers and New Consumers' Holdco. respectively, would be eligible to use immediately prior to the sending and filing of the Information Circular for a distribution of its securities. Therefore, the Information Circular must contain the disclosure in respect of New Consumers and New Consumers' Holdco prescribed by Form 41-101F1 – Information Required in a Prospectus (Form 41-101F1).
- 33. As New Consumers will not have been in existence for three years on the date of the Information Circular, Item 32.1(a) of Form 41-101F1 requires that the financial statements of Lendco, the Trust and OLP be included as they are the predecessor entities that will form the business of New Consumers.
- 34. As New Consumers' Holdco will not have been in existence for three years on the date of the Information Circular, Item 32.1(a) of Form 41-101F1 requires that the financial statements of OLP be included as it is the predecessor entity that will form the business of New Consumers' Holdco.
- 35. Item 8.2(1)(a) and 8.2(2) of Form 41-101F1 require the Fund and/or the Trust, as applicable, to include management's discussion and analysis corresponding to each of the financial years ended December 31, 2009 and December 31, 2008 of Lendco, OLP and the Trust (collectively, the **MD&A**) in the Information Circular. The MD&A for Lendco and OLP is referred to as the **Subject MD&A**.
- 36. Item 32.2(1) of Form 41-101F1 requires the Fund and/or the Trust, as applicable, to include certain annual financial statements of Lendco, OLP and the Trust in the Information Circular, including: (i) statements of income, retained earnings and cash flows of Lendco, OLP and the Trust for each of the financial years ended December 31, 2009, December 31, 2008 and December 31, 2007; and (ii) a balance sheet of Lendco, OLP and the Trust

as at the end of December 31, 2009 and December 31, 2008 (the **Predecessor Financial Statements**). The Predecessor Financial Statements for Lendco and OLP are referred to as the **Subject Predecessor Financial Statements**.

- 37. Item 32.3(1) of Form 41-101F1 requires the Fund to include certain interim financial statements of Lendco, OLP and the Trust in the Information Circular, including (i) a comparative income statement, a statement of retained earnings, and a cash flow statement of Lendco, OLP and the Trust for the most recent interim period ended more than 45 days before the date of the Information Circular and (ii) a balance sheet Lendco, OLP and the Trust as at the end of the most recent interim period ended more than 45 days before the date of the Information Circular (collectively, the Interim Financial Statements). The Interim Financial Statements for Lendco and OLP are referred to as the Subject Interim Financial Statements. The Subject Predecessor Financial Statements and the Subject Interim Financial Statements are collectively referred to as the Subject Financial Statements).
- 38. Subsection 4.2(1) of National Instrument 41-101 General Prospectus Requirements (NI 41-101) requires that the financial statements (other than interim financial statements) required to be included in the Information Circular must be audited in accordance with National Instrument 52-107 – Acceptable Accounting Principles, Auditing Standards and Reporting Currency.
- 39. The Conversion Transaction will not result in a change in beneficial ownership of the assets and liabilities of the Fund from either an accounting or economic perspective, and New Consumers will continue to carry on the business of Lendco, OLP and the Trust following the Conversion Transaction. Similarly, the Conversion Transaction will not result in a change in beneficial ownership of the assets and liabilities of the Trust from either an accounting or economic perspective and New Consumers' Holdco will continue to carry on the business of OLP following the Conversion Transaction. Furthermore, the Conversion Transaction will be an internal reorganization without dilution to the Unitholders. Accordingly, no acquisition will occur as a result of the Conversion Transaction and therefore the significant acquisition financial statement disclosure requirements contained in Form 41-101F1 are inapplicable.
- 40. The Conversion Transaction will be accounted for on a continuity of interest basis and accordingly, following the Conversion Transaction, the comparative consolidated financial statements for New Consumers and New Consumers' Holdco prior to the Conversion Transaction will reflect, except to the extent of the presentation of equity components, the financial position, results of

operations and cash flows as if New Consumers and New Consumers' Holdco had always carried on the businesses formerly carried on by the Fund and the Trust, respectively.

Circular Relief

- 41. New Consumers and New Consumers' Holdco will each be established for the exclusive purpose of effecting the Conversion Transaction and will have no material assets (other than a nominal amount of cash), liabilities or business operations prior to the Effective Date.
- 42. The Subject Financial Statements and the Subject MD&A are not relevant to Unitholders for the purposes of considering the Conversion Transaction; the Subject Financial Statements and the Subject MD&A will be substantially and materially the same as the consolidated financial statements of the Fund and the Trust filed in accordance with Part 4 of NI 51-102 because the financial position of the entities that exist both before and after the Conversion Transaction is substantially the same, except to the extent of presentation of equity components.
- 43. The financial statements of the Fund are reported on a consolidated basis, which includes the financial results of Lendco, the Trust and OLP. Lendco does not report its financial results independently from the consolidated financial statements of the Fund. OLP does not report its financial results independently from the consolidated financial statements of the Fund or the Trust.
- 44. The Information Circular will contain prospectus level disclosure in accordance with Form 41-101F1 (other than the Subject Financial Statements and the Subject MD&A) and will contain sufficient information to enable a reasonable Unitholder to form a reasoned judgment concerning the nature and effect of the Conversion Transaction and the resultant public entities and reporting issuers from the Conversion Transaction, being New Consumers and New Consumers' Holdco.

Short Form Qualification Relief and Short Form Notice Relief

45. Subsection 2.7(2) of NI 44-101 contains an exemption for successor issuers from the qualification criteria for short form prospectus eligibility contained in Subsections 2.2(d) and 2.3(1)(d) of NI 44-101, if an information circular relating to a restructuring transaction that resulted in the successor issuer was filed by the successor issuer or an issuer that was a party to the restructuring transaction, and such information circular (i) complied with applicable securities legislation, and (ii) included disclosure in

accordance with Item 14.2 or 14.5 of Form 51-102F5 for the successor issuer. New Consumers will be the successor issuer of the Fund and New Consumers' Holdco will be the successor issuer of the Trust. However, neither New Consumers nor New Consumers' Holdco can rely on this exemption because the Subject Financial Statements and the Subject MD&A will not be included in the Information Circular if the Circular Relief is granted, although the Information Circular will otherwise comply with the requirements of Form 51-102F5.

- 46. The Fund has previously qualified to file a prospectus in the form of a short form prospectus pursuant to Section 2.2 of NI 44-101 and has previously filed a notice of intention to be qualified to file a short form prospectus under Section 2.8(1) of NI 44-101.
- 47. The Trust has previously qualified to file a prospectus in the form of a short form prospectus pursuant to Section 2.3 of NI 44-101 and has previously filed a notice of intention to be qualified to file a short form prospectus under Section 2.8(1) of NI 44-101.
- 48. The Applicants anticipate that New Consumers and/or New Consumers' Holdco may wish to file a preliminary short form prospectus following completion of the Conversion Transaction, relating to the offering or potential offering of debt or equity securities of New Consumers and/or nonconvertible debt securities of New Consumers' Holdco, respectively.
- 49. In addition to the filing of a preliminary short form prospectus, and assuming the Conversion Transaction has been completed, New Consumers and New Consumers' Holdco each intend to file a notice of intention to be qualified to file a short form prospectus under Section 2.8 of NI 44-101 (the Notice of Intention) following completion of the Conversion Transaction; in the absence of the Short Form Notice Relief, New Consumers and New Consumers' Holdco 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.
- 50. Pursuant to the qualification criteria set forth in Section 2.2 of NI 44-101 as modified by the Short Form Qualification Relief, following the Conversion Transaction, New Consumers will be qualified to file a short form prospectus pursuant to NI 44-101.
- 51. Pursuant to the qualification criteria set forth in Section 2.3 of NI 44-101 as modified by the Short Form Qualification Relief, following the Conversion Transaction, New Consumers' Holdco expects to be qualified to file a short form prospectus pursuant to NI 44-101.

- Pursuant to the proposed Circular Relief, any 52. short form prospectus filed by New Consumers pursuant to NI 44-101 during the term of the Relief Period will specifically incorporate by reference the Information Circular and any financial statements and related management's discussion and analysis of the Fund and the Trust incorporated by reference into the Information Circular (which is consistent with the requirement in Item 11.3 of Form 44-101F1 - Short Form Prospectus (Form 44-101F1) that any short form prospectus filed by an issuer relying on the exemption in Subsection 2.7(2) of NI 44-101 include, or incorporate by reference, the disclosure required by Item 14.2 or 14.5 of Form 51-102F5).
- 53. Pursuant to the proposed Circular Relief, any short form prospectus filed by New Consumers' Holdco pursuant to NI 44-101 during the term of the Relief Period will specifically incorporate by reference the Information Circular (other than the Excluded Information), including any financial statements and related management's discussion and analysis of the Trust incorporated by reference into the Information Circular (which is consistent with the requirement in Item 11.3 of Form 44-101F1 that any short form prospectus filed by an issuer relying on the exemption in Subsection 2.7(2) of NI 44-101 include, or incorporate by reference, the disclosure required by Item 14.2 or 14.5 of Form 51-102F5).
- 54. The Short Form Qualification Relief is only required by New Consumers until the expiry of the Relief Period as, at such time New Consumers will either have filed, or have been required to file, its annual financial statements and annual information form for the year ended December 31, 2010 (which will be New Consumers' initial "current annual financial statements" and "current AIF" for the purposes of Subsection 2.2(d) of NI 44-101).
- 55. The Short Form Qualification Relief is only required by New Consumers' Holdco until the expiry of the Relief Period as, at such time New Consumers' Holdco will either have filed, or have been required to file, its annual financial statements and annual information form for the year ended December 31, 2010 (which will be New Consumers' Holdco's initial "current annual financial statements" and "current AIF" for the purposes of Subsection 2.3(1)(d) of NI 44-101).

Decision

The Decision Maker 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 Maker under the Legislation is that:

- a) the Circular Relief is granted provided that the Information Circular discloses that New Consumers and New Consumers' Holdco are newly incorporated entities that have no material assets, income or liabilities;
- b) the Short Form Qualification Relief is granted; and
- c) the Short Form Notice Relief is granted provided that, at the time New Consumers or New Consumers' Holdco files its Notice of Intention, it meets the requirements of Section 2.2 or 2.3, as applicable, of NI 44-101, as modified by the Short Form Qualification Relief.

"Michael Brown" Assistant Manager Ontario Securities Commission

2.1.6 Boralex Power Income Fund

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).

December 10, 2010

IN THE MATTER OF THE SECURITIES LEGISLATION OF QUÉBEC, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, NOVA SCOTIA, NEW BRUNSWICK, 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 BORALEX POWER INCOME FUND (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**") that the Filer is not a reporting issuer (the "**Exemptive Relief Sought**").

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

- (a) the *Autorité des marchés financiers* is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

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

Representations

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

- 1. The Filer is an open-ended limited purpose trust created under the laws of the Province of Québec.
- The head office of the Filer is located at 36 Lajeunesse Street, Kingsey Falls, Québec, J0A 1B0.
- 3. The Filer is a reporting issuer in the Jurisdictions.
- 4. The authorized capital of the Filer consists of an unlimited number of trust units and an unlimited number of special trust units.
- 5. On May 3, 2010, the Filer, Boralex Inc. ("Boralex") and Boralex Power Inc. entered into a support agreement pursuant to which Boralex, through its wholly owned subsidiary 7503679 Canada Inc. (the "Offeror"), agreed, subject to its terms and conditions, to purchase all of the issued and outstanding trust units (the "Units") of the Filer. The offer was filed on May 19, 2010 and was subsequently extended and varied (the "Offer").
- 6. On September 15, 2010, the Offeror took up and paid for 26,428,340 Units.
- 7. On September 28, 2010, the Offer expired and the Offeror took up and paid for 2,661,029 Units.
- On September 27, 2010, the Filer called a special meeting of its unitholders (the "Special Meeting"), to approve its combination with 7596740 Canada Inc. ("Subco"), a wholly-owned subsidiary of the Offeror (the "Business Combination").
- 9. On October 21, 2010, the unitholders of the Filer, present or represented by proxy, at the Special Meeting, voted in favour of the proposed Business Combination, which was effected on November 1, 2010.
- 10. Pursuant to the Business Combination, all of the outstanding Units, other than those held by the Offeror and Boralex, were exchanged for redeemable preferred shares of Subco (the "Redeemable Shares").
- 11. Immediately following the Business Combination, on November 1, 2010, the Redeemable Shares were redeemed by Subco for a consideration in cash or in debentures payable to holders of the Redeemable Shares. Under the terms of the Business Combination, each holder of a Redeemable Share received, at its election, \$5.00 consideration per Redeemable Share in cash or 0.05 of a \$100 principal amount of 6.75% convertible unsecured subordinated debentures of Boralex.

- 12. As a result of the Business Combination, the Filer is now a wholly-owned subsidiary of Subco.
- 13. On November 2, 2010, the Units of the Fund were delisted from the Toronto Stock Exchange.
- 14. No securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 – *Marketplace Operation*.
- 15. The outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the Jurisdictions in Canada and fewer than 51 security holders in total in Canada.
- 16. The Filer ceased to be a reporting issuer in British Columbia on November 14, 2010.
- 17. The Filer is not in default of any requirements applicable to a reporting issuer under the Legislation, except for failure to file its interim financial statements and interim management's discussion and analysis for the period ended September 30, 2010 as required by National Instrument 51-102 Continuous Disclosure Obligations and the interim certificates as required by National Instrument 52-109 Certification of Disclosure in Issuer's Annual and Interim Filings.
- 18. The Filer is not eligible to use the simplified procedure under CSA Staff Notice 12-307 Applications for a Decision that an Issuer is not a Reporting Issuer in order to apply for the Exemptive Relief Sought because it is in default of certain filing obligations under the Legislation as described in paragraph 16 above.
- 19. The Filer has no intention to proceed with an offering of its securities in a jurisdiction of Canada by way of private placement or public offering.
- 20. Upon the grant of the Exemptive Relief Sought, the Filer will not be a reporting issuer in any jurisdiction of Canada.

Decision

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

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

"Alida Gualtieri" Manager Continuous Disclosure Autorité des marchés financiers

2.1.7 Hartford Investments Canada Corp. and CI Financial Corp.

Headnote

NP 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – approval granted for change of control of mutual fund manager under s. 5.5(2) of NI 81-102 and approval for abridgement of the related 60 day notice requirement to 47 days under s. 5.8(1)(a) of NI 81-102 – approval conditional on at least 47 days notice to unitholders, no changes to the portfolio advisers to the Funds for at least 60 days after notice delivered – OSC staff view amalgamation, in conjunction with closing, to be a change of manager – prior approval of the unitholders to be obtained prior to the amalgamation a condition of approval – not to be considered a precedent.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.5(2), 5.8(1), 19.1.

December 8, 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 HARTFORD INVESTMENTS CANADA CORP. ("Hartford")

AND

IN THE MATTER OF CI FINANCIAL 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") for approval, and an exemption, pursuant to section 19.1 of National Instrument 81-102 – *Mutual Funds* ("NI 81-102"), pursuant to the following provisions of NI 81-102:

 Section 5.5(2) in connection with the proposed change of control of Hartford ("Approval Sought"); and (b) Section 5.8(1)(a) to abridge the time for delivering notice to unitholders (the "Hartford Unitholders") of the mutual funds identified in Schedule "A" hereto (the "Hartford Funds") of the proposed change of control of Hartford from 60 days to 47 days ("Exemption Sought").

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

- (c) the Ontario Securities Commission is the principal regulator for this application; and
- (d) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("MI 11-102") is intended to be relied upon in all of the provinces and territories of Canada (other than the Jurisdiction).

Interpretation

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

Representations

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

- 1. The Filer issued a press release on October 21, 2010 announcing a transaction (the "Transaction") under which the Filer will acquire all of the outstanding shares of Hartford no later than December 15, 2010 (the "Closing"). The completion of the Transaction is subject to the satisfaction of certain conditions, including that the approval and relief described in this decision is granted.
- 2. The Filer is a reporting issuer in all provinces of Canada and is not on any list of defaulting issuers maintained in any jurisdiction. The Filer's shares are listed on the Toronto Stock Exchange under the trading symbol "CIX".
- 3. The Filer's head office is located in Toronto, Ontario.
- 4. The mutual fund business owned by the Filer is carried on through CI Investments Inc. (the "CI Manager"). The CI Manager currently is registered under the *Securities Act* (Ontario) as an adviser in the category of portfolio manager, has applied for registration as an investment fund manager and is an exempt market dealer. The CI Manager manages in excess of 100 public mutual funds, which are sold to the public in all the provinces and territories of Canada.
- 5. Hartford is an unlimited liability corporation incorporated under the laws of the Province of Nova Scotia. Hartford acts as the trustee and the

manager of the Hartford Funds. Units of the Hartford Funds are sold in all of the provinces and territories of Canada pursuant to a simplified prospectus and annual information form dated May 14, 2010.

- 6. The Filer, the CI Manager, Hartford and the Hartford Funds are not in default of any applicable securities legislation in any province or territory of Canada.
- 7. The directors and officers of Hartford will change on or after the Closing to provide, at a minimum, that the directors of Hartford will be nominees of the Filer. Such directors or officers of Hartford who are so replaced by the Filer will, however, be individuals who are currently directors and/or officers of the CI Manager. By virtue of their roles as directors and/or officers of the CI Manager, the proposed new directors and officers of Hartford have demonstrated that they have the necessary education, experience, integrity and competence to be directors and/or officers of Hartford.
- 8. The change of control of Hartford will not materially affect the operation and administration of the Hartford Funds. Hartford will remain the manager of the Hartford Funds for a period of time after Closing.
- 9. It is intended that the Hartford Funds will be maintained as a separate family of funds for a period of time after Closing. The CI Manager does not intend to increase the management fees that the Hartford Funds pay.
- 10. The Filer intends to amalgamate Hartford with the CI Manager or one of its subsidiaries or affiliates after Closing (the "Amalgamation"). OSC Staff take the view that the Amalgamation, in conjunction with the Closing, results in a change of manager for the Hartford Funds within the meaning of NI 81-102. Accordingly, the Filer has agreed to obtain the prior approval of the Hartford Unitholders for the Amalgamation at a meeting of the Hartford Unitholders.
- 11. The Filer intends to effect the Amalgamation within nine months after Closing.
- 12. To the extent that any change is made after Closing which constitutes a "material change" to the Hartford Funds within the meaning of National Instrument 81-106 – Investment Fund Continuous Disclosure ("NI 81-106"), the Hartford Funds will comply with the continuous disclosure obligations set out in section 11.2 of NI 81-106. Further, any notices which are required to be delivered to, or approvals obtained from, the Canadian securities or Hartford Unitholders administrators in connection with any such material change will be delivered or obtained, as required under applicable Canadian securities legislation.

- A notice regarding the change of control of Hartford was submitted to the registration branch of the Ontario Securities Commission on October 29, 2010 pursuant to sections 11.9 and 11.10 of National Instrument 31-103 – Registration Requirements and Exemptions.
- The notice contemplated by section 5.8(1) of NI 81-102 of the proposed indirect change in control of Hartford was mailed by the Filer to the Hartford Unitholders by October 29, 2010 (the "Notice Date").
- 15. The Filer intends to cause no changes to the portfolio advisers to the Hartford Funds for at least 60 days following the Notice Date.
- 16. The Filer believes that abridging the period prescribed by section 5.8(1)(a) of NI 81-102 to 47 days will not be prejudicial to the Hartford Unitholders.

Decision

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

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

- the Hartford Unitholders are given at least 47 days notice of the change of control of Hartford;
- (b) no changes to the portfolio advisers to the Hartford Funds are effected for at least 60 days following the Notice Date; and
- (c) prior approval of the Hartford Unitholders be obtained for the Amalgamation.

"Darren McKall"

Assistant Manager, Investment Funds Branch Ontario Securities Commission

Appendix "A"

HARTFORD FUNDS

Hartford Growth Portfolio Hartford Balanced Growth Portfolio Hartford Balanced Portfolio Hartford Conservative Portfolio Hartford Capital Appreciation Fund Hartford Global Leaders Fund Hartford International Equity Fund Hartford U.S. Dividend Growth Fund Hartford Canadian Dividend Fund Hartford Canadian Dividend Growth Fund Hartford Canadian Stock Fund Hartford Canadian Value Fund Hartford Canadian Balanced Fund Hartford Global Balanced Fund Hartford Canadian Bond Fund Hartford Global High Income Fund Hartford Canadian Money Market Fund

2.1.8 Intact Investment General Partner Inc.

Headnote

MI 11-102 – Exemption from requirement to register as investment fund manager – accumulation of assets of individual subsidiary insurance companies resulted in a mutual fund – insurance companies regulated under separate legislation, no offer to the public of units of limited partnership – Section 25(4) Securities Act (Ontario) and Section 7.3 of NI 31-103.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements and Exemptions, s. 7.3. Securities Act (Ontario), ss. 25(4), 74.

December 14, 2010

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

AND

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

AND

IN THE MATTER OF INTACT INVESTMENT GENERAL PARTNER INC. (the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for an exemption from Section 25(4) of the Ontario Securities Act (the "**Act**") and Section 7.3 of National Instrument 31-103, *Registration Requirements and Exemptions* ("**NI 31-103**") exempting the Filer from the registration requirement contained in the Act and NI 31-103 that would require the Filer to register as an investment fund manager with respect Intact Investment Limited Partnership (the "**Exemption Sought**"). The exemption is being sought pursuant to Section 74(1) of the Act and Section 15.1 of NI 31-103.

Under the Process for Exemptive Relief Applications:

- (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 the Province of Québec.

Interpretation

Defined terms contained in the Act and 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 incorporated under the *Canada Business Corporations Act.* The head office of the Filer is located in Toronto, Ontario.
- 2. The Filer, a wholly-owned subsidiary of Intact Financial Corporation ("**IFC**"), is the general partner for Intact Investment Limited Partnership (the "**Limited Partnership**"), a limited partnership established under the *Limited Partnerships Act* (Ontario) whose principal place of business is located in Toronto, Ontario.
- 3. The Limited Partnership is a "mutual fund in Ontario" as that term is defined in the Act.
- 4. IFC is a reporting issuer in all provinces and territories in Canada (the "**Jurisdictions**"). IFC's registered and principal business office is located in Toronto, Ontario. IFC is a holding company incorporated under the *Canada Business Corporations Act* which, through its operating subsidiaries, provides property and casualty insurance in Canada.
- 5. Intact Insurance Company, Novex Insurance Company, The Nordic Insurance Company of Canada, Trafalgar Insurance Company of Canada and Belair Insurance Company Inc., each of which is a subsidiary of IFC, (collectively, the "Limited Partners") are the limited partners of the Limited Partnership.
- 6. Intact Investment Management Inc. (the "Adviser"), a corporation incorporated under the Canada Business Corporations Act, is a wholly-owned subsidiary of IFC and is registered under NI 31-103 in Ontario, Quebec, British Columbia and Alberta as an adviser in the category of portfolio manager. The head office of the Adviser is located in Toronto, Ontario.
- 7. The Adviser is, pursuant to an Advisor Agreement between the Adviser and IFC, the portfolio manager of the investment portfolios of IFC and its affiliates, including the Limited Partners and the Limited Partnership.
- 8. The Limited Partners, through IFC, pay to the Adviser, as full compensation for investment

management services rendered, a quarterly fee based on assets under management, whether in their own respective investment portfolio or in the investment portfolio of the Limited Partnership.

- 9. The Limited Partnership was formed for the purpose of restructuring the manner in which the investments of the Limited Partners are held and managed. The initial restructuring involved each of the Limited Partners contributing part of its portfolio of the marketable securities they owned to the Limited Partnership. Going forward, the Limited Partners contribute cash to the Limited Partnership which is collectively employed to purchase marketable securities for the investment portfolio of the Limited Partnership. The pooling of the investment portfolios of the Limited Partners was intended to achieve improved risk management, capital management and operating performance.
- 10. The Filer, Limited Partnership, Adviser and IFC are not in default of securities legislation in any of the Jurisdictions.
- 11. The Limited Partnership, the Filer and the Limited Partners are (and in the case of any future Limited Partners, will be) all members of the IFC group of companies.
- 12. Pursuant to the limited partnership agreement which governs the relationship between the Limited Partners and the Limited Partnership (the "Partnership Agreement"), the ownership interests of the Limited Partners are not transferable and the only parties that may become limited partners are other regulated insurance companies in Canada that are affiliated with IFC. The Limited Partnership currently has six (6) beneficial security holders made up of the Filer and the Limited Partners. The Limited Partnership does not intend to ever have more than fifty (50) beneficial security holders.
- 13. Given the fact that all the Limited Partners are regulated insurance companies in Canada, the structure of the Limited Partnership required approval from the Office of the Superintendent of Financial Institutions Canada ("OSFI") and from the Autorité des marchés financiers. Such approvals were received in July and September 2008 respectively.
- 14. As a condition to the approval of the structure, the investment portfolio of the Limited Partnership must be managed by the Adviser in compliance with the requirements of the *Insurance Companies Act* (Canada), the regulations made thereunder, guidance issued by OSFI and the investment policies applicable to the Limited Partners.
- 15. Under the Partnership Agreement, the Filer acts in the best interest of the Limited Partners with the

degree of care, diligence and skill that a reasonably prudent investment fund administrator would exercise in comparable circumstances.

- 16. The Limited Partnership has never sought and does not intend to seek to borrow money from the public.
- 17. The Limited Partnership is not, and does not intend to become, a reporting issuer, as such term is defined in the Act, and its securities will not be listed on any stock exchange. As such, the Limited Partnership does not distribute and has never distributed its securities to the public.

Decision

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

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

"Carol S. Perry" Commissioner Ontario Securities Commission

"James D. Carnwarth" Commissioner Ontario Securities Commission

2.1.9 Intact Financial Corporation

Headnote

MI 11-102 – Exemption from requirement to register as investment fund manager – accumulation of assets of individual subsidiaries pension plans resulted in a mutual fund – pension plans regulated under separate legislation, no offer to the public of units of fund – Section 25(4) Securities Act (Ontario) and Section 7.3 of NI 31-103.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements and Exemptions, s. 7.3. Securities Act (Ontario), section 25(4), s. 74.

December 14, 2010

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

AND

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

AND

IN THE MATTER OF INTACT FINANCIAL CORPORATION (the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for an exemption from Section 25(4) of the Ontario Securities Act (the "**Act**") and Section 7.3 of National Instrument 31-103 – *Registration Requirements and Exemptions* ("**NI 31-103**") exempting the Filer from the registration requirement contained in the Act and NI 31-103 that would require the Filer to register as an investment fund manager with respect to the Intact Pension Funds – Master Trust (the "**Exemption Sought**"). The exemption is being sought pursuant to Section 74(1) of the Act and Section 15.1 of NI 31-103.

Under the Process for Exemptive Relief Applications:

- (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 the province of Québec.

Interpretation

Defined terms contained in the Act and 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. IFC is a corporation incorporated under the *Canada Business Corporations Act.* IFC's registered and principal business office is located in Toronto, Ontario.
- 2. IFC is a reporting issuer in all provinces and territories in Canada. IFC is a holding company which, through its operating subsidiaries, provides property and casualty insurance in Canada.
- The Intact Pension Funds Master Trust (the "Master Trust") is a trust established in Ontario through a master trust agreement (the "Master Trust Agreement") between IFC and RBC Dexia Investor Services Trust (the "Trustee").
- 4. The Master Trust is a "mutual fund in Ontario" as that term is defined in the Act because the Master Trust is organized under the laws of Ontario.
- 5. The Trustee is a trust company incorporated under the *Trust and Loan Companies Act* (Canada) duly registered and authorized to carry on business in Canada.
- 6. The Master Trust is made up of the assets of six participating pension plans, namely three registered under the laws of Quebec: Régime de retraite des employés d'Intact et de ses compagnies affiliées (anciennement le régime de Belair), Régime de retraite de la direction d'Intact et de ses compagnies affiliées (anciennement le régime de la direction du Groupe Commerce), Régime de retraite des employés d'Intact et de ses compagnies affiliées (anciennement le régime des employés du Groupe Commerce), and three registered under the laws of Ontario: Pension Plan for Employees of Intact and Its Affiliated Companies (formerly Halifax Plan), Pension Plan for Employees of Intact and Its Affiliated Companies (formerly Nordic Plan), Pension Plan for Employees of Intact and Its Affiliated Plan), Companies (formerly Wellinaton (collectively, the "Participating Pension Plans"). The Master Trust commingles the assets of all the Participating Pension Plans and was formed for the purpose of facilitating the collective investment and administration of the assets of all the Participating Pension Plans.
- 7. IFC acts as administrator for the Participating Pension Plans and has been delegated various

responsibilities for their administration pursuant to applicable pension benefits law. Consequently, responsibility for the administration of the Master Trust is shared between IFC and the Trustee.

