The Ontario Securities Commission

OSC Bulletin

January 21, 2011

Volume 34, Issue 3

(2011), 34 OSCB

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

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Published under the authority of the Commission by:
Carswell, a Thomson Reuters business
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
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Subscriptions are available from Carswell at the price of $649 per year.

Subscription prices include first class postage to Canadian addresses. Outside Canada, these airmail postage charges apply on a current subscription:

U.S.	$175
Outside North America	$400

Single issues of the printed Bulletin are available at $20 per copy as long as supplies are available.

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ISSN 0226-9325

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Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

January 21, 2011

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
Suite 1700, Box 55
20 Queen Street West
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Carol S. Perry	—	CSP
Christopher Portner	—	CP
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

January 24, 2011 10:00 a.m.	**Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Leverage Pro Inc., Prosporex Investment Club Inc., Prosporex Investments Inc., Prosporex Ltd., Prosporex Inc., Prosporex Forex SPV Trust, Networth Financial Group Inc., and Networth Marketing Solutions** s. 127 and 127.1 H. Daley in attendance for Staff Panel: JDC/MCH
January 24, 2011 10:00 a.m.	**Shaun Gerard McErlean and Securus Capital Inc.** s. 127 M. Britton in attendance for Staff Panel: CSP
January 25, 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.** s. 127 M. Britton in attendance for Staff Panel: CSP

January 25, 2011 2:00 p.m.	**Ciccone Group, Medra Corporation, 990509 Ontario Inc., Tadd Financial Inc., Cachet Wealth Management Inc., Vince Ciccone, Darryl Brubacher, Andrew J. Martin., Steve Haney, Klaudiusz Malinowski and Ben Giangrosso** s. 127 P. Foy in attendance for Staff Panel: CSP
January 25, 2011 3:00 p.m.	**Majestic Supply Co. Inc., Suncastle Developments Corporation, Herbert Adams, Steve Bishop, Mary Kricfalusi, Kevin Loman and CBK Enterprises Inc.** s. 37, 127 and 127.1 D. Ferris in attendance for Staff Panel: CSP
January 26, 2011 10:00 a.m.	**Rezwealth Financial Services Inc., Pamela Ramoutar, Chris Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc. and Sylvan Blackett** s. 127(1) and (5) A. Heydon in attendance for Staff Panel: CSP
January 26, 2011 11:00 a.m.	**Global Consulting and Financial Services, Crown Capital Management Corporation, Canadian Private Audit Service, Executive Asset Management, Michael Chomica, Peter Siklos (Also Known As Peter Kuti), Jan Chomica, and Lorne Banks** s. 127 H. Craig/C. Rossi in attendance for Staff Panel: CSP
January 26, 2011 12:00 p.m.	**QuantFX Asset Management Inc., Vadim Tsatskin, Lucien Shtromvaser and Rostislav Zemlinsky** s. 127 H. Craig in attendance for Staff Panel: CSP
January 27, 2011 2:00 p.m.	**Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiaints Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group** s. 127 and 127.1 H. Craig in attendance for Staff Panel: MGC
January 27, 2011 2:30 p.m.	**Helen Kuszper and Paul Kuszper** s. 127 and 127.1 U. Sheikh in attendance for Staff Panel: MGC
January 31 – February 7, February 9-18, February 23, 2011 10:00 a.m.	**Anthony Ianno and Saverio Manzo** s. 127 and 127.1 A. Clark in attendance for Staff Panel: EPK/SA
January 31, February 1-7, February 9-11, 2011 10:00 a.m.	**Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk** s. 37, 127 and 127.1 C. Price in attendance for Staff Panel: TBA

February 8, 2011 2:30 p.m.	**Ameron Oil and Gas Ltd. and MX-IV, Ltd.** s. 127 M. Boswell in attendance for Staff Panel: TBA
February 11, 2011 10:00 a.m.	**Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman** s. 127(7) and 127(8) M. Boswell in attendance for Staff Panel: TBA
February 14-18, February 23 – March 1, 2011 10:00 a.m.	**Nelson Financial Group Ltd., Nelson Investment Group Ltd., Marc D. Boutet, Stephanie Lockman Sobol, Paul Manuel Torres, H.W. Peter Knoll** s. 127 P. Foy in attendance for Staff Panel: EPK/MCH
February 16, 2011 2:00 p.m.	**Global Energy Group, Ltd., New Gold Limited Partnerships, 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
February 16, 2011 2:00 p.m.	**Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Vadim Tsatskin, Michael Schaumer, Elliot Feder, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff** s. 37, 127 and 127.1 H. Craig in attendance for Staff Panel: TBA
February 25, 2011 10:00 a.m.	**Hillcorp International Services, Hillcorp Wealth Management, Suncorp Holdings, 1621852 Ontario Limited, Steven John Hill, and Danny De Melo** s. 127 A. Clark in attendance for Staff Panel: MGC
February 28, 2011 11:00 a.m.	**North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti** s. 127 M. Britton in attendance for Staff Panel: TBA
March 1-7, March 9-11, March 21 and March 23-31, 2011 10:00 a.m.	**Paul Donald** s. 127 C. Price in attendance for Staff Panel: TBA
March 7, 2011 10:00 a.m.	**Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton** s. 127 H. Craig in attendance for Staff Panel: TBA

March 10, 2011 10:00 a.m.	**Alexander Christ Doulis (aka Alexander Christos Doulis, aka Alexandros Christodoulidis) and Liberty Consulting Ltd.** s. 127 S. Horgan in attendance for Staff Panel: CP/PLK
March 21 and March 23-31, 2011 May 2 and May 4-16, 2011 10:00 a.m.	**York Rio Resources Inc., Brilliante Brasilcan Resources Corp., Victor York, Robert Runic, George Schwartz, Peter Robinson, Adam Sherman, Ryan Demchuk, Matthew Oliver, Gordon Valde and Scott Bassingdale** s. 127 H. Craig in attendance for Staff Panel: TBA
March 30, 2011 10:00 a.m.	**Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang** s. 127 and 127.1 M. Britton in attendance for Staff Panel: TBA
April 4 and April 6-7, 2011 April 11-18 and April 20, 2011 10:00 a.m.	**Uranium308 Resources Inc., Michael Friedman, George Schwartz, Peter Robinson, and Shafi Khan** s. 127 M. Boswell in attendance for Staff Panel: TBA
April 4 and April 6-15, 2011 10:00 a.m.	**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.** s. 127 M. Britton in attendance for Staff Panel: TBA
April 5, 2011 2:30 p.m.	**Lehman Brothers & Associates Corp., Greg Marks, Kent Emerson Lounds and Gregory William Higgins** s. 127 H. Craig in attendance for Staff Panel: TBA
April 11-18, April 20-21 and April 26-29, 2011 10:00 a.m.	**Axcess Automation LLC, Axcess Fund Management, LLC, Axcess Fund, L.P., Gordon Alan Driver, David Rutledge, 6845941 Canada Inc. carrying on business as Anesis Investments, Steven M. Taylor, Berkshire Management Services Inc. carrying on business as International Communication Strategies, 1303066 Ontario Ltd. carrying on business as ACG Graphic Communications, Montecassino Management Corporation, Reynold Mainse, World Class Communications Inc. and Ronald Mainse** s. 127 Y. Chisholm in attendance for Staff Panel: TBA
April 26-27, 2011 10:00 a.m.	**Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling** s. 127(1) and 127.1 J. Superina, A. Clark in attendance for Staff Panel: JEAT/PLK/MGC

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

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

s. 127

H. Craig in attendance for Staff

Panel: TBA

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

s. 127(1) and (5)

J. Feasby in attendance for Staff

Panel: TBA

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

s. 127 (1)

M. Britton in attendance for Staff

Panel: TBA

TBA **Shane Suman and Monie Rahman**

s. 127 and 127(1)

C. Price in attendance for Staff

Panel: JEAT/PLK

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

s. 127

H. Craig in attendance for Staff

Panel: JEAT/CSP/SA

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

s. 127

H. Craig in attendance for Staff

Panel: TBA

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

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA **Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)**

s. 127 and 127.1

D. Ferris in attendance for Staff

Panel: TBA

TBA **Abel Da Silva**

s. 127

M. Boswell in attendance for Staff

Panel: TBA

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

s. 127(7) and 127(8)

H. Craig in attendance for Staff

Panel: TBA

TBA **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

TBA

Ameron Oil and Gas Ltd., MX-IV Ltd., Gaye Knowles, Giorgio Knowles, Anthony Howorth, Vadim Tsatskin, Mark Grinshpun, Oded Pasternak, and Allan Walker

s. 37, 127 and 127.1

M. Boswell in attendance for Staff

Panel: TBA

TBA

David M. O'Brien

s. 37, 127 and 127.1

M. Boswell in attendance for Staff

Panel: TBA

TBA

Paul Azeff, Korin Bobrow, Mitchell Finkelstein, Howard Jeffrey Miller and Man Kin Cheng (a.k.a. Francis Cheng)

s. 127

T. Center/D. Campbell in attendance for Staff

Panel: TBA

TBA

Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

Maple Leaf Investment Fund Corp., Joe Henry Chau (aka: Henry Joe Chau, Shung Kai Chow and Henry Shung Kai Chow), Tulsiani Investments Inc., Sunil Tulsiani and Ravinder Tulsiani

s. 127

A. Perschy/C. Rossi in attendance for Staff

Panel: CP/PLK

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

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

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

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

LandBankers International MX, S.A. De C.V.; Sierra Madre Holdings MX, S.A. De C.V.; L&B LandBanking Trust S.A. De C.V.; Brian J. Wolf Zacarias; Roger Fernando Ayuso Loyo, Alan Hemingway, Kelly Friesen, Sonja A. McAdam, Ed Moore, Kim Moore, Jason Rogers and Dave Urrutia

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

1.1.2 Veolia Environnement S.A. – Notice of Correction

The date was inadvertently omitted from *Veolia Environnement S.A.* (2011), 34 OSCB 64, published on January 7, 2010. The decision is dated November 12, 2010.

1.1.3 Notice of Memorandum of Understanding between certain provincial securities regu-lators and the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA) concerning MFDA access to the National Registration Database (NRD)

The Ontario Securities Commission, certain other provincial securities regulators and IIROC recently entered into a memorandum of understanding with the MFDA concerning MFDA access to NRD (the MOU).

The MOU was delivered to the Minister of Finance on January 21, 2011 and is subject to approval by the Minister. The MOU will take effect the date it receives Ministerial Approval, or, if the Minister does not rejected or approve the MOU by March 22, 2011, it will automatically come into effect on March 23, 2011.

The MOU was entered into with the MFDA in order to facilitate the sharing of information concerning compliance and enforcement matters. The MOU establishes a framework for the entry and viewing of regulatory notes on NRD by the MFDA in connection with such matters where they relate to current and former MFDA Member firms and Approved Persons or applicants for MFDA membership or approval.

Questions may be referred to:

Christopher Jepson
Senior Legal Counsel
Compliance and Registrant Regulation
Tel: 416-593-2379
E-mail: cjepson@osc.gov.on.ca

January 21, 2011

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

August 3, 2010

Mr. Larry Waite
President and Chief Executive Officer
Mutual Fund Dealers Association of Canada
Suite 1600, 121 King Street West,
Toronto, Ontario
M5H 3T9

Dear Mr. Waite:

Re: Access to the National Registration Database system by Mutual Fund Dealers Association of Canada

This letter agreement ("**Agreement**") is between the British Columbia Securities Commission ("**BCSC**"), Alberta Securities Commission ("**ASC**"), Ontario Securities Commission ("**OSC**"), Autorité des marchés financiers ("**AMF**"), and the Investment Industry Regulatory Organization of Canada ("collectively, the "**Regulators**"), on the one hand, and the Mutual Fund Dealers Association of Canada ("**MFDA**"), on the other. In this Agreement, the Regulators, together with the securities regulatory authorities of Saskatchewan, Manitoba, Newfoundland and Labrador, New Brunswick, Nova Scotia, Prince Edward Island, Yukon, the Northwest Territories and Nunavut, are collectively referred to as the "**Securities Administrators**".