- The trust agreements establishing the trust funds for the Participating Pension Plans empower IFC, as administrator, of the Participating Pension Plans to direct the Trustee in the management of the assets of the trust funds.
- 9. Intact Investment Management Inc. (the "Adviser"), a corporation incorporated under the Canada Business Corporations Act, is a wholly-owned subsidiary of IFC and is registered under NI 31-103 in Ontario, Quebec, British Columbia and Alberta as an adviser in the category of portfolio manager. The head office of the Adviser is located in Toronto, Ontario.
- 10. The Adviser has been appointed by IFC as the portfolio manager of the Master Trust in accordance with the terms of the Master Trust Agreement.
- 11. Pursuant to the terms of the Master Trust Agreement, the responsibilities of IFC, among others, include managing the investment of the assets of the Master Trust in accordance with the Master Trust Agreement, applicable law, and any investment policy or guidelines applicable to the Participating Pension Plans, including the appointment and supervision of one or more portfolio manager(s) for all or any portion of the assets of the Master Trust.
- 12. Pursuant to the terms of the Master Trust Agreement, the Trustee only has such duties and responsibilities in relation to the Master Trust as are specifically set forth in the Master Trust Agreement, which are primarily administrative.
- 13. Neither IFC nor the Master Trust are in default of securities legislation in any of the Jurisdictions.
- 14. The Participating Plans are highly regulated, pursuant to applicable pension benefits law and convention, and are maintained by IFC and its subsidiaries for the sole purpose of providing pension and other benefits to their eligible employees and beneficiaries.
- 15. IFC does not intend to allow any third parties or members of the public to participate in the Master Trust. Any additional participant in the Master Trust would be a pension plan maintained for the sole purposes of providing pension and other benefits to eligible employees and beneficiaries of IFC and its subsidiaries.
- 16. IFC is required to manage the investment of the assets of the Master Trust in accordance with the Master Trust Agreement, applicable law, and

internal investment policy, mandate and guidelines applicable to the Participating Pension Plans, including the appointment and supervision of one or more portfolio manager(s) for all or any portion of the assets of the Master Trust.

Decision

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

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

"Carol S. Perry" Commissioner Ontario Securities Commission

"James D. Carnwarth" Commissioner Ontario Securities Commission

2.1.10 Legacy Oil + Gas Inc.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions - Relief granted to an oil & gas issuer from the requirement to file a business acquisition report for an acquisition that is significant based on the income test in Part 8 of National Instrument 51-102. Acquisition is not significant under the asset test and investment test in Part 8 of National Instrument 51-102. The application of the income test using the income from continuing operations of the issuer and the acquired business leads to an anomalous result in that the significance of the acquired business is exaggerated out of proportion to its significance on an objective basis and in comparison to the results of the asset test and the investment test. Issuer is of the view that the acquisition is not a significant transaction to it from a business and commercial perspective. The issuer provided additional measures which further demonstrate the insignificance of the acquisition to the filer. The alternative measures include market capitalization, reserve volumes, current production, gross revenues and income from continuing operations excluding depletion, depreciation and accretion and asset impairment charge.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, Part 8, s. 13.1.

Citation: Legacy Oil + Gas Inc., Re, 2010 ABASC 571

December 9, 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 LEGACY OIL + GAS INC. (THE FILER)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Makers**) have received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for relief from the requirement to file a business acquisition report for the Acquisition (as defined below) (the **Exemption Sought**).

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, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; and
- (c) this 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:

- 1. The Filer is a corporation amalgamated under the *Business Corporations Act* (Alberta) (the **ABCA**) with its head office located in Calgary, Alberta.
- 2. The Filer is a reporting issuer in each of the provinces of Canada and to its knowledge, is not in default of any requirements under the securities legislation in any of those jurisdictions.
- The common shares of the Filer are listed for trading on the Toronto Stock Exchange under the trading symbol LEG.
- Bronco Energy Ltd. (Bronco) is a corporation incorporated pursuant to the ABCA with its head office located in Calgary, Alberta.
- 5. Bronco is a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador.
- The authorized capital of Bronco consists of an unlimited number of class A common shares (Bronco Shares) all of which are held by the Filer and an unlimited number of preferred shares, none of which are issued and outstanding.

- 7. Pursuant to a plan of arrangement under section 193 of the ABCA on November 4, 2010 the Filer acquired all of the issued and outstanding Bronco Shares and all of the Convertible Secured Subordinated Debentures of Bronco (the Acquisition). The Filer is now the sole securityholder of Bronco.
- 8. Pursuant to part 8 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**), an issuer must file a business acquisition report within 75 days after the date of an acquisition should it be determined that the acquisition was a "significant acquisition". The tests for determining whether an acquisition is a significant acquisition are set out in section 8.3 of NI 51-102, and are referred to as the asset test, the investment test and the income test. An acquisition is considered to be significant if the any of the described tests are met.
- 9. The Acquisition is not a significant acquisition under the asset test as Bronco's consolidated assets as of December 31, 2009 were only approximately 6% of the consolidated assets of the Filer as of December 31, 2009 and Bronco's consolidated assets as of September 30, 2010 were only approximately 3.6% of the consolidated assets of the Filer as of September 30, 2010.
- 10. The Acquisition is not a significant acquisition under the investment test as the total consideration paid to the Bronco securityholders with respect to the Acquisition was only approximately 5% of the consolidated assets of the Filer as of December 31, 2009 and approximately 2.1% of the consolidated assets of the Filer as of September 30, 2010.
- 11. The Acquisition would be a significant acquisition under the income test, which requires comparison of income from continuing operations from the Filer and Bronco. The application of the income test using the income from continuing operations of the Filer and Bronco leads to an anomalous result in that the significance of the acquired business is exaggerated out of proportion to its significance on an objective basis and in comparison to the results of the asset test and the investment test.
- 12. A comparison of the Filer's proportionate share of the operating income of Bronco to its own operating income for the 12 months ending September 30, 2010 would not result in the Acquisition being considered significant, more accurately reflects the significance of the Acquisition from a business and commercial perspective and its results are generally consistent with the other tests of significance in subsection 8.3(2) of NI 51-102.

- 13. The Filer is of the view that the Acquisition is not a significant transaction to it from a business and commercial perspective.
- 14. The Filer has provided the Decision Makers with additional measures which further demonstrate the insignificance of the Acquisition to the Filer. The alternative measures include market capitalization, reserve volumes, current production, gross revenues and income from continuing operations excluding depletion, depreciation and accretion and asset impairment charge.

Decision

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

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

"Blaine Young" Associate Director, Corporate Finance

2.2 Orders

2.2.1 Rogers Communications Inc. – s. 104(2)(c)

Headnote

Clause 104(2)(c) - Issuer bid - relief from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act - Issuer proposes to purchase, at a discounted purchase price, up to 3,100,000 of its class B shares from one of its shareholders and/or such shareholder's affiliates - due to discounted purchase price, proposed purchases cannot be made through TSX trading system - but for the fact that the proposed purchases cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in reliance upon the issuer bid exemption available under section 101.2 of the Securities Act and in accordance with the TSX rules governing normal course issuer bid purchases - no adverse economic impact on or prejudice to issuer or public shareholders - proposed purchases exempt from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act. subject to conditions. including that the issuer not purchase more than one-third of the maximum number of shares to be purchased under its normal course issuer bid by way of off-exchange block purchases.

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF ROGERS COMMUNICATIONS INC.

ORDER (Clause 104(2)(c))

UPON the application (the "**Application**") of Rogers Communications Inc. (the "**Issuer**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to clause 104(2)(c) of the Act exempting the Issuer from sections 94 to 94.8 and 97 to 98.7 of the Act (the "**Issuer Bid Requirements**") in connection with the proposed purchases ("**Proposed Purchases**") by the Issuer of up to 3,100,000 (the "**Subject Shares**") of the Issuer's Class B Non-Voting shares (the "**Shares**") from The Bank of Nova Scotia and/or its affiliates (the "**Selling Shareholder**");

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

AND UPON the Issuer (and the Selling Shareholder in respect of paragraphs 5, 6, 7, 10, 14 and 21 as they relate to the Selling Shareholder) having represented to the Commission that:

- 1. The Issuer is a corporation governed by the *Business Corporations Act* (British Columbia).
- 2. The corporate headquarters of the Issuer is located at 333 Bloor Street East, 10th Floor, Toronto, Ontario, M4W 1G9.
- 3. The Issuer is a reporting issuer in each of the provinces of Canada and the Shares are listed for trading on the Toronto Stock Exchange (the "TSX") and the New York Stock Exchange. The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.
- 4. As of November 30, 2010, the authorized common share capital of the Issuer consists of 112,462,014 Class A Voting shares and 1,400,000,000 Shares. There are 446,152,799 Shares issued and outstanding as of that date.
- 5. The corporate headquarters of the Selling Shareholder is located in Toronto, Ontario.
- The Selling Shareholder does not directly or indirectly own more than 5% of the issued and outstanding Shares.
- 7. The Selling Shareholder owns the Subject Shares and the Subject Shares were not acquired in anticipation of resale pursuant to private agreements under an issuer bid exemption order issued by a securities regulatory authority ("Off-Exchange Block Purchases").
- 8. Pursuant to a "Notice of Intention to Make a Normal Course Issuer Bid" filed with the TSX, as of February 15, 2010 (the "Notice"), the Issuer is permitted to make normal course issuer bid (the "Bid") purchases (each, a "Bid Purchase") to a maximum of the lesser of 43,600,000 Shares and that number of Shares that can be purchased under the Bid for an aggregate purchase price of C\$1.500.000.000 in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "TSX Rules"). As of November 30, 2010, 33,980,906 Shares have been purchased under the Bid, including 11,380,000 Shares which were purchased pursuant to Off-Exchange Block Purchases. Assuming completion of the purchase of the Subject Shares, the Issuer will have purchased under the Bid an aggregate of 14,480,000 Shares pursuant to Off-Exchange Block Purchases, representing approximately 33% of the 43,600,000 Shares authorized to be purchased under the Bid.
- 9. In addition to making Bid Purchases by means of open market transactions, the Notice contemplates that the Issuer may purchase Shares by way of exempt offer.

- 10. The Issuer and the Selling Shareholder intend to enter into agreements of purchase and sale (each, an "Agreement") pursuant to which the Issuer will agree to acquire, by trades occurring prior to January 1, 2011, the Subject Shares from the Selling Shareholders for purchase prices (each, a "Purchase Price") that will be negotiated at arm's length between the Issuer and the Selling Shareholders. The Purchase Price will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Shares.
- 11. The purchase of the Subject Shares by the Issuer pursuant to the Agreement will constitute an "issuer bid" for purposes of the Act to which the Issuer Bid Requirements would apply.
- 12. Because the Purchase Price will be at a discount to the prevailing market price and below the bidask price for the Shares at the time of each trade, the Proposed Purchases cannot be made through the TSX trading system and, therefore, will not occur "through the facilities" of the TSX. As a result, the Issuer will be unable to acquire the Subject Shares from the Selling Shareholder in reliance upon the exemption from the Issuer Bid Requirements that is available pursuant to Section 101.2(1) of the Act.
- 13. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Shares at the time of the trade, the Issuer could otherwise acquire the Subject Shares as a "block purchase" (a "Block Purchase") in accordance with Section 629(1)7 of the TSX Rules and the exemption from the Issuer Bid Requirements in Section 101.2(1) of the Act.
- 14. The Selling Shareholder is at arm's length to the Issuer and is not an "insider" of the Issuer, an "associate" of an "insider" of the Issuer, or an "associate" or "affiliate" of the Issuer, as such terms are defined in the Act. In addition, the Selling Shareholder is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**").
- 15. The Issuer will be able to acquire the Subject Shares from the Selling Shareholder in reliance upon the exemption from the dealer registration requirements of the Act that is available as a result of the combined effect of section 2.16 of NI 45-106 and Section 4.1(a) of Commission Rule 45-501 Ontario Prospectus and Registration Exemptions.
- 16. Management is of the view that the Issuer will be able to purchase the Subject Shares at a lower price than the price at which the Issuer will be able to purchase the Shares under the Bid and management is of the view that this is an appropriate use of the Issuer's funds.

- 17. The purchase of Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's securityholders. As the Subject Shares are non-voting shares, the Proposed Purchases will not affect control of the Issuer. The Proposed Purchases will be carried out with a minimum of cost to the Issuer.
- To the best of the Issuer's knowledge, as of November 30, 2010, the public float for the Shares consisted of approximately 90.13% of the Shares for purposes of the TSX Rules.
- 19. The market for the Shares is a "liquid market" within the meaning of Section 1.2 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*.
- 20. Other than the Purchase Price, no additional fee or other consideration will be paid in connection with the Proposed Purchases.
- 21. At the time that an Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer nor the Selling Shareholder will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

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

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

- (a) the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit for the Bid Purchases in accordance with the TSX Rules;
- (b) the Issuer will refrain from conducting a Block Purchase in accordance with the TSX Rules during the calendar week it completes each Proposed Purchase and may not make any further Bid Purchases for the remainder of that calendar day;
- (c) the Purchase Price is not higher than the last "independent trade" (as that term is used in paragraph 629(1)1 of the TSX Rules) of a board lot of Shares immediately prior to the execution of each Proposed Purchase;
- (d) the Issuer will otherwise acquire any additional Shares pursuant to the Bid and in accordance with the TSX Rules;

- (e) immediately following its purchase of the Subject Shares from the Selling Shareholder, the Issuer will report the purchase of the Subject Shares to the TSX;
- (f) at the time that the Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer nor the Selling Shareholder will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed;
- (g) the Issuer will issue a press release in connection with the Proposed Purchases; and
- (h) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, more than one-third of the maximum number of Shares the Issuer can purchase under the Bid.

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

"Margot Howard" Commissioner Ontario Securities Commission

"Mary Condon" Commissioner Ontario Securities Commission

2.2.2 Mega-C Power Corporation 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 MEGA-C POWER CORPORATION, RENE PARDO, GARY USLING, LEWIS TAYLOR SR., LEWIS TAYLOR JR., JARED TAYLOR, COLIN TAYLOR AND 1248136 ONTARIO LIMITED

ENDORSEMENT (Section 127 of the Act)

| Hearing: | November 25, 2010 | | |
|-----------|---------------------------------|---|--|
| Decision: | November 30, 2010 | | |
| Panel: | James D. Carnwath | - | Commissioner and Chair of the Panel |
| | Kevin J. Kelly | - | Commissioner |
| Counsel: | Matthew Britton Alice Hewitt | - | for Staff of the Ontario Securities Commission |
| | Michael Meredith | - | for Rene Pardo |
| | Lewis Taylor Sr. | - | Self-represented |
| | Lewis Taylor Jr. | - | Self-represented |
| | Jared Taylor | - | Self-represented |
| | Colin Taylor | - | Self-represented |

ENDORSEMENT

[1] Mr. Pardo moves for an adjournment of the sanctions hearing in this matter while he pursues an application made to the Divisional Court for a judicial review of the decision on the merits, which issued on September 7, 2010.

[2] His counsel, Mr. Meredith, fairly concedes that the earliest date he has available is January 28, 2011, but even that date is not certain. This matter has been before the Commission for approximately 5 years. The sanctions hearing is scheduled for December 7th and 8th, 2010, less than two weeks away. If the adjournment is granted, the outcome of the sanctions hearing will be unavailable to the Divisional Court.

[3] Counsel submits that Mr. Pardo has been denied procedural fairness by the failure of the Commission to consider the settlement agreement that he entered into with Staff of the Commission. While it appears to us that the settlement agreement was "considered" by the panel of September 29th, 2010, this is a matter for the Divisional Court.

[4] Counsel further submits that a hearing panel cannot consider a settlement agreement after the start of the hearing on the merits. Subject to any submissions made at the sanctions hearing, this would appear to us to be a correct analysis of Commission practice and procedure absent, of course, total agreement by all the parties before the hearing panel. This also is a matter for the Divisional Court.

[5] We find the motion premature for two reasons:

[6] First, granting the adjournment would place an incomplete record before the Divisional Court. The sanctions, if any, applied to Mr. Pardo would be unknown. The results might be more favourable than the settlement agreement, whose terms are unknown to this Panel. It happens frequently that the Divisional Court returns a matter to a tribunal where the course of the

tribunal proceeding has not run. This is particularly pertinent in this matter where the sanction hearing is imminent and its results will be known by January 28th, 2011.

[7] Second, we reject the submission that Mr. Pardo has been denied procedural fairness that brings him within the exception in *Ontario (Liquor Control Board) v. Lifford Wine Agencies* (2005), 76 O.R. (3d) 401 at paragraph 43. The measure of his prejudice must be viewed in the light of prejudice to the Taylor respondents, prejudice to the principle of efficient completion of contested matters and prejudice to the efficient use of tribunal and judicial resources.

[8] We see little or no prejudice to Mr. Pardo in this result. He will be able to make these arguments made before us today before the Divisional Court, the same arguments he proposes to make if the adjournment is granted. The only difference is that the Divisional Court will have a completed record of this proceeding and a potential waste of judicial resources will be avoided.

[9] Mr. Pardo's motion for an adjournment is denied. The sanctions and costs hearing will proceed as scheduled on December 7th and 8th, 2010.

DATED at Toronto this 30th day of November, 2010.

"James D. Carnwath"

"Kevin J. Kelly"

2.2.3 Paladin Capital Markets Inc. et al. – ss. 127(1), 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 PALADIN CAPITAL MARKETS INC., JOHN DAVID CULP, AND CLAUDIO FERNANDO MAYA

ORDER

Sections 127(1), 127(7) and 127(8)

WHEREAS on June 2, 2009, 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 that:

- under s. 127(1)1 of the Act, the registration of Paladin Capital Markets Inc. ("Paladin") and John David Culp ("Culp") be suspended;
- 2. under s. 127(1)2 of the Act, all trading in any securities by the Respondents cease;
- 3. under s. 127(1)2 of the Act, all trading in securities of Paladin cease; and
- under s. 127(1)3 of the Act, all exemptions contained in Ontario securities law do not apply to the respondents;

AND WHEREAS on June 2, 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 June 4, 2009 the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on June 15, 2009 at 10:00 a.m;

AND WHEREAS the Commission held a hearing on June 15, 2009 to consider whether to extend the Temporary Order;

AND WHEREAS counsel for staff of the Commission ("Staff"), Claudio Fernando Maya ("Maya") and Culp, on his own behalf and for Paladin, appeared at the hearing held on June 15, 2009;

AND WHEREAS Culp, on his own behalf and for Paladin, consented to the extension of the Temporary Order to September 30, 2009;

AND WHEREAS Maya consented to the extension of the Temporary Order to September 30, 2009,

subject to his right to contest the Temporary Order by hearing on July 2, 2009 at 2:30 p.m.;

AND WHEREAS on July 2, 2009, the Commission heard submissions from Staff and Maya as to the continuation of the Temporary Order against Maya;

AND WHEREAS on July 2, 2009, with reasons issued on July 10, 2009, the Commission was not satisfied that Maya had provided satisfactory information not to extend the temporary order;

AND WHEREAS the Temporary Order was extended on consent of Staff and the respondents on September 29, 2009, November 30, 2009, February 2, 2010 and March 22, 2010, and on June 15, 2010, the Temporary Order was extended on consent of Staff and the respondents to August 6, 2010 and the hearing was adjourned to August 5, 2010 for the purpose of a confidential pre-hearing conference and to consider whether to extend the Temporary Order;

AND WHEREAS Staff filed a Statement of Allegations dated June 9, 2010 and the Commission issued a Notice of Hearing on June 10, 2010 in this matter;

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

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

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

AND WHEREAS on July 19, 2010, the Commission ordered at Staff's request that the settlement hearing in respect of Paladin be adjourned to August 5, 2010;

AND WHEREAS on August 3, 2010, Staff filed a Notice of Withdrawal with respect to the allegations against Culp having regard to his death;

AND WHEREAS on August 5, 2010 counsel for Staff attended at the settlement hearing and no one attended for Paladin;

AND WHEREAS on August 5, 2010 the Commission approved the settlement agreement in respect of Paladin;

AND WHEREAS on August 5, 2010 counsel for Staff and counsel for Maya attended in person at the preconference hearing held immediately following the settlement hearing; **AND WHEREAS** on August 5, 2010 counsel for Maya requested that motion dates be set with respect to a proposed motion to exclude the voluntary interview of Culp from this proceeding;

AND WHEREAS counsel for Staff and counsel for Maya agreed to set motion dates for November 29, 2010 (full day) and November 30, 2010 (half a day);

AND WHEREAS Staff and Maya consented to an extension of the Temporary Order until the close of business on November 30, 2010 with respect to Maya only;

AND WHEREAS on August 5, 2010, the Commission ordered that the Temporary Order be extended until the close of business on November 30, 2010 with respect to Maya only and that the hearing be adjourned to November 29, 2010;

AND WHEREAS on November 23, 2010, Staff agreed to the exclusion of the statement of Culp and accordingly Maya withdrew his motion;

AND WHEREAS on November 23, 2010, Maya and Staff consented to an extension of the Temporary Order until the close of business on December 13, 2010 with respect to Maya only;

AND WHEREAS by order dated November 26, 2010, the Commission extended the Temporary Order until the close of business on December 13, 2010 with respect to Maya only and adjourned the hearing to December 13, 2010 at 10:00 a.m.;

AND WHEREAS on December 13, 2010, Maya and Staff consented to an extension of the Temporary Order until the close of business on January 14, 2011 with respect to Maya only;

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

AND WHEREAS by Order made November 24, 2010, pursuant to subsection 3.5(3) of the Act, each of Howard I. Wetston, James E. A. Turner, Kevin J. Kelly, Carol S. Perry, Patrick J. LeSage, James D. Carnwath and Mary G. Condon, acting alone, is authorized to exercise the powers of the Commission under the Act, subject to subsection 3.5(4) of the Act, including the power to make orders under section 127 of the Act;

IT IS ORDERED:

- 1. pursuant to subsections 127(7) and 127(8) of the Act, that the Temporary Order is extended until the close of business on January 14, 2011 with respect to Maya only; and
- 2. that the hearing is adjourned to January 14, 2011 at 11:00 a.m.

Dated at Toronto this 13th day of December 2010.

"Carol S. Perry"

2.2.4 EnerCare Inc. and EnerCare Solutions Inc. – s. 1(11)(b)

Headnote

Application by former wholly owned subsidiaries of public income trust and investment trust for an order designating applicants to be reporting issuers – applicants are the public corporate entities that will continue following a transaction whereby unitholders of the income trust will exchange their ordinary units for common shares of one of the applicants and a trust will transfer shares of certain subsidiaries and inter-company debt to the other applicant in return for common shares and convertible debentures – conversion transaction effected by way of plan of arrangement under the Canada Business Corporation Act pursuant to an arrangement agreement – income trust and investment trust will be wound-up on effective date of conversion – requested order harmonizes regulatory treatment of applicant across Canada.

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF ENERCARE INC. AND ENERCARE SOLUTIONS INC.

ORDER (Clause 1(11)(b))

UPON the application (the "**Application**") of EnerCare Inc. ("**New Consumers**") and EnerCare Solutions Inc. ("**New Consumers' Holdco**" and together with New Consumers, the "**Applicants**") for an order pursuant to clause 1(11)(b) of the Act that, for the purposes of Ontario Securities law, the Applicants become reporting issuers in Ontario as of January 1, 2011 (the "**Effective Date**");

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

AND UPON the Issuer having represented to the Commission that:

- 1. New Consumers was incorporated under the laws of Canada on September 27, 2010 under the name 7660251 Canada Inc. New Consumers changed its name from 7660251 Canada Inc. to EnerCare Inc. effective October 8, 2010.
- 2. New Consumers is a direct wholly-owned subsidiary of The Consumers' Waterheater

Income Fund (the "Fund"), an unincorporated open-ended investment trust established on October 28, 2002 under the laws of the Province of Ontario.

- The Fund's head office is located at 2 East Beaver Creek Road, Building 2, Richmond Hill, Ontario, L4B 2N3.
- 4. The Fund is a reporting issuer (or the equivalent thereof) in each of the provinces and territories of Canada (the "**Reporting Jurisdictions**") and, to its knowledge, is currently not in default of any applicable requirements under the securities legislation thereof.
- 5. The Fund has trust units (the "**Units**') and convertible debentures (the "**Convertible Debentures**") listed and posted for trading on the Toronto Stock Exchange (the "**TSX**") under the symbols "CWI.UN" and "CWI.DB".
- New Consumers' Holdco was incorporated under the laws of Canada on September 27, 2010 under the name 7660260 Canada Inc. New Consumers' Holdco changed its name from 7660260 Canada Inc. to EnerCare Solutions Inc. effective October 8, 2010.
- 7. New Consumers' Holdco is a direct wholly-owned subsidiary of The Consumers' Waterheater Operating Trust (the "Trust"), an unincorporated open-ended investment trust established on November 18, 2002 under the laws of the Province of Ontario. The Trust is a direct whollyowned subsidiary of the Fund.
- The Trust's head office is located at 2 East Beaver Creek Road, Building 2, Richmond Hill, Ontario, L4B 2N3.
- 9. The Trust is a reporting issuer (or the equivalent thereof) in each of the Reporting Jurisdictions and, to its knowledge, is currently not in default of any applicable requirements under the securities legislation thereof.
- 10. The Trust has outstanding to the public \$60,000,000 aggregate principal amount of 6.20% series 2009-1 senior notes, due April 30, 2012 (the "Series 2009-1 Notes"), \$270,000,000 aggregate principal amount of 6.75% series 2009-2 senior notes, due April 30, 2014 (the "Series 2009-2 Notes") and \$240,000,000 aggregate principal amount of 5.25% series 2010-1 senior unsecured notes, due March 15, 2013 (the "Series 2010-1 Notes" and together with the Series 2009-1 Notes and the Series 2009-2 Notes, the "Senior Notes").
- 11. The Trust does not have any securities listed or posted for trading on any exchange or quotation and trading system.

- 12. The registered office of each of the Applicants is 2 East Beaver Creek Road, Building 2, Richmond Hill, Ontario, L4B 2N3.
- 13. The Fund plans to convert from an income trust to a corporation on or about January 1, 2011 (the "Conversion Transaction").
- 14. The Conversion Transaction will be effected by way of a plan of arrangement under the *Canada Business Corporations Act* pursuant to an arrangement agreement to be entered into between, among others, the Fund, the Trust, New Consumers and New Consumers' Holdco.
- 15. New Consumers will have conducted no business prior to the Effective Date.
- 16. Prior to the Effective Date, New Consumers will not be a reporting issuer in any jurisdiction and its shares will not be listed or posted for trading on any exchange or quotation and trade reporting system.
- 17. New Consumers' Holdco will have conducted no business prior to the Effective Date.
- 18. Prior to the Effective Date, New Consumers' Holdco will not be a reporting issuer in any jurisdiction and its shares will not be listed or posted for trading on any exchange or quotation and trade reporting system.
- 19. On the Effective Date, among other things:
 - (a) unitholders of the Fund will receive one common share of New Consumers (a "New Consumers Share") for each Unit held;
 - (b) the Trust will transfer the shares of certain subsidiaries and certain intercompany debt to New Consumers' Holdco in return for common shares and debt of New Consumers' Holdco and the assumption by New Consumers' Holdco of the Senior Notes;
 - the Trust will be dissolved and will distribute the common shares and debt of New Consumers' Holdco to the Fund;
 - (d) the Fund will be dissolved and will distribute the common shares and debt of New Consumers' Holdco to New Consumers; and
 - (e) New Consumers will assume the Convertible Debentures, which will become convertible for New Consumers Shares (the "New Consumers Convertible Debentures").

- 20. New Consumers will continue the business of the Fund following the Effective Date and it is intended that New Consumers will be a reporting issuer (or equivalent thereof) in all the Reporting Jurisdictions and that the New Consumers Shares and the New Consumers Convertible Debentures will be listed and posted for trading on the TSX.
- 21. New Consumers' Holdco will continue the business of the Trust following the Effective Date and it is intended that New Consumers' Holdco will be a reporting issuer (or equivalent thereof) in all the Reporting Jurisdictions.
- 22. The TSX has indicated that the New Consumers Shares will be listed on the Effective Date, subject to the prior receipt of certain standard documents. The New Consumers Shares will not be posted for trading on the TSX until two or three trading days after the Effective Date.
- 23. As a result of the varying definitions of "reporting issuer" contained in Canadian securities legislation, on the Effective Date each of the Applicants will, by operation of law, automatically become reporting issuers in each of the Reporting Jurisdictions, except Ontario.
- 24. The definition of "reporting issuer" in clause 1(1) of the Act will not, by operation of law, confer upon the Applicants status as reporting issuers upon completion of the Conversion Transaction on the Effective Date.
- 25. Each Applicant has made the Application so that it will be a reporting issuer in all of the Reporting Jurisdictions on the Effective Date.

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

IT IS ORDERED pursuant to clause 1(11)(b) of the Act that, for purposes of Ontario securities law, the Applicants shall become reporting issuers on the Effective Date.

DATED in Toronto on this 14th day of December, 2010.

"Carol S. Perry" Commissioner Ontario Securities Commission

"James D. Carnwath" Commissioner Ontario Securities Commission

2.2.5 Adira Energy Ltd. – 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 British Columbia – Issuer's securities listed for trading on the TSX venture exchange – Continuous disclosure requirements in 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 ADIRA ENERGY LTD.

ORDER (clause 1(11)(b))

UPON the application of Adira Energy Ltd. (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 was originally incorporated on February 20, 1997 under the name "Trans New Zealand Oil Company" by filing its Articles of Incorporation with the Secretary of State of Nevada. The Applicant changed its name to "AMG Oil Ltd." on July 27, 1998. On November 25, 2008, the Applicant's shareholders approved the change of the jurisdiction of AMG from the State of Nevada to the CBCA by way of continuation. The Applicant completed the filing of its Articles of Conversion with the Nevada Secretary of State on November 25, 2008, and the Applicant's Articles of Continuance were accepted for filing by Industry Canada effective November 27, 2008. The effect of these filings was to transfer the jurisdiction of incorporation of the Applicant from the State of Nevada to the Canada Business Corporations Act. On December 17, 2009 articles of amendment were filed to change the Applicant's name from "AMG Oil Ltd." to "Adira Energy Ltd.".

- 2. The Applicant's registered and head office is currently located at 120 Adelaide St. West, Suite 1204, Toronto, Ontario, Canada, M5H 1T1.
- As of the date hereof, the Applicant's authorized 3. share capital consists of an unlimited number of Common Shares (the Common Shares) with no par value. As of the date hereof, there are 62,640,001 Common Shares issued and outstanding. There are 27,500,000 subscription receipts outstanding which are exercisable upon fulfilment of certain conditions, including the listing of the Applicant on the TSX Venture Exchange (TSXV). Each subscription receipt is exercisable for one Common Share and one half of one Common Share purchase warrant. The Applicant currently has 5,659,000 options exercisable for Common Shares and 4,500,770 Common Share purchase warrants outstanding and expects to issue another 1,285,500 Common Share purchase warrants in connection with the issuance of the subscription receipts.
- 4. The Applicant is currently a reporting issuer in British Columbia and has been a reporting issuer under the Securities Act (British Columbia) (the BC Act) since February 1, 2006. As at the date hereof, the Applicant is not in default of any requirements under applicable securities laws.
- 5. The Applicant is not currently a reporting issuer or the equivalent in any jurisdiction in Canada other than British Columbia.
- 6. As of the date hereof, the Applicant is not on the list of defaulting reporting issuers maintained pursuant to the BC Act and, to the best of its knowledge, is not in default of any of its obligations under the BC Act or the rules and regulations made thereunder.
- 7. The continuous disclosure document requirements of the BC Act are substantially the same as the continuous disclosure requirements under the Act.
- 8. The continuous disclosure materials filed by the Applicant under the BC Act are available on the System for Electronic Document Analysis and Retrieval (**SEDAR**), with February 6, 2006 being the date of the first electronic filing on SEDAR by the Applicant.
- 9. The Common Shares are listed and posted for trading on the OTCBB, where they trade under the stock symbol "AMGOF", and the FWB Frankfurter Wertpapierbörse where they trade under the stock symbol "AORLB8". The Common Shares are listed and posted for trading on the TSXV under the trading symbol "ADL". The Common Shares are not traded on any other stock exchange or trading quotation system.

- 10. The Applicant is not in default of any of the rules, regulations or policies of the TSXV.
- 11. Pursuant to the policies of the TSXV, 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 TSXV, 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.
- 12. Pursuant to the policies of the TSXV, the Applicant has undertaken an assessment of its shareholder base to determine whether or not the Applicant has a significant connection to Ontario as defined in the policies of the TSXV. As a result of that assessment, the Applicant has determined that the Applicant has come to have a significant connection to Ontario in that more than 78% of the Applicant's issued and outstanding Common Shares are held directly or indirectly by residents of Ontario and its head office is located in Ontario.
- 13. 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, has:
 - been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority;
 - (b) entered into a settlement agreement with a Canadian securities regulatory authority; or
 - (c) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision,

other than:

in the case of Colin Kinley where an out of court settlement agreement was entered into and all charges were denied and dropped. Claims were made by Layne Christensen Company and Layne Energy against Manx Drilling; Saber Energy Corp; Saber Energy Inc; Tau Capital of Toronto; Warren Newfield; Colin Kinley and Andrew MacEwen for, amongst other things, claiming a breach of fiduciary duty. The case was brought before the District Court of Johnson County, Kansas and as part of a settlement a stipulation and order for dismissal was signed by all parties and the court on September 15, 2009. The Court ordered the case dismissed with prejudice; and in the case of Ilan Diamond, who joined the board of directors of a private company Dina Glassware (Pty) Ltd. (South Africa) that was in distress in May, 2005. The business had grown from a small profitable distribution business that supplied goods predominantly to the catering industry into a larger business supplying household goods to Rapid expansion had led to retail chains. inadequate credit cycle management and difficulties meeting scheduled deliveries to purchasers throughout South Africa and five adjacent countries. Mr. Diamond spent 20 months with the company attempting to remedy its problems and refocus the company's target market. Finally, with the failure of one of the company's largest customers resulting in additional cash flow issues, the board of directors ultimately determined the company should make a voluntary liquidation application. Such application was filed in February of 2007.

- 14. Neither the Applicant, nor any of its officers, directors, nor to the knowledge of the Applicant and 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 ongoing or concluded investigations:
 - (i) by a Canadian securities regulatory authority, or
 - a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or
 - (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receivermanager or trustee, within the preceding 10 years.
- 15. Neither any of the officers or directors of the Applicant, nor, to the knowledge of the Applicant and 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: (i) 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 (ii) 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.

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 this 13th day of December, 2010.

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

2.2.6 Sunil Tulsiani et al.

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

AND

IN THE MATTER OF SUNIL TULSIANI, TULSIANI INVESTMENTS INC., PRIVATE INVESTMENT CLUB INC., and GULFLAND HOLDINGS LLC

ORDER

WHEREAS on May 27, 2010, the Commission issued a Notice of Hearing and Statement of Allegations in this matter and Sunil Tulsiani ("Tulsiani"), Tulsiani Investments Inc. ("Tulsiani Investments"), Private Investment Club Inc. ("Private Investment Club") and Gulfland Holdings LLC ("Gulfland") (collectively, the "Respondents") were properly served with the Notice of Hearing and Statement of Allegations;

AND WHEREAS on December 14, 2010, Staff attended a confidential pre-hearing and no one attended on behalf of any of the Respondents;

AND WHEREAS Staff advised the Panel that it had consulted with counsel for Tulsiani, Tulsiani Investments and Private Investment Club and determined that there were currently no pre-hearing issues to address and that both parties were prepared to set dates for the hearing on the merits;

AND WHEREAS Staff advised the Panel it intended to provide additional disclosure to counsel for Tulsiani, Tulsiani Investments and Private Investment Club and that it would make the disclosure available at the offices of the Commission for Gulfland;

AND WHEREAS Staff undertook to provide notice of the additional disclosure and a copy of this order to a representative of Gulfland;

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

IT IS ORDERED that the hearing on the merits is scheduled to commence on May 24, 2011 at 10:00 a.m. and to continue on May 25, 26, 27, and 30, 2011, or such further or other dates as to be agreed to by the parties and fixed by the Office of the Secretary.

DATED at Toronto this 14th day of December, 2010.

"Carol S. Perry"

2.2.7 Trapeze Asset Management Inc. et al. – s. 144

Headnote

Section 144 – Application for partial revocation of cease trade order – Variation of cease trade order to permit certain trades for the purpose of selling securities for a nominal amount solely to establish a tax loss – The securities were acquired prior to the respective dates of the cease trade orders – Each of the purchasers of the securities will be sophisticated purchasers who understand that such shares have no market value, the purpose of the proposed trades and the nature of the cease trade orders – Each of the purchasers are not aware of any material information that has not been generally disclosed – Partial revocation granted subject to conditions.

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF TRAPEZE ASSET MANAGEMENT INC.

AND

TRAPEZE CAPITAL CORP.

AND

ACCOUNTHOLDERS LISTED IN SCHEDULE "A"

AND

STORM CAT ENERGY CORPORATION

AND

RICHARDS OIL & GAS LIMITED

ORDER (Section 144 of the Act)

WHEREAS on April 27, 2009, a Director of the Ontario Securities Commission (the "Commission") made an order under paragraphs 2 and 2.1 of subsection 127(1) of the Act that all trading in and all acquisitions of securities of Storm Cat Energy Corporation ("Storm Cat"), whether direct or indirect, shall cease until further order by the Director (the "Storm Cat CTO");

AND WHEREAS on May 26, 2010, a Director of the Commission made an order under paragraph 2 of subsection 127(1) of the Act that all trading in and all acquisitions of securities of Richards Oil & Gas Limited

("Richards Oil"), whether direct or indirect, shall cease until further order by the Director (the "**Richards Oil CTO**");

AND WHEREAS Trapeze Asset Management ("TAMI"), Trapeze Capital Corp. ("TCC") and certain accountholders listed in Schedule A (the "Accountholders") (together with TAMI and TCC, the "Applicants") have made an application pursuant to section 144 of the Act (the "Application") for a partial revocation of the Storm Cat CTO and the Richards Oil CTO to permit the sale by the Applicants of the Storm Cat Shares (as defined below) and the Richards Oil Shares (as defined below) solely for the purpose of establishing a tax loss;

AND WHEREAS National Policy 12-202 *Revocation of a Compliance-related Cease Trade Order* provides that the Commission will generally grant a partial revocation order to permit a securityholder to sell securities for a nominal amount solely to establish a tax loss;

AND UPON the Applicants having represented to the Commission that:

- 1. TAMI is an Ontario corporation and is registered as an portfolio manager, exempt market dealer and investment fund manager (pending approval) under the Act.
- 2. TCC is an Ontario corporation and is registered as an investment dealer under the Act.
- TAMI holds 4,139,753 common shares of Storm Cat on behalf of managed accounts and TCC holds 779,667 common shares of Storm Cat on behalf of managed accounts (collectively, such 4,919,420 shares are referred to as the "Storm Cat Shares").
- 4. TAMI holds 17,857,674 common shares of Richards Oil on behalf of managed accounts and TCC holds 6,535,690 common shares of Richards Oil on behalf of managed accounts.
- 5. The Accountholders hold 446,560 common shares of Richards Oil (collectively the 24,839,924 common shares held by TAMI, TCC and the Accountholders are herein referred to as the "**Richards Oil Shares**").
- 6. The Storm Cat CTO was made by the Commission because Storm Cat failed to file the following continuous disclosure materials as required by Ontario securities law:
 - (a) audited annual financial statements for the year ended December 31, 2008;
 - (b) management's discussion and analysis relating to the audited annual financial statements for the year ended December 31, 2008;

- (c) annual information form for the year ended December 31, 2008.
- 7. The Richards Oil CTO was made by the Commission because Richards Oil failed to file the following continuous disclosure materials as required by Ontario securities law:
 - (a) audited annual financial statements for the year ended December 31, 2009;
 - (b) management's discussion and analysis relating to the audited annual financial statements for the year ended December 31, 2009;
 - (c) certification of the foregoing filings as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*.
- 8. The Storm Cat Shares and the Richards Oil Shares were acquired prior to the respective dates of the Storm Cat CTO and the Richards Oil CTO.
- 9. TAMI and TCC will effect the proposed trades of the Storm Cat Shares (the "**Storm Cat Disposition**") solely for the purpose of enabling them to establish a tax loss in respect of such Storm Cat Disposition.
- 10. TAMI, TCC and the Accountholders will effect the proposed trades of the Richards Oil Shares (the **"Richards Oil Disposition"**) solely for the purpose of enabling them to establish a tax loss in respect of such Richards Oil Disposition.
- 11. It is intended that the Storm Cat Shares and the Richards Oil Shares will be sold at a price of \$0.00001 per share for aggregate proceeds of \$49.19 and \$248.40, respectively, solely for the purpose of establishing tax losses.
- 12. Each of the purchasers of the Storm Cat Shares and the Richards Oil Shares will be sophisticated purchasers who understand that such shares have no market value, the purpose of the proposed trades and the nature of the Storm Cat CTO and the Richards Oil CTO.
- 13. Each of the Applicants has acknowledged that the issuance of a partial revocation order does not guarantee the issuance of a full revocation order in the future.
- 14. Each of the Applicants and each of the purchasers are not aware of any material information concerning the affairs of Storm Cat or Richards Oil that has not been generally disclosed.
- 15. Each of the purchasers will purchase and hold the Storm Cat Shares and/or the Richards Oil Shares, as the case may be, as principal.

16. Each purchaser of the Storm Cat Shares and the Richards Oil Shares will be provided with a copy of the Storm Cat CTO and/or the Richards Oil CTO, as the case may be, and a copy of this Order prior to the Storm Cat Disposition and the Richards Oil Disposition.

AND WHEREAS considering the Application and the recommendation of the staff of the Commission;

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

IT IS ORDERED, pursuant to section 144 of the Act, that the Storm Cat CTO and the Richards Oil CTO be partially revoked solely to permit the Storm Cat Disposition and the Richards Oil Disposition provided that:

- 1. Prior to the completion of the Storm Cat Disposition and the Richards Oil Disposition, each purchaser of the Storm Cat Shares and the Richards Oil Shares will:
 - (a) receive:
 - (i) a copy of the Storm Cat CTO and/or the Richards Oil CTO, as the case may be; and
 - (ii) a copy of this Order;
 - (b) provide the Applicants with signed and dated acknowledgements which clearly state that the Storm Cat CTO and the Richards Oil CTO remains in effect, and that the issuance of a partial revocation of a cease trade order does not guarantee the issuance of a full revocation in the future; and
- 2. The Applicants undertake to make available copies of the written acknowledgements referred to in paragraph 1(b) to staff of the Commission upon request.

DATED in Toronto this 15th day of December 2010.

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

SCHEDULE A

ACCOUNTHOLDERS

Richard Hermon Ficor Resources Inc. Globus Precision Inc.

2.2.8 IGM Financial Inc. – s. 104(2)(c)

Headnote

Clause 104(2)(c) - Issuer bid - relief from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act - Issuer proposes to purchase, at a discounted purchase price, up to 1,000,000 of its common shares from one of its shareholders and/or such shareholder's affiliates - due to discounted purchase price, proposed purchases cannot be made through the TSX – but for the fact that the proposed purchases cannot be made through the TSX, the Issuer could otherwise acquire the subject shares in reliance upon the issuer bid exemption available under section 101.2 of the Act and in accordance with the TSX rules governing normal course issuer bid purchases - no adverse economic impact on or prejudice to issuer or public shareholders - proposed purchases exempt from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act, subject to conditions, including that the issuer not purchase more than one-third of the maximum number of shares to be purchased under its normal course issuer bid by way of off-exchange block purchases.

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF IGM FINANCIAL INC.

ORDER

(Clause 104(2)(c))

UPON the application (the "**Application**") of IGM Financial Inc. (the "**Issuer**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to Section 104(2)(c) of the *Securities Act* (Ontario) (the "**Act**") exempting the Issuer from the requirements of Sections 94 to 94.8 and 97 to 98.7 of the Act (the "**Issuer Bid Requirements**") in connection with the proposed purchase or purchases (the "**Proposed Purchases**") of up to an aggregate of 1,000,000 (the "**Subject Shares**") of the Issuer's common shares (the "**Shares**") from The Toronto-Dominion Bank and/or its affiliates (collectively, the "**Selling Shareholders**");

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

AND UPON the Issuer (and the Selling Shareholders in respect of paragraphs 5, 6, 7, 8, 11 and 23 as they relate to the Selling Shareholders) having represented to the Commission that:

- 1. The Issuer is a corporation governed by the *Canada Business Corporations Act.*
- 2. The head office of the Issuer is located at 447 Portage Avenue, Winnipeg, Manitoba, R3C 3B6.
- 3. The Issuer is a reporting issuer in each of the provinces and territories of Canada and the Shares are listed for trading on the Toronto Stock Exchange (the "**TSX**"). The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.
- 4. As at November 30, 2010, the authorized common share capital of the Issuer consisted of an unlimited number of Shares, of which 260,889,525 were issued and outstanding.
- 5. The corporate headquarters of the Selling Shareholders are located in Toronto, Ontario.
- The Selling Shareholders do not directly or indirectly own more than 5% of the issued and outstanding Shares.
- 7. The Selling Shareholders are the beneficial owner of the Subject Shares. The Subject Shares were not acquired by the Selling Shareholders in anticipation of resale pursuant to private agreements under an issuer bid exemption order issued by a securities regulatory authority ("Off-Exchange Block Purchases").
- 8. Each of the Selling Shareholders is at arm's length to the Issuer and is not an "insider" of the Issuer, an "associate" of an "insider" of the Issuer or an "associate" or "affiliate" of the Issuer, as such terms are defined in the Act. In addition, each Selling Shareholder is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus and Registration Exemptions* ("NI 45-106").
- 9. Pursuant to a "Notice of Intention to Make a Normal Course Issuer Bid" filed with the TSX and dated April 7, 2010 (the "Notice"), the Issuer is permitted to make normal course issuer bid (the "Bid") purchases (each a "Bid Purchase") to a maximum of 13,121,380 Shares from April 12, 2010 until April 11, 2011 in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "TSX Rules").
- As of November 30, 2010, 2,566,700 Shares have been purchased under the Bid, including 1,650,000 Shares purchased pursuant to Off-Exchange Block Purchases. Assuming the completion of the purchase of the Subject Shares, the Issuer will have purchased under the Bid an aggregate of 2,650,000 Shares pursuant to Off-Exchange Block Purchases, representing approximately 20% of the Shares authorized to be purchased under such Bid.

- 11. The Issuer and the Selling Shareholders intend to enter into one or more agreements of purchase and sale (the "**Agreement**") pursuant to which the Issuer will agree to acquire, by one or more trades occurring prior to the end of day on March 31, 2011, the Subject Shares from the Selling Shareholders for a purchase price or prices (the "**Purchase Price**") that will be negotiated at arm's length between the Issuer and the Selling Shareholders. The Purchase Price will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Shares.
- 12. The Subject Shares acquired under each Proposed Purchase will constitute a "block" as that term is defined in section 628 of the TSX Rules.
- 13. The purchase of the Subject Shares by the Issuer pursuant to the Agreement will constitute an "issuer bid" for purposes of the Act, to which the Issuer Bid Requirements would otherwise apply.
- 14. Because the Purchase Price will be at a discount to the prevailing market price and below the bidask price for the Shares at the time of each trade, the Proposed Purchases cannot be made through the TSX trading system and, therefore, will not occur "through the facilities" of the TSX. As a result, the Issuer will be unable to acquire the Subject Shares from the Selling Shareholders in reliance upon the exemption from the Issuer Bid Requirements that is available pursuant to Section 101.2(1) of the Act.
- 15. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Shares at the time of the trade, the Issuer could otherwise acquire the Subject Shares as a "block purchase" (a "Block Purchase") in accordance with Section 629(I)7 of Part VI of the TSX Rules and the exemption from the Issuer Bid Requirements available pursuant to Section 101.2(1) of the Act. The Notice filed with the TSX by the Issuer contemplates that purchases under the Bid may be made by such other means as permitted by the TSX, including by Off-Exchange Block Purchases.
- 16. The Issuer will be able to acquire the Subject Shares from the Selling Shareholders in reliance upon the exemption from the dealer registration requirements of the Act that is available as a result of the combined effect of Section 2.16 of NI 45-106 and Section 4.1(a) of Commission Rule 45-501 Ontario Prospectus and Registration Exemptions.
- 17. Management of the Issuer is of the view that it will be able to purchase of the Subject Shares at a lower price than the price at which the Issuer would be able to purchase the Shares under the Bid through the facilities of the TSX and the Issuer

is of the view that this is an appropriate use of the Issuer's funds.

- 18. The purchase of Subject Shares will not adversely affect the Issuer, the rights of any of the Issuer's securityholders or affect control of the Issuer.
- 19. The Proposed Purchases will be carried out with a minimum of cost to the Issuer.
- 20. The market for the Shares is a "liquid market" within the meaning of Section 1.2 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*. The purchase of Subject Shares would not have any effect on the ability of other shareholders of the Issuer to sell their common shares in the market.
- 21. Other than the Purchase Price, no additional fee or other consideration will be paid in connection with the Proposed Purchases.
- 22. To the best of the Issuer's knowledge, as of November 30, 2010, the public float for the Shares represented approximately 39.49% of all the issued and outstanding Shares for purposes of the TSX Rules.
- 23. At the time that each Agreement is entered into by the Issuer and the Selling Shareholders and at the time of each Proposed Purchase, neither the Issuer nor the Selling Shareholders will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

AND UPON the Commission being satisfied that it would not be prejudicial to the public interest for the Commission to grant the requested exemption;

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

- the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit for the Bid Purchases in accordance with the TSX Rules;
- (b) the Issuer will refrain from conducting a Block Purchase in accordance with the TSX Rules during the calendar week it completes each Proposed Purchase and may not make any further Bid Purchases for the remainder of that calendar day;
- (c) the Purchase Price is not higher than the last "independent trade" (as that term is used in paragraph 629(I)1 of the TSX Rules) of a board lot of Shares

immediately prior to the execution of each Proposed Purchase;

- (d) the Issuer will otherwise acquire any additional Shares pursuant to the Bid and in accordance with the TSX Rules, including by means of open market transactions and by other means as may be permitted by the TSX, including Off-Exchange Block Purchases;
- (e) immediately following each Proposed Purchase of the Subject Shares from the Selling Shareholders, the Issuer will report the purchase of the Subject Shares to the TSX;
- (f) at the time that the Agreement is entered into by the Issuer and the Selling Shareholders and at the time of each Proposed Purchase, neither the Issuer nor the Selling Shareholders will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed;
- (g) the Issuer will issue a press release in connection with the Proposed Purchases; and
- (h) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, more than one-third of the maximum number of Shares the Issuer can purchase under the Bid.

DATED at Toronto this 14th day of December, 2010.

"Carol S. Perry" Commissioner Ontario Securities Commission

"James D. Carnwath" Commissioner Ontario Securities Commission

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

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

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

AND

IN THE MATTER OF ROBERT JOSEPH VANIER (a.k.a. CARL JOSEPH GAGNON)

SETTLEMENT AGREEMENT BETWEEN STAFF OF THE ONTARIO SECURITIES COMMISSION AND ROBERT JOSEPH VANIER

PART I – INTRODUCTION

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "Act"), it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Robert Joseph Vanier (the "Respondent" or "Vanier").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding commenced by Notice of Hearing dated March 29, 2010 (the "Proceeding") against Vanier according to the terms and conditions set out in Part V of this Settlement Agreement. Vanier agrees to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III – AGREED FACTS

3. Staff and the Respondent agree, solely for the purposes of this Settlement Agreement, any order of the Commission contemplated hereby, and any other regulatory proceeding commenced by a securities regulatory authority, with the facts and conclusions set out in Part III of this Settlement Agreement. Nothing in this Settlement Agreement is intended to be an admission of civil liability by the Respondent to any person or company; such liability is expressly denied.

A. The Respondent

- 4. Vanier is a resident of Ontario and has never been registered with the Commission in any capacity.
- 5. Carl Joseph Gagnon ("Gagnon") was a resident of Quebec and has never been registered with the Commission in any capacity.
- 6. Vanier and Gagnon are the same person. The Respondent was in the Quebec witness protection program. The Respondent changed his name from Gagnon to Vanier before 2002.
- 7. Gagnon has a record of at least 70 convictions for offences under the *Criminal Code of Canada*, R.S.C. 1985, c. C-46, as amended (the "Criminal Record"), including numerous convictions for fraud.

B. Onco Petroleum Inc.

8. Onco Petroleum Inc. ("Onco") was incorporated under the laws of Ontario on October 31, 2002 and continued as a federal corporation under the laws of Canada on September 29, 2006.

- 9. Vanier was Chairman of the Board of Onco from October 31, 2002 until April 6, 2006; Vice President and Secretary of Onco from October 31, 2002 until March 31, 2003; and President and Chief Executive Officer of Onco from March 13, 2007 to September 25, 2008.
- 10. On October 12, 2007, Onco filed a prospectus with the Commission to gain reporting issuer status (the "Prospectus"). No securities were being offered pursuant to the Prospectus.
- 11. Vanier, as President and Chief Executive Officer of Onco, signed a Certificate of the Corporation dated October 12, 2007, certifying that "the foregoing constitutes full, true and plain disclosure of all material facts relating to the securities previously issued by the issuer as required by Part XV of the Securities Act (Ontario) and the regulations thereunder" (the "Certificate of the Corporation").
- 12. Vanier, as a Promoter of Onco, signed a Certificate of Promoters dated October 12, 2007, certifying that "the foregoing constitutes full, true and plain disclosure of all material facts relating to the securities previously issued by the issuer as required by Part XV of the *Securities Act* (Ontario) and the regulations thereunder" (the "Certificate of Promoters").
- 13. The Certificate of the Corporation and the Certificate of Promoters were filed with the Prospectus with the Commission on October 12, 2007.

C. Misrepresentations to Staff of the Commission

- 14. During the course of filing the Prospectus with the Commission, Vanier did not disclose that he was previously known as Gagnon, nor did he disclose the Criminal Record.
- 15. Under the heading "Use of Available Funds", the Prospectus stated: "At June 30, 2007, the Company held approximately \$20,499,208 in U.S. funds (equivalent to \$21,839,856 at that date)."
- 16. At June 30, 2007, Onco did not have \$21,839,856 in available assets. Approximately \$20,000,000 was owed to Onco and was evidenced by an unsecured promissory note from William Del Biaggio III (the "Promissory Note"). There was no notation in the Prospectus regarding the Promissory Note.