This Agreement confirms the terms and conditions under which the Regulators have authorized the MFDA to access and use the National Registration Database system ("**NRD**"). Such access and use is subject to approval by CDS Inc. in accordance with the NRD Operations Agreement between the Regulators and CDS Inc. Subject to the foregoing, the MFDA is authorized by the Regulators to access and use NRD on the following terms and conditions:

1. The MFDA's access to and use of NRD is limited to:

   (a) viewing information and adding regulatory notes concerning current and former MFDA Members or Approved Persons (as defined in MFDA By-Law No. 1) and applicants for MFDA membership or approval (collectively, "**MFDA Members and Approved Persons**") for the purpose of ensuring compliance with and enforcement of MFDA By-laws, Rules, Policies and other requirements prescribed by the MFDA; and

   (b) viewing information concerning non-MFDA Members and non-Approved Persons ("**Other Persons**") for the purpose of identifying the appropriate regulatory authority to which complaints about such Other Persons may be referred.

2. The MFDA may add regulatory notes to NRD concerning current and former MFDA Members and Approved Persons in accordance with the Canadian Securities Administrators' Regulatory Procedures Manual. These regulatory notes may be for early warnings, terms and conditions, compliance and enforcement issues. The MFDA is not authorized to add any other information to NRD.

3. The MFDA is not permitted to collect, use or disclose the information which it views on NRD for any commercial or other non-regulatory purpose or in the course of a commercial or other non-regulatory activity. The MFDA acknowledges the necessity to respect the privacy of individuals and will comply with privacy legislation where applicable.

4. The MFDA is not permitted to disclose the information which it obtains from or views on NRD to any other person, except the authorities identified in section 23 of MFDA By-law No. 1 or where required by law.

5. The MFDA will ensure that access to NRD by staff of the MFDA will be in compliance with the MFDA's Internal Procedure – NRD Access by MFDA Staff, a copy of which is attached as Schedule A.

6. MFDA staff located in British Columbia, Alberta or Ontario will be granted access to NRD through the use of user names and passwords created by the BCSC, ASC or OSC, as applicable. Requests for granting or terminating NRD access will be made through the MFDA's Director, Membership Services and Communications, who will make such requests to the securities regulatory authority in whose jurisdiction the relevant MFDA staff member is located. Immediately upon request, the MFDA will cease use of any user names and passwords, and will surrender and provide the details thereof, to the securities regulatory authority which created the user name and password.

7. The MFDA agrees to defend, indemnify and hold each of the Securities Administrators and their respective commissioners, commission members, directors, employees and agents harmless from and against any and all damages, liabilities, losses, demands, claims, actions, suits, costs, charges or expenses (including all legal and advisor's fees, costs and expenses) suffered or incurred by any of them in connection with, or arising or resulting from, the MFDA's access to or use of NRD. This indemnity, and paragraphs 3, 4 and 6 above, shall survive the termination of this Agreement.

The Regulators may at any time, in their sole discretion, modify or amend the above terms and conditions governing the MFDA's access to and use of NRD, upon written notification to the MFDA. The MFDA may request a change to the above terms and conditions by submitting a request in writing to the Regulators. The acceptance of any such requested change shall be in the sole discretion of the Regulators.

The Regulators, on the one hand, or the MFDA, on the other hand, may terminate this Agreement at any time, upon the provision of written notification to the other party.

The parties may send any request or give notice in respect of this Agreement (other than as contemplated in paragraph 6 above) by fax, email or courier, to the other party at the following address:

To the Regulators:

CSA IT Systems Office
c/o Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario, M5H 3S8

Attention: Ian Campbell
Chief Information Officer
Economic Analysis, Strategy and Project Planning Branch

Email: icampbell@osc.gov.on.ca
Tel.: (416) 593-8306
Fax: (416) 593-8218

To the MFDA:

Mutual Fund Dealers Association of Canada
Suite 1600, 121 King Street West
Toronto, ON, M5H 3T9

Attention: Ken Woodard
Director, Membership Services and Communications

Email : kwoodard@mfda.ca
Tel.: (416) 943-4602
Fax: (416) 943-1218

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes any prior agreements, understandings, negotiations and discussions, whether written or oral, pertaining to the subject matter hereof.

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, including any fax counterpart, and it shall not be necessary when making proof of this Agreement to account for more than one counterpart.

The execution of this Agreement by the AMF may be subject to any approval or consent required by the AMF under any law to which the AMF is subject.

Please indicate your acknowledgement, confirmation and acceptance of the foregoing by signing the enclosed copy of this letter where indicated and returning one (1) original signed copy to the attention of the CSA IT Systems Office, c/o Deputy Director, Policy and Project Office - Economic Analysis, Strategy and Project Planning Branch of the Ontario Securities Commission at 20 Queen Street West, 19th Floor, Toronto, Ontario M5H 3S8.

Yours truly,

ALBERTA SECURITIES COMMISSION

Per: "David Linder", Executive Director

AUTORITÉ DES MARCHÉS FINANCIERS

Per: "Jean St. Gelais", Chair

For purposes of An Act respecting the Ministère du Conseil exécutif (R.S.Q., c. M-30), **Secrétaire général associé aux affaires intergouvernementales canadiennes**

Per: "Yves Castonguay", Secrétaire général associé aux Affaires intergouvernementales canadiennes

BRITISH COLUMBIA SECURITIES COMMISSION

Per: "Paul Bourque", Executive Director

ONTARIO SECURITIES COMMISSION

Per: "Peggy Dowdall-Logie", Executive Director and Chief Administrative Officer

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

Per: "Paul Riccardi", Senior Vice President, Enforcement, Policy and Registration

"Rossana DiLieto", Vice President, Registrations and Complaints

c. Saskatchewan Financial Services Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Superintendent of Securities of Prince Edward Island
Nova Scotia Securities Commission
Newfoundland and Labrador Securities Commission
Superintendent of Securities of the Yukon
Registrar of Securities of the Northwest Territories
Registrar of Securities of Nunavut

Acknowledged, confirmed and accepted this 21st day of October, 2010.

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

“Mark T. Gordon”, Executive Vice President

SCHEDULE A

Mutual Fund Dealers Association of Canada

MFDA Internal Procedure

NRD Access by MFDA Staff

A. Introduction

Many of the securities regulatory authorities in Canada use a database for registrations called the National Registration Database ("NRD"). Registrants are required to update and submit changes to their registration using NRD. Such updates and changes would include termination of a Registrant sponsored by them ("Approved Person"), transfer of an Approved Person, new sponsorship of a proposed Approved Person and registration of corporate changes such as branch opening and closings.

The MFDA requires certain registration information for conducting reviews of Members, Membership applications and enforcement of our rules, by-laws and policies. The CSA and IIROC have granted NRD access to the MFDA to facilitate this activity. *It is important to note that the CSA and IIROC have placed strict terms and limitations on our access, which are reflected in this procedure, and it is essential that all staff ensure that they fully comply with this procedure.*

The MFDA is authorized only to view information about MFDA Members, applicants, and Approved Persons and to add regulatory notes about such firms and individuals. The MFDA also has limited authority to identify individuals who are the subject of complaints. For further details, see section D of this procedure below. Access to NRD within the MFDA is strictly-controlled and limited to a few specifically-designated individuals.

This procedure is an important MFDA policy. An employee's failure to comply with this procedure may be considered to be a violation of the terms of their employment agreement.

The procedure is set forth below.

B. Restriction of Access to Authorized Staff Members

NRD access will be restricted to the following authorized staff members:

- For the Enforcement Department access will be restricted to the Director and Managers of Case Assessment, the Case Assessment Analysts, the Case Assessment Officers, Director and Managers of Investigations and the Administrative Assistant, Investigations.
- For the Membership Services Department, access will be restricted to the Director, Membership Services and the Membership Services Coordinators.
- For Compliance, access will be restricted to the Vice-President, Directors, Managers and Senior Compliance Officers.
- For the Prairie Region, access will be restricted to the Regional Director, the Compliance Manager, Senior Compliance Officers, the Investigations Manager and the Administrative Assistant.
- For the Pacific Region, access will be restricted to the Regional Director, the Compliance Manager, Senior Compliance Officers, the Investigations Manager and the Administrative Assistant.
- All of the above positions will have access to view information on NRD, however, only the following positions will be permitted to add regulatory notes:
    - Director and Managers of Case Assessment
    - Prairie and Pacific Region Investigations Managers
    - Case Assessment Analysts
    - Case Assessment Officers

- Administrative Assistant, Investigations
- Director, Membership Services

The Director, Membership Services and Communications will maintain on a current basis a list of the individuals who currently have NRD access. Individuals in the above positions will not have access until it has been authorized by the British Columbia Securities Commission (in the case of the Pacific Region), Alberta Securities Commission (in the case of the Prairie Region) or the Ontario Securities Commission in accordance with the procedures noted below. Only designated staff will be allowed access to NRD.

Requests for granting or terminating access will be made through the Director, Membership Services and Communications, who will deal with the applicable securities regulatory authority. MFDA management must ensure that they provide immediate notification of the resignation, suspension or termination of authorized individuals to the Director, Membership Services and Communications, as it is imperative that the MFDA provide immediate notification of such events to the applicable securities regulatory authority so that that the individual's NRD authorization may be revoked. No other MFDA departments or staff members will have access to NRD.

C. Process for Accessing NRD Information

Any requests from departmental staff members for NRD information will be required to be made via Email to an authorized staff member. The Email should specify the following:

a. The individual or firm name that you are requesting information for;

b. The reason for the request; and

c. The file number to which the request is associated, where appropriate.

Any information obtained from NRD may only be used in accordance with section D below.

D. Use of Registration Information

Authorized staff may access NRD:

- to view information concerning current and former MFDA Members or Approved Persons (as defined in MFDA By-Law No. 1) and applicants for MFDA membership or approval for the purpose of ensuring compliance with and enforcement of MFDA By-laws, Rules, Policies and other requirements prescribed by the MFDA. Certain authorized staff, as set out in Part B of the procedure, may also access NRD to add regulatory notes. Any regulatory notes must be added in accordance with the Canadian Securities Administrators' Regulatory Procedures Manual. These regulatory notes may be for early warnings, terms and conditions, compliance and enforcement issues. No other information may be added to NRD; or

- to view information concerning non-MFDA Members and non-Approved Persons ("Other Persons") for the purpose of identifying the appropriate regulatory authority to which complaints about such Other Persons may be referred.

Bear in mind that you must comply with all applicable privacy laws. Information obtained from or viewed on NRD may not be disclosed to any entity or individual other than the authorities permitted by MFDA By-law 1, section 23 or where required by law. Such information may not be collected, used or disclosed for, or in the course of, any commercial or non-regulatory purpose or activity.

E. Questions

Any questions regarding this procedure should be directed to the Director, Membership Services and Communications.

1.1.4 CSA Staff Notice 13-315 (Revised) – Securities Regulatory Authority Closed Dates 2011

CANADIAN SECURITIES ADMINISTRATORS' STAFF NOTICE 13-315 (REVISED)
SECURITIES REGULATORY AUTHORITY CLOSED DATES 2011*

We have a review system for prospectuses (including long form, short form and mutual fund prospectuses), prospectus amendments, pre-filings, and waiver applications. It is described in National Policy 11-202 – *Process for Prospectus Reviews in Multiple Jurisdictions* (NP 11-202).

Under NP 11-202, a filer that receives a receipt from the principal regulator will be deemed to have a receipt in each passport jurisdiction where the prospectus was filed. However, the principal regulator's receipt will only evidence that the OSC has issued a receipt if the OSC is open on the date of the principal regulator's receipt and has indicated that it is "clear for final". If the OSC is not open on the date of the principal regulator's receipt, the principal regulator will issue a second receipt that evidences that the OSC has issued a receipt on the next day that the OSC is open.

A dealer may solicit expressions of interest in a non-principal jurisdiction only after a receipt has been issued by that jurisdiction. In addition, an issuer may distribute its securities in the non-principal jurisdiction only at that time.

The following is a list of the closed dates of the securities regulatory authorities for 2011. These dates should be noted by issuers in structuring their affairs.