D. Misrepresentations to Canadian Trading and Quotation System Inc.

- 17. On August 20, 2007, Vanier filed an application on behalf of Onco with Canadian Trading and Quotation System Inc. ("CNQ"), to have its securities qualified for listing and trading on the CNQ (the "Application").
- 18. The Application contained Form 2A Listing Statement Certificate of the Issuer, signed by Vanier as Chief Executive Officer of Onco which stated: "Pursuant to a resolution duly passed by its Board of Directors, Onco Petroleum Inc. hereby applies for the listing of the above mentioned securities on CNQ. The foregoing contains full, true and plain disclosure of all material information relating to Onco Petroleum Inc. It contains no untrue statement of material fact and does not omit to state a material fact that is required to be stated or that is necessary to prevent a statement that is being made from being false or misleading in light of the circumstances in which it was made."
- 19. The Application also contained Form 2B Listing Summary containing, among other things, financial information as at December 31, 2006 that listed Current Assets as \$23,831,817. The Application contained no reference to the Promissory Note.
- 20. The Application contained Form 3 Personal Information Form, requiring the applicant to answer a number of questions and to swear/declare that all the answers are true and correct to the best of their knowledge (the "PIF Affidavit") The PIF Affidavit was sworn by Vanier on April 18, 2007.
- 21. In the PIF Affidavit, in response to question 2: "Have you ever had, used or operated under, or carried on business under any name other than the name mentioned in Question 1(a) [above] of this form, or have you ever been known under any other name?", Vanier answered no.
- 22.1 n the PIF Affidavit, in response to question 4(b): "Have you ever been convicted under any law of any province, territory, state or country for contraventions or criminal offences not noted in 4(a) above [securities-related offences]?", Vanier answered no.

PART IV - CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

23. By engaging in the conduct described above in Part III of this Settlement Agreement, the Respondent has breached Ontario securities law by:

- (a) failing to provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed contrary to section 56(1) of the Act;
- (b) making statements in an application, preliminary prospectus, prospectus, financial statement or other document required to be filed or furnished under Ontario securities law that, in a material respect and at the time and in light of the circumstances in which it was made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statement not misleading contrary to section 122(1)(b) of the Act; and
- (c) as the President and Chief Executive Officer of Onco did authorize, permit or acquiesce in the commission of the violations of sections 56(1) and 122(1)(b) of the Act, as set out above, by Onco pursuant to section 129.2 of the Act.
- 24. The Respondent's conduct was contrary to the public interest.

PART V – TERMS OF SETTLEMENT

25. Vanier agrees to the terms of settlement listed below.

- 26. The Commission will make an order pursuant to section 127(1) and section 127.1 of the Act that:
 - (a) The Settlement Agreement is approved;
 - (b) Trading in and acquisition of any securities by Vanier shall cease for a period of thirteen (13) years commencing thirty (30) days after the date of the Commission's order, with the exception that Vanier be permitted to trade in and acquire securities within a single account for a registered retirement savings plan (as defined in the *Income Tax Act* (Canada)) in which he has sole legal and beneficial ownership and interest, provided that:
 - the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;
 - (ii) Vanier does not own legally or beneficially more than one percent of the outstanding securities of the class or series of the class in question; and
 - (iii) Vanier must carry out any permitted trading through a registered dealer and through one account opened in his name only and must close any other accounts;
 - (c) Any exemptions contained in Ontario securities law do not apply to Vanier for a period of thirteen (13) years commencing thirty (30) days after the date of the Commission's order;
 - (d) Vanier is reprimanded;
 - (e) Vanier resign any positions that he holds as a director or officer of an issuer, registrant, or investment fund manager within thirty (30) days of the date of the Commission's order;
 - (f) Vanier is permanently prohibited from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager commencing thirty (30) days after the date of the Commission's order;
 - (g) Vanier is permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter; and
 - (h) Vanier pay the sum of \$10,000 towards the Commission's costs relating to the investigation of this matter.
- 27. Vanier agrees to personally make any payments ordered above by certified cheque or bank draft when the Commission approves this Settlement Agreement. Vanier will not be reimbursed for, or receive a contribution toward, this payment from any other person or company.

PART VI – STAFF COMMITMENT

- 28. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 29 below.
- 29. If the Commission approves this Settlement Agreement and Vanier fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against Vanier. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

- 30. The parties will seek approval of this Settlement Agreement at an *in camera* hearing before the Commission scheduled for August 9, 2010, or on another date agreed to by Staff and Vanier, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.
- 31. Staff and Vanier agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on Vanier's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.
- 32. If the Commission approves this Settlement Agreement, Vanier agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
- 33. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.
- 34. Whether or not the Commission approves this Settlement Agreement, Vanier will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

- 35. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:
 - i. this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and
 - ii. Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.
- 36. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement and a period of four (4) months has elapsed from the date of the Commission's order approving the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

- 37. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.
- 38. A fax copy of any signature will be treated as an original signature.

Dated this 5th day of August, 2010.

<u>"Robert Vanier"</u> Robert Joseph Vanier <u>"Silvia DeBastos"</u> Witness

<u>"Kathryn Daniels"</u> Deputy Director, Enforcement Branch

Schedule "A"

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

AND

IN THE MATTER OF ROBERT JOSEPH VANIER (a.k.a. CARL JOSEPH GAGNON)

ORDER

(sections 127 and 127.1)

WHEREAS on August 6, 2010, the Commission issued a Notice of Hearing pursuant to section 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the "Act"), to consider whether it was in the public interest to approve a settlement agreement entered into between the Robert Joseph Vanier (the "Respondent" or "Vanier") and Staff of the Commission ("Staff");

AND WHEREAS the Vanier entered into a Settlement Agreement with Staff dated August 4, 2010 (the "Settlement Agreement") in which he agreed to a settlement of the proceedings commenced by the Notice of Hearing dated March 29, 2010, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and Staff's Statement of Allegations dated March 29, 2010, and upon reading the submissions from counsel for Staff, and upon hearing submissions from counsel for Staff and counsel for Vanier;

AND WHEREAS Vanier acknowledges that the facts set out in Part III of the Settlement Agreement constituted a breach of sections 56(1), 122(1)(b) and 129.2 of the Act and conduct contrary to the public interest under the Act;

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

IT IS HEREBY ORDERED THAT:

- (a) the Settlement Agreement between Vanier and Staff is approved;
- (b) Vanier shall cease trading in and acquisitions of any securities for a period of thirteen (13) years commencing thirty (30) days after the date of this order, with the exception that Vanier be permitted to trade in and acquire securities within a single account for a registered retirement savings plan (as defined in the *Income Tax Act* (Canada)) in which he has sole legal and beneficial ownership and interest, provided that:
 - the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;
 - (ii) Vanier does not own legally or beneficially more than one percent of the outstanding securities of the class or series of the class in question; and
 - (iii) Vanier must carry out any permitted trading through a registered dealer and through one account opened in his name only and must close any other accounts;
- (c) any exemptions in Ontario securities law do not apply to Vanier for a period of thirteen (13) years commencing thirty (30) days after the date of this order;
- (d) Vanier is hereby reprimanded;
- (e) Vanier resign any positions that he holds as a director or officer of an issuer, registrant, or investment fund manager within thirty (30) days of the date of this order;
- (f) Vanier is prohibited from becoming or acting as an officer or director of an issuer, registrant or investment fund manager permanently commencing thirty (30) days after the date of this order;

- (g) Vanier is prohibited from becoming or acting as an registrant, investment fund manager or promoter permanently; and
- (h) Vanier agrees to pay costs of the investigation in the amount of \$10,000 to the Commission.

Dated this day of August, 2010.

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 |
|---------------------|-------------------------------|--------------------|-------------------------------|-------------------------|
| Inviro Medical Inc. | 09 Dec 10 | 21 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 |
|--------------|---|--------------------|-------------------------------|-----------------------------|---|
| | | | | | |

THERE ARE NO ITEMS FOR THIS WEEK.

4.2.2 Outstanding Management & Insider Cease Trading Orders

| Company Name | Date of Order or Temporary Order | Date of Hearing | Date of Permanent Order | Date of Lapse/ Expire | Date of Issuer Temporary Order |
|---------------------------------|---|--------------------|-------------------------------|-----------------------------|--------------------------------------|
| 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 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 |
|-----------------------------|----------------------|---|------------------------------|----------------------------------|
| 11/30/2010 | 2 | 365 March Road Limited Partnership - Limited Partnership Interest | 12,400,000.00 | 100.00 |
| 11/23/2010 to 11/30/2010 | 95 | Abenteuer Resources Corp Receipts | 12,000,000.00 | 15,000,000.00 |
| 11/30/2010 | 35 | ACM Commercial Mortgage Fund - Units | 1,739,458.24 | 15,809.41 |
| 11/24/2010 to 11/25/2010 | 10 | Active Growth Capital Inc Common Shares | 625,000.00 | 3,500,000.00 |
| 09/29/2009 | 9 | Advanced Explorations Inc Units | 325,000.00 | 2,166,667.00 |
| 11/25/2010 | 10 | AgriMarine Holdings Inc Units | 1,400,000.00 | 5,600,000.00 |
| 11/01/2010 | 9 | American Achievement Corporation - Notes | 3,547,600.00 | 9.00 |
| 11/30/2010 | 30 | Amerix Precious Metals Corporation - Common Shares | 512,750.00 | 7,725,000.00 |
| 11/12/2010 | 3 | Applewood II Hotel Holdings Inc & Combo Construction Limited - Units | 1,800,000.00 | 1,800,000.00 |
| 10/13/2010 | 1 | Aroway Minerals Inc Common Shares | 107,500.00 | 500,000.00 |
| 10/13/2010 | 72 | Aroway Minerals Inc Flow-Through Units | 1,369,084.00 | 6,845,420.00 |
| 10/13/2010 | 31 | Aroway Minerals Inc Non-Flow Through Units | 600,000.00 | 3,750,000.00 |
| 10/15/2010 | 26 | Aura Silver Resources Inc Units | 2,197,626.64 | 13,040,743.00 |
| 11/25/2010 | 61 | AXMIN Inc Common Shares | 10,000,000.00 | 83,333,333.00 |
| 10/13/2010 | 14 | BacTech Mining Corporation - Units | 430,000.00 | 43.00 |
| 10/14/2010 | 26 | Bayfield Ventures Corp Common Shares | 4,999,999.20 | 3,571,428.00 |
| 10/20/2010 | 7 | Beaufield Resources Inc Common Shares | 3,000,250.00 | 5,455,000.00 |
| 11/30/2010 | 3 | Bedford Commons 2 Property Holdings Inc - Units | 3,800,000.00 | 3,800,000.00 |
| 11/16/2010 | 25 | biOasis Technologies Inc Units | 1,029,287.50 | 2,058,575.00 |
| 12/02/2010 | 4 | Birch Hill Equity Partners IV, L.P Limited Partnership Interest | 48,000,000.00 | 4.00 |
| 12/02/2010 | 1 | Birch Hill Equity Partners (Entrepreneurs) IV, L.P Limited Partnership Interest | 300,000.00 | 1.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price (\$) | No. of Securities Distributed |
|-----------------------------|----------------------|---|------------------------------|----------------------------------|
| 10/04/2010 | 7 | Bolero Resources Corp Units | 1,000,000.00 | 8,000,000.00 |
| 11/30/2010 | 16 | Bonnefield Canadian Farmland LP 1 - Limited Partnership Units | 5,185,000.00 | 5,185.00 |
| 11/26/2010 | 5 | BonTerra Resources Inc Units | 2,000,000.00 | 4,000,000.00 |
| 09/27/2010 | 389 | Brant County Riverbend Development Investment Corporation - Common Shares | 8,061,600.00 | 806,160.00 |
| 09/27/2010 | 232 | Brant County Riverbend Development LP - Limited Partnership Units | 15,994,180.00 | 1,599,418.00 |
| 11/26/2010 | 30 | BRC Minerals Ltd - Common Shares | 1,890,450.50 | 1,855,000.00 |
| 10/19/2010 | 1 | Campus Crest Communities, Inc Common Shares | 20,592.00 | 1,600,000.00 |
| 10/18/2010 to 10/25/2010 | 28 | Canadian Arrow Mines Limited - Units | 664,750.10 | 9,496,430.00 |
| 11/23/2010 | 167 | Canadian Energy Exploration Inc - Common Shares | 6,999,999.86 | N/A |
| 11/30/2010 | 59 | Canadian Western Bank - Debentures | 300,000,000.00 | N/A |
| 11/30/2010 | 35 | Centurion Apartment Real Estate Investment Trust - Units | 1,618,040.00 | 161,804.00 |
| 11/30/2010 | 5 | CGS Flow-Through 2010 LP - Limited Partnership Units | 195,000.00 | 7,800.00 |
| 10/08/2010 | 1 | China XD Plastics Co. Ltd Common Shares | 1,500,000.00 | 250,000.00 |
| 11/23/2010 | 42 | Cloudbreak Resources Ltd Common Shares | 3,313,499.50 | 7,942,840.00 |
| 11/22/2010 to 11/26/2010 | 9 | Colwood City Centre Limited Partnership - Notes | 249,000.00 | 249,000.00 |
| 11/30/2010 to 12/03/2010 | 5 | Colwood City Centre Limited Partnership - Notes | 76,000.00 | 76,000.00 |
| 11/02/2010 to 11/25/2010 | 7 | CommunityLend Inc Loan Agreements | 78,300.00 | 78,300.00 |
| 11/08/2010 to 11/11/2010 | 3 | CommunityLend Inc Units | 1,600.00 | 3.00 |
| 12/03/2010 | 26 | Connaught Oil & Gas Ltd Common Shares | 50,714,200.00 | 1,267,855.00 |
| 11/09/2010 | 3 | Costamare Inc Common Shares | 10,577,600.00 | 880,000.00 |
| 10/21/2010 | 99 | Crazy Horse Resources Inc - Receipts | 8,499,999.75 | 11,333,333.00 |
| 11/25/2010 | 37 | Creston Moly Corp Special Warrants | 11,500,000.00 | 28,750,000.00 |
| 11/23/2010 | 111 | Crosshair Exploration & Mining Corp Flow-Through Shares | 10,000,000.00 | N/A |
| 11/23/2010 | 111 | Crosshair Exploration & Mining Corp Receipts | 10,000,000.00 | 40,000,000.00 |
| 11/10/2010 | 20 | Cue Resources Ltd Units | 1,146,899.95 | 16,384,285.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price (\$) | No. of Securities Distributed |
|-----------------------------|----------------------|---|------------------------------|----------------------------------|
| 11/24/2010 | 152 | Curtis Resources Ltd - Common Shares | 41,154,282.00 | 20,577,141.00 |
| 11/24/2010 | 1 | CVR Energy, Inc Common Shares | 1,630,500.00 | 150,000.00 |
| 11/05/2010 | 1 | Developers Divershified Realty Corporation - Notes | 500,750.00 | 500,000.00 |
| 01/01/2009 to 12/01/2009 | 27 | DKAM Capital Ideas Fund LP - Limited Partnership Units | 5,234,174.00 | 38,698.02 |
| 11/23/2010 | 15 | Embotics Corporation - Debentures | 2,000,000.00 | 11,816.00 |
| 09/28/2010 to 10/04/2010 | 35 | Enhanced Oil Resources Inc Units | 1,849,685.00 | 9,248,425.00 |
| 12/03/2010 | 17 | Estrella Gold Corporation - Units | 1,000,000.00 | 2,000,000.00 |
| 11/26/2010 | 4 | Excalibur Resources Ltd Units | 400,500.00 | 2,670,000.00 |
| 11/03/2009 to 09/24/2010 | 1 | Excel BRIC Fund - Units | 5,321,643.00 | 296,882.18 |
| 11/03/2009 to 09/24/2010 | 1 | Excel BRIC Fund - Units | 2,721,486.99 | 373,063.09 |
| 11/03/2009 to 09/24/2010 | 1 | Excel BRIC Fund - Units | 4,021,455.00 | 219,344.21 |
| 11/03/2009 to 09/24/2010 | 1 | Excel BRIC Fund - Units | 3,067,578.06 | 465,813.56 |
| 11/19/2010 | 30 | Exile Resources Inc Units | 2,412,000.00 | 20,100,000.00 |
| 11/29/2010 | 2 | First Leaside Mortgage Fund - Trust Units | 1,044,330.00 | 1,044,330.00 |
| 11/29/2010 | 1 | First Leaside Ultimate Limited Partnership - Limited Partnership Interest | 250,000.77 | 245,701.00 |
| 11/30/2010 | 2 | First Leaside Wealth Management Fund - Trust Units | 1,150,000.00 | 1,150,000.00 |
| 10/22/2010 | 8 | Focus Metal Inc Units | 60,500.00 | 605,000.00 |
| 06/29/2010 to 06/30/2010 | 6 | Fortune Minerals Limited - Flow- Through Shares | 1,977,300.00 | 2,535,000.00 |
| 07/09/2010 | 1 | Foundation Resources Inc, - Common Shares | 5,000.00 | 50,000.00 |
| 11/23/2010 | 14 | General Motors Company - Common Shares | 63,258,510.00 | 2,907,333.00 |
| 11/22/2010 | 66 | Global Minerals Ltd Units | 3,982,099.55 | 9,239,390.00 |
| 09/10/2010 | 2 | Gold Standard Ventures Corp Units | 1,745,000.40 | 2,684,616.00 |
| 11/24/2010 | 2 | Goodbaby International Holdings Limited - Common Shares | 127,937.34 | 200,000.00 |
| 11/17/2010 | 16 | Grayd Resource Corporation - Common Shares | 6,000,000.00 | 4,800,000.00 |
| 11/26/2010 | 44 | Gunpoint Exploration Ltd Common Shares | 17,319,070.00 | 33,500,626.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price (\$) | No. of Securities Distributed |
|-----------------------------|----------------------|---|------------------------------|----------------------------------|
| 11/30/2010 | 8 | GWR Resources Inc Flow-Through Units | 1,750,000.00 | 6,250,000.00 |
| 11/29/2010 | 4 | IGW Real Estate Investment Trust - Units | 97,084.95 | 96,557.21 |
| 11/22/2010 to 11/26/2010 | 110 | IGW Real Estate Invnestment Trust - Units | 4,369,127.51 | N/A |
| 11/23/2010 | 1 | Investeco Private Equity Fund III, L.P - Limited Partnership Units | 251,762.50 | 250.00 |
| 11/29/2010 | 4 | Jack Cooper Holdings Corp - Units | 6,586,326.07 | 6,500.00 |
| 12/01/2010 | 23 | Kane Biotech Inc Units | 253,280.00 | 3,166,000.00 |
| 11/05/2010 | 16 | Kilo Goldmines Ltd Units | 4,748,000.00 | 23,740,000.00 |
| 11/30/2010 | 3 | Kingwest Avenue Portfolio - Units | 175,924.31 | 5,930.49 |
| 11/30/2010 | 14 | Kirrin Resources Inc Units | 674,000.00 | 8,425,000.00 |
| 08/16/2010 | 1 | Kokomo Enterprises Inc Units | 120,000.00 | 2,000,000.00 |
| 07/29/2009 | 4 | Kokomo Enterprises Inc Units | 85,500.00 | 1,140,000.00 |
| 11/03/2010 | 1 | Le Gaga Holdings Limited - American Depository Shares | 1,918.00 | 200.00 |
| 11/24/2010 | 25 | Logan Resources Ltd Flow-Through Units | 771,250.00 | 10,283,332.00 |
| 11/24/2010 | 17 | Logan Resources Ltd Non-Flow Through Units | 400,000.00 | 6,666,667.00 |
| 11/12/2010 to 11/19/2010 | 40 | Lynden Energy Corp Units | 2,993,000.00 | 5,986,000.00 |
| 01/01/2008 to 12/31/2008 | 2 | M-L International Investment Fund - Units | 84,935,151.58 | 872,199.30 |
| 11/04/2010 | 21 | Macusani Yellowcake Inc Units | 4,502,500.00 | 18,010,000.00 |
| 11/10/2010 | 2 | Mail.ru Group Limited - Common Shares | 1,942,500.00 | 70,000.00 |
| 11/12/2010 | 29 | Mainstream Minerals Corporation - Units | 450,000.00 | 5,000,000.00 |
| 08/06/2010 | 5 | Marine Mining Corp Units | 400,000.00 | 3,333,333.00 |
| 11/09/2010 to 11/18/2010 | 80 | Medallion Resources Ltd Units | 1,524,998.70 | 5,083,329.00 |
| 07/30/2010 | 30 | Metanor Resources Inc Flow- Through Shares | 3,186,944.80 | 4,902,992.00 |
| 10/21/2010 | 19 | Metanor Resources Inc Flow- Through Shares | 4,266,900.00 | 8,285,242.00 |
| 11/30/2010 | 5 | Molycor Gold Corp Flow-Through Units | 420,000.00 | 5,250,000.00 |
| 10/27/2010 | 1 | Momentive Performance Materials Inc. - Note | 1,002,400.00 | 1.00 |
| 11/10/2010 | 8 | Montero Mining and Exploration ltd Common Shares | 2,100,000.00 | N/A |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price (\$) | No. of Securities Distributed |
|-----------------------------|----------------------|--|------------------------------|----------------------------------|
| 11/26/2010 | 35 | Morrison Laurier Mortgage Corporation - Preferred Shares | 1,907,000.00 | 190,700.00 |
| 11/30/2010 | 28 | MPT Mustard Products & Technologies Inc Common Shares | 441,425.25 | 1,261,215.00 |
| 11/04/2010 to 11/05/2010 | 29 | Naina Capital Corp - Units | 1,351,000.00 | N/A |
| 11/09/2010 | 2 | Nakina Systems Inc Notes | 270,616.35 | 2.00 |
| 11/23/2010 to 12/01/2010 | 2 | Nakina Systems Inc Warrants | 335,860.76 | 7.00 |
| 11/10/2010 | 1 | NeoProbe Corporation - Units | 1,500,000.60 | 789,474.00 |
| 10/13/2010 to 10/22/2010 | 25 | Newport Canadian Equity Fund - Trust Units | 506,300.00 | 3,958.84 |
| 10/12/2010 to 10/22/2010 | 7 | Newport Fixed Income Fund - Trust Units | 812,500.00 | 7,503.98 |
| 10/12/2010 to 10/22/2010 | 6 | Newport Global Equity Fund - Trust Units | 420,000.00 | 7,086.03 |
| 10/08/2010 to 10/22/2010 | 47 | Newport Yield Fund - Trust Units | 1,524,846.00 | 13,076.38 |
| 11/30/2010 | 1 | Nichromet Extraction Inc Units | 665,000.00 | 6,650,000.00 |
| 10/01/2009 to 09/30/2010 | 1 | Northwest Select Global Growth Portfolio - Units | 18,883,344.22 | N/A |
| 11/19/2010 | 81 | NQ Exploration Inc Units | 1,000,000.00 | 1,000.00 |
| 11/01/2010 | 11 | NQ Exploration Inc Units | 300,000.00 | 3,000,000.00 |
| 10/04/2010 | 20 | Nuinsco Resources Limited - Units | 499,999.99 | 7,142,857.00 |
| 10/01/2010 | 1 | Nuinsco Resources Limited - Units | 500,000.00 | 10,000,000.00 |
| 11/18/2010 | 5 | Oakwood Retirement Communities Inc - Bonds | 90,000,000.00 | 5.00 |
| 10/20/2010 | 83 | OceanaGold Corporation - Special Warrants | 42,081,760.00 | 8,152,860.00 |
| 11/29/2010 | 153 | Petro Uno Resources Ltd Warrants | 11,502,300.00 | 20,320,730.00 |
| 11/08/2010 | 10 | Pinestar Gold Inc - Common Shares | 132,000.00 | 2,200,000.00 |
| 11/30/2010 | 3 | Plazabridge Lifestyle Communites Inc - Units | 11,500,000.00 | 11,500,000.00 |
| 11/29/2010 | 2 | Plazacorp Properties Holdings Inc Units | 4,307,000.00 | 4,307,000.00 |
| 11/18/2010 | 3 | Plenary Justice Thunder Bay LP - Notes | 92,239,282.00 | 92,239,282.00 |
| 10/21/2010 | 1 | Premier Gold Mines Limited - Common Shares | 136,000.00 | 25,000.00 |
| 11/10/2010 | 1 | President and Fellows of Haarvard College - Bonds | 4,975,093.31 | 5,000,000.00 |
| 10/27/2010 | 27 | Quaterra Resources Inc Units | 17,050,090.00 | 11,724,000.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price (\$) | No. of Securities Distributed |
|-----------------------------|----------------------|--|------------------------------|----------------------------------|
| 10/29/2010 | 6 | Radiant Energy Corporation - Common Shares | 93,679.56 | 764,107.00 |
| 06/25/2010 to 06/28/2010 | 2 | Rainy River Resources Ltd Common Shares | 131,800.00 | 20,000.00 |
| 09/08/2010 | 61 | Rainy River Resources Ltd Flow- Through Shares | 21,041,000.00 | 2,450,000.00 |
| 11/30/2010 to 12/03/2010 | 34 | Range Royalty Limited Partnership - Limited Partnership Units | 8,231,888.00 | 587,992.00 |
| 11/30/2010 to 12/03/2010 | 191 | Range Royalty Trust - Units | 28,168,112.00 | 2,012,008.00 |
| 12/03/2010 | 1 | Raven Minerals Corp Common Shares | 3,240,000.00 | 3,600,000.00 |
| 10/29/2010 | 3 | Red Pine Exploration - Common Shares | 32,500.00 | 250,000.00 |
| 10/22/2010 | 13 | Renforth Resouces Inc Units | 760,000.00 | 15,200,000.00 |
| 11/26/2010 | 148 | Reservoir Capital Corp Units | 3,060,001.00 | 5,100,000.00 |
| 10/01/2010 | 1 | Riva Gold Corporation - Units | 111,250.00 | 741,667.00 |
| 11/12/2010 | 67 | Roca Mines Inc Units | 5,075,000.00 | 20,300,000.00 |
| 11/23/2010 | 46 | Rockgate Capital Corp Receipts | 15,000,920.00 | 13,637,200.00 |
| 12/02/2010 | 23 | Rockhaven Resources Ltd Units | 6,000,009.40 | 8,571,442.00 |
| 10/28/2010 | 7 | RTN Stealth Software Inc Units | 112,350.00 | 312,000.00 |
| 11/22/2010 | 140 | Rugby Mining Limited - Common Shares | 8,500,000.00 | 10,000,000.00 |
| 11/23/2010 | 5 | Slam Exploration Ltd Flow-Through Units | 1,293,600.00 | 6,160,000.00 |
| 10/21/2010 | 103 | Solara Exploration Ltd Units | 3,989,879.70 | N/A |
| 11/26/2010 | 30 | Southern Silver Exploration Corp Units | 1,060,100.00 | 10,061,000.00 |
| 12/01/2010 | 2 | Stacey Muirhead Limited Partnership - Limited Partnership Units | 402,000.00 | 10,360.32 |
| 12/01/2010 | 1 | Stacey Muirhead RSP Fund - Trust Units | 500.00 | 48.92 |
| 11/25/2010 | 29 | STG Markets Limited Partnership - Limited Partnership Units | 1,040,000.00 | 104.00 |
| 10/29/2010 | 71 | STG Markets Limited Partnership - Units | 1,510,000.00 | N/A |
| 11/30/2010 | 32 | Stone 2010-WCPD Flow-Through Limited Partnership - Limited Partnership Units | 2,490,000.00 | 99,600.00 |
| 11/12/2010 | 28 | Stone 2010-WCPD Flow-Through Limited Partnership - Limited Partnership Units | 2,015,000.00 | 80,600.00 |
| 10/28/2010 | 35 | Strike Minerals Inc Units | 406,000.00 | 8,120,000.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price (\$) | No. of Securities Distributed |
|-----------------------------|----------------------|--|------------------------------|----------------------------------|
| 10/28/2010 | 33 | Strike Minerals Inc Units | 406,000.00 | 8,120,000,000. |
| 11/24/2010 | 6 | Sultan Minerals Inc Common Shares | 373,000.00 | 4,662,500.00 |
| 06/29/2010 | 2 | Temex Resource Corp Common Shares | 625,000.00 | 2,000,000.00 |
| 11/01/2010 | 84 | Terreno Resources Corp Units | 2,770,499.55 | 18,469,997.00 |
| 09/30/2010 to 10/31/2010 | 20 | The Absolute Resource Fund L.P Limited Partnership Interest | 12,409,170.00 | 20.00 |
| 11/15/2010 | 6 | The Coca-Cola Company - Notes | 25,150,673.63 | 25,000,000.00 |
| 11/25/2010 | 3 | The CRS 2010 Limited Partnership - Limited Partnership Units | 125,000.00 | 5.00 |
| 11/03/2010 | 54 | The Goldman Sachs Group, Inc Notes | 499,955,000.00 | 500,000,000.00 |
| 12/01/2010 | 8 | The Investment Partners Fund - Trust Units | 1,268,124.43 | 70,911.89 |
| 11/24/2010 | 12 | Trincan Capital Corp - Units | 300,000.00 | 3,000,000.00 |
| 07/28/2010 | 1 | Trueclaim Exploration Inc Common Shares | 12,000.00 | 100,000.00 |
| 11/16/2010 | 13 | Tuscany Energy Ltd - Flow-Through Shares | 1,200,000.00 | 8,000,000.00 |
| 10/14/2010 | 59 | U308 Corp Units | 7,196,730.00 | 23,989,100.00 |
| 11/26/2010 | 6 | UEX Corporation - Flow-Through Shares | 9,075,000.00 | 5,500,000.00 |
| 11/23/2010 | 7 | Valeant Pharmaceuticals International - Notes | 12,901,081.41 | 12,689,000.00 |
| 10/22/2010 | 2 | Ventana Gold Corp Warrants | 65,000,000.00 | 6,500,000.00 |
| 10/04/2010 | 69 | VentriPoint Diagnostics Ltd - Common Shares | 1,070,000.00 | 10,700,000.00 |
| 09/24/2010 to 09/27/2010 | 65 | Walton GA Woodbury Park Investment Corporation - Common Shares | 1,214,580.00 | 121,458.00 |
| 09/17/2010 | 175 | Walton GA Woodbury Park Investment Corporation - Common Shares | 4,073,860.00 | 407,386.00 |
| 09/17/2010 | 6 | Walton GA Woodbury Park LP - Limited Partnership Units | 4,021,264.15 | 351,402.00 |
| 09/24/2010 to 09/27/2010 | 57 | Walton Southern U.S. Land 2 Investment Corporation - Common Shares | 1,189,510.00 | 118,951.00 |
| 09/17/2010 | 52 | Walton Southern U.S. Land 2 Investment Corporation - Common Shares | 1,511,510.00 | 151,151.00 |
| 09/17/2010 | 7 | Walton Southern U.S. Land LP 2 - Limited Partnership Units | 1,658,110.59 | 161,389.00 |
| 09/24/2010 to 09/27/2010 | 8 | Walton Southern U.S. Land LP 2 - Limited Partnership Units | 1,403,358.48 | 136,164.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price (\$) | No. of Securities Distributed |
|-----------------------------|----------------------|---|------------------------------|----------------------------------|
| 11/30/2010 to 12/03/2010 | 5 | Wesbrooke Retirement Limited Partnership - Units | 37,500.00 | 37,500.00 |
| 11/02/2010 | 24 | West kirkland Mining Inc - Flow- Through Shares | 2,587,479.60 | 2,156,233.00 |
| 11/29/2010 | 1 | Wimberly Fund - Trust Units | 10,000.00 | 10,000.00 |
| 11/29/2010 to 11/30/2010 | 2 | Wimberly Fund - Trust Units | 155,000.00 | 155,000.00 |
| 11/26/2010 | 327 | Wind Acquisition Finances S.A Notes | 3,686,455,000.00 | N/A |
| 11/22/2010 | 78 | Windstorm Resources Inc - Units | 2,415,600.00 | 8,052,000.00 |
| 11/22/2010 | 90 | Xianburg Data Systems Canada Corporation - Common Shares | 1,229,750.00 | 4,099,168.00 |
| 11/03/2010 to 11/04/2010 | 16 | Yellowhead Mining Inc Units | 2,632,890.96 | 2,437,862.00 |