1. Saturdays and Sundays (all)
2. Monday January 3, 2011 (all)
3. Tuesday January 4 (QC)
4. Monday February 21 (AB, SK, MB, ON,PE)
5. Friday February 25 (YT)
6. Monday March 14 (NL)
7. Friday April 22 (all)
8. Monday April 25 (all except AB, SK, ON,)
9. Monday May 23 (all)
10. Tuesday June 21 (NT)
11. Friday June 24 (QC)
12. Monday June 27 (NL)
13. Friday July 1 (all)
14. Monday July 11 (NL, NU)
15. Friday July 29 (SK)
16. Monday August 1 (all except QC, NL, PE, YT)
17. Wednesday August 3 (NL**)
18. Monday August 15 (YT)
19. Friday August 19 (PE)
20. Monday September 5 (all)
21. Monday October 10 (all)
22. Friday November 11 (all except AB, ON, QC)
23. Friday December 23 (QC, NT)
24. Friday December 23 after 12:00 p.m. (NB, NS, PE, YT); after 1:00 p.m. (BC)
25. Monday December 26 (all)
26. Tuesday December 27 (all)
27. Friday December 30 (QC,NT)
28. Friday December 30 after 12:00 p.m. (NB); after 1:00 p.m. (BC)
29. Monday January 2, **2012** (all)
30. Tuesday January 3, **2012** (QC)

* Bracketed information indicates those jurisdictions that are closed on the particular date.

** Weather permitting, otherwise observed on the first following acceptable weather day, such determination made on morning of holiday.

January 21, 2011

1.1.5 Notice of Commission Approval – CNSX Markets Inc. – Amendments to CNSX Rules 1, 3, 4 and 11 including the repeal of Rules 4-107 – Entry of Orders for Market Maker Securities and 4-108 – Fair Prices, and the addition of Rule 12

CNSX MARKETS INC. (CNSX MARKETS)

AMENDMENTS TO CNSX RULES 1, 3, 4 AND 11 INCLUDING THE REPEAL OF RULES 4-107 – ENTRY OF ORDERS FOR MARKET MAKER SECURITIES AND 4-108 – FAIR PRICES, AND THE ADDITION OF RULE 12

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission approved on January 12, 2011, amendments to CNSX Markets rules, in particular to Rule 1-101 relating to definitions; Rule 3 relating to the governance of trading; Rule 4 relating to the trading of securities, including the repeal of Rules 4-107 and 4-108; Rule 11-101 relating to the application of rules; and the addition of Rule 12 relating to access by eligible clients. The amendments were published for comment on September 24, 2010 at (2010) 33 OSCB 8601. No comments were received.

The definition for the term "CNSX Trading System" was incorrectly defined in the version published for comment since the word "Markets" was missing from the definition. The revised definition of "CNSX Trading System" with the change blacklined can be found below.

1-101 Definitions

(2) In these Rules, unless the subject matter or context otherwise requires:

"CNSX Trading System" means the electronic system operated by CNSX Markets for receiving orders and trading securities.

1.2 Notices of Hearing

1.2.1 Paladin Capital Markets Inc. et al. – s. 127(1)

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

AND

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

NOTICE OF HEARING
(Subsections 127(1))

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127(1) and 127.1 of the Securities Act, R.S.O., 1990 c. S.5, as amended (the "Act") at its offices at 20 Queen Street West, 17th Floor, Toronto, Ontario, commencing on January 14, 2011 at 11:00 a.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the settlement agreement dated January 12, 2011 between Staff of the Commission and Claudio Fernando Maya;

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

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

DATED at Toronto this 12th day of January, 2011.

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

1.2.2 Alexander Christ Doulis et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
ALEXANDER CHRIST DOULIS
(aka ALEXANDER CHRISTOS DOULIS,
aka ALEXANDROS CHRISTODOULIDIS)
and LIBERTY CONSULTING LTD.

NOTICE OF HEARING
(Sections 127 and 127.1)

TAKE NOTICE that the Commission will hold a hearing pursuant to sections 127 and 127.1 of the *Act* at its offices on the 17th Floor, 20 Queen Street West, Toronto, Ontario, commencing on the 10th day of March, 2011, at 10:00 a.m. or as soon thereafter as the hearing can be held, to consider whether it is in the public interest to make the following orders:

(a) pursuant to clause 2 of subsection 127(1) that the Respondents cease trading in securities, permanently or for such time as the Commission may direct;

(b) pursuant to clause 2.1 of subsection 127(1) that the Respondents cease acquiring securities, permanently or for such time as the Commission may direct;

(c) pursuant to clause 3 of subsection 127(1) that any exemptions contained in Ontario securities law do not apply to the Respondents or any of them permanently, or for such period as specified by the Commission;

(d) pursuant to paragraph 6 of subsection 127(1) that the Respondents be reprimanded;

(e) pursuant to clause 9 of subsection 127(1) that each of the Respondents or any of them pay an administrative penalty for their failure to comply with Ontario securities law;

(f) pursuant to clause 10 of subsection 127(1) that each of the Respondents or any of them disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law;

(g) pursuant to section 127.1 that the Respondents pay the costs of Staff's investigation and the costs of, or related to, this proceeding, incurred by or on behalf of the Commission; and

(h) to make such other order as the Commission may deem appropriate.

BY REASON OF the allegations set out in the Statement of Allegations dated January 14, 2011 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 at the hearing;

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

DATED at Toronto this 14th day of January, 2011.

"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
ALEXANDER CHRIST DOULIS
(aka ALEXANDER CHRISTOS DOULIS,
aka ALEXANDROS CHRISTODOULIDIS)
and LIBERTY CONSULTING LTD.

STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION

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

I. OVERVIEW

1. Between January 2004 and September 2010 (the "Material Time"), Alexander Christ Doulis, also known as Alexander Christos Doulis and also known as Alexandros Christodoulidis ("Doulis") used powers of attorney to exercise a *de facto* discretionary trading authority over brokerage accounts held by his clients (the "Clients") at Desjardins Securities ("Desjardins") and engaged in advising without registration.

2. Doulis required payments from the Clients as compensation for his services based on a percentage of the year-end value of their assets under management. Doulis personally sent the Clients annual invoices on the letterhead of Liberty Consulting Ltd. with specific instructions to make payments either to accounts in the name of Liberty Consulting Ltd. that he controlled or accounts in his own name.

3. During a voluntary interview on July 15, 2009, a compelled examination under oath on July 13, 2010 and in correspondence - all with Staff, Doulis made misleading or untrue statements, including stating that he did not know if the Clients were invoiced for his services, that he was unaware of how much the Clients paid and that he was not receiving any remuneration directly or indirectly for his services. He also misleadingly minimized his role with Liberty Consulting Ltd. and purported to have little knowledge of the company, when in fact he was the directing mind, had signing authority over a bank account, exercised considerable control over the company and was providing investment management services through the company.

II. THE RESPONDENTS

4. Doulis is a Canadian citizen and Greek citizen.

5. Liberty Consulting Ltd., also known as Liberty Consulting for the Offshore and also known as Liberty Consulting of the Turks and Caicos Islands ("Liberty Consulting") is a company incorporated pursuant to the laws of the Turks and Caicos Islands with an office in Toronto, Ontario.

6. At various points during the Material Time, Doulis was an officer, director and President of Liberty Consulting. Doulis has previously been a shareholder of Liberty Consulting. Doulis held himself out as the beneficial owner of, and was the directing mind of Liberty Consulting.

7. Neither Doulis nor Liberty Consulting were registered with the Commission in any capacity during the Material Time. Doulis has acknowledged that he is not registered and refuses to apply for registration with the Commission.

8. Liberty Consulting is owned by the Paladin Trust, a trust constituted under the laws of the Isle of Man on February 3, 2003. Doulis caused the Paladin Trust to be created and is the sole beneficiary of the Paladin Trust.

9. Liberty Consulting lists a Canadian office located at 160 Frederick Street #203, Toronto ("Liberty Consulting Office"). The Liberty Consulting Office is a residential condominium where Doulis and his spouse, Sally Doulis, reside. The Liberty Consulting Office is owned by Minotaur Capital Corporation ("Minotaur") and Liberty Consulting pays rent to Minotaur.

10. Minotaur is a company incorporated pursuant to the laws of Ontario in 1987. Sally Doulis is an officer, director and the President of Minotaur. The registered office of Minotaur is the Liberty Consulting Office.

III. ALLEGATIONS

11. Staff make the following allegations:

(a) Between January 1, 2004 and September, 2010, Doulis and Liberty Consulting engaged in the business of advising with respect to investing in, buying or selling securities without being registered in accordance with Ontario securities law in any category of adviser, contrary to subsection 25(3) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") [previously subsection 25(1)(c) of the Act[1]]; and

(b) Between July 2009 and September 2010, Doulis made statements to Staff that, in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state facts that were required to be stated or that were necessary to make the statements not misleading, contrary to s. 122(1)(a) of the Act.

A. ADVISING WITHOUT REGISTRATION

12. During the Material Time, Doulis held powers of attorney (the "Powers of Attorney") over the brokerage accounts of twelve individuals and corporations (the "Clients"). Eight of the accounts were held by residents of Ontario or companies located in Ontario.

13. At the direction of Doulis, the Clients held brokerage accounts at Desjardins. In each case, Doulis and the individual Client or its legal representative executed a power of attorney form provided by Desjardins. The Power of Attorney allowed Doulis to make all trading decisions and issue all trading instructions to Desjardins in respect of the Clients' brokerage accounts. Desjardins issued copies of all trade confirmations and monthly account statements for the Clients' accounts to Doulis, as well as to the Clients.

14. At Desjardins, the Clients were nominally represented by Edward Milewski ("Milewski") and Elisa Baker-Moteeram ("Moteeram"). During the Material Time, Milewski and Moteeram were Dealing Representatives (formerly Salespersons) registered with the Ontario Securities Commission (the "Commission") under the category of Investment Dealer under the Act. The Clients took little or no advice from either Milewski or Moteeram and relied primarily on Doulis to make investment decisions on their behalf.

15. Doulis had complete discretion and issued virtually all of the trading instructions to Desjardins on the Clients' accounts. After Doulis assumed the Power of Attorney over the Clients' accounts, the Clients had little contact with him. Doulis did not discuss trades with the Clients before or after the trades were made.

16. Doulis charged the Clients annually for his services that were variously described as investment management services, portfolio services or investment oversight. Doulis' services consisted of making decisions and issuing instructions to Desjardins with respect to investing in, buying and/or selling securities in the Clients' brokerage accounts. Doulis' fee arrangements varied among the Clients, but generally required the Clients to pay a percentage of the value of their assets under management on a yearly basis.

17. Doulis issued annual invoices to the Clients indicating the amount they were required to pay to Liberty Consulting for his services and instructed them to provide a cheque, money order or wire transfer. At various times, Doulis instructed the Clients to make the payments to bank accounts held in his name personally and in the name of Liberty Consulting. Doulis received some cheques or money orders directly at the Liberty Consulting Office.

18. Desjardins informed the Clients on February 9, 2010, that as of March 12, 2010, they would no longer allow Doulis to trade on their behalf through the Powers of Attorney and would no longer provide Doulis with copies of their account statements. Shortly after February 9, 2010, Doulis instructed the Clients to change to different financial institutions and/or brokerages and designate him as a power of attorney again. Many of the Clients followed this direction and Doulis thereafter continued providing his services for the Clients at other financial institutions and/or brokerages.

19. Doulis receives a yearly "retainer" from Liberty Consulting, as well as other benefits, including the use of the Liberty Consulting Office as a residence. Furthermore, Doulis received payments from Clients directly to accounts in his own name.