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Legislation

9.1.1 Bill 135, Helping Ontario Families and Managing Responsibly Act, 2010

HELPING ONTARIO FAMILIES AND MANAGING RESPONSIBLY ACT, 2010

Schedules 3 and 18 of the *Helping Ontario Families and Managing Responsibly Act, 2010* contain amendments to the *Commodity Futures Act* and the *Securities Act*. Bill 135 received Royal Assent on December 8, 2010. Bill 135 has become chapter 26, Statutes of Ontario, 2010. Most of these amendments came into force on the same date and the remainder come into force on one or more days to be named by proclamation of the Lieutenant Governor of Ontario.

These Schedules may be viewed on the Ontario Legislative Assembly's website at www.ontla.on.ca. In addition, consolidated versions of the *Securities Act* and the *Commodity Futures Act* reflecting these amendments are expected to be available shortly on the Ontario e-laws site at www.e-laws.gov.on.ca.

The Explanatory Notes in Bill 135 provided a summary of these amendments. Relevant extracts are reproduced below, subject to minor text changes made for greater clarity and to the addition of italicized notes. The additional notes generally specify which of the provisions are to come into force on proclamation.

SCHEDULE 3 COMMODITY FUTURES ACT

Currently, section 59 of the *Commodity Futures Act* authorizes the Ontario Securities Commission to issue a direction for the interim preservation of property or money in certain circumstances, and requires the Commission to apply to court no later than seven days after the direction is issued for a court order continuing the direction. An amendment to the section requires the Commission, instead, to serve and file a notice of application for a court order no later than 10 days after the Commission issues the direction.

Subsection 64(3) of the Act is re-enacted to make its wording consistent with Crown immunity provisions in other Ontario statutes.

SCHEDULE 18 SECURITIES ACT

In general terms, the amendments to the *Securities Act* deal with five matters: the establishment of a regulatory framework for trading in derivatives; the regulation of credit rating organizations; the regulation of alternative trading systems; insider trading; and technical matters. Here are some highlights of these amendments.

Regulatory framework for derivatives

Amendments to the Act establish a regulatory framework for trading in derivatives in Ontario. A new Part respecting trading in derivatives is added to the Act. New rule-making authority is also added to the Act. Current provisions of the Act are made applicable to derivatives, including provisions respecting registration, fraud, market manipulation, insider trading and the oversight of exchanges.

Here is a more detailed description of some of those amendments.

Definitions of "derivative", "designated derivative" and "related derivative" are added to subsection 1(1) of the Act. Related amendments are made to several other definitions. Amendments to other provisions of the Act authorize the Ontario Securities Commission to include or exclude financial instruments from the definition of derivative or designated derivative. (See, for example, the amendment to subsection 1(10) of the Act.) Related amendments are made to subsection 143(1) of the Act, which authorizes the Commission to make rules. (See, in particular, new paragraphs 10.1, 19.1, 19.2 and 19.4 of subsection 143(1) of the Act.) [*Note: Paragraphs 19.1, 19.2 and 19.4 of subsection 143(1) of the Act come into force on proclamation.*]

A new Part XV.1 is added to the Act. It imposes requirements for trading in designated derivatives. Section 64.1 of the Act prohibits a person or company from trading in a designated derivative unless a prescribed disclosure document has been filed and accepted by the Director. Provision is made for exceptions to this requirement. Subsection 64.2(2) of the Act provides that no derivatives transaction is void, voidable or unenforceable, and no counterparty is entitled to rescind a transaction, solely because the transaction failed to comply with the Act or the regulations. Related amendments are made to subsection 143(1) of

the Act, which authorizes the Commission to make rules. (See, in particular, paragraphs 11 and 35 of subsection 143(1) of the Act.) [Note: Part XV.1 and paragraph 143(1) 35 of the Act come into force on proclamation.]

Subsection 21(5) of the Act is re-enacted to extend the Commission's supervisory powers to exchanges on which derivatives are traded. A new section 21.2.2 of the Act permits the Commission to designate trade repositories and to regulate them. Related amendments are made to subsection 143(1) of the Act, which authorizes the Commission to make rules. (See, in particular, paragraphs 11, 12 and 35 of subsection 143(1) of the Act.)

The registration requirement in subsection 25(1) of the Act, which currently applies only in relation to securities, is amended to apply in relation to derivatives too. Persons or companies who are in the business of trading in derivatives are required to be registered as dealers. Additional categories of registration may be prescribed under the new subsection 25(1.1) of the Act for persons or companies trading in derivatives. Corresponding amendments are made with respect to registration as advisors, and relating to exemptions from the registration requirements. (See, for example, the amendments to subsections 25(7), 27(3) and section 34 and the new subsection 35(5.1) of the Act.) [*Note: The amendments referred to in this paragraph come into force on proclamation.*]

Part XIII of the Act is amended to extend the market conduct requirements to dealers in derivatives. These amendments include the requirement to provide trade confirmations (subsection 36(1) of the Act), the requirement to provide trade information to the Commission (subsection 36(2) of the Act), the prohibition against telephoning a residence or calling at a residence for the purpose of trading in a derivative (subsection 37(1) of the Act) and the requirement to obtain Commission approval of certain advertising material and disclosure documents (subsection 50(2) of the Act).

Provisions dealing with insider trading and tipping (sections 76 and 134 of the Act), misrepresentation in disclosure documents (section 122 of the Act) and fraud and market manipulation (sections 126.1 and 126.2 of the Act) are extended to include derivatives. Amendments to subsections 134 (7) and (8) of the Act also extend, for "related derivatives", the operation of the provision concerning civil liability for insider trading and tipping. [Note: The amendment to section 122 of the Act comes into force on proclamation.]

The Commission's investigation and enforcement powers are extended to cover derivatives. This includes amendments to the Commission's power to order investigations and financial examinations (sections 11 and 12 of the Act) and to conduct compliance reviews (section 20 of the Act). The Commission's authority under section 127 of the Act to issue sanctions when required in the public interest is also extended.

Regulation of credit rating organizations

A new Part IX of the Act authorizes the Commission to regulate credit rating organizations. Definitions of "credit rating organization" and "credit rating" are added to subsection 1(1) of the Act.

Under a new section 22 of the Act, credit rating organizations may apply to the Commission to be designated. Section 23 of the Act requires the designated credit rating organizations to comply with regulatory requirements. A related amendment is made to subsection 143(1) of the Act, which authorizes the Commission to make rules. (See paragraph 63 of subsection 143(1) of the Act.)

A new subsection 24(2) of the Act prohibits designated credit rating organizations from making representations that the Commission has in any way passed upon the merits of a credit rating or the methodologies used to determine the credit rating.

Regulation of alternative trading systems

Currently, under section 21 of the Act, the Commission is authorized to recognize stock exchanges and to make decisions relating to them. A new section 21.0.1 of the Act gives the Commission analogous authority to make decisions relating to alternative trading systems. A definition of "alternative trading system" is added to subsection 1(1) of the Act. A related amendment is made to subsection 143(1) of the Act, which authorizes the Commission to make rules. (See paragraph 12 of subsection 143(1) of the Act.)

Insider trading

Currently, section 76 of the Act prohibits insider trading and tipping in relation to reporting issuers. This prohibition is extended in relation to issuers that have a real and substantial connection to Ontario and whose securities are listed and posted for trading on the TSX Venture Exchange. (See the new definition of "reporting issuer" in subsection 76(5) of the Act.) [*Note: As indicated previously, section 76 has also been amended to apply to derivatives. This is implemented through the reference to "related derivative" in subsection 76(6).*]

Technical matters

Currently, section 126 of the Act authorizes the Commission to issue a direction for the interim preservation of property or money in certain circumstances, and requires the Commission to apply to court no later than seven days after the direction is issued for a court order continuing the direction. An amendment to the section requires the Commission, instead, to serve and file a notice of application for a court order no later than 10 days after the Commission issues the direction.

The English version of subsection 141(3) of the Act is re-enacted to make its wording consistent with Crown immunity provisions in other Ontario statutes.

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:

Air Canada Principal Regulator - Quebec **Type and Date:** Preliminary Short Form Prospectus dated December 9, 2010 NP 11-202 Receipt dated December 9, 2010 **Offering Price and Description:** \$162,800,000.00 - 44,000,000 Class A Variable Voting Shares and/or Class B Voting Shares Price: \$3.70 per Share **Underwriter(s) or Distributor(s):**

Canaccord Genuity Corp. RBC Dominion Securities Inc. TD Securities Inc. **Promoter(s):**

Project #1674197

Issuer Name:

Alexco Resource Corp. Principal Regulator - British Columbia **Type and Date:** Preliminary Short Form Prospectus dated December 13, 2010 NP 11-202 Receipt dated December 13, 2010 **Offering Price and Description:** \$41,000,000.00 - 5,000,000 COMMON SHARES Price: \$8.20 per Common Share **Underwriter(s) or Distributor(s):** Canaccord Genuity Corp. Cormark Securities Inc. **Promoter(s):**

Project #1675526

Issuer Name:

American Bonanza Gold Corp. Principal Regulator - British Columbia **Type and Date:** Preliminary Short Form Prospectus dated December 8, 2010 NP 11-202 Receipt dated December 8, 2010 **Offering Price and Description:** Up to \$15,400,000.00 - 44,000,000 Units Price: \$0.35 per Unit **Underwriter(s) or Distributor(s):** Wellington West Capital Markets Inc. **Promoter(s):**

Project #1673749

Issuer Name: Breakwater Resources Ltd. Principal Regulator - Ontario Type and Date: Preliminary Short Form Prospectus dated December 13, 2010 NP 11-202 Receipt dated December 13, 2010 **Offering Price and Description:** \$40,005,000.00 - 6,350,000 Common Shares Price: \$6.30 per Common Share Underwriter(s) or Distributor(s): **Dundee Securities Corporation** GMP Securities L.P. Canaccord Genuity Corp. Credit Suisse Securities (Canada). Inc. TD Securities Inc. Cormark Securities Inc. Octagon Capital Corporation Promoter(s):

Project #1675502

Issuer Name:

Brompton Advantaged Oil & Gas Income Fund Principal Regulator - Ontario **Type and Date:** Preliminary Short Form Prospectus dated December 8, 2010 NP 11-202 Receipt dated December 8, 2010 **Offering Price and Description:** Warrants to Subscribe for up to * Units at a Subscription Price of \$* per Unit **Underwriter(s) or Distributor(s):**

Promoter(s):

Issuer Name: Brompton Advantaged VIP Income Fund Principal Regulator - Ontario Type and Date: Preliminary Short Form Prospectus dated December 8, 2010 NP 11-202 Receipt dated December 8, 2010 Offering Price and Description: Warrants to Subscribe for up to * Units at a Subscription Price of \$* per Unit Underwriter(s) or Distributor(s):

Promoter(s):

Project #1673926

Issuer Name:

Brompton Oil & Gas Income Fund Principal Regulator - Ontario **Type and Date:** Preliminary Short Form Prospectus dated December 8, 2010 NP 11-202 Receipt dated December 8, 2010 **Offering Price and Description:** Warrants to Subscribe for up to * Units at a Subscription Price of \$* per Unit **Underwriter(s) or Distributor(s):**

Promoter(s):

Project #1673940

Issuer Name:

Brompton VIP Income Fund Principal Regulator - Ontario **Type and Date:** Preliminary Short Form Prospectus dated December 8, 2010 NP 11-202 Receipt dated December 8, 2010 **Offering Price and Description:** Warrants to Subscribe for up to * Units at a Subscription Price of \$* per Unit **Underwriter(s) or Distributor(s):**

Promoter(s):

Project #1673925

Issuer Name: CC&L Balanced Growth Portfolio CC&L Balanced Income Portfolio CC&L Balanced Portfolio CC&L Growth Portfolio CC&L Money Market Fund Principal Regulator - Ontario Type and Date: Preliminary Simplified Prospectuses dated December 9, 2010 NP 11-202 Receipt dated December 10, 2010 Offering Price and Description: Canadian First Series units Underwriter(s) or Distributor(s):

Promoter(s):

Connor Clark & Lunn Managed Portfolios Inc. Project #1674430

Issuer Name:

Chieftain Metals Inc. Principal Regulator - Ontario **Type and Date:** Amended and Restated Preliminary Long Form Prospectus dated December 10, 2010 NP 11-202 Receipt dated December 13, 2010 **Offering Price and Description:** \$ *: \$ * - * Common Shares at \$ * Per Common Share; and \$ * - * Flow-Through Shares at \$ * Per Flow-Through Share **Underwriter(s) or Distributor(s):** Wellington West Capital Markets Inc. Raymond James Ltd. Haywood Securities Inc.

Promoter(s):

Project #1660663

Issuer Name:

Cogeco Cable Inc. Principal Regulator - Quebec **Type and Date:** Preliminary Base Shelf Prospectus dated December 10, 2010 NP 11-202 Receipt dated December 10, 2010 **Offering Price and Description:** \$750,000,000.00 - Debt Securities **Underwriter(s) or Distributor(s):**

Promoter(s):

Issuer Name: Creststreet 2011 FT National Class Creststreet 2011 FT Québec Class Principal Regulator - Ontario Type and Date: Preliminary Long Form Prospectus dated December 10, 2010 NP 11-202 Receipt dated December 10, 2010 **Offering Price and Description:** Maximum Offering: \$25,000,000 - 2,500,000 Creststreet 2011 FTNational Class Units @ \$10.00 per Creststreet 2011 FT National Class Unit Underwriter(s) or Distributor(s): Scotia Capital Inc. CIBC World Markets Inc. National Bank Financial Inc. BMO Nesbitt Burns Inc. **Dundee Securities Corporation** HSBC Securities (Canada) Inc. Canaccord Genuity Corp. GMP Securities L.P. Raymond James Ltd. Wellington West Capital Markets Inc. Desjardins Securities Inc. Industrial Alliance Securities Inc. Manulife Securities Incorporated Union Securities Ltd. Promoter(s): Creststreet Asset Management Limited Project #1674841/1644843

Issuer Name:

Criterion Utility Plus Fund Principal Regulator - Ontario **Type and Date:** Preliminary Simplified Prospectus and dated December 7, 2010 NP 11-202 Receipt dated December 8, 2010 **Offering Price and Description:** Class A and F Units **Underwriter(s) or Distributor(s):**

Promoter(s): Criterion Investments Inc. Project #1673558 **Issuer Name:** Denison Mines Corp. Principal Regulator - Ontario Type and Date: Preliminary Short Form Prospectus dated December 9, 2010 NP 11-202 Receipt dated December 9, 2010 **Offering Price and Description:** \$25,000,000.00 - Common Shares Issuable on the Exercise of 25,000,000 Outstanding Special Warrants and 1,400,000 Common Shares Issuable on the Exercise of 1,400,000 Outstanding Flow-Through Special Warrants Price:\$2.45 per Special Warrant and \$3.00 per Flow-Through Special Warrant Underwriter(s) or Distributor(s): GMP Securities L.P. Scotia Capital Inc. Promoter(s):

Project #1674373

Issuer Name:

Deutsche Bank Aktiengesellschaft Principal Regulator - Ontario **Type and Date:** Amended and Restated Preliminary Base Shelf Prospectus dated December 8, 2010 NP 11-202 Receipt dated December 9, 2010 **Offering Price and Description:** \$2,000,000,000.00 - Notes (Structured Notes) **Underwriter(s) or Distributor(s):** DEUTSCHE BANK SECURITIES LIMITED **Promoter(s):**

Project #1612680

Issuer Name:

Dollarama Inc. Principal Regulator - Quebec Type and Date: Preliminary Short Form Prospectus dated December 10, 2010 NP 11-202 Receipt dated December 10, 2010 Offering Price and Description: \$324,800,000.00 - 11,200,000 Common Shares Price: \$29.00 per Common Share Underwriter(s) or Distributor(s): **RBC** Dominion Securities Inc. CIBC World Markets Inc. Scotia Capital Inc. National Bank Financial Inc. Barclays Capital Canada Inc. Credit Suisse Securities (Canada), Inc. Desjardins Securities Inc. HSBC Securities (Canada) Inc. Raymond James Ltd. Promoter(s):

Issuer Name: Flaherty & Crumrine Investment Grade Fixed Income Fund Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated December 8, 2010

NP 11-202 Receipt dated December 8, 2010

Offering Price and Description: Warrants to Subscribe for up to * Units at a Subscription Price of \$* per Unit Underwriter(s) or Distributor(s):

Promoter(s):

-Project #1673935

Issuer Name:

Front Street Flow-Through 2011-I Limited Partnership Principal Regulator - Ontario Type and Date: Preliminary Long Form Prospectus dated December 9. 2010 NP 11-202 Receipt dated December 10, 2010 **Offering Price and Description:** \$150,000.00 - Maximum Offering - 6,000,000 Units @ \$25.00 per Unit Underwriter(s) or Distributor(s): National Bank Financial Inc. CIBC World Markets Inc. **RBC** Dominion Securities Inc. BMO Nesbitt Burns Inc. **TD** Securities Inc. GMP Securities L.P. Scotia Capital Inc. Canaccord Genuity Corp. Macquarie Capital Markets Canada Ltd. Raymond James Ltd. Tuscarora Capital Inc. **Dundee Securities Corporation** HSBC Securities (Canada) Inc. Manulife Securities Incorporated Sherbrooke Street Capital (SSC) Inc. Wellington West Capital Markets Inc. Promoter(s): Front Street Capital 2004 Project #1674771

Issuer Name: Global Uranium Fund Inc. Principal Regulator - Ontario Type and Date: Preliminary Short Form Prospectus dated December 8, 2010 NP 11-202 Receipt dated December 8, 2010 Offering Price and Description: Class D Warrants to Subscribe for up to * Equity Shares at a Subscription Price of \$* per Equity Share Underwriter(s) or Distributor(s):

Promoter(s):

Project #1673932

Issuer Name:

Kirkcaldy Capital Corp. Principal Regulator - British Columbia **Type and Date:** Preliminary CPC Prospectus dated December 8, 2010 NP 11-202 Receipt dated December 10, 2010 **Offering Price and Description:** \$300,000.00 - 1,500,000 Common Shares Price: \$0.20 per Common Share **Underwriter(s) or Distributor(s):** Haywood Securities Inc. **Promoter(s):** Ionic Securities Ltd. **Project #**1675113

Issuer Name:

Metals Plus Income Corp. Principal Regulator - Ontario Type and Date: Preliminary Long Form Prospectus dated December 9, 2010 NP 11-202 Receipt dated December 9, 2010 **Offering Price and Description:** Maximum \$* - * Class A Shares @ \$10.00 per Share Underwriter(s) or Distributor(s): BMO Nesbitt Burns Inc. CIBC World Markets Inc. National Bank Financial Inc. Scotia Capital Inc. Canaccord Genuity Corp. HSBC Securities (Canada) Inc. GMP Securities L.P. Raymond James Ltd. **Dundee Securities Corporation** Mackie Research Capital Corporation Macquarie Private Wealth Inc. Desiardins Securities Inc. Manulife Securities Incorporated Wellington West Capital Markets Inc. Promoter(s): Faircourt Asset Management Inc. Project #1674301

Northern Graphite Corporation Principal Regulator - Ontario **Type and Date:** Amended and Restated Preliminary Long Form Prospectus dated December 8, 2010 NP 11-202 Receipt dated December 9, 2010 **Offering Price and Description:** \$1,000,000.00 to \$3,000,000.00: 2,000,000 to 6,000,000 Common Shares Price: \$0.50 per Common Share **Underwriter(s) or Distributor(s):** Union Securities Ltd. **Promoter(s):** Gregory Bowes **Project #**1633818

Issuer Name:

Parkland Income Fund Principal Regulator - Alberta Type and Date: Preliminary Short Form Prospectus dated December 7. 2010 NP 11-202 Receipt dated December 8, 2010 **Offering Price and Description:** \$45,000,000.00 - 5.75% SERIES 2 CONVERTIBLE UNSECURED SUBORDINATED DEBENTURES DUE DECEMBER 31, 2015 Price: \$1,000.00 per Debenture Underwriter(s) or Distributor(s): Scotia Capital Inc. **RBC** Capital Markets CIBC World Markets Inc. TD Securities Inc. HSBC Securities (Canada) Inc. Canaccord Genuity Corp. **Dundee Securities Corporation** PI Financial Corp. Promoter(s):

Project #1673698

Issuer Name:

Petro Uno Resources Ltd. Principal Regulator - Alberta **Type and Date:** Preliminary Short Form Prospectus dated December 8, 2010 NP 11-202 Receipt dated December 8, 2010 **Offering Price and Description:** \$11,502,300.00 - 19,170,500 Common Shares issuable on exercise of outstanding Special Warrants **Underwriter(s) or Distributor(s):** Macquarie Capital Markets Canada Ltd. Canaccord Genuity Corp. Paradigm Capital Inc. **Promoter(s):**

Project #1673997

Issuer Name: PMI Gold Corporation Principal Regulator - British Columbia Type and Date: Preliminary Short Form Prospectus dated December 10, 2010 NP 11-202 Receipt dated December 10, 2010 **Offering Price and Description:** \$7,500,500.00 - 10,715,000 Common Shares on Exercise of 10,715,000 Special Warrants Price: \$0.70 per Special Warrant Underwriter(s) or Distributor(s): Cormark Securities Inc. Haywood Securities Inc. Salman Partner Inc. M Partners Inc. Promoter(s):

Project #1674881

Issuer Name:

Premium Brands Holdings Corporation Principal Regulator - British Columbia Type and Date: Preliminary Short Form Prospectus dated December 13, 2010 NP 11-202 Receipt dated December 13, 2010 **Offering Price and Description:** \$50.000.000.00 - 5.75% Convertible Unsecured Subordinated Debentures Price: \$1,000.00 per Debenture Underwriter(s) or Distributor(s): National Bank Financial Inc. Scotia Capital Inc. BMO Nesbitt Burns Inc. CIBC World Markets Inc. **TD** Securities Inc. Canaccord Genuity Corp. Industrial Alliance Securities Inc. Laurentian Bank Securities Inc. PI Financial Corp. Promoter(s):

Project #1675573

Issuer Name:

Prosperity Goldfields Corp. Principal Regulator - British Columbia **Type and Date:** Preliminary Long Form Prospectus dated December 8, 2010 NP 11-202 Receipt dated December 8, 2010 **Offering Price and Description:** Distribution by Evolving Gold Corp. as a Dividend-in-Kind of Common Shares of the Company **Underwriter(s) or Distributor(s):**

Promoter(s):

EVOLVING GOLD CORP. Project #1673898 **Issuer Name:** Resaas Services Inc. Principal Regulator - British Columbia Type and Date: Amended and Restated Preliminary6 Long Form Prospectus dated December 10, 2010 NP 11-202 Receipt dated December 10, 2010 **Offering Price and Description:** \$800,000.00 to \$1,200,000 - 3,200,000 to 4,800,000 Units Price: \$0.25 per Unit Underwriter(s) or Distributor(s): Haywood Securities Inc. Promoter(s): Cory Brandolini Cameron Shippit Project #1615640

Issuer Name: Superior Plus Corp. Principal Regulator - Alberta Type and Date: Preliminary Short Form Prospectus dated December 10, 2010 NP 11-202 Receipt dated December 10, 2010 **Offering Price and Description:** \$150,000,000.00 - 6.0% Convertible Unsecured Subordinated Debentures Price: \$1,000.00 per Debenture Underwriter(s) or Distributor(s): National Bank Financial Inc. CIBC World Markets Inc. BMO Nesbitt Burns Inc. Scotia Capital Inc. Cormark Securities Inc. Promoter(s):

Project #1675038

Issuer Name: Tahoe Resources Inc. Principal Regulator - British Columbia Type and Date: Preliminary Short Form Prospectus dated December 10, 2010 NP 11-202 Receipt dated December 10, 2010 **Offering Price and Description:** \$306,027,528.00 - 21,704,080 Shares Price: \$14.10 per Share Underwriter(s) or Distributor(s): GMP Securities L.P. BMO Nesbitt Burns Inc. Canaccord Genuity Corp. CIBC World Markets Inc. Merrill Lynch Canada Inc. **RBC** Dominion Securities Inc. **Dundee Securities Corporation**

Project #1674790

TD Securities Inc. **Promoter(s):**

Issuer Name: Aumento Capital Corporation Type and Date: Final CPC Prospectus dated December 10, 2010 Receipted on December 14, 2010 Offering Price and Description: Minimum of \$400,000.00 - 2,000,000 Common Shares; Maximum of \$600,000.00 - 3,000,000 Common Shares; Price: \$0.20 per Common Share Underwriter(s) or Distributor(s): Canaccord Genuity Corp. Promoter(s): David Danziger Project #1643436

Issuer Name:

Barclays Bank PLC Principal Regulator - Ontario **Type and Date:** Final Base Shelf Prospectus dated December 9, 2010 NP 11-202 Receipt dated December 13, 2010 **Offering Price and Description:** U.S.\$21,000,000,000.00 - Global Medium-Term Notes, Series A (principal protected notes) **Underwriter(s) or Distributor(s):**

Promoter(s):

Project #1663842

Issuer Name:

Bioniche Life Sciences Inc. Principal Regulator - Ontario **Type and Date:** Final Short Form Prospectus dated December 13, 2010 NP 11-202 Receipt dated December 13, 2010 **Offering Price and Description:** \$14,500,000.00 - 10,000,000 Common Shares Price: \$1.45 Per Offered Share **Underwriter(s) or Distributor(s):** NCP Northland Capital Partners Inc. Dundee Securities Corporation National Bank Financial Inc. **Promoter(s):**

Issuer Name: Bridgeport Ventures Inc. Principal Regulator - Ontario Type and Date:

Final Short Form Prospectus dated December 13, 2010 NP 11-202 Receipt dated December 13, 2010

Offering Price and Description: \$15,000,000.00 - 15,000,000: Units Per Offered Unit

\$1.00 Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc. MGI Securities Inc. **Promoter(s):**

Project #1668295

Issuer Name:

Canadian Advantaged Convertibles Fund Principal Regulator - Ontario Type and Date: Final Long Form Prospectus dated December 10, 2010 NP 11-202 Receipt dated December 14, 2010 **Offering Price and Description:** Maximum \$90,000,000.00 (9,000,000 Units) \$10.00 per Unit Underwriter(s) or Distributor(s): CIBC World Markets Inc. National Bank Financial Inc. **RBC** Dominion Securities Inc. BMO Nesbitt Burns Inc. Scotia Capital Inc. **TD** Securities Inc. HSBC Securities (Canada) Inc. Raymond James Ltd. Canaccord Genuity Corp. Wellington West Capital Markets Inc. Dundee Securities Corporation

Macquarie Private Wealth Inc. Mackie Research Capital Corporation **Promoter(s):** First Asset Investment Management Inc. **Project** #1662028

Issuer Name:

Canadian Convertibles Fund Principal Regulator - Ontario **Type and Date:** Final Long Form Prospectus dated December 10, 2010 NP 11-202 Receipt dated December 14, 2010 **Offering Price and Description:**

Underwriter(s) or Distributor(s):

Promoter(s): First Asset Investment Management Inc. Project #1662409 **Issuer Name:** CGX Energy Inc. Principal Regulator - Ontario Type and Date: Final Short Form Prospectus dated December 6, 2010 NP 11-202 Receipt dated December 8, 2010 **Offering Price and Description:** \$20,025,000.00 - 22,250,000 Common Shares Price: \$0.90 per Common Share Underwriter(s) or Distributor(s): Cormark Securities Inc. Canaccord Genuity Corp. Macquarie Capital Markets Canada Ltd. GMP Securities L.P. Toll Cross Securities L.P. Promoter(s):

Project #1666594

Issuer Name:

D-Box Technologies Inc. Principal Regulator - Quebec **Type and Date:** Final Short Form Prospectus dated December 10, 2010 NP 11-202 Receipt dated December 10, 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):**

Issuer Name: Dividend 15 Split Corp. Principal Regulator - Ontario Type and Date:

Final Short Form Prospectus dated December 9, 2010 NP 11-202 Receipt dated December 13, 2010

Offering Price and Description: \$63,800,000.00 (Maximum) - Up to 2,900,000 Preferred Shares @ \$10.00/Share and 2,900,000 Class A Shares @ \$12.00/Share

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:

Eaglewood Energy Inc. Principal Regulator - Alberta **Type and Date:** Final Short Form Prospectus dated December 10, 2010 NP 11-202 Receipt dated December 10, 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:

EMED Mining Public Limited Principal Regulator - Ontario **Type and Date:** Final Long Form Prospectus dated December 13, 2010 NP 11-202 Receipt dated December 13, 2010 **Offering Price and Description:** \$24,430,950.00 - 180,970,000 ORDINARY SHARES Price: \$0.135 per Offered Share **Underwriter(s) or Distributor(s):** Canaccord Geniuty Corp. GMP Securities L.P. Paradigm Capital Inc. **Promoter(s):**

Project #1647178

Issuer Name:

Exemplar Canadian Focus Portfolio Exemplar Diversified Portfolio Exemplar Global Opportunities Portfolio Exemplar Leaders Portfolio Principal Regulator - Ontario **Type and Date:** Amendment #1 dated December 9, 2010 to the Long Form Prospectus dated April 23, 2010 NP 11-202 Receipt dated December 14, 2010 **Offering Price and Description:**

Underwriter(s) or Distributor(s):

Promoter(s): Blumont Capital Corporation Project #1550444

Issuer Name:

Exemplar Leaders Fund (formerly, Northern Rivers Conservative Growth Fund) Principal Regulator - Ontario **Type and Date:** Amendment #1 dated December 3, 2010 to the Simplified Prospectus and Annual Information Form dated August 20, 2010 NP 11-202 Receipt dated December 14, 2010 **Offering Price and Description:** Mutual Fund Units @ Net Asset Value **Underwriter(s) or Distributor(s):**

Promoter(s):

BluMont Capital Corporation **Project** #1609222

Issuer Name:

Fairfax Financial Holdings Limited Principal Regulator - Ontario **Type and Date:** Final Base Shelf Prospectus dated December 10, 2010 NP 11-202 Receipt dated December 10, 2010 **Offering Price and Description:**

Underwriter(s) or Distributor(s):

Promoter(s):

Frontiers Canadian Short Term Income Pool (Class A units) Frontiers Canadian Fixed Income Pool (Class A, C, I, and O units)

Frontiers Canadian Monthly Income Pool (Class A, C, I, and O units)

Frontiers Canadian Equity Pool (Class A, C, I, and O units) Frontiers U.S. Equity Pool (Class A, C, I, and O units) Frontiers U.S. Equity Currency Neutral Pool (Class O units) Frontiers International Equity Pool (Class A, C, I, and O units) Frontiers Emerging Markets Equity Pool (Class A, C, I, and O units) Frontiers Global Bond Pool (Class A, C, I, and O units) Principal Regulator - Ontario **Type and Date:** Final Simplified Prospectuses dated December 8, 2010

NP 11-202 Receipt dated December 9, 2010 Offering Price and Description:

Class A, C, I, and O units Underwriter(s) or Distributor(s):

Promoter(s):

CIBC Asset Management Inc Project #1651995

Issuer Name:

Geodrill Limited Principal Regulator - Ontario **Type and Date:** Final Long Form Prospectus dated December 9, 2010 NP 11-202 Receipt dated December 10, 2010 **Offering Price and Description:** \$40,000,000.00 - 20,000,000 ORDINARY SHARES Price: \$2.00 per Offered Share **Underwriter(s) or Distributor(s):** Clarus Securities Inc. Jennings Capital Inc. **Promoter(s):**

Project #1661562

Issuer Name:

Horizons BetaPro S&P 500 VIX Short-Term Futures Bull Plus ETF

Horizons BetaPro S&P 500 VIX Short-Term Futures ETF Principal Regulator - Ontario

Type and Date:

Final Long Form Prospectus dated December 9, 2010 NP 11-202 Receipt dated December 13, 2010 **Offering Price and Description:** Mutual Fund Trust Units at Net Asset Value **Underwriter(s) or Distributor(s):**

Promoter(s): BetaPro Management Inc.

Project #1581773

Issuer Name:

ING DIRECT Streetwise Balanced Fund ING DIRECT Streetwise Balanced Growth Fund ING DIRECT Streetwise Balanced Income Fund Principal Regulator - Ontario **Type and Date:** Final Simplified Prospectuses dated December 10, 2010 NP 11-202 Receipt dated December 10, 2010 **Offering Price and Description:** Mutual Fund Units @ Net Asset Value **Underwriter(s) or Distributor(s):** ING Direct Funds Limited **Promoter(s):**

Project #1657158

Issuer Name:

NAV CANADA Principal Regulator - Ontario Type and Date: Final Base Shelf Prospectus dated December 8, 2010 NP 11-202 Receipt dated December 8, 2010 **Offering Price and Description:** \$750,000,000.00 - General Obligation Notes Underwriter(s) or Distributor(s): **RBC** Dominion Securities Inc. TD Securities Inc. BMO Nesbitt Burns Inc. CIBC World Markets Inc. National Bank Financial Inc. Desjardins Securities Inc. Laurentian Bank Securities Inc. Promoter(s):

Project #1664482

Issuer Name:

Orezone Gold Corporation Principal Regulator - Ontario **Type and Date:** Final Short Form Prospectus dated December 13, 2010 NP 11-202 Receipt dated December 13, 2010 **Offering Price and Description:** \$46,875,000.00 - 12,500,000 Common Shares Price: \$3.75 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):**

Pathway Multi Series Fund Inc. - Explorer Series Fund (Mutual Fund Shares: A/Rollover Series, A/Regular Series, F Series and I Series)

Pathway Multi Series Fund Inc. - Energy Series Fund

(Mutual Fund Shares: A/Rollover Series, A/Regular Series, F Series and I Series)

Pathway Multi Series Fund Inc. - Canadian Flex ™ Series Fund

(Mutual Fund Shares: A/Regular Series, Low Load/DSC Series, F Series and I Series)

Pathway Multi Series Fund Inc. - Resource Flex ${}^{\rm T\!M}$ Series Fund

(Mutual Fund Shares: A/Regular Series, Low Load/DSC Series, F Series and I Series)

Pathway Multi Series Fund Inc. - Flex Dividend and Income Growth ™ Series Fund

(Mutual Fund Shares: A/Regular Series, Low Load/DSC Series, F Series and I Series)

Principal Regulator - Ontario

Type and Date:

Final Simplified Prospectuses dated December 13, 2010 NP 11-202 Receipt dated December 14, 2010

Offering Price and Description:

Mutual Fund Shares: A/Rollover Series, A/Regular Series, Low Load/DSC Series, F Series and I Series Underwriter(s) or Distributor(s):

Promoter(s):

Project #1653499

Issuer Name:

Penfold Capital Acquisition IV Corporation Principal Regulator - Ontario **Type and Date:** Final CPC Prospectus dated December 10, 2010 NP 11-202 Receipt dated December 13, 2010 **Offering Price and Description:** Minimum Offering: \$375,000.00 or 3,750,000 Common Shares; Maximum Offering: \$425,000 or 4,250,000 Common Shares Price: \$0.10 per Common Share **Underwriter(s) or Distributor(s):** Northern Securities Inc. **Promoter(s):** Gary M. Clifford **Project #**1575388

Issuer Name:

PetroNova Inc. Principal Regulator - Alberta Type and Date: Final Long Form Prospectus dated December 13, 2010 NP 11-202 Receipt dated December 14, 2010 **Offering Price and Description:** Cdn\$65,400,000.00 - 52,320,000 Common Shares Price: Cdn\$1.25 per Common Share Underwriter(s) or Distributor(s): Raymond James Ltd. Canaccord Genuity Corp. FirstEnergy Capital Corp. GMP Securities L.P. TD Securities Inc. Promoter(s): Antonio Vincentelli Project #1651281

Issuer Name:

Royal Nickel Corporation Principal Regulator - Ontario **Type and Date:** Final Long Form Prospectus dated December 9, 2010

NP 11-202 Receipt dated December 10, 2010 Offering Price and Description:

\$45,125,000.00 - 14,500,000 Units - \$2.25 per Unit; and

5,000,000 Flow-Through Units \$2.50 per Flow-Through Unit

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc. UBS Securities Canada Inc. Scotia Capital Inc. Desjardins Securities Inc. Haywood Securities Inc. Raymond James Ltd. **Promoter(s):**

Russell LifePoints Balanced Income Portfolio (Series A, B, F, F-5, I-5)

Russell LifePoints Balanced Portfolio (Series A, B, F, F-6, I-6)

Russell LifePoints Balanced Growth Portfolio (Series A, B, F, F-7, I-7)

Russell LifePoints Long-Term Growth Portfolio (Series A, B, F)

Russell LifePoints All Equity Portfolio (Series A, B, F)

Russell LifePoints Balanced Class Portfolio (Series B, F, F-6, I-6)

Russell LifePoints Balanced Growth Class Portfolio (Series B, F, F-7, I-7)

Russell LifePoints Long-Term Growth Class Portfolio (Series B, F)

Russell LifePoints All Equity Class Portfolio (Series B, F) Principal Regulator - Ontario

Type and Date:

Amendment #1 dated December 6, 2010 to the Simplified Prospectuses and Annual Information Form dated July 20, 2010

NP 11-202 Receipt dated December 8, 2010 Offering Price and Description:

Underwriter(s) or Distributor(s):

Russell Investments Canada Limited

Promoter(s):

Russell Investments Canada Limited **Project** #1597869

Issuer Name:

STONE & CO. DIVIDEND GROWTH CLASS CANADA (Series A, B, C, F, T8A, T8B and T8C) STONE & CO. RESOURCE PLUS CLASS (Series A, B and C) STONE & CO. FLAGSHIP GROWTH & INCOME FUND CANADA (Series F, AA, BB, CC, FF, T8A, T8B and T8C) STONE & CO. FLAGSHIP STOCK FUND CANADA (Series A, B, C, F, T8A, T8B and T8C) STONE & CO. FLAGSHIP GLOBAL GROWTH FUND (Series A, B, C, F, T8A, T8B and T8C) STONE & CO. GROWTH INDUSTRIES FUND (Series A, B, C and F) STONE & CO. FLAGSHIP MONEY MARKET FUND CANADA (Series A, B and C) STONE & CO. EUROPLUS DIVIDEND GROWTH FUND (Series A, B, C, F, T8A, T8B and T8C) Principal Regulator - Ontario Type and Date: Amendment #1 dated November 26, 2010 to the Simplified Prospectuses and Annual Information Form dated August 18, 2010 NP 11-202 Receipt dated December 8, 2010 **Offering Price and Description:**

Underwriter(s) or Distributor(s):

Promoter(s): Stone & Co. Limited Project #1607273

Issuer Name:

Surrey Capital Corp. Principal Regulator - Ontario **Type and Date:** Final CPC Prospectus dated December 10, 2010 NP 11-202 Receipt dated December 13, 2010 **Offering Price and Description:** MINIMUM OFFERING: \$200,000.00 or 2,000,000 Common Shares; MAXIMUM OFFERING: \$500,000.00 or 5,000,000 Common Shares PRICE: \$0.10 per Common Share **Underwriter(s) or Distributor(s):** Leede Financial Markets Inc. **Promoter(s):** Claude Ayache **Project** #1649960 Issuer Name: Toronto Hydro Corporation Principal Regulator - Ontario Type and Date: Final Base Shelf Prospectus dated December 9, 2010 NP 11-202 Receipt dated December 9, 2010 Offering Price and Description: \$1,000,000,000.00 - DEBENTURES (unsecured) Underwriter(s) or Distributor(s):

Promoter(s):

Project #1672031

Issuer Name: Wi-LAN Inc. Principal Regulator - Ontario Type and Date: Final Short Form Prospectus dated December 10, 2010 NP 11-202 Receipt dated December 13, 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 Capital Inc. Wellington West Capital Markets Inc. CIBC World Markets Inc. Fraser Mackenzie Limited Promoter(s):

Chapter 12

Registrations

12.1.1 Registrants

| Туре | Company | Category of Registration | Effective Date |
|--|---|--|----------------------|
| Name Change | From: R.A. Floyd Capital Management Inc. To: Birchleaf Investments Inc. | Portfolio Manager and Investment Fund Manager | December 7, 2010 |
| Consent to Suspension (Pending Surrender) | Prime Rate Capital Management LLP | Exempt Market Dealer | December 9, 2010 |
| New Registration | Excel Funds Management Inc. | Investment Fund Manager | December 10, 2010 |
| Change in Registration Category | Thornmark Asset Management Inc. | From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager | December 10, 2010 |
| New Registration | JovFinancial Solutions Inc. | Exempt Fund Manager and Investment Fund Manager | December 10, 2010 |
| Change in Registration Category | Kassirer Asset Management Corporation | From: Portfolio Manager and Exempt Market Dealer To: Portfolio Manager, Exempt Market Dealer and Investment Fund Manager | December 13, 2010 |
| Change in Registration Category | Perennial Asset Management Corp. | From: Portfolio Manager and Exempt Market Dealer To: Portfolio Manager, Exempt Market Dealer and Investment Fund Manager | December 13, 2010 |
| Consent to Suspension (Pending Surrender) | Storm Capital Corporation | Exempt Market Dealer | December 13, 2010 |

| Туре | Company | Category of Registration | Effective Date |
|------------------------------------|---|--|----------------------|
| Change in Registration Category | Gestion Palos Inc./Palos Management Inc. | From: Exempt Market Dealer To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager | December 14, 2010 |
| Change in Registration Category | Mapleridge Capital Corporation | From: Portfolio Manager, Commodity Trading Manager and Exempt Market Dealer To: Portfolio Manager, Commodity Trading Manager, Exempt Market Dealer and Investment Fund Manager | December 14, 2010 |
| Change in Registration Category | Robert Evans Investment Counsel Limited | From: Portfolio Manager To: Portfolio Manager and Investment Fund Manager | December 14, 2010 |
| Change in Registration Category | Brickburn Asset Management Inc. | From: Portfolio Manager To: Portfolio Manager and Investment Fund Manager | December 15, 2010 |

Chapter 13

SROs, Marketplaces and Clearing Agencies

13.2 Marketplaces

13.2.1 Alpha ATS LP Notice – Summary of Comments for Alpha Self Trade Management

ALPHA ATS LP NOTICE

SUMMARY OF COMMENTS FOR ALPHA SELF TRADE MANAGEMENT

Background

The Ontario Securities Commission (OSC) published on July 30, 2010 a notice regarding Alpha ATS LP (Alpha)'s proposed new functionality named Alpha Self Trade Management.

Alpha Self Trade Management introduces an optional order tag that will allow firms to have unintentional self (or "wash") trades suppressed from the public feed. A self trade occurs where orders on both sides of the trade are from the same Subscriber and include the identical self trade key. The self trade key is intended for use only on orders that may result in trades where there is no change in beneficial or economic ownership. Self trades do not update the last sale price, daily volume, turnover or other trading statistics.

The objective of Alpha Self Trade Management is to provide Subscribers with a means to address concerns regarding the public dissemination of unintentional wash trades. Suppressing self trades from the public feed prevents the misleading appearance of trading activity or interest in the purchase or sale of the security where there is no change in beneficial or economic ownership.

The OSC and Alpha received 3 comment letters from other marketplaces¹.

Alpha would like to thank all commenters for their submissions. This summary will summarize the key issues and Alpha's responses. Alpha notes that most of comments were in fact questions regarding the functionality of the Self Trade Management tag. Alpha notes that a detailed product sheet is available on its web site and that staff are available to answer any questions.

General Comments

Two of the marketplaces² described how Policy 2.2 of UMIRs prohibits effecting a trade in security which involved no change in the beneficial or economic interest where the participant or Access person knows or ought reasonably to know that the execution of the trade would create or reasonably be expected to create a false or misleading appearance of trading activity.

<u>Alpha Response</u>

Unintentional wash trades occur on all Canadian marketplaces. Marketplaces have implemented different solutions to identify and/or prevent unintentional wash trades.

TMX, Omega, Chi-X, Pure, and TriAct MATCH Now add a (private) wash trade marker where the trade has occurred between proprietary accounts of the same firm. TMX, Omega, Chi-X, and Pure disseminate wash trades on the public feed. Tri-Act MATCH Now does not include wash trades in public trade reports.

Two marketplaces have implemented solutions to prevent unintentional self trades: TMX offers Self Trade Prevention to allow firms to prevent two orders from the same firm from trading against each other based on matching keys – when keys match, the portion of the active order is reduced to prevent the self trade. Omega offers an optional No-Match ID that prevents orders with matching No-Match IDs from executing against each other.

Alpha's Self Trade Management is aligned with TMX, Omega, and TriAct in preventing the misleading appearance of trading activity or interest in the purchase or sale of the security where there is no change in beneficial or economic ownership. Alpha's solution is considered a beneficial alternative consistent with regulatory policy objectives: providing the benefits of execution (such as downstream events) but suppressing the print on the public record that could influence participants. Alpha's Self Trade

¹ TMX, Chi-X Canada and CNSX Markets Inc.

² TMX and Chi-X Canada

Management also reduces the opportunity for crossed or locked markets that may result from other marketplace solutions where an order router attempts to take out an order at a price level, but is rejected.

Use of Self Trade Tag

One marketplace³ expressed concerns that the tag can be misused by a dealer in order to prevent reporting trades to the public feed. It also expressed concerns about the use of the tag in the Alpha IntraSpreadTM Facility.

Alpha Response

Similar to implementations by TMX and Omega, the unique trading key provided by the Subscriber is intended for use only on buy and sell orders for accounts that may result in trades where there is no change in beneficial or economic ownership. This may apply to Dark orders and Seek Dark Liquidity[™] (SDL) orders entered to the Alpha IntraSpread[™] Facility where there is no change in beneficial or economic ownership.

The self trade key is set on an order by order basis. There is no global association for setting the self trade key based on Trader ID, Account ID (or any other identifier). Subscribers are expected to use the tag for the purpose intended and will be responsible for inappropriately using it in compliance with UMIR.

Alpha will capture self trading activity in a daily report that will be available for review by Alpha Staff. Also these trades will be identifiable to IIROC.

Post Trade transparency requirements

All three marketplaces requested clarification on how does Alpha comply with the transparency requirements in S. 7.2 of National Instrument 21-101 if it doesn't report the trades to the public feed and whether it has received an exemption from the requirement.

Alpha Response

Self trades (as defined by Alpha Self Trade Management), which should involve no change in beneficial or economic ownership, and are generally no different from journal transactions between inventories, should not be considered as trades executed on the marketplace for the purposes of the transparency requirements. Alpha is effectively avoiding the need for a participant or Access person to "take down" an unintentional wash trade - the net result is the same.

IIROC Monitoring

All three marketplaces request clarification on whether IIROC will be able to monitor the trades even though they will not be reported to the public data feed.

Alpha Response

We have worked with IIROC to provide the necessary information for IIROC to review.

Recordkeeping Requirements

Two marketplaces⁴ asked questions regarding the information available to subscribers who use this feature and whether they will be able to do reconciliation.

Alpha Response

The same information available for any other order or trade will be available to the subscriber. These trades will clear through CDS in the same manner as any other trades.

Other marketplaces

One marketplace asked for information regarding any other marketplace which did not provide such trades to the public feed.

Alpha Response

According to information published TriAct Canada web site: "Public trade reports do not include trades between two principal accounts for the same broker ("wash trades").

³ TMX

⁴ ChiX Canada and CNSX Markets Inc.

13.2.2 Alpha ATS LP – Notice of Proposed Changes and Request for Feedback

ALPHA ATS LP

NOTICE OF PROPOSED CHANGES AND REQUEST FOR FEEDBACK

INTRASPREAD FACILITY

Alpha ATS LP has announced its proposed plans to implement the changes described below in Q1 2011. It is publishing this Notice of Proposed Changes in accordance with the requirements set out in OSC Staff Notice 21-703 – *Transparency of the Operations of Stock Exchanges and Alternative Trading Systems*. Pursuant to OSC Staff Notice 21-703, Commission staff invite market participants to provide feedback on the proposed changes.

Feedback on the proposed changes should be in writing and submitted by Wednesday, January 26, 2011 to:

Market Regulation Branch Ontario Securities Commission Suite 1903, Box 55 20 Queen Street West Toronto, ON M5H 3S8 Fax (416) 595-8940 Email: marketregulation@osc.gov.on.ca

And to:

Randee Pavalow Head of Operations and Legal Alpha ATS LP 70 York Street, suite 1501 Toronto, ON M5J 1S9 Email: randee.pavalow@alphatradingsystems.ca

Comments received will be made public on the OSC website. Upon completion of the review by OSC staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

ALPHA ATS LP

NOTICE OF PROPOSED CHANGES TO ALPHA INTRASPREAD™ FACILITY

AND

SUMMARY OF COMMENTS AND RESPONSES TO JULY 16, 2010 PROPOSAL

Background

The Ontario Securities Commission (OSC) published on July 16, 2010 Alpha ATS LP (Alpha)'s notice regarding its proposed new functionality named Alpha IntraSpread[™] Facility (the original proposal).

The original Alpha IntraSpread[™] Facility, included a set of new order types offered by Alpha ATS, which allowed Subscribers to seek order matches within their firm without pre-trade transparency, with guaranteed price improvement for active orders. It was intended that the IntraSpread[™] facility would be available to all Subscribers and for all symbols traded on Alpha ATS.

Alpha Objectives

The objective of the Alpha IntraSpread[™] Facility (both the original and revised proposal) is to provide choice and options to accommodate different trading strategies and marketplace participants. Some of the strategies that would benefit from using the facility include: enabling the retail flow to participate on the active side and receive a guaranteed price improvement, a larger fill

size and a lower active fee; enabling buy side clients to post Dark Orders and benefit from accessing the active flows; and enabling liquidity providers to post Dark Orders to benefit from access to the active flows.

Comment Process and Current Status

The OSC and Alpha received 13 comment letters: 7 from dealers¹, 4 from other marketplaces², and 2 from other marketplace participants³.

Alpha would like to thank all commenters for their submissions. The summary that follows the discussion of the new proposal will summarize the key issues and Alpha's responses. A more specific summary of each letter and Alpha's response is attached as well. The responses to the comments reflects the views of Alpha and do not necessarily reflect the views of the Ontario Securities Commission (OSC) or of the Investment Industry Regulatory Organization of Canada (IIROC).

Alpha began discussions with the OSC and IIROC staff after the closing of the comment period. The OSC Staff expressed concerns regarding the current proposal based on the views it had developed regarding a marketplace facilitating a dealer matching orders within its own firm without interacting with orders of other dealers. In response to the comments raised by OSC Staff and further discussions with both OSC and IIROC Staff, Alpha has revised its proposal which is being published today for comment.

Alpha's Revised Proposal

Description of Proposed Changes and Reasons for Changes

Alpha plans to introduce a revised Alpha IntraSpread[™] Facility.⁴

The changes are intended to address the regulatory concerns related to marketplaces facilitating internalization of dealer order flow, while at the same time preserve the benefits of the original IntraSpread[™] Facility proposal, including reduced trading fees, price improvement and increased trade size for the active side, and improved access to liquidity for the passive side. The revised proposal constitutes what was originally planned as phase II of the IntraSpread Facility[™], and makes these benefits more accessible.