B. MISLEADING COMMISSION STAFF

20. During a voluntary interview on July 15, 2009, a compelled examination under oath on July 13, 2010 and in correspondence – all with Staff, Doulis made statements that, in a material respect and at the time and in light of the

[1] Subsection 25(3) came into force on September 28, 2009 replacing subsection 25(1)(c) of the Act.

circumstances under which they were made, were misleading or untrue or did not state facts that were required to be stated or that were necessary to make the statements not misleading. The misleading statements made by Doulis included:

(i) That he had no role or business with Liberty Consulting except referring clients to them, sending bulk mail for them, collecting fees due to them and writing comments for them with respect to tax law and offshore investing. In fact, Doulis was at that time managing the investment portfolios of the Clients purportedly on behalf of Liberty Consulting; he also held and exercised full discretionary trading authority on accounts held in Liberty Consulting's name and was a principal and a signing authority on a bank account in Liberty Consulting's name in the Turks and Caicos;

(ii) That he did not send, and to his knowledge, nobody sent the Clients invoices for his investment management services. In fact, Doulis sent invoices to the Clients himself on behalf of Liberty Consulting and on his own behalf;

(iii) That he had received only one cheque from one client on one occasion. In fact, Doulis had instructed the Clients to send their cheques to the Liberty Consulting Office and had received cheques from the Clients there;

(iv) That he did not know what remuneration Liberty Consulting received for the investment management services he provided to the Clients. In fact, Doulis had sent the Clients invoices and correspondence setting out the specific terms on which they would pay Liberty Consulting for the services he provided; and

(v) That he did not receive remuneration, either directly or indirectly, from any of the Clients. In fact, Doulis received both direct and indirect remuneration from the Clients in consideration of the investment management services he provided to them.

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

21. The conduct of the Respondents contravened Ontario securities law and is contrary to the public interest.

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

DATED at Toronto this 14th day of January, 2011.

1.3 News Releases

1.3.1 Investor Alert: Impact Finance and Douglas Charles

FOR IMMEDIATE RELEASE
January 17 2011

INVESTOR ALERT: IMPACT FINANCE AND DOUGLAS CHARLES

TORONTO – The Ontario Securities Commission ("OSC") is warning investors not to send money to Impact Finance or Douglas Charles. Representatives of these entities, including an individual purported to be Ian T. Ball, may be soliciting residents of Ontario in a fraudulent advance fee scheme.

Impact Finance and Douglas Charles representatives are contacting investors who hold securities of York Rio Resources Inc. and offering to exchange these securities for shares of another company. Investors are being told that they have to send an advance fee payment to these entities before their securities can be exchanged. Investors are in danger of being defrauded of the fees they send and never receiving payment for the securities that are purportedly being sold for them.

Impact Finance is purportedly located in Boston, Massachusetts. Douglas Charles is purportedly located in Panama City, Panama. These entities are not registered in any capacity with the OSC under the *Securities Act* (Ontario).

York Rio Resources Inc. is a respondent in an illegal distribution and fraud proceeding that is currently before the Commission awaiting a hearing. More information is available under OSC Proceedings on the OSC website at www.osc.gov.on.ca.

If you have any questions or information relating to these matters, please contact the OSC Contact Centre at 1-877-785-1555.

For media inquiries:

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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

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)

1.3.2 OSC Requests New Members for Small Business Advisory Committee

FOR IMMEDIATE RELEASE
January 18, 2011

OSC REQUESTS NEW MEMBERS FOR
SMALL BUSINESS ADVISORY COMMITTEE

TORONTO – The Ontario Securities Commission (OSC) is seeking applicants for membership on its Small Business Advisory Committee (SBAC).

OSC staff recognize the pivotal role played by small issuers in the capital markets and the critical importance of consulting with investors, industry participants and other stakeholders. Small issuers account for 40 per cent of Ontario's reporting issuers, representing approximately $10.5 billion in market capitalization.

The SBAC will advise OSC staff on the emerging issues and unique challenges faced by small issuers. The committee will discuss the development, implementation and communication of policies and practices, in order to promote efficient capital markets and help investors receive the information they need to make informed investment decisions.

The SBAC is seeking approximately 12 members who will meet five times annually. Members will be selected for their extensive involvement with small issuers, their knowledge of continuous disclosure issues faced by such issuers and their strong interest in related policy matters. The SBAC will be chaired by OSC staff representative Lisa Enright, a Manager in the Corporate Finance Branch.

Representatives of reporting issuers, industry associations, advisors, investing organizations and any other interested persons are invited to apply in writing for membership on the SBAC. Interested parties should submit their application indicating their areas of practice and relevant experience by February 4, 2011.

Applications and questions regarding SBAC may be forwarded in writing to:

Lisa Enright
Manager, Corporate Finance
Ontario Securities Commission
416-593-3686
lenright@osc.gov.on.ca

For Media Inquiries: Wendy Dey
Director, Communications & Public Affairs
416-593-8120

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Theresa Ebden
Senior Communications Specialist
416-593-8307

Dylan Rae
Media Relations Specialist
416-595-8934

For Investor Inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4 Notices from the Office of the Secretary

1.4.1 Paladin Capital Markets Inc. et al.

FOR IMMEDIATE RELEASE
January 13, 2011

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

AND

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

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Claudio Fernando Maya. The hearing will be held on January 14, 2011 at 11:00 a.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 January 12, 2011 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)

1.4.2 Deutsche Bank Securities Limited

FOR IMMEDIATE RELEASE
January 13, 2011

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

AND

IN THE MATTER OF
DEUTSCHE BANK SECURITIES LIMITED

AND

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

TORONTO – Following a hearing held in the above named matter, the Commission issued an order which provides that any further proceedings before the IIROC Hearing Panel are stayed, effective from the date of this order until a decision of the Commission has been released.

A copy of the Order dated January 10, 2011 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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Director, Communications & Public Affairs
416-593-8120

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 Alexander Christ Doulis et al.

FOR IMMEDIATE RELEASE
January 14, 2011

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

AND

IN THE MATTER OF
ALEXANDER CHRIST DOULIS
(aka ALEXANDER CHRISTOS DOULIS,
aka ALEXANDROS CHRISTODOULIDIS)
and LIBERTY CONSULTING LTD.

TORONTO – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on March 10, 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 Notice of Hearing dated January 14, 2011 and Statement of Allegations of Staff of the Ontario Securities Commission dated January 14, 2011 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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Theresa Ebden
Senior Communications Specialist
416-593-8307

For investor inquiries:

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

1.4.4 Borealis International Inc. et al.

FOR IMMEDIATE RELEASE
January 14, 2011

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

AND

IN THE MATTER OF
BOREALIS INTERNATIONAL INC.,
SYNERGY GROUP (2000) INC.,
INTEGRATED BUSINESS CONCEPTS INC.,
CANAVISTA CORPORATE SERVICES INC.,
CANAVISTA FINANCIAL CENTER INC.,
SHANE SMITH, ANDREW LLOYD, PAUL LLOYD,
VINCE VILLANTI, LARRY HALIDAY, JEAN BREAU,
JOY STATHAM, DAVID PRENTICE, LEN ZIELKE,
JOHN STEPHAN, RAY MURPHY,
ALEXANDER POOLE, DEREK GRIGOR,
EARL SWITENKY, MICHELLE DICKERSON,
DEREK DUPONT, BARTOSZ EKIERT,
ROSS MACFARLANE, BRIAN NERDAHL,
HUGO PITTOORS AND LARRY TRAVIS

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

A copy of the Reasons for Decision dated January 13, 2011 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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Media Relations Specialist
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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 Paladin Capital Markets Inc. et al.

FOR IMMEDIATE RELEASE
January 14, 2011

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

AND

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

TORONTO – Following a hearing held today, the Commission issued an Order approving the Settlement Agreement reached between Staff of the Commission and Claudio Fernando Maya.

A copy of the Order dated January 14, 2011 with the Settlement Agreement attached as Schedule A is available at **www.osc.gov.on.ca.**

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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416-593-8307

For investor inquiries:

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

1.4.6 Magna International Inc. et al.

FOR IMMEDIATE RELEASE
January 17, 2011

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

AND

IN THE MATTER OF
MAGNA INTERNATIONAL INC.

AND

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

TORONTO – The Commission issued its Reasons For Order Regarding Motions For Leave To Intervene in the above named matter.

A copy of the Reasons For Order Regarding Motions For Leave To Intervene dated January 14, 2011, is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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Director, Communications & Public Affairs
416-593-8120

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 Paul Azeff et al.

FOR IMMEDIATE RELEASE
January 18, 2011

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

AND

IN THE MATTER OF
PAUL AZEFF, KORIN BOBROW,
MITCHELL FINKELSTEIN,
HOWARD JEFFREY MILLER AND
MAN KIN CHENG (a.k.a. FRANCIS CHENG)

TORONTO – Following an appearance in the above matter the Commission issued an order which provides that if necessary, a motion regarding disclosure issues will take place on February 22, 2011 at 10:00 a.m.

A copy of the Order dated January 17, 2011 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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416-593-8120

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

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Media Relations Specialist
416-595-8934

Theresa Ebden
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416-593-8307

For investor inquiries:

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

1.4.8 Global Energy Group, Ltd. et al.

FOR IMMEDIATE RELEASE
January 19, 2011

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

AND

IN THE MATTER OF
GLOBAL ENERGY GROUP, LTD.,
NEW GOLD LIMITED PARTNERSHIPS,
CHRISTINA HARPER, 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

TORONTO – The Commission issued an Order in the above named matter which provides that (1) pursuant to subsection 127(7) and 127(8) of the Act, the Temporary Order is extended to March 3, 2011, without prejudice to Feder to bring a motion if he opposes the extension; and (2) the hearing in this matter is adjourned to February 16, 2011 at 2:00 p.m. or on such other date as provided by the Secretary's Office and agreed to by the parties.

A copy of the Order dated December 7 , 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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Theresa Ebden
Senior Communications Specialist
416-593-8307

For investor inquiries:

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

1.4.9 Global Energy Group, Ltd. et al.

FOR IMMEDIATE RELEASE
January 19, 2011

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

AND

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

TORONTO – The Commission issued an Order in the above named matter which provides that, upon hearing submissions from Staff, Schaumer, Silverstein, counsel for Pasternak, Walker and Brikman, and the agent for counsel for Feder, (1) the hearing is adjourned to February 16, 2011 at 2:00 p.m. or on such other date as provided by the Office of the Secretary and agreed to by the parties, to set dates for the hearing on the merits; and (2) Staff will renew efforts to obtain an effective address for service on Bajovski and Cohen providing notice of any future hearings or orders that may be made by the Commission to set dates for the hearing on the merits.

A copy of the Order dated December 7, 2010 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:

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Manager, Public Affairs
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Theresa Ebden
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For investor inquiries:

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

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Westshore Terminals Income Fund et al.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 51-102 Continuous Disclosure Obligations – reporting issuer requests relief from all the requirements of NI 51-102 – reporting issuer is a wholly owned subsidiary of a parent reporting issuer – subsidiary's only outstanding securities are note receipts – note receipts trade as units together with shares of the parent reporting issuer and cannot be transferred separately from shares of the parent reporting issuer – note receipts do not qualify as "designated exchangeable securities" under section 13.3 of NI 51-102 – requested relief granted, subject to conditions substantially similar to section 13.3 of NI 51-102.

National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings – reporting issuer subsidiary of parent reporting issuer requests relief from the requirements in Parts 4 and 5 of NI 52-109 to file annual and interim certificates – requested relief granted, subject to conditions.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 8.6.

January 11, 2011

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

AND

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

AND

IN THE MATTER OF
WESTSHORE TERMINALS INCOME FUND
(the Fund),
WESTSHORE TERMINALS
INVESTMENT CORPORATION
(New Westshore), and
WESTSHORE TERMINALS HOLDINGS LTD.
(Holdings, and together with the Fund and
New Westshore, the Filers)

DECISION

Background

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

1. the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) (the Continuous Disclosure Requirements) do not apply to Holdings; and

2. the requirements of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109) (the Certification Requirements) do not apply to Holdings.

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

(a) the British Columbia Securities Commission (the BCSC) is the principal regulator for this application;

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

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

Interpretation

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

Representations

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

1. The Fund

(a) the Fund was an open-ended trust established under the laws of the Province of British Columbia by a declaration of trust made as of December 2, 1996, as amended and restated on September 29, 2005;

(b) the Fund's principal office was located at 1800 – 1067 West Cordova Street, Vancouver, British Columbia V6C 1C7;

(c) the Fund was a "reporting issuer" in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland;

(d) as of November 4, 2010, 74,250,016 units of the Fund (the Fund Units) were listed and traded on the Toronto Stock Exchange (the TSX) under the symbol "WTE.UN"; and

(e) the Fund held a 100% interest in both the common shares of Westshore Terminals Ltd. (the General Partner) and the limited partnership units of Westshore Terminals Limited Partnership (Westshore LP);

2. Westshore LP

(a) Westshore LP operates a coal storage and loading terminal on land leased from the Vancouver Fraser Port Authority located at Roberts Bank, British Columbia (the Business);

3. Holdings

(a) Holdings is a corporation incorporated under the *Business Corporations Act* (British Columbia) (the BCBCA) on September 28, 2010;

(b) the head and registered office of Holdings is located at 1800 – 1067 West Cordova Street, Vancouver, British Columbia V6C 1C7;

(c) the capital structure of Holdings consists of an unlimited number of common shares (the Holdings Shares), of which one Holdings Share was outstanding as at November 4, 2010, and was held by New Westshore; and

(d) Holdings has debt obligations consisting of 10.5% subordinated notes due December 31, 2040 (the Holdings Notes) with an aggregate principal amount of $371,250,080, represented by note receipts (the Note Receipts);

4. New Westshore

   (a) New Westshore is a corporation incorporated under the BCBCA on September 28, 2010;

   (b) the head and registered office of New Westshore is located at 1800 – 1067 West Cordova Street, Vancouver, British Columbia V6C 1C7;

   (c) the authorized capital of New Westshore consists of an unlimited number of common shares (the New Westshore Shares), of which one New Westshore Share was outstanding as at November 4, 2010, which was held by the Fund; and

   (d) New Westshore has no debt obligations outside the ordinary course of business;

5. the Filers entered into a plan of arrangement under section 180 of the BCBCA (the Arrangement) with the holders of Fund Units (Unitholders), which provided the terms and conditions under which the Fund would be converted into a corporate structure;

6. the Fund mailed to the Unitholders a notice of special meeting (Unitholder Meeting) and management information circular (Circular) dated October 5, 2010 containing prospectus-level disclosure of the business and affairs of each of the Fund, New Westshore and Holdings and information on the Arrangement; the Circular included disclosure, among other things, that the completion of the Arrangement was subject to the parties obtaining consents, orders, approvals or exemptions on terms satisfactory to the trustees of the Fund;

7. the Fund provided the Unitholders with prior notice of the Arrangement, including a statement that a copy of the Circular would be available for review on SEDAR;

8. on November 4, 2010, Unitholders approved the Arrangement with an affirmative vote of 99.88% of the votes cast at the Unitholder Meeting;

9. on November 12, 2010, the Filers received final approval of the Supreme Court of British Columbia and all applicable regulatory bodies for the Arrangement;

10. the Arrangement was completed on January 1, 2011;

11. under the Arrangement, in addition to other matters, the following occurred:

   (a) the Fund transferred all of its property, including 100% of the limited partnership units of Westshore LP and the common shares of the General Partner, to Holdings;

   (b) the Fund was wound up;

   (c) Holdings issued 74,250,016 Holdings Shares, all of which were acquired by New Westshore;

   (d) New Westshore issued 74,250,016 New Westshore Shares; and

   (e) New Westshore acquired, through Holdings, a 100% interest in the limited partnership units of Westshore LP and the common shares of the General Partner;

12. on completion of the Arrangement, New Westshore became a publicly-owned corporation and Holdings became a wholly-owned subsidiary of New Westshore;

13. on completion of the Arrangement, New Westshore and Holdings became reporting issuers in the Jurisdictions as a result of the Fund having been, for a period of at least twelve months prior to the Arrangement, a reporting issuer in the Jurisdictions;

14. New Westshore is a reporting issuer and will comply with all applicable corporate and securities laws including, but not limited to, the Continuous Disclosure Requirements and the Certification Requirements; as Holdings is a material and wholly-owned subsidiary of New Westshore, New Westshore is required to include in its public disclosure information concerning Holdings;

15. the New Westshore Shares and the Note Receipts trade together on the TSX as the New Units; each New Unit consists of: (a) one Note Receipt representing $5.00 principal amount of Holdings Notes; and (b) one New Westshore Share;

16. the New Westshore Shares and the Note Receipts are subject to a restraint on disposition such that transfer of a New Westshore Share is effective only upon the transfer of a Note Receipt and vice versa, except in the event of a separation event (a Separation Event) consisting of one or more of the following circumstances:

    (i) maturity of the Holdings Notes, unless repaid in full;

    (ii) acceleration of the Holdings Notes; or

    (iii) separate approvals by resolutions approved by holders of a 66 ⅔% majority of Note Receipts and of the New Westshore Shares, in either case represented and voted on a poll at meetings to consider such resolutions;

17. on October 8, 2010, the TSXV conditionally approved the listing of the New Units in substitution of the Fund Units;

18. on January 4, 2011, the New Units commenced trading on the TSX under the symbol "WTE.UN";

19. the TSX has agreed to list the New Westshore Shares, however they cannot be posted for trading on the TSX until there exists for the purposes of the listing requirements of the TSX a sufficient public distribution of New Westshore Shares that are held separately from Note Receipts, which can only happen upon the occurrence of a Separation Event;

20. New Westshore will satisfy dividends declared on the New Westshore Shares with the dividends it will receive on the Holdings Shares that it owns;

21. Holdings will satisfy its obligation under the Holdings Notes from the distributions it receives on the limited partnership units it holds in Westshore LP;

22. Holdings has no current intention of accessing the capital markets in the future by issuing any securities to the public other than the Holdings Notes that are outstanding on completion of the Arrangement, and it has no current intention to issue equity securities other than to New Westshore;

23. the obligations of Holdings under the Holdings Notes represent its primary liability;

24. it is not currently anticipated that Holdings will have any other meaningful assets or sources of income;

25. holders of Note Receipts maintain an equity interest in the parent company of Holdings and will receive, in the disclosure provided by New Westshore, financial and continuous disclosure information in respect of both securities constituting a New Unit; as such, separate disclosure by Holdings as required by the Continuous Disclosure Requirements would not provide otherwise unavailable meaningful information or be of any significant additional benefit to the holders of the New Units or potential investors, but would impose a significant and largely duplicative cost on Holdings;

26. it is financial information relating to Westshore LP, and not to New Westshore, that is of primary importance to holders of New Units as Westshore LP is the operator of the Business of which New Westshore, through Holdings, is the 100% indirect holder; disclosure of this information will be made within the continuous public disclosure of New Westshore, including in New Westshore's consolidated financial statements, and will permit holders of New Units and potential investors to determine:

    (a) the success of the Business underlying both Holdings and New Westshore;

    (b) the ability of New Westshore to pay dividends on the New Westshore Shares; and

    (c) the ability of Holdings to satisfy its obligations under the Holdings Notes represented by the Note Receipts;

27. should the relief from the Continuous Disclosure Requirements be granted, Holdings will not be able to fully comply with the Certification Requirements; and

28. each of the Filers is not in default of any requirement under securities legislation in the jurisdictions in which it is a reporting issuer.

Decision

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

1. The decision of the Decision Makers under the Legislation is that the Continuous Disclosure Requirements do not apply to Holdings provided that:

   (a) New Westshore is the beneficial owner of all of the issued and outstanding voting securities of Holdings;

   (b) New Westshore is a reporting issuer in a designated Canadian jurisdiction (as defined in NI 51-102) and has filed all documents it is required to file under NI 51-102;

   (c) New Westshore complies with securities legislation in respect of making public disclosure of material information on a timely basis;

   (d) New Westshore immediately issues in Canada and files a news release that discloses any material changes in its affairs;

   (e) New Westshore continues to consolidate the financial information of its subsidiaries, including Holdings, in its own financial information, or, if the generally accepted accounting principles in Canada prohibit such consolidation, provides separate financial statements of Holdings to holders of Note Receipts;

   (f) New Westshore sends to all holders of Note Receipts all the disclosure materials required to be sent to holders of New Westshore Shares;

   (g) New Westshore complies with the filing requirements set out under Part 12 of NI 51-102 with respect to material documents and contracts of Holdings;

   (h) Holdings has not issued any securities to the public other than the Note Receipts;

   (i) Holdings issues in Canada a news release and files a material change report in accordance with Part 7 of NI 51-102, for all material changes in respect of the affairs of Holdings that are not also material changes in the affairs of New Westshore;

   (j) Holdings has no material liabilities and no operations or material assets other than its holdings of the limited partnership units of Westshore LP and of the common shares of the General Partner; and

   (k) Holdings files in electronic format:

      (i) if New Westshore is a reporting issuer in the local jurisdiction, a notice indicating that it is relying on the continuous disclosure documents filed by New Westshore and setting out where those documents can be found in electronic format; or

      (ii) copies of all documents New Westshore is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by New Westshore of those documents with a securities regulatory authority or regulator.

2. The further decision of the Decision Makers under the Legislation is that the Certification Requirements do not apply to Holdings provided that:

   (a) Holdings is not required to, and does not, file its own interim filings and annual filings (as those are defined in NI 52-109);

   (b) Holdings files in electronic format under its SEDAR profile either (i) copies of New Westshore's annual certificates and interim certificates at the same time as New Westshore is required under NI 52-109 to file such documents; or (ii) a notice indicating that it is relying on New Westshore's annual certificates and interim certificates and setting out where those documents can be found for viewing on SEDAR; and

(c) Holdings is exempt from or otherwise not subject to the Continuous Disclosure Requirements, and both New Westshore and Holdings are in compliance with the conditions set out in paragraph 1 of this decision.

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

2.1.2 Roctest Ltd. – 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).

Montreal, January 12, 2011

Roctest Ltd.
665, rue Pine
St-Lambert, Québec
J4P 2P4

Re: Roctest Ltd. (the "Applicant") – Application for a Decision under the securities legislation of Québec and Ontario (the "Jurisdictions") that the Applicant is not a reporting issuer

Dear Sirs/Mesdames:

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 and indirectly, by fewer than 15 security holders in each of the Jurisdictions in Canada and fewer than 51 security holders in total in Canada;
- no securities of the Applicant are traded on a marketplace as defined in *Regulation 21-101 respecting Marketplace Operation*;
- 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
- 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's status as a reporting issuer is revoked.

"Josée Deslauriers"
Director Investment Funds and
Continuous Disclosure

2.1.3 IBI Group Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption granted to a successor issuer from the requirement to file a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the filing of a preliminary short form prospectus – disclosure regarding the predecessor issuer will effectively be the disclosure of the successor issuer – predecessor issuer is qualified to file a short form prospectus.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions.

January 6, 2011

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
IBI GROUP INC.
(the Applicant)

DECISION

Background

The regulator in the Jurisdiction (the **Decision Maker**) has received an application from the Applicant for a decision under the securities legislation of the Jurisdiction (the **Legislation**) pursuant to section 8.1 of National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**) exempting the Applicant from the requirement under section 2.8 of NI 44-101 for the Applicant to file a notice (the **Notice of Intention**) declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the filing of its first preliminary short form prospectus (the **Preliminary Prospectus**) after the notice (the **Exemption Sought**).

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 Applicant has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport*

System (**MI 11-102**) is intended to be relied upon in all provinces and territories of Canada other than the Province of Ontario.

Interpretation

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

Representations

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

The Applicant

1. The Applicant was incorporated under the laws of Ontario on June 30, 2010 for the purpose of becoming the successor issuer to IBI Income Fund (the **Fund**) as a result of the Conversion (as defined below).

2. The head office of the Applicant is located at 230 Richmond Street West, 5th Floor, Toronto, Ontario, M5V 1V6.

3. The authorized share capital of the Applicant consists of an unlimited number of common shares (**Common Shares**).

4. The Applicant has not conducted any business or operations, other than (i) to take all such steps necessary to complete the Conversion, and (ii) since the completion of the Conversion, the continued operation of the business of the Fund as described in paragraph 14(b) below.

5. The Applicant was not prior to the Conversion a reporting issuer in any jurisdiction of Canada and is not in default under securities legislation in such jurisdictions.