The revised IntraSpread[™] Facility is designed to allow matching of orders between dealers, with additional features designed to maximize benefits for the active, retail order flow and minimize potential for "gaming" the passive liquidity providing flow.

The revised IntraSpread[™] Facility continues to be based on the two order types: Dark order and Seek Dark Liquidity[™] (SDL[™]) order, but with some changes in the implementation details.

Dark Order

The Dark order is a fully hidden order, used to manage passive interest with no pre-trade transparency, and offer price improvement to tradable incoming orders.

- Dark orders have no pre-trade transparency as information on Dark orders is not disseminated on any public data feeds.
- The price of a Dark order is calculated as an offset of the NBBO by adding the price offset to the National Best Bid for a buy order and subtracting it from the National Best Offer for a sell order. The price of the Dark order can optionally be capped.
- The price offset is calculated as a percentage of the NBBO spread, and can have one of two values:
 - o 10% capped to one price tick (i.e. "no more than a penny"), or
 - o 50% with no tick cap.
- If either side of the NBBO is not set, or the NBBO is locked or crossed, Dark orders will not trade.

¹ CIBC World Markets Inc., GMP Securities Ltd., Maple Securities Canada Ltd., Newedge Group SA, Penson Financial Services Canada Inc., RBC Capital Markets, Scotia Capital Inc.,

² Chi-X Canada, CNSX Markets Inc., Liquidnet Canada Inc., and TMX Group

³ F. Martin, Consultant and CSTA, Inc., an industry association.

⁴ Additional information is available in the Subscriber Notice and blacklined Trading Policies on the Alpha ATS web site: www.alphatradingsystems.ca

- Dark orders are day only orders and must be for a board lot quantity. Dark orders cannot be Iceberg, On-Stop, Inside Match, AON, FOK, FAK, MOO, LOO, MOC, Special Terms, Bypass, Passive Only, TTM or ROC.
- Dark orders can be amended, including quantity, price offset and price cap, in addition to other standard amendable order attributes.
- Dark orders trade only with incoming SDL[™] orders that are tradable at the calculated price of the Dark order. Dark orders do not trade with each other.
- Dark orders are accepted in Pre-Open and Continuous trading sessions (from 7:00am to 4:00pm). Dark orders trade in the Continuous trading session but do not participate in opening or closing auctions.

Seek Dark Liquidity[™] (SDL[™]) Order

The SDL[™] order is used to interact with the dark liquidity.

- SDL[™] orders are "immediate-or-cancel" they trade with eligible Dark orders to the extent possible, and any residual is cancelled. Price can be market or limit.
- SDL[™] orders only trade with Dark orders and do not interact with other transparent orders in the Alpha CLOB.
- SDL[™] orders interact with Dark orders from any Alpha Subscriber.
- SDL[™] orders must be for a board lot quantity, and cannot be Iceberg, On-Stop, Inside Match, AON, FAK, MOO, LOO, MOC, Special Terms, Bypass, Passive Only, TTM or ROC.
- SDL[™] orders are accepted only during Continuous trading session (from 9:30am to 4:00pm)

IntraSpread[™] Trades

- Matching in IntraSpread[™] follows the price/broker /smart size/round-robin priority set out below:
 - Price Priority Dark orders with better price (higher price offset) have priority, then
 - o Broker Preferencing Dark orders from the same Subscriber have priority, then
 - o Smart Size Priority Dark orders with sufficient size to fully fill the incoming order have priority, then
 - Round-Robin Priority Dark orders take turns in interacting with the incoming order. Each time a
 Dark order is inserted, it is placed at the end of the queue. Each time a Dark order trades or its
 quantity is increased, the order is placed at the end of the queue.
- Trades are disseminated on the public data feed in real-time. These trades do not set the Alpha last sale price (ALSP) or the NLSP. Trade prices may have up to three decimal places for prices above \$0.50 and up to four decimal places for prices below \$0.50.

<u>Eligibility</u>

- IntraSpread facility is available to all Subscribers and for all symbols traded on Alpha ATS.
- SDL[™] orders can be entered only on behalf of Retail Customers
 - The definition of Retail Customer is based on the definition set out in the IIROC Dealer Member rules.
 - It is expected that Subscribers have policies and procedures in place in regards to identifying which accounts qualify and supervisory procedures to monitor ongoing compliance.
 - If Alpha deems that a Subscriber is allowing SDL[™] orders from non-retail clients, Alpha may take appropriate action against the firm regarding access to the Alpha IntraSpread[™] Facility.
- Dark orders can be entered without any constraints.

Expected Impact of the changes

The Alpha IntraSpread[™] Facility will give Alpha Subscribers the opportunity to allow large buy-side orders to access a new liquidity pool with minimal market impact, to provide retail orders with price improvement opportunities, and to reduce the overall cost of trading.

Consultations

Alpha received requests for this facility from its Subscribers. Discussions were held with Subscribers and buy-side firms to refine requirements and review initial feedback from the regulators. Alpha also received comments from the industry and the regulators in response to the July 16th 2010 proposal.

Current implementation of changes in the Canadian marketplace and any alternatives considered

Dark matching facilities and orders are currently available in the Canadian capital markets. Alpha IntraSpread [™] Facility was designed to address comments and requests made by its Subscribers. Alternatives considered focused on the interaction between dark orders and the CLOB, price improvement variables, internalization and sub-penny pricing.

Alpha notes that it has also reviewed the Joint CSA/IIROC Position Paper 23-405 on Dark Liquidity in the Canadian Market which was published on November 18, 2010. While the Alpha revised proposal is generally in line with the policy considerations set out in the paper, we acknowledge that changes may be required if some of the proposals are adopted. Since the outcome of the position paper is unknown at this time, we intend to go ahead with our proposal with the understanding that it may need to change in the future.

Summary of Comments and Responses regarding Alpha IntraSpread™ Facility proposed on July 16, 2010 (the original proposal)

General Comments

Introduction

The original Alpha IntraSpread[™] Facility combined market structure features that currently exist in the marketplace (internalization, price improvement orders, no pre-trade transparency); and, in fact, have existed in slightly different forms over a long period of time. Examples include the upstairs market, broker preferencing, TMX Posit proposal, TMX ATX proposal, TMX Pegged Order proposal, TriAct's MatchNow, Chi-X hidden orders, Alpha Inside Match Order, and iceberg orders.

The growth in these types of features has lead to the debate in the U.S. around the subject of "dark pools" which has spread to other parts of the world including Canada, even though neither their significance nor any harmful impact has been established. The nature of the discussion, including the characterization of these trading choices as "dark," has often clouded the real issues – is there a need for different trading venues other than a transparent central limit order book and should the same rules apply or are special rules required.

Comments

There were 5 general comments in support of the original Alpha IntraSpread^M Facility which stated that there are benefits to dark forms of liquidity.⁵ Specifically, one commenter noted that the Alpha IntraSpread^M Facility provides price improvement to retail investors, allows trades at a lower cost and reduces back office trade processing fees.⁶

The two general comments against the Alpha IntraSpread[™] Facility were concerned about reduced transparency in the public book.⁷

Alpha Response

The Alpha IntraSpread[™] Facility was being introduced to provide choice and options to dealers and their clients. It has long been recognized that "one size does not fit all" in the world of investors and trading securities.

There have long existed alternatives to the CLOB such as crossing markets and the upstairs market. A variety of dark order types exist in Canadian market today, without any evidence of negatively impacting the transparent markets.

⁵ Chi-X, CIBC, F. Martin, RBC, and Scotia

⁶ F. Martin

⁷ CNSX Markets. Inc and Newedge Group SA.

Also there is a danger in assuming facts for which there has been no evidence. There have been studies that have shown there is no evidence that the existence of dark pools and/or internalization, even in the U.S. where they are a much larger part of the trading volume, harm the transparent marketplace.⁸

Process for Implementing New Order Types is not a Rulemaking Process, and therefore the outstanding Policy debate should not prevent the Alpha IntraSpread™ Facility from proceeding

Introduction

National Instrument 21-101 requires that an alternative trading system must provide 45 days notice before implementing any changes such as order types. Although the rule does not require publication for comment and approval, Alpha has always published on its web site any proposed changes. In addition, the OSC now requests the marketplaces to publish certain changes through it.⁹ While an opportunity to provide comments has been provided; it should be clear that marketplace changes are not a policy or rulemaking process. The marketplace filing with the securities regulator is analogous to an issuer's filing of a prospectus in that it is reviewed to confirm that it does not raise any issues so that permitting the issuer to go ahead would not be contrary to the public interest. New products, or in this case new order types, are not to be prevented from proceeding while there is a debate going on regarding a new policy direction. This is necessary because any new direction or precedent must be subject to a rulemaking process (which often takes years to conclude), where the initial policy direction can change as a result of the process, and should be applicable to all marketplaces at the same time.

Comments

Four commenters have suggested that it is premature for the OSC to allow the Alpha IntraSpread[™] Facility to proceed.¹⁰ Two argued that it should not proceed because of the CSA work being done on the topic of dark pools requires resolution before allowing any more dark pools¹¹. One argued that the original Alpha IntraSpread[™] Facility goes beyond current precedent, and the other is concerned because of the fact that the potential for success is greater.

Alpha Response

As pointed out in the CNSX Markets' letter, The original Alpha IntraSpread[™] Facility was a combination of historical forms of dark trading that have been allowed. As a result, we do not think it raised any new issues. These new order types should be allowed because any changes in policy direction must be applied to all market participants (including Chi-X, TMX, TriAct and Liquidnet) and not just new entrants.

Alpha also believes that some of the issues being raised are commercial or competitive issues rather than regulatory issues. The fact that Alpha has been successful in achieving a large market share and may be successful in introducing new order types is not a reason for stopping it from proceeding.

It also should be remembered that the marketplace only provides a tool when it offers new functionality; the actual use of the feature can depend upon many factors including the dealer's particular clients, level of technology support, and ability to adapt to new offerings.

Although there has been some form of a dark facility for years, there is no evidence that such facilities harm the price discovery process or the transparent marketplaces. The opposite, in fact, may well be true: that reporting trades on a real time basis for dark trades that result from the matching of natural order flows provides highly valued information from a price discovery perspective.

Fair Access, Internalization and "Jitney Orders"

Introduction

A large number of the comments focused on whether the original Alpha IntraSpread[™] Facility would benefit some dealers over others. These comments criticize allowing internalization or the use of jitney orders under the claim that it violates fair access.

⁸ "Diving into Dark Pools," by Saritna Buti, Barbar Rindi and Ingrid Werner (Dice Center WIP 2010-10, Fisher College of Business WP 2010-03-010)

⁹ OSC Staff Notice 21-703 (32 OSCB 8007), October 9, 2009.

¹⁰ CNSX, Penson, Scotia and TMX

¹¹ The Canadian Securities Administrators (CSA) with the Investment Industry Regulatory Organization of Canada (IIROC) have tried to bring clarity to the issues through its Request for Comments which was published on September 30, 2009 (Dark Pools, Dark Orders and other Developments on Market Structure), holding a forum on Dark Pools on March 23, 2010, and recent publication on November 19, 2010 (IIROC Notice 10-0303).

While the regulatory structure does require fair access, this does not mean it requires open access to all or a guarantee that each market participant will be able to benefit in the same way as every other market participant.

The principles surrounding the U.S. National Market System (NMS) and Canadian rules regarding multiple marketplaces were intended to promote fair competition among marketplaces because such competition promotes more efficient and innovative trading services including more efficient pricing of securities.¹² The U.S. SEC, when addressing the issue of fair access, was not guaranteeing that all access or functionality would be the same or have the same impact for all marketplace participants. It focused on membership in the marketplace and ability to access quotes in the transparent marketplaces, specifically stating that:

"Rules 610(a) and (b) further the goal of fair and efficient access to quotations primarily by prohibiting trading centers from unfairly discriminating against non-members or non-subscribers that attempt to access their quotations through a member or subscriber of the trading center. Market participants can either become members or they can obtain indirect access by "piggybacking" on the direct access of member or subscribers."¹³

The access requirements for alternative trading systems in Canada are set out in Section 6.13 of National Instrument 21-101 on Marketplace Operations (Rule 21-101). It provides that an alternative trading system establish written standards for granting access and not unreasonably prohibit, condition or limit access by a person to services offered. Fair access does not require that all functionality be used by or similarly benefit all subscribers.

In the Canadian marketplace, we can identify numerous features that do not benefit all participants in the same way, most notably the trading fee tiers that several other marketplaces have in place.

Comments

Two marketplaces raised concerns regarding the proposed functionality benefiting a specific segment of intermediaries rather than all dealers.¹⁴ One of these marketplaces suggested it extends the impact of broker preferencing by deliberately optimizing internalization opportunities.¹⁵

Concerns were raised by three commenters that allowing some participants to have arrangements with others for using this facility (usually referred to in the comment letters as a jitney arrangement) would exacerbate the result of benefiting some subscribers and concentrating order flow.¹⁶

One dealer and one marketplace noted that the Alpha IntraSpreadTM Facility is really a third party internalization engine rather than a dark pool¹⁷. The dealer stated that as such it facilitates a common practice which does not raise any concerns. However, the marketplace believes that each of the customers should be required to be regulated in order to use this facility or to otherwise do internalization.

One marketplace acknowledges the benefits of internalization for lower trading and clearing costs.¹⁸ The industry association stated that there were split views on internalization of order flow and whether it should be allowed on any marketplace; however the survey supporting the letter indicated 61.6% in favor of internalization¹⁹.

Alpha Response

Dealers have always been allowed to choose the business model and therefore the clients with which they wish to deal. A dealer can choose to have an institutional or retail business. It can also choose to be purely agency, principal or some combination. Moreover a dealer can choose who they want to deal with and have in the Upstairs market, OTC markets, and in the third market system in the U.S. The concerns raised in the comment letters seem to focus on the fact that certain dealers have advantages due to their order flow. While this may be true, it is also a competitive issue and not a regulatory fairness or access issue. Whether a particular dealer or customer may benefit from using this facility depends upon many factors including its ability and business model. Public policy should not be focused on whether some participants may be able to benefit more than others but whether there is any inappropriate barriers to participation and benefits made available by the marketplace.

- ¹⁶ TMX,CSTA and CIBC
- ¹⁷ CIBC and Liquidnet
- ¹⁸ CNSX
- ¹⁹ CSTA

¹² U.S. SEC Regulation NMS (Release no. 34-51808, June 2005), p12.

¹³ U.S. SEC Regulation NMS (Release no. 34-51808, June 2005), p166.

¹⁴ TMX and Chi-X

¹⁵ Chi-X

Internalization has existed in various forms and has never been considered as unfair. Moreover NI 21-101 acknowledges this indirectly by excluding from the definition of marketplace, a dealer who execute trades through a marketplace (crosses).

As reflected in the quote from the SEC NMS Release, "jitney arrangements" or "piggybacking" actually support fair access by providing a means for those who might not otherwise have access to participate or benefit. In addition, jitney arrangements are similar to third market maker activity in the U.S. which has been accepted by the regulators and market participants provided clients receive best execution.

Any dealer using the Alpha IntraSpread[™] Facility either directly or indirectly will still be subject to best execution. The same principles and utility of jitney arrangements apply in Canada. Jitney arrangements allow the benefits of the Alpha IntraSpread[™] Facility to be shared by a larger group of dealers with different business models.

NI 21-101 only includes dealers as marketplaces if the dealers execute a trade outside of a marketplace. Thus this facility removes the need for the individual members to operate a separate marketplace and is no different than allowing a dealer to arrange a cross and print through a marketplace.

In response to regulatory comments, Alpha had agreed to remove the internalization feature and to expand the interaction among order flows. However, it expects that the regulators will take a consistent approach to all marketplaces and relevant parties that provide substantially similar functionality.

Sub-Penny Pricing and Price Improvement

Introduction

The requirements regarding sub-penny pricing are set out in Part 6 of UMIR. Section 6.1 states that no order shall be entered on a marketplace at a price that includes a fraction of a cent other than an increment of one half of one cent in respect of an order with a price or less than \$0.50. However Policy 6.1 provides exceptions for a Basis Order, Call Market Order, or a VWAP Order. What these order types have in common is that the price is determined outside of interaction with the central limit order book. Specifically, a Call Market Order is defined by UMIR as an order that is entered on a marketplace on a trading day at a price to be established by the trading system of the marketplace. Thus a review of the rule and its exceptions makes it clear that the rules were designed to apply to the lit markets.

The pegged/dark orders introduced by Chi-X, Tri-Act and Alpha have been permitted because they fall within the same policy considerations provided by the exceptions in Policy 6.1. The policy considerations reflected in UMIRs indicate that requirements regarding sub-penny pricing were specifically created with the transparent marketplace in mind and not intended to apply to certain kinds of order such as dark orders.

Comments

The comments focused on two areas: (1) whether the same rules should apply to the dark and lit marketplace; and (2) whether sub-penny pricing undermines the UMIR rules that require price improvement.

Two commenters believe the same rules should apply to both lit and dark parts of the marketplace.²⁰ Both of these supports sub-penny pricing, but one supports it only in the dark marketplace.

One commenter supports the position that all orders should continue to be permitted to execute at sub-tick prices and visible quotations should be limited to full-tick increments.²¹ The industry association, while noting different views on sub-penny pricing in the dark markets, indicated support for maintaining full-tick support in visible market.²²

Four commenters believe that allowing sub-penny pricing in the dark circumvents providing meaningful price improvement as required by UMIR.²³

Alpha Response

Currently there is sub-penny pricing for pegged and dark orders as well as for Basis, VWAP and Call Orders. The Alpha Dark order is consistent with current orders available at MatchNow, Chi-X and Alpha as well as the new order types proposed by TMX. UMIRS prohibit sub-penny pricing in the visible marketplace but allow it where there is no interaction within a central limit book. There are reasons why a dark pool or order type should be treated differently. The nature of a dark pool or dark order type

²⁰ CNSX, Scotia.

²¹ CIBC

²² CSTA

²³ GMP, Maple Securities Canada Limited, Newedge, TSX

is more similar to a cross or crossing system than to the continuous market. In fact it fits within the definition of a call market order where the point in time is continuous.²⁴

The discussion regarding changing Part 6 of UMIRS so that the same rules would apply to the lit and dark market, as well as how many decimal places should be allowed if sub-penny pricing is permitted in either the dark or lit, are really policy issues that should be dealt with separately from this filing.

Any decision to change current interpretations of UMIR so as to prohibit Alpha from proceeding with its implementation of Dark orders should be immediately applied to all other marketplaces, since it would create an inappropriate advantage and would be unfair to apply a different treatment to different marketplaces only due to the timing of the process.

Best Execution and Best Price

Introduction

Dealers' use of any new order types or marketplace functionality is always subject to compliance with its own regulatory requirements (securities regulation as well as UMIRS). The availability of the Alpha IntraSpread[™] Facility does not mitigate or eliminate that responsibility. In fact it supports those clients who are seeking execution without market impact.

Comments

One commenter claimed that trading client orders in an internalized manner with de minimus price improvement on Alpha could not be justified when compared to the trading opportunity on other lit Canadian marketplaces²⁵.

Another commenter claimed that Alpha IntraSpread[™] Facility is not consistent with the concept of best price because it only allows trades within the same dealer.²⁶

One commenter suggested requiring disclosure to clients of the use of Dark orders²⁷.

Alpha's Response

Best execution requires that the dealer considers the client's needs in regards to price, speed, depth and transaction cost²⁸. While Alpha believes its original facility was able to satisfy each of these requirements, it wishes to acknowledge it is up to the dealer to determine best execution based on the actual facts and client's needs at the time of trading. The policy on best price (which will be replaced by the Order Protection Rule) requires that no order trade through a better priced order on a visible marketplace. The guaranteed price improvement in Alpha IntraSpread Facility ensures that the obligation for best price will be satisfied. Furthermore, the price improvement over the NBBO that was traditionally available only to institutional clients via the upstairs market will now be available to retail clients as well. Finally, the dark orders will allow buy-side firms to improve the quality of execution for their large orders.

Decisions regarding which order types, routing choices and information to provide to clients have always been part of a dealer's best execution obligation. Transparency around those decisions has been left to the dealer's discretion since they are proprietary and part of the service it provides to clients.

Contact Information:

Any questions regarding these changes should be addressed to Randee Pavalow, Head of Operations and Legal, Alpha ATS LP: randee.pavalow@alpha-group.ca, t: 647-259-0420

²⁴ The concept of continuous call markets was introduced with Optimark and continues with facilities like MatchNow.

²⁵ TMX

²⁶ GMP

²⁷ Liquidnet

²⁸ NI 23-101, Part.

| ISSUE | COMMENT | RESPONSE |
|---|--|---|
| CIBC World Markets Inc. | | |
| Internalization | IntraSpread [™] will operate a third party internalization engine rather than a proper dark pool which does not raise any concerns. The internalization activity enabled by this facility is common practice today. | |
| Fair Access and future phases | Concerns focus around enabling counterparty selection in trading either through the internalization of jitney order from other dealers or through the addition of an exclusionary matching leg within IntraSpread™. Notes that while the ability to enter bi-lateral arrangements exists in Equiduct PartnerEx in Europe, permitting dealers to control who they deal with is not available to dealers today. Most regulation in Canada, the U.S. and Europe has been aimed at reducing selective information disclosure and selective access to order flow. | Fair Access requires that any party be able to access the marketplace. Any IIROC member can participate in the Alpha ATS and can use the facility. Jitney arrangements provide smaller dealers with the ability to receive the same benefits as larger ones. |
| | Supports future phases where there is communal matching because it supports price improvement and fill probability. | No decisions have been made at this time on future phases or functionality. |
| Interaction of dark order with visible limit orders | By providing that the dark order with the discretionary pricing are constrained to the dark pools, IntraSpread™ maintains the tradeoff between price and immediacy. All individual order should bear a single price at a single moment in time which is achieved by pegging to NBBO. The only dark order types that should be permitted on visible markets are those that are deterministically priced or that that bear a discretionary but reveal at least a portion of their size. Fully hidden, deterministically priced order should be permitted provided they are priced inside the NBBO. | IntraSpread [™] satisfies all of the principles for interaction that are set out. |
| Priorities | Allocations should be based on price then visibility, with visible orders receiving priority at any given price level. IntraSpread[™] achieves this through price improvement. Would like more information on allocation rules. | Priorities within IntraSpread™ are based on price then time within a subscriber. |
| Sub-penny pricing | All orders should continue to be permitted to execute at sub-tick prices and visible quotations should continue to be limited to full-tick increments. | Alpha IntraSpread [™] Facility is consistent with current rules which only limit visible quotations to full-tick increments. |

| ISSUE | COMMENT | RESPONSE |
|---|--|---|
| Chi-X Canada | | |
| General Comment – | Many benefits that are offered by dark forms of liquidity | |
| Broker Preferencing and Fair Access | Broker preferencing has been around and an accepted feature but it has contributed to the disproportionately high concentration of order flow across a limited number of participants interfering with technology and other advancements. | Broker preferencing is available to all dealers. There is no evidence that broker preferencing rather than a successful business model is the basis for where order flow is located. Moreover, it should be raised as a policy issues and not a reason for delaying new functionality that is independent of the issue. |
| | Same issues in IntraSpread: disincentive for those who are not customers of preferenced dealers impacting quote competition and appearance of a two-tiered market, market structure opportunism; disincentive for large investors to forgo investing in technology. | The concerns focus on concentration and size of specific participants which are competition and Canadian market structure issues that are not created by this facility. |
| | IntraSpread provides more opportunity t o deliberately optimize internalization opportunities. | Internalization is an important part of market structure and exists throughout the world. While the dealer may benefit, so does the client. |
| | Siphoning large segments of order flow into the hands of a limited few fragmenting markets without accessibility to majority of market of market participants could lead to further market segmentation, a less robust price discovery mechanism, and continued deterioration of public markets. | Competitive interests is not an appropriate basis for making an objection. These same kinds of objections were raised when the issue of multiple markets were first raise and the evidence now shows that any potential harms from fragmentation have been offset by the benefits of completion to reduced spreads and greater liquidity in the Canadian markets. |
| | Concerns are exacerbated by Alpha's Jitney allocation methodology: by allowing participants to resell their broker IDs to other brokers on a selected basis , small or intermediate dealers may be incented to aggregate their order flow with larger brokers | The Alpha IntraSpread [™] Facility was not designed with the intent of specifically promoting jitney arrangements. Any such arrangements will be made between dealers as they are in other contexts. There is no support for Chi-X' characterization of these arrangements. Moreover, jitney arrangements allow the benefits of the Alpha IntraSpread [™] Facility to be shared by a larger group of dealers with different business models. |
| | Questions: | |
| | Do customers opt-in or out when sending orders. | Customers opt-in by marking the incoming order as SDL. |
| | How will trades within the facility be marked? How will information be made available? | There will be no specific marker but trade information will be provided to the public feed as well as available to customers through their private data information. |
| | These trades should set the LSP. | Pegged orders have been treated like call market orders and therefore do not set the last sale price – example is MatchNow. |
| | How will dealers be able to demonstrate best execution? | Each dealer has their own policies and procedures for determining best execution. Price will be assured since there is guaranteed price |

| ISSUE | COMMENT | RESPONSE |
|---------------------|---|--|
| | | improvement. Information regarding transaction costs and liquidity on a historical basis will also be available. |
| | How will orders be in compliance with order exposure rule? | IIROC's guidelines to Policy 6.3 provide that client orders which are routed to a non- transparent facility to determine if liquidity is available on that marketplace at prices that are equal to or better than displayed order would comply with Rule 6.3 provided any unexecuted portion of the client order was then immediately entered on a marketplace that did provide order transparency. Clients can either configure their own routers to comply or can use the RAD routing strategy in the Alpha Order Router to comply. |
| | | |
| CNSX Markets Inc. | | |
| General Comments | CNSX is against any initiative that reduces liquidity in public book and should be preceded by full review. | |
| | IntraSpread is a combination of historical forms of dark trading that have been allowed. The existing order types/pools were set in an environment with minimal multi-market experience and limited public and industry input can be distinguished: one was a call market and the other s provided open access or have a size threshold. | If current precedents are no longer valid then should repeal or prohibit all of them not just new entrants. |
| | The risk of harm is greater becauseof economic clout and potential impact on amount of dark. | There is no evidence to support the allegation and it is inappropriate to penalize parties because they are commercially successful. |
| Internalization | Acknowledges that direct benefit of internalization is lower trading and clearing costs to the internalizer; however asks question of what data has been collected to evaluate estimated cost savings and whether there is a disproportionate benefit to some dealers. | Benefits to dealer depend on many factors including its ability and interest in using the new functionality and it is not just size that is the key determinant. Public policy debate is never focused on whether some benefit more than others but whether anyone is excluded from benefiting for the wrong reasons – the test being inappropriate discrimination. |
| | Seems to be concerned will develop similar practices to those that exist in the US | No market integrity issues identified in US and no evidence dark was cause of "flash crash" |
| | Asks whether volume estimates have been calculated whether caps have been considered. | This is not a question that should be considered in this context – more of policy issue. |
| | Suggests that internalization benefit is incremental if there is broker preferencing and should be balanced against any unintended consequences. | The degree of benefit is not relevant where there is no evidence of harm. |
| | Systemic fully-internalized trading does not appear to be consistent with the spirit of the UMIR order handling and best price requirements or CSA OPR. | No less inconsistent then upstairs market, and price improvement addresses any potential issues |