The Fund

6. The Fund is an unincorporated, open-ended limited purpose trust established under the laws of the Province of Ontario pursuant to a declaration of trust made as of August 31, 2004.

7. The Fund is a reporting issuer in each of the provinces and territories of Canada and is not in default under securities legislation in such jurisdictions.

8. The Fund is qualified to file a short form prospectus pursuant to section 2.2 of NI 44-101.

The Conversion

9. The Fund has undertaken a conversion into a corporation by way of a statutory plan of arrangement (the **Conversion**). Under the Conversion, the holders of units of the Fund (the **Unitholders**) exchanged their respective units for Common Shares.

10. The Conversion was approved by the Unitholders at the Special Meeting of Unitholders held on August 5, 2010 (the **Meeting**) and a management information circular dated July 13, 2010 (the **Information Circular**) was prepared and mailed to Unitholders in connection with the Conversion and the Meeting and filed by the Fund on July 14, 2010.

11. The Information Circular complied with applicable securities legislation and included disclosure in accordance with Item 14.2 of Form 51-102F5 for the Applicant.

12. The Conversion was approved by a final order dated August 10, 2010 of the Ontario Superior Court of Justice pursuant to subsection 182(5) of the *Business Corporations Act* (Ontario).

13. The Conversion became effective on January 1, 2011.

14. Upon completion of the Conversion,

    (a) Common Shares were distributed to Unitholders in exchange for their Units on a one-for-one basis and the Common Shares were listed on the Toronto Stock Exchange;

    (b) the sole business of the Applicant is the business of the Fund prior to the Conversion (the Conversion does not contemplate the acquisition of any additional operating assets or the disposition of any existing operating assets);

    (c) the Applicant is a reporting issuer in each of the provinces and territories of Canada; and

    (d) the Applicant is a “successor issuer” to the Fund as defined in NI 44-101.

Exemption Sought

15. Following the Conversion, the Applicant will be qualified to file a short form prospectus on the basis that it will satisfy the requirements of subsections 2.2(a), (b), (c) and (e) of NI 44-101 and, as a successor issuer, can make use of the exemption provided under subsection 2.7(2) of NI 44-101 with respect to subsection 2.2(d) of NI 44-101.

16. The Applicant anticipates that it may wish to file a Preliminary Prospectus following the Conversion

relating to the offering of securities of the Applicant.

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

18. Following the effective date of the Conversion, the Applicant filed on January 4, 2011 a notice declaring its intention to be qualified to file a short form prospectus.

19. The Applicant will not satisfy the requirement of subsection 2.8(1) of NI 44-101 before January 18, 2011, and will not be qualified to file the Preliminary Prospectus before that date, unless the Exemption Sought is granted.

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 the Exemption Sought is granted, provided that, at the time the Applicant files the Preliminary Prospectus, the Applicant meets the requirements of:

(a) subsections 2.2(a), (b), (c) and (e) of NI 44-101, and

(b) the exemption for successor issuers set forth in subsection 2.7(2) of NI 44-101.

This decision will terminate on the earlier of (i) January 18, 2011, the date which is 10 business days following the filing of the Notice of Intention, and (ii) the date the Preliminary Prospectus is filed.

"Jo-Anne Matear"
Assistant Manager
Ontario Securities Commission

2.1.4 Armtec Infrastructure Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption granted to a successor issuer from the requirement to file a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the filing of a preliminary short form prospectus – disclosure regarding the predecessor issuer will effectively be the disclosure of the successor issuer – predecessor issuer is qualified to file a short form prospectus.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions.

December 21, 2010

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

AND

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

AND

IN THE MATTER OF
ARMTEC INFRASTRUCTURE INC.
(the Applicant)

DECISION

Background

The regulator in the Jurisdiction (the Decision Maker) has received an application from the Applicant for a decision under the securities legislation of the Jurisdiction (the Legislation) pursuant to section 8.1 of National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) exempting the Applicant from the requirement under section 2.8 of NI 44-101 for the Applicant to file a notice (the Notice of Intention) declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the filing of its first preliminary short form prospectus (the Preliminary Prospectus) after the notice (the Exemption Sought).

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 Applicant has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport*

System (MI 11-102) is intended to be relied upon in all provinces of Canada other than the Province of Ontario.

Interpretation

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

Representations

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

The Applicant

1. The Applicant was incorporated under the laws of Ontario on May 5, 2010 for the purpose of becoming the successor issuer to Armtec Infrastructure Income Fund (the Fund) as a result of the Conversion (as defined below).

2. The head office of the Applicant is located at 370 Speedvale Avenue West, Suite 3, Guelph, Ontario N1H 7M7.

3. The authorized share capital of the Applicant consists of an unlimited number of common shares (Common Shares).

4. The Applicant has not conducted any business or operations, other than to execute the arrangement agreement relating to the Conversion and entering into a shareholder rights plan and phantom share plan in connection with the Conversion.

5. The Applicant is not a reporting issuer in any jurisdiction of Canada and is not in default under securities legislation in such jurisdictions.

The Fund

6. The Fund is an unincorporated, open-ended limited purpose trust established under the laws of the Province of Ontario by a declaration of trust dated June 15, 2004, as amended and restated on July 27, 2004.

7. The Fund is a reporting issuer in each of the provinces of Canada and is not in default under securities legislation in such jurisdictions.

8. The Fund is qualified to file a short form prospectus pursuant to section 2.2 of NI 44-101.

The Proposed Conversion

9. The Fund is proposing to undertake a conversion of the Fund into the Applicant by way of a statutory plan of arrangement (the Conversion). Under the Conversion, the holders of units of the Fund (the Unitholders) will, if certain conditions are satisfied or waived, exchange their respective units for Common Shares.

10. The Conversion has been approved by the Unitholders at the Annual and Special Meeting of the Fund held on June 24, 2010 (the Meeting) and a management information circular dated May 18, 2010 (the Information Circular) was prepared and mailed to Unitholders in connection with the Conversion and the Meeting and filed by the Fund on May 27, 2010.

11. The Information Circular complied with applicable securities legislation and included disclosure in accordance with Item 14.2 of Form 51-102F5 for the Applicant.

12. The Conversion has been approved by a final order dated June 29, 2010 of the Ontario Superior Court of Justice pursuant to subsection 182(5) of the *Business Corporations Act* (Ontario).

13. The completion of the Conversion is subject to certain conditions. If implemented, it is expected that the Conversion will be effective on or about January 1, 2011.

14. Upon completion of the Conversion,

    (a) 20,347,784 Common Shares will be issued and outstanding and the Common Shares will be listed on the Toronto Stock Exchange;

    (b) the sole business of the Applicant will be the current business of the Fund (the Conversion does not contemplate the acquisition of any additional operating assets or the disposition of any existing operating assets);

    (c) the Applicant will be a reporting issuer in each of the provinces of Canada; and

    (d) the Applicant will be a “successor issuer” to the Fund as defined in NI 44-101.

The Filer's Anticipated Prospectus Filing

15. The Applicant expects that it may file the Preliminary Prospectus in accordance with NI 44-101 on or before January 17, 2011 relating to the offering of securities of the Applicant.

Exemption Sought

16. Following the Conversion, the Applicant will be qualified to file a short form prospectus on the basis that it will satisfy the requirements of subsections 2.2(a), (b), (c) and (e) of NI 44-101 and, as successor issuer, can make use of the exemption provided under subsection 2.7(2) of NI

44-101 with respect to subsection 2.2(d) of NI 44-101.

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

18. The Filer intends to file the Notice of Intention on or about January 4, 2011 following the completion of the Conversion on or about January 1, 2011. The Filer will not satisfy the requirement of subsection 2.8(1) of NI 44-101 until 10 business days after it files the Notice of Intention, being January 18, 2011 (assuming the filing of the Notice of Intention on January 4, 2011), and will not be qualified to file the Preliminary Prospectus before that date, unless the Exemption Sought is granted.

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 the Exemption Sought is granted, provided that, at the time the Filer files the Preliminary Prospectus, the Filer meets the requirements of:

(a) paragraphs 2.2(a), (b), (c) and (e) of NI 44-101, and

(b) the exemption for successor issuers set forth in subsection 2.7(2) of NI 44-101.

This decision will terminate on the earlier of (i) January 18, 2011, the date which is 10 business days following the proposed filing of the Notice of Intention, and (ii) the date the Preliminary Prospectus is filed.

"Jo-Anne Matear"
Assistant Manager, Corporate Finance

2.1.5 Invesco Trimark Ltd. and Trimark Energy Class

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to allow mutual fund to short sell up to 20% of net assets, subject to certain conditions – National Instrument 81-102 Mutual Funds.

Applicable Legislative Provisions

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

December 31, 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
INVESCO TRIMARK LTD.
(the "Filer")

AND

IN THE MATTER OF
TRIMARK ENERGY CLASS
(the "Fund")

DECISION

Background

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

(a) the requirement contained in subsection 2.6(a) of National Instrument 81-102 Mutual Funds ("**NI 81-102**") prohibiting a mutual fund from providing a security interest over a mutual fund's assets;

(b) the requirement contained in subsection 2.6(c) of NI 81-102 prohibiting a mutual fund from selling securities short; and

(c) the requirement contained in subsection 6.1(1) of NI 81-102 prohibiting a mutual fund from depositing any part of a mutual fund's assets with an entity other than that mutual fund's custodian

(paragraphs (a), (b) and (c) together shall be referred to as the "**Exemption Sought**").

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

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation amalgamated under the laws of Ontario with its head office based in Toronto, Ontario.

2. The Filer manages a number of retail mutual funds that are qualified for distribution to investors in each province and territory in Canada. Securities of the Fund are distributed by participating dealers.

3. The Fund will be a class of shares of a mutual fund corporation, established under the laws of the Province of Ontario, of which the Filer will be the manager. The Fund will be a reporting issuer in all of the provinces and territories in Canada. The Fund will not be classified as a money market fund.

4. The investment practices of the Fund will comply in all respects with the requirements of Part 2 of NI 81-102, except to the extent that the Fund has received permission from the applicable securities regulatory authorities to deviate therefrom.

5. The Filer and the Fund are not in default of securities legislation in any of the Jurisdictions.

6. Any short sales by the Fund will be subject to compliance with the investment objectives and strategies of the Fund.

7. In order to effect a short sale, the Fund will borrow securities from either its custodian or a dealer (in either case, the "**Borrowing Agent**"), which Borrowing Agent may be acting either as principal for its own account or as agent for other lenders of securities.

8. The simplified prospectus and annual information form for the Fund will disclose the proposed use of short selling by the Fund, the specific risks related to short selling and details of this exemptive relief prior to implementing the short selling strategy.

9. The Fund will implement the following requirements and controls when conducting a short sale:

    a. securities will be sold short for cash, with the Fund assuming the obligation to return to the Borrowing Agent the securities borrowed to effect the short sale;

    b. the short sale will be effected through market facilities through which the securities sold short are normally bought and sold;

    c. the Fund will receive cash for the securities sold short within normal trading settlement periods for the market in which the short sale is effected;

    d. the securities sold short will be liquid securities, and "liquid securities" are securities that satisfy either (i) or (ii) below:

        i. the securities are listed and posted for trading on a stock exchange; and;

            a) the issuer of the security has a market capitalization of not less than CDN $100 million, or the equivalent thereof, at the time the short sale is effected; or

            b) the Fund's portfolio advisor has pre-arranged to borrow the securities for the purpose of such sale; or

        ii. the securities are fixed-income securities, bonds, debentures or other evidences of indebtedness of, or guaranteed by, the Government of Canada or any province or territory of Canada or the Government of the United States of America;

e. at the time the Fund sells a security short:

i. the aggregate market value of all securities of the issuer of the securities sold short by the Fund will not exceed 5% of the net asset value of the Fund; and

ii. the Fund will place a "stop-loss" order with a dealer to immediately purchase for the Fund an equal number of the same securities if the trading price of the securities exceeds 120% (or such lesser percentage as the Manager may determine) of the price at which the securities were sold short;

f. the Fund will deposit Fund assets with the Borrowing Agent as security in connection with the short sale transaction;

g. the Fund will keep proper books and records of all short sales and Fund assets deposited with Borrowing Agents as security; and

h. the Fund will maintain appropriate internal controls regarding short sales prior to conducting any short sales, including developing written policies and procedures and risk management controls for the conduct of short sales.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, provided that in respect of the Fund:

1. the aggregate market value of all securities sold short by the Fund does not exceed 20% of the total net assets of the Fund on a daily marked-to-market basis;

2. the Fund holds "cash cover" (as defined in NI 81-102) in an amount, including the Fund assets deposited with Borrowing Agents as security in connection with short sale transactions, that is at least 150% of the aggregate market value of all securities sold short by the Fund on a daily marked-to-market basis;

3. no proceeds from short sales by the Fund are used by the Fund to purchase long positions in securities other than cash cover;

4. any short sales made by the Fund will be subject to compliance with the investment objectives of the Fund

5. the Fund maintains appropriate internal controls regarding its short sales including written policies and procedures, risk management controls and proper books and records;

6. for short sale transactions in Canada, every dealer that holds Fund assets as security in connection with short sale transactions by the Fund shall be a registered dealer in Canada and a member of an organization that is a participating member of the Canadian Investor Protection Fund;

7. for short sale transactions outside of Canada, every dealer that holds Fund assets as security in connection with short sale transactions by the Fund shall:

a. be a member of a stock exchange and, as a result, be subject to a regulatory audit; and

b. have a net worth in excess of the equivalent of $50 million determined from its most recent audited financial statements that have been made public;

8. except where the Borrowing Agent is the Fund's custodian, when the Fund deposits Fund assets with a Borrowing Agent as security in connection with a short sale transaction, the amount of Fund assets deposited with the Borrowing Agent does not, when aggregated with the amount of Fund assets already held by the Borrowing Agent as security for outstanding short sale transactions of the Fund, exceed 10% of the total net assets of the Fund, taken at market value as at the time of the deposit;

9. the security interest provided by the Fund over any of its assets that is required to enable the Fund to effect short sale transactions is made in accordance with industry practice for that type of transaction and relates only to obligations arising under such short sale transactions;

10. prior to conducting any short sales, the Fund discloses in its simplified prospectus a description of: (a) short selling, (b) how the Fund intends to engage in short selling, (c) the risks associated with short selling, and (d) in the Investment Strategy section of the simplified prospectus, the Fund's strategy and this exemptive relief;

11. prior to conducting any short sales, the Fund discloses in its annual information form or an amendment thereto the following information:

    a. that there are written policies and procedures in place that set out the objectives and goals for short selling and the risk management procedures applicable to short selling;

    b. who is responsible for setting and reviewing the policies and procedures referred to in the preceding paragraph, how often the policies and procedures are reviewed, and the extent and nature of the involvement of the board of directors or trustee in the risk management process;

    c. the trading limits or other controls on short selling in place and who is responsible for authorizing the trading and placing limits or other controls on the trading;

    d. whether there are individuals or groups that monitor the risks independent of those who trade; and

    e. whether risk measurement procedures or simulations are used to test the portfolio under stress conditions.

This relief shall terminate upon the coming into force of any legislation or rule of the principal regulator dealing with matters referred to in subsections 2.6(a), 2.6(c) and 6.1(1) of NI 81-102.

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

2.1.6 First Asset Investment Management Inc. et al.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund mergers – approval required because mergers do not meet the criteria for pre-approval – As the continuing fund is new, no simplified prospectus or financial statements are available to send to terminating funds' unitholders, and the continuing fund does not have substantially similar fundamental investment objective or fee structure as compared to that of the terminating funds – Terminating funds' unitholders provided with timely and adequate disclosure regarding the merger and prospectus-level disclosure regarding the continuing fund.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(b), 5.6(1)(a), 5.6(1)(f).

January 17, 2011

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
FIRST ASSET INVESTMENT MANAGEMENT
INC. (the Filer), CRITERION WATER
INFRASTRUCTURE FUND AND
CRITERION GLOBAL CLEAN ENERGY FUND
(the Merging Funds)

DECISION

Background

1. The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Merging Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for approval of the mergers (the **Merger**) of each Merging Fund into Criterion Utility Plus Fund (the **Continuing Fund**) (together with the Merging Funds, the **Funds**) under subsection 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) (the **Requested Relief**).

2. 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 (the **Principal Regulator**), 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, Nova Scotia and Newfoundland and Labrador (including Ontario, the **Jurisdictions**).

Interpretation

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

Representations

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

The Filer

5. The head office of the Filer is located at 95 Wellington Street West, Suite 1400, Toronto, Ontario. The Filer is not in default of securities legislation in any of the Jurisdictions and is governed by the laws of Ontario.

Merging Funds

6. The head office of each Merging Fund is located at 95 Wellington Street West, Suite 1400, Toronto, Ontario. The Filer is the manager and trustee of both Merging Funds.

7. The Merging Funds are each open-end mutual fund trusts established under the laws of Ontario and each is a member of the Criterion Investments' Family of Funds.

8. Criterion Water Infrastructure Fund has ten Classes of units outstanding: Class A, B, C, D, F, L, M, N, O and P units and Criterion Global Clean Energy Fund has four classes of units outstanding: Class H, F, U and P units, each offered for sale in the Jurisdictions under a simplified prospectus and annual information form dated June 4, 2010, as amended (together, the "**Simplified Prospectus**"). A receipt for a final amended and restated simplified prospectus and annual information form, amending and restating the Simplified Prospectus of the Merging Funds, is expected to be received on or about January 14, 2011.

9. Each Merging Fund is a reporting issuer in the Jurisdictions and is not in default of securities legislation in any province or territory of Canada.

The Continuing Fund

10. The Continuing Fund will be launched as a publicly offered open-end mutual fund on or about January 14, 2011, as a member of the Criterion Investments' Family of Funds. The Continuing Fund, a mutual fund trust, will offer for sale in the Jurisdictions two classes of units: Class A and F units, under a simplified prospectus and annual information form. The head office of the Continuing Fund will be located at 95 Wellington Street West, Suite 1400, Toronto, Ontario. The Filer will be the manager and trustee of the Continuing Fund.

The Merger

11. The Filer proposes to merge each Merging Fund into the Continuing Fund. A press release and material change report each dated November 24, 2010 and an amendment number 2 dated November 25, 2010 to the Simplified Prospectus were filed on SEDAR in November, 2010 in connection with the proposed Mergers.

12. At special meetings of unitholders held on January 10, 2011, unitholders of each Merging Fund approved their respective Mergers into the Continuing Fund. Subject to necessary regulatory approval, the Filer intends to implement the Mergers prior to January 31, 2011.

13. A joint notice of special meeting and management information circular (the **Circular**) was mailed to unitholders of the Merging Funds on or about December 15, 2010.

14. Unitholders of the Merging Funds will continue to have the right to redeem securities of such Merging Funds for cash at any time up to the close of business on the day prior to the effective date of the Mergers.

15. Upon completion of the Mergers, all classes of units of the Merging Funds that are fee-based and not subject to a servicing fee (i.e. class F and class P units of the Merging Funds) will be exchanged for a class of units of the Continuing Fund that are similarly fee-based and not subject to a servicing fee (i.e. class F units of the Continuing Fund). All other outstanding classes of units of each of the Merging Funds, which may be subject to the initial sales charge, low-load, or deferred sales charge options will be exchanged for class A units of the Continuing Fund that are similarly subject to the initial sales charge, low-load, or deferred sales charge options, respectively.

16. Units of each class of the Merging Funds will be exchanged for units of the corresponding class of the Continuing Fund at an exchange ratio calculated by dividing the net asset value per unit of the relevant class of the relevant Merging Fund by the net asset value per unit of the relevant class of the Continuing Fund, as determined at the close of business on the business day prior to the effective date of the Mergers.

17. The Mergers will be structured as a tax-deferred transaction within the meaning of section 132.2 of the *Income Tax Act* (Canada).

18. Following the Mergers, a material change report for the Merging Funds and the Continuing Fund and an amendment to the Simplified Prospectus of each Merging Fund and the Continuing Fund will be filed on SEDAR.

19. Following the Mergers, the Merging Funds will be wound up as soon as reasonably practicable.

20. Neither the Merging Funds nor the Continuing Fund will bear any costs of their respective Mergers.

21. The net asset value for the Merging Funds are, and for the Continuing Fund will be, calculated on a daily basis on each business day in Toronto, Ontario.

22. Approval of the Mergers is required because the Mergers do not satisfy all of the criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102 because:

    (a) contrary to section 5.6(1)(a)(ii) of NI 81-102, a reasonable person may consider the fundamental investment objectives and fee structure of the Continuing Fund not to be substantially similar to the fundamental investment objectives and fee structure of each Merging Fund; and

    (b) contrary to section 5.6(1)(f)(ii) of NI 81-102, the current simplified prospectus and the most recent annual and interim financial statements for the Continuing Fund will not be sent to unitholders of the Merging Funds.

23. As required by National Instrument 81-107 – *Independent Review Committee for Investment Funds*, the Filer presented the terms of the Mergers to the independent review committee of each Merging Fund for its review. The independent review committee of each Merging Fund recommended the Mergers advising that, after reasonable inquiry, it concluded that the Mergers will achieve a fair and reasonable result for the unitholders of each Merging Fund.

24. The Filer cannot deliver the current simplified prospectus and the most recent annual and interim financial statements for the Continuing Fund as the Continuing Fund is new and does not

yet have receipt for a final simplified prospectus or financial statements. Instead of delivering these documents, the Filer included a description of the Continuing Fund in the Circular as well as a description of the similarities and differences between the Merging Funds and the Continuing Fund. In particular, the differences in the fundamental investment objectives and fee structure of the Merging Funds and the Continuing Fund have been disclosed in the Circular.

25. The information in the Circular, together with the information contained in the Simplified Prospectus of the Merging Funds that unitholders in the Merging Funds received when their initial investment was made, provide unitholders with prospectus-level disclosure with respect to the Continuing Fund.

26. The Circular also disclosed that the final simplified prospectus and annual information form regarding the Continuing Fund will be available on or about January 12, 2011, subject to regulatory approval, and that unitholders of the Merging Funds can obtain such documents by calling the Filer at a toll-free number or by accessing the SEDAR website. Upon request by a unitholder, the Filer will make best efforts to provide a unitholder with the simplified prospectus and annual information form in a timely manner.

27. The Filer believes the Mergers will be beneficial to unitholders of each Merging Fund for the following reasons:

    (a) following the Mergers, unitholders of the Merging Funds are expected to enjoy improved economies of scale and potentially lower proportionate fund operating expenses (which are borne indirectly by unitholders of the Merging Funds) as part of the larger combined Continuing Fund;

    (b) the comparatively larger portfolio of the Continuing Fund is expected to offer improved portfolio diversification to unitholders of each of the Merging Funds;

    (c) the Continuing Fund is expected to have larger cash balances as a result of its larger size; and

    (d) the Mergers transition unitholders of each of the Merging Funds to a growing and more viable Continuing Fund.

Decision

The Principal Regulator is satisfied that the test contained in the Legislation that provides the Principal Regulator with the jurisdiction to make the decision has been met. The decision of the Principal Regulator under the Legislation is that the Requested Relief is granted.

"Vera Nunes"
Assistant Manager, Investment Funds Branch
Ontario Securities Commission

2.1.7 EnerVest Diversified Income Trust and Canoe Financial LP

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Investment fund, and its manager, exempted from the dealer registration requirement for certain trading activities to be carried out in connection with a warrant offering by the investment fund – Trading activities to consist of the distribution of a short form (final) prospectus to existing holders of securities of the fund, and the distribution of units of the fund to holders of the warrants, upon their exercise, through an appropriately registered dealer.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 74(1).
Multilateral Instrument 11-102 Passport System.