| ISSUE | COMMENT | RESPONSE |
|--|---|--|
| | Questions whether a client Dark order can execute against non-client SDL | Must operate within context of UMIRS so unlikely for orders less than 5000 shares. Otherwise it should not matter as long client gets best execution. |
| Price Improvement | Time to revisit application of price improvement rules – at time most of rules were created minimum tick was 1/8 th of a dollar so that disincentive to do systemic internalization has been reduced | This argument is not a reason to stop new initiatives that fit within current rules unless prepared to prohibit all marketplaces and market participants |
| | Aware that sub-tick price improvement currently exists but were established before transparency initiative of OSC. | Policy debate regarding sub-penny pricing should not prevent new developments if they are consistent with current practice. Operational changes should not be treated as a policy debate. |
| Sub-penny trading increments | Sub-penny trading increments are clearly appropriate for VWAP and basis trades because price is derived from a number factors | Dark order is derived from a reference price and should be treated in the same manner. |
| | Believes allowing "quoting" in sub-pennies and that all marketplaces (dark or lit) should be allowed to accept orders and report trades in subpenny increments or unfair advantage. Asks whether regulators are prepared to allow all marketplaces to do so. | Current rules do not treat dark and lit markets the same. |
| Questions | Why do trades in IntraSpread not set the last sale price? How does the exclusion of access to a dark order meet fair access? Will there be inter-dealer preferencing allowed through offering jitney access instead? | -Pegged orders have been treated like call market orders and therefore do not set the last sale price, as exemplified in MatchNow. Furthermore, if trades with fractional prices were to set the last sale price, then additional guidance may be required from IIROC wrt to handling of short sell orders, defining of the closing price, etc. -Fair access requires that all parties have appropriate access to the marketplace. Internalization has never been determined to violate any requirements including fair access. -Jitney arrangement have always been available for any purpose on Alpha. |
| CSTA, Inc | | |
| General | CSTA did a survey and received 162 completed responses: 41 buy side and 121 sell side traders. They do not make any firm statements in favor or against the Alpha IntraSpread™ Facility, but note the survey discusses some relevant issues. | |
| Relevance of ownership structure | The majority answered that the ownership structure should be considered when looking at new product offerings. | Although most marketplaces (exchanges and others) have dealers who are owners, ownership structure has never been considered as relevant to determining the quality of a marketplace's functionality in Canada or elsewhere and should not be a relevant factor. Ownership structure may be relevant from a governance perspective in the case of exchanges or sometimes requires disclosure where there may be conflicts. |

| ISSUE | COMMENT | RESPONSE |
|--|--|---|
| Internalization | There are split views on internalization of order flow and whether it should be allowed on any marketplace. | The survey actually indicates 61.6% in favour of internalization. Moreover internalization is happening today on marketplaces and throughout the world. Addressing internalization as an issue should be addressed through a policy analysis and not within the context of one marketplace's proposals. |
| Price Improvement or Trading at the NBBO | The majority felt price improvement was not required and trading at the NNBO for dark orders should be allowed. | |
| Sub-penny pricing | There is a split decision that sub-penny pricing are significant; however continuous books should not move towards sub-penny pricing. | The issue of the significance of sub-penny pricing should be determined as part of a policy discussion and therefore applied consistently to all marketplaces. |
| Fair Access | A majority thought that selective counterparty trading should not be allowed. A structure that would allow or counterparty selections would permit flow that was not internalized to be exposed to a select group of other dealers' Dark Orders. | Allowing dealers to selectively choose who they want to deal with has always been available in the Upstairs market, OTC markets, third market system in the U.S. and EquiductPartnerEx in Europe. |
| Impact on quality of the markets | The majority believe that the facility will not improve market quality. | The CSTA itself raises the question whether regulators should evaluate if new functionality will improve the quality of the markets or whether that responsibility should be determined by the users of the product. The OSC standard for reviewing these kinds of changes is not a merit review but whether such changes will raise market integrity issues such as fraud and manipulation so that it is contrary to the public interest to allow it to proceed. Moreover, whether in fact the changes add or detract from market quality cannot be determined by opinion but should be determined by facts. Due to the diversified needs of the market participants, some will always support and some will always find fault. Regulators are not in a position to state what is the best solution or even what is a good solution: only market participants through their behavior can determine that. |
| Fionnuala Martin | | |
| and Associates | | |
| General | Supportive of Alpha IntraSpread[™] new initiatives that offer improved services, choices and cost effectiveness. New facility will improve on dark pool trading by lowering fees and reducing or eliminating data leakage that could be used by others to take advantage of retail order flow. | |
| Benefits of IntraSpread™ | Provides price improvement to retail investors Allows trades at a lower cost Reduce back office trade processing fees | |

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| GMP | | |
| Best Price | Alpha IntraSpread [™] Facility is not consistent with the concept of best price because it only allows trades within the same dealer. The SDL Order should be allowed to trade against Dark Orders from all subscribers at the same price point. | The policy on best price (which will be replaced by the Order Protection Rule) requires that no order trade through a better priced order on a visible marketplace. First, because these orders are dark the rule does not apply to orders within the facility but also the guaranteed price improvement ensures that the obligation for best price for orders outside of the facility will be satisfied. |
| Sub-penny pricing | The proposal allows dealers to intentionally circumvent the visible market with no meaningful price improvement. | The current rules treat the visible market differently from dark order types. Alpha IntraSpread™ Facility is consistent with current rules. |
| Liquidnet Canada | | |
| General | Liquidnet supports competition and innovation in the marketplace, but believes that entities performing equivalent functions should be subject to equivalent regulation. | |
| Internalization | The Alpha IntraSpread [™] Facility is only providing technology to its customers in order for them bring their customers' orders together. Therefore each of the customers that use the tool to internalize should be required to be regulated as an alternative trading system under NI 21- 101. | NI 21-101 only includes dealers as marketplaces if the dealers execute a trade outside of a marketplace. Thus this facility removes the need for the individual members to operate a separate marketplace and is no different than allowing a dealer to arrange a cross and print through a marketplace. |
| Best Execution | Liquidnet is suggesting that investors be informed in advance of use of order types and other information. To comply with best execution, dealers should route to providers of that dark liquidity. | Decisions regarding which order types, routing choices and information to provide to clients have always been part of a dealer's best execution obligation. Transparency around those decisions have been left to the dealer's discretion since they are proprietary and part of the service it provides to clients. Multiple dark pools/options are available to dealers today, so we are expecting that the approach to transparency around order routing should not significantly change with introduction of Alpha IntraSpread Facility. |
| Maple Securities | | |
| Canada Limited | | |
| General comment | These new order types will be very popular with the dealer community and expect that all marketable client orders will be routed through these dark markets. | Alpha Intraspread [™] is being introduced to provide choice and options to dealers and their clients. It is hard to predict who will actually use it and how they will use it since it will be up to each dealer to evaluate how this facility fits in with its trading strategies and best execution obligations to its clients. |
| Sub-penny pricing | Introduction of sub-penny order types for | -IIROC has previously expressed an opinion |

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| | dark orders only is contrary to the spirit of the IIROC rule requiring price improvement for clients. Because price-improvement is dark, clients cannot easily compare potential price improvement between dealers. Dealers can use the dark market to avoid interference by client orders booked in the visible market. Dark orders sub-penny pricing increases the risk of client orders in the visible market being front run by predatory algorithms. | contrary to the view of the commenter. If this position is adopted then all marketplaces (Chi-X, MatchNow and TMX) should also be subject to the same requirements. -Price improvement is only owed to a client and not to another dealer's clients so the comparison is not relevant. |
| Dark Locked and Crossed Markets | A subscriber could put in a buy and sell order at the same price. | Since the Dark orders do not trade against each other, they do not create locked or crossed markets nor should the rules apply to dark marketplaces because there is no need to protect against a perception of market quality issues. |
| Suggested solutions | SDL order should trade against all brokers rather than only the originating broker. | This functionality is under consideration for the next phase. In the mean time, jitney arrangements may be able to achieve the same thing. |
| | Market SDL order that are not fully filled in the dark market should trade immediately with the visible market. | This can be done by designating the SDL order as a TTM order. It is left to the Dealer to decide whether that is appropriate in light of the particular strategy or needs of the client. |
| | Dark Orders should be subject to same tick rules as visible orders. | This is not the current position of the regulators and there are marketplaces that currently have sub-penny pricing. |
| | IIROC should rule on how locked and crossed markets will be applied to dark markets. | [It is the clear that the policy rationale behind locked and crossed markets is not relevant to dark marketplaces.] |
| Newedge Group SA | | |
| General comments | Alpha Intraspread [™] will benefit a small number of investors at the expense of overall market transparency and will exacerbate the unequal playing field that exists with respect to the current market structure in Canada. It will draw significant visible liquidity out of the market from high frequency traders which will further erode the visible price discovery mechanism within the Canadian markets. Any rules impacting market transparency and open access negatively are inconsistent with key OSC or IIROC principles. There are a number of dark pools operating in Canada that are eroding price discovery and creating an unequal playing field and should be reviewed to ensure they operate in a way that is consistent with current requirements. | -Alpha Intraspread[™] is being introduced to provide choice and options to dealers and their clients. It is hard to predict who will actually use it and how they will use it since it will be up to each dealer as well its customers to evaluate how this facility fits in with its trading strategies and best execution obligations to its clients. In fact some parties have suggested that the fee structure will discourage high frequency traders from using the facility. The facility as proposed works within any requirements regarding transparency and access. Regulators in Canada and throughout the world have acknowledged that full transparency is not appropriate in all circumstances. -Alpha made reference in the notice to its web site where it contains a product sheet which provides the details requested by the commenter. |

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| | Seeks greater clarity on how orders will function | |
| Sub-penny pricing | Allowing an SDL [™] order of less than \$.01 is in conflict with UMIR 6.3 because price improvement has been historically improved by at least one trading increment. | Chi-X, TriAct and Alpha provide price improvement of less than one trading increment. TMX received recent approval to implement order types that result in sub-penny trades. |
| Penson Financial Services Canada Inc. | | |
| No new services while policy debate is ongoing | It is premature to allow IntraSpread™ Facility in light of analysis being done by CSA. | Changes should not be prevented while a policy debate is going on if they are not inconsistent with current requirements. |
| Unequal Access | Dark Pools may reduce liquidity since they are not accessible by all investors. | There is no evidence to support this claim either here or in other jurisdictions. |
| | Clients of smaller dealers could be disadvantaged through reduced liquidity and trading information. | Trades from the facility will be published and there is no reason for smaller dealers to be disadvantaged. |
| RBC Dominion Securities Inc. | | |
| Supportive of initiatives that promote an efficient and competitive marketplace | The proposed initiative is a broker neutral solution which benefits the entire broker-dealer community by providing an additional source of dark liquidity. | |
| тмх | IntraSpread proposal moves far past the status quo for dark orders and should not be approved now while the policy making process is ongoing | Rulemaking process is a long process which often takes 3 or more years. New products cannot be put on hold especially when they are consistent with current products or precedent. Consistent doesn't mean identical. There are no key differences between proposed Alpha IntraSpread Facility and various implementations available in the market today, which would impact the market integrity. |
| | Notes internalize only feature may be considered similar to MatchNow but is significantly different as follows: Unique internalization only nature MatchNow features approved under characterization of call market and IntraSpread is continuous. systematically provides micro-penny price improvement to marketable customer orders "marketflow" orders are exposed to all dealers 10% price improvement vs. 20% minimum price improvement | -The internalization feature is not unique since it was allowed under TMX ATX proposal and is available in MatchNow. Moreover the fact that it is made available from a marketplace does not mean it is different. In fact by doing it through a marketplace, it does not introduce any new characteristics other than additional transparency which should be welcome. -IntraSpread [™] works in a very similar way to MatchNow and should be characterized in the same way. -Operates within current rules for sub-penny pricing. |

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| | | -MatchNow allows for preferencing which has the same effect as limiting order exposure. -Alpha Price Improvement order set the precedent for 10% price improvement. |
| | | |
| Internalization | Internalization benefits a specific segment of intermediaries but does not benefit the investing community as whole – raises concerns of fair treatment of investors and concerns related ensuring vibrancy of Canadian capital markets through the existence of strong visible marketplaces. | This comment, discusses internalization without discussing upstairs market or alternative internalization solutions, such as FOX product offered in the past by the TMX. It has long been accepted that transparency is not always good for investors (IOSCO paper), so alternative types of markets have been developed. Investors choose their market intermediaries based on various criteria including service and intermediaries compete so that some are more successful than others. By suggesting that some intermediaries may benefit more from this facility because they are more successful, the TMX is suggesting that dealers should not be able to benefit or allow their customers to benefit from their successes. |
| Policy making through rule review | IntraSpread should not be approved until CSA has articulated a view on a marketplace internalization vehicle or strategy: Extent of dealer internalization expansion because a threat to transparent price discovery What constitutes meaningful price improvement to ensure fiduciary obligations and preserve liquidity on Canadian equity exchanges | The issues of internalization caps or meaningful price improvement should be determined as part of a policy discussion and therefore applied consistently to all marketplaces. In the interim, Alpha IntraSpread Facility is using mechanisms already available today, which have not proven to cause harm, and should be approved to operate as such, until a policy change if any. |
| Broker Exclusion and Fair Access | IntraSpread will result in a system of broker exclusion that will result in pockets of liquidity residing on the Alpha marketplace that are only accessible to certain participants- all subscribers of Alpha will not receive the benefit of equal access to orders | Dealers have always been able to maximize efficiencies within its orderflow through crossing and the upstairs market. Fair Access does not guarantee access and benefits to everyone in the same identical way. |
| | 21-101 (6.13(b)) prohibits an ATS from unreasonably limiting access to services. | All subscribers have access to the service. |
| | Creates two-tiered structure which is different from broker preferencing. | The structure created is no different from upstairs market. |
| | While dealers are allowed to internalize within the UMIRS, marketplaces should be held to a higher standard and should not be used as an outsourced internalization vehicle. | Internalization services provided by marketplaces offer greater transparency into the solution and trading activity than internalizations solutions developed by dealers themselves, and should be the preferred approach by the industry. |
| | Use of jitney orders or anticipated expansion is a harmful precedent if the dealer exclusivity is extended to selective groups of dealers thereby permitting a dealer consortium to execute orders among themselves because violates fair access principles and possible effect on diminished price discovery and lower liquidity on visible | As reflected In the quote from the SEC NMS Release, "jitney arrangements" or "piggybacking" actually support fair access by providing a means for those who might not otherwise have access to participate or benefit. In addition, jitney arrangements are similar to third market maker activity in the U.S. which has been accepted by |

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| | marketplaces. | the regulators and market participants provided clients receive best execution. |
| | Disadvantages or impairs fair competition among dealers because not all can use facility in same advantageous way. It will encourage smaller dealers to enter into arrangements with larger dealers to that their flow can interact. | This practice was developed in the U.S. under the third market system which advantaged customers without any harm to transparency or market structure. |
| Jitney Orders | Describes a "Jitney Order" as a jitney dealer's Dark order matching with an SDL order of the executing dealer which will allow a consortium of preferred counterparities for purposes of the Alpha facility. | Characterization is incorrect. IntraSpread was not built to promote jitney arrangement but it should not be prohibited or it would limit other dealers be able to maximize best execution and reduce costs. Dealers have entered into these kinds of arrangements (including the introducing- carrying model) for various business reasons and are subject to IIROC requirements which address any potential concerns. |
| Meaningful Price Improvement | Dealers will be able to execute against client order with less price improvement for the client than if the dealer had simply internalized the trade because the UMIR rules have the effect of requiring full tick price improvement while Alpha Dark Order and SDL can execute at less than a full tick. UMIR 6.3(1)(b) and 8.1(1) review require full tick price improvement. Best available price does not simply mean any price improvement over the best posted price. Sub-penny price improvement is not adequate improvement to justify the yielding of priority of a previously posted visible quote. | -The requirements regarding sub-penny pricing are set out in Part 6 of UMIR. Section 6.1 states that no order shall be entered on a marketplace at a price that includes a fraction of a cent other than an increment of one half of one cent in respect of an order with a price or less than \$.50. However Policy 6.1 provides exceptions for a Basis Order, Call Market Order, or a VWAP Order. What these order types have in common is that the price is determined outside of interaction with the central limit order book. Specifically, a Call Market Order is defined by UMIR as an order that is entered on a marketplace on a trading day at a price to be established by the trading system of the marketplace. Thus a review of the rule and its exceptions makes it clear that the rules were designed to apply to the lit markets. -Different rules have been applied to dark orders. - Similar mechanisms exist today in the market (Match Now, Alpha's PII/IM order type, and TMX approved discretionary order/Inside Spread order) |
| | Acknowledges that sub-penny price improvement is currently being provided on marketplaces such as MatchNow, Chi-X an Alpha but these features were introduced without any consultation process; none of them should be allowed until issues have been resolved. | These orders and how they work were reviewed by both OSC and IIROC prior to implementation. Policy discussion to make changes to the rules has been started as well but should not affect new similar implementations, until it has been concluded. |
| Best Execution | NI 23-101 requires dealers to make reasonable efforts and test should be onerous. Trading client orders in an internalized manner with de minimus price improvement on Alpha could not be justified when compared to the trading opportunity on other lit Canadian marketplaces. | TMX position ignores the factors that should be considered when determining best execution and attempts to undermine the dealer's responsibility by suggesting rules should be in place to determine when a specific market can not satisfy this basic obligation to a client. Best execution requires that the dealer consider the client's needs in regards to price, speed, depth and transaction cost. While Alpha believes its facility will be able to satisfy each of these requirements, it would acknowledge it is up to the dealer to |

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| | | determine based on the actual facts at the time of trading where best execution can be achieved. |
| Order Pricing and Wash Trades | Can a trader place buy and sell dark orders in a single security at overlapping prices? | Yes. Since dark order have no pre-trade transparency, there are no concerns of creating locked or crossed quotes. Dark orders with overlapping prices exist today between various dark pools, with no negative impact. |
| Public Markers | Will OSC require distinct public marker requirements | There is no such requirement today for trades from dark orders in existing marketplaces. Any regulatory requirement must apply to all marketplaces at the same time. |
| Last Sale Price | Will it update LSP? Chi-X does. | Pegged orders have been treated like call market orders and therefore do not set the last sale price. Alpha IntraSpread Facility execution mechanism is most similar to MatchNow, and MatchNow trades do not set the LSP. |
| Execution price | How does price increment cap work? | Please see the example in the product sheet available on the Alpha website. |
| Execution Queue | Does price improvement trump time priority in the facility? | Yes. |
| Trade Data | Request for description of rounding methodology. | There will be no price rounding on the public trade data. |
| | Request for information on what is reported back to SDL Order provider when a trade occurs. | Detailed protocol specification changes related to IntraSpread order types is included in the product sheet available on the Alpha website. |
| Scotia Capital | | |
| General comment | Supportive of continued innovation in marketplace systems and modes provided they are evaluated for potential impact on market functions, fairness and efficiency | |
| Sub-penny Pricing | Consistent rules should be applied to both dark and lit marketplaces. Allowing similar sub-penny pricing to the visible marketplaces would expose some of the weaknesses of the maker /taker model. Sub-penny crosses should be allowed but not for the continuous book | -Different market structures may require different treatments. -Dark pools are more similar to crosses and crossing networks than continuous markets so sub-penny pricing should be allowed. |
| Delay until issues of sub-penny price improvement, maker/taker fee model and value of displayed orders has been considered and resolved | | As pointed out in the CNSX Markets' letter, The Alpha IntraSpread [™] Facility is a combination of historical forms of dark trading that have been allowed. It does not raise any new issues. These new order types should be allowed because any changes in policy direction must be applied to all market participants (including Chi-X, TMX, TriAct and Liquidnet) and not just new entrants. Alpha also believes that some of the issues being raised are commercial or competitive issues rather than regulatory issues. The fact that Alpha |

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| | | has been successful in achieving a large market share and may be successful in introducing new order types is not a reason for stopping it from proceeding. |

Chapter 25

Other Information

25.1 Consents

25.1.1 SL Resources Inc. – s. 4(b)

Headnote

Consent given to a corporation under the Business Corporations Act (Ontario) to continue under the BVI Business Companies Act, 2004 (as amended).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am. Business Corporations Act, R.S.A. 2000, c. B9, as am. Securities Act, R.S.O. 1990, c. S.5, as am.

Regulation Cited

Regulation made under the Business Corporations Act, O. Reg. 289/00, as am., s. 4(b).

IN THE MATTER OF R.R.O 1990, REGULATION 289/00, AS AMENDED (the "Regulation") MADE UNDER THE BUSINESS CORPORATIONS ACT (ONTARIO), R.S.O. 1990, c.B.16, AS AMENDED (the "OBCA")

AND

IN THE MATTER OF SL RESOURCES INC.

CONSENT (Subsection 4(b) of the Regulation)

UPON the application (the "**Application**") of SL Resources Inc. (the "**Applicant**") to the Ontario Securities Commission (the "**Commission**") requesting the consent from the Commission for the Applicant to continue in another jurisdiction (the "**Continuance**"), as required by clause 4(b) of the Regulation;

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

AND UPON the Applicant having represented to the Commission that:

- 1. The Applicant is a corporation existing under the provisions of the OBCA and was formed by Articles of Incorporation pursuant to the *Business Corporations Act* (Ontario) on April 8, 2005.
- 2. The Applicant's registered office is located at 32 Roxborough Street East, Toronto, Ontario M4W 1V6.
- 3. The Applicant's authorized share capital consists of an unlimited number of common shares ("**Common Shares**") of which 4,800,000 Common Shares are issued and outstanding as of the date hereof.
- 4. The Applicant proposes to make an application to the Director under the OBCA pursuant to section 181 of the OBCA (the "Application for Continuance") for authorization to continue as a company under the BVI Business Companies Act, 2004 (as amended) (the "BVI Act"). As a result of the Meeting (as defined below), wherein the shareholders of the Applicant approved the Applicant's corporate name change to "White Tiger Gold Ltd.", to be effected concurrently with the Continuance of the Applicant to the British Virgin Islands, the Applicant proposes to make the application for

authorization to continue as White Tiger Gold Ltd. Upon receipt of the consent to continue, the Applicant will continue under the BVI Act as White Tiger Gold Ltd.

- 5. Pursuant to clause 4(b) of the Regulation, where a corporation is an offering corporation under the OBCA, the Application for Continuance must be accompanied by a consent from the Commission.
- 6. The Applicant is an offering corporation under the OBCA and is a reporting issuer within the meaning of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"). The Applicant is not a reporting issuer in any other jurisdiction in Canada. The Applicant intends to remain a reporting issuer under the Act following the Continuance.
- 7. The Applicant is not in default of any of the provisions of the Act or the regulations or rules made under the Act.
- 8. The Applicant is not a party to any proceeding or, to the best of its knowledge, information and belief, pending proceeding under the Act.
- 9. The holders of Common Shares of the Applicant authorized the Continuance of the Applicant at a special meeting of shareholders (the "**Meeting**") held on December 9, 2010. The special resolution authorizing the Continuance was approved at the Meeting by 100% of the votes cast.
- 10. The management information circular of the Applicant dated November 11, 2010 provided to all shareholders of the Applicant in connection with the Meeting included full disclosure of the reasons for, and the implications of, the proposed Continuance, included a summary of the material differences between the OBCA and the applicable laws of the British Virgin Islands and advised the shareholders of the Applicant of their dissent rights in connection with the Application for Continuance pursuant to section 185 of the OBCA
- 11. The Application for Continuance is being made in connection with the proposed reverse take-over transaction involving the acquisition (the "**Acquisition**") by the Applicant of four wholly-owned subsidiaries of LLC UK Dalsvetmet ("**DZM**") and DZM's entire 80% interest in a fifth subsidiary.
- 12. The Continuance has been proposed to facilitate the Acquisition and the future business of the resulting issuer. The Continuance will allow the Applicant to take advantage of the favourable tax treatment accorded to companies governed by the BVI Act, particularly in light of the fact that the Applicant and the resulting issuer have no operations or material assets in Canada.
- 13. As the Applicant does not intend to maintain a corporate office in Canada subsequent to the Continuance, the Applicant has provided an undertaking (the "**Undertaking**") to the Commission that it will complete and file an "Issuer Form of Submission to Jurisdiction and Appointment of Agent for Service of Process" in the form of Schedule "A" thereto (the "**Submission to Jurisdiction Form**") with the Commission through the System for Electronic Document Analysis and Retrieval (SEDAR) promptly following the effective date of the Continuance. The Undertaking also provides that the Applicant will maintain and update the information contained in the Submission to Jurisdiction Form, or furnish a new Submission to Jurisdiction Form, in accordance with the provisions contained therein. The form of Undertaking provided to the Commission is attached as Appendix "A".
- 14. The material rights, duties and obligations of a company governed by the laws of the British Virgin Islands and memorandum of association and articles of association substantially similar to those approved by the shareholders of the Applicant at the Meeting (the "**Memorandum and Articles of Association**") are substantially similar to those of a corporation governed by the OBCA. Such rights provided by the Memorandum and Articles of Association cannot be amended without the consent of the shareholders of the Applicant.

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

THE COMMISSION HEREBY CONSENTS to the continuance of the Applicant as a company under the BVI Act.

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

"Paulette Kennedy" Commissioner Ontario Securities Commission

"James Carnwath" Commissioner Ontario Securities Commission

APPENDIX "A"

UNDERTAKING

To: Ontario Securities Commission (the "Commission")

RE: SL Resources Inc. (the "Applicant") – Application dated November 15, 2010 for a Consent to continuance to the British Virgin Islands (the "Continuance") pursuant to clause 4(b) of Ontario Regulation 289/00 made under the *Business Corporations Act*, R.S.O. 1990, c. B. 16

The Applicant hereby undertakes that it will complete and file an "Issuer Form of Submission to Jurisdiction and Appointment of Agent for Service of Process" in the form of Schedule "A" hereto (the "**Submission to Jurisdiction Form**") with the Commission through the System for Electronic Document Analysis and Retrieval (SEDAR) promptly following the effective date of the Continuance.

The Applicant hereby further undertakes that it will maintain and update the information contained in the Submission to Jurisdiction Form, or furnish a new Submission to Jurisdiction Form, in accordance with the provisions contained therein.

Dated: November 29, 2010

SL RESOURCES INC.

<u>"Dennis H. Peterson"</u> Name: Dennis H. Peterson Title: Director

SCHEDULE "A"

ISSUER FORM OF SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

1. Name of issuer (the "Issuer"):

- 2. Jurisdiction of incorporation, or equivalent, of Issuer:
- 3. Address of principal place of business of Issuer:
- 4. Description of securities (the "Securities"):
- 5. Name of agent for service of process (the "Agent"):
- 6. Address for service of process of Agent in Canada (which address may be anywhere in Canada):
- 7. The Issuer designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served with any notice, pleading, subpoena, summons or other process in an action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of, relating to or concerning the obligations of the Issuer as a reporting issuer and irrevocably waives any right to raise as a defence in any such Proceeding an alleged lack of jurisdiction to bring such Proceeding.
- 8. The Issuer irrevocably and unconditionally submits to the non-exclusive jurisdiction of:
 - (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces and territories of Canada in which the Securities have been distributed; and
 - (b) any administrative proceeding in any such province or territory,

in any Proceeding arising out of or related to or concerning the obligations of the Issuer as a reporting issuer.

- 9. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file a new Submission to Jurisdiction and Appointment of Agent for Service of Process in this form or as otherwise prescribed by securities law at least 30 days before termination, for any reason, of this Submission to Jurisdiction and Appointment of Agent for Service of Process.
- 10. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file an amended Submission to Jurisdiction and Appointment of Agent for Service of Process at least 30 days before a change in the name or address of the Agent.
- 11. This Submission to Jurisdiction and Appointment of Agent for Service of Process shall be governed by and construed in accordance with the laws of Province of Ontario.

Dated:

Signature of Signing Officer of Issuer

Print name and title of person signing

AGENT

The undersigned accepts the appointment as agent for service of process of White Tiger Gold Ltd. under the terms and conditions of the preceding Submission to Jurisdiction and Appointment of Agent for Service of Process.

Dated:

Signature of Agent

Print name of person signing and, if Agent is not an individual, the title of the person

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