Citation: EnerVest Diversified Income Trust, Re, 2011 ABASC

January 14, 2011

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
ENERVEST DIVERSIFIED INCOME TRUST
AND
CANOE FINANCIAL LP
(the Filers)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Makers**) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) granting relief from the dealer registration requirement in the Legislation in respect of certain trades to be carried out by Canoe Financial LP (the **Manager**) on behalf of EnerVest Diversified Income Trust (**EDIT**), in connection with a proposed offering of warrants (the **Warrant Offering**) to acquire units of EDIT to be made pursuant to a short-form (final) prospectus (the **Warrant Prospectus**) (collectively, the **Exemption Sought**).

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

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

(ii) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in by the Filers in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territories, Northwest Territories and Nunavut (collectively, the **Passport Jurisdictions**); and

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

Interpretation

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

Representations

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

1. EDIT is a closed-end investment trust established under the laws of the Province of Alberta pursuant to a declaration of trust dated as of August 5, 1997, as amended and restated from time to time. EDIT is a reporting issuer in each of the provinces and territories of Canada and is not in default of securities legislation in any jurisdiction.

2. EDIT is not considered to be a mutual fund under the securities legislation of the provinces and territories of Canada. Consequently, EDIT is not subject to the various policies and regulations that apply to mutual funds under such legislation. EDIT is subject to certain other requirements and restrictions contained in applicable securities laws, including National Instrument 81-106 *Investment Fund Continuous Disclosure*.

3. The head office of EDIT is located in Calgary, Alberta.

4. The authorized capital of EDIT consists of an unlimited number of trust units (the **Units**). The Units are listed and posted for trading on the Toronto Stock Exchange (the **TSX**) under the ticker symbol EIT.UN. As at October 18, 2010, there were 95,093,667 Units outstanding.

5. Approximately 98% of the Units are issued through and are held in the book-entry only system of CDS Clearing and Depository Services Inc. The remainder of the Units are registered directly in the names of the holders by way of a certificate.

6. Canoe Financial LP is the Manager of EDIT. The Manager is a limited partnership established under the laws of the Province of Alberta on April 23, 2008. Under the terms of a management agreement dated as of July 24, 1997 (as amended and restated from time to time), and assigned to the Manager effective November 1, 2010, the Manager is responsible for providing, or causing to be provided, certain management and administrative services to EDIT. The head office of the Manager is located in Calgary, Alberta.

7. The Manager also provides portfolio management services to EDIT pursuant to an investment management agreement dated as of March 14, 2002 (as amended and restated from time to time) and assigned to the Manager effective November 23, 2010.

8. Haber Trilix Advisors, LP is an investment adviser of EDIT (the **Investment Adviser**). The Investment Adviser provides portfolio management services to EDIT pursuant to an amended and restated sub-advisory agreement dated December 16, 2010. The principal office of the Investment Adviser is located in Needham, Massachusetts.

9. The investment objectives of EDIT are to maximize monthly distributions relative to risk and maximize net asset value, while maintaining and expanding a diversified investment portfolio, primarily through acquiring, investing, holding, transferring, disposing of or otherwise dealing with or in equity and debt securities of royalty and income trusts, corporations, partnerships, or other issuers and such other investments as the Manager may determine in its sole discretion from time to time.

10. EDIT's portfolio consists of investments in units of royalty trusts, income trusts, real estate investment trusts, limited partnership structures representing pools of income producing assets, as well as other investments in common shares, corporate debt, convertible debt and preferred shares.

11. EDIT is subject to certain investment restrictions that, among other things, limit the equity securities and other securities that EDIT may acquire for its portfolio. The investment restrictions may not be changed without the approval of the holders of the Units (the **Unitholders**) by a resolution passed by two-thirds of the votes cast at a meeting of Unitholders called for such purpose, except to the extent necessary to ensure compliance with applicable laws, regulations or other requirements imposed by applicable regulatory authorities from time to time.

12. Under the Warrant Offering, each Unitholder is entitled receive one-quarter of a warrant for each Unit held. Each whole warrant entitles the holder to subscribe for one Unit upon payment to EDIT of a subscription price at any time prior to the expiry of the warrants. The term of the warrant is expected to be nine months. The warrants are expected to be listed on the TSX. Holders of warrants in Canada are permitted to sell or transfer their warrants instead of exercising their warrants to subscribe for Units. Holders of warrants who exercise their warrants may subscribe pro rata for additional Units pursuant to an additional subscription privilege.

13. Given that the Filers will trade in securities of EDIT in connection with the Warrant Offering, the Filers are subject to the dealer registration requirement.

14. The Warrant Offering will consist of:

    (a) the distribution of the Warrant Prospectus and the issuance of warrants to Unitholders after the Warrant Prospectus has been filed, and receipts obtained, under the securities legislation of the Jurisdictions; and

    (b) the distribution of Units to holders of the warrants, upon the exercise of the warrants by the Unitholders, through a registered dealer that is registered in a category that permits the registered dealer to make the distribution.

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 principal regulator under the Legislation is that the Exemption Sought is granted provided that the Warrant Offering will consist of:

    (a) the distribution of the Warrant Prospectus and the issuance of warrants to Unitholders after the Warrant Prospectus has been filed, and receipts obtained, under the securities legislation of the Jurisdictions; and

    (b) the distribution of Units to holders of the warrants, upon the exercise of the warrants by the Unitholders, through a registered dealer that is registered in a category that permits the registered dealer to make the distribution.

For the Commission:

"Glenda Campbell, QC"
Vice Chair

"Stephen Murison"
Vice-Chair

2.1.8 TransGlobe Apartment Real Estate Investment Trust

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions – issuer is a real estate investment trust which holds all of its properties through limited partnerships – entity holds units in limited partnerships which are exchangeable into and in all material respects the economic equivalent to the issuer's publicly traded units – issuer may include entity's indirect interest in issuer when calculating market capitalization for the purposes of using the 25% market capitalization for certain related party transactions – in addition, relief granted from the valuation requirement for certain non-cash assets in connection with a specific related party transaction – valuation not required of exchangeable limited partnership units since public units can be a proxy for such exchangeable units – valuation not required for general partnership units which are meant to provide revenue akin to a management services agreement.

Applicable Legislative Provisions

Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, ss. 5.5, 5.7, 6.3.

December 20, 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
TRANSGLOBE APARTMENT REAL ESTATE
INVESTMENT TRUST
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for a decision pursuant to Section 9.1 of Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**):

(a) that the Filer be granted an exemption from the minority approval and formal valuation requirements under Part 5 of MI 61-101 relating to any related party transaction of the Filer entered into indirectly by the Filer through the Partnerships (as defined below), if that transaction would qualify for the transaction size exemptions set out in Sections 5.5(a) and 5.7(1)(a) of MI 61-101 if the indirect equity interest in the Filer, in the form of Exchangeable LP Units (as defined below), were included in the calculation of the Filer's market capitalization (the **Market Cap Relief**); and

(b) that the Filer be granted an exemption from the requirement in Section 6.3(1)(d) of MI 61-101 to obtain a formal valuation of any Exchangeable LP Units and other GP Units (as defined below) to be issued in connection with the Transaction (as defined below) (the **Valuation Relief**).

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

(a) the Ontario Securities Commission is the principal regulator for 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 Québec (together with Ontario, the Jurisdictions).

Interpretation

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

Representations

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

1. The principal, registered and head office of the Filer is located at 5925 Airport Road, Suite 700 in Mississauga, Ontario.

2. The Filer is an unincorporated, open-ended real estate investment trust established on April 8, 2010 under, and governed by, the laws of the Province of Ontario, pursuant to a declaration of trust dated April 8, 2010 (as amended and restated as of May 6, 2010, and as further amended, supplemented or amended and restated from time to time, the **Declaration of Trust**).

3. The Filer was formed to own multi-suite, residential rental properties across Canada. As at the date hereof, the Filer owns a portfolio of 65 residential properties principally located in urban centres in the Provinces of Alberta, Ontario, Québec, New Brunswick and Nova Scotia, of which 65 of the 67 properties were acquired from TransGlobe (as defined below) as part of the closing of its initial public offering (the **IPO**) of trust units (the **Units**) in May 2010.

4. The Filer is authorized to issue an unlimited number of Units and an unlimited number of special voting units (the **Special Voting Units**). As at December 1, 2010, there were 24,735,971 Units and 5,325,112 Special Voting Units issued and outstanding. The number of Special Voting Units outstanding at any point in time is equivalent to, and accompanies, the number of outstanding units of limited partnerships managed and controlled by the Filer that are exchangeable into Units for the purpose of providing voting rights with respect to the Filer to the holder of such exchangeable securities.

5. The Filer's Units are listed on the Toronto Stock Exchange under the symbol "TGA.UN".

6. TransGlobe Investment Management Ltd. (being the promoter of the Filer) and other companies and entities controlled or under the direction of the Drimmer family (collectively, **TransGlobe**) hold all 5,325,112 Special Voting Units issued and outstanding. Such Special Voting Units were issued to accompany the issue of 5,325,112 Class B LP Units (as defined below) which are also held by TransGlobe. The 5,325,112 Special Voting Units and 5,325,112 Class B LP Units in aggregate held by TransGlobe represent, as at December 1, 2010, an approximate 18% voting and effective economic interests in the Filer (on a non-diluted basis).

7. The Filer holds all of its residential rental properties through eleven limited partnerships (the **Existing Partnerships**) managed and controlled by the Filer. Each such Existing Partnership is authorized to issue an unlimited number of class A general partnership units (the **Class A GP Units**), class B general partnership units (the **Class B GP Units**), class A limited partnership units (the **Class A LP Units**) and class B limited partnership units (the **Class B LP Units**).

8. All of the outstanding Class A GP Units of the Existing Partnerships are held by a wholly-owned subsidiary of the Filer which is the managing general partner of such limited partnerships, and all of the outstanding Class B GP Units of the Existing Partnerships are held by a TransGlobe entity (**TGGP**) which carries on specific administrative and/or management duties and responsibilities on behalf of such limited partnerships, but remains subject to the oversight of the Filer, in consideration for cash distribution calculated as a percentage of the gross book value and gross property revenue of such Existing Partnerships on such Class B GP Units.

9. The Filer has been advised by the lead underwriter of the Filer's IPO (the **Lead Underwriter**) that, as of December 1, 2010, the base annual cash distribution payable to TGGP pursuant to the terms of the limited partnership agreements of the Existing Partnerships, each dated May 10, 2010, is within the range of the annual fees typically payable to external managers by publicly traded, TSX-listed, real estate investment trusts in Canada that have external management structures (excluding hotel real estate investment trusts).

10. All the outstanding Class A LP Units are held by the Filer and all the outstanding Class B LP Units are held by TransGlobe.

11. The Filer is party to a non-competition agreement with the principals of TransGlobe which gives the Filer a right of first opportunity to acquire multi-suite residential rental properties from TransGlobe, which right has been disclosed by the Filer in its IPO prospectus as being one of its competitive strengths. As further disclosed in the Filer's IPO prospectus, such non-competition agreement also requires the Filer to undertake any acquisition of real property through one or more Existing Partnerships or newly created limited partnerships (**New Partnerships**, and collectively with the Existing

Partnerships, the **Partnerships**) managed and controlled by the Filer, but with TGGP carrying on specific administrative and/or management duties and responsibilities on behalf thereof.

12. The Filer, through a number of New Partnerships and in a series of transaction steps, proposes to acquire (the **Transaction**) a portfolio of real estate properties (the **Acquisition Properties**) and promissory notes in the aggregate principal amount of approximately $2.8 million (the **Notes**) from TransGlobe and its co-owners (the **Vendors**) for consideration, excluding the assumption of mortgages and/or debt, of approximately $107.4 million payable to the Vendors to be comprised of a combination of approximately $89.4 million in cash and the issue of approximately 1.75 million class B limited partnership units of the New Partnerships having a value of approximately $18.0 million.

13. The New Partnerships to be created by the Filer in connection with the Transaction will, in all material respects, have terms and conditions, including capital structure, consistent with the Existing Partnerships and as otherwise described herein. In particular, the class B limited partnership units of the New Partnerships to be issued in connection with the Transaction will have the same attributes, in all material respects, as the Class B LP Units and as otherwise described herein (collectively with the Class B LP Units, the **Exchangeable LP Units**). In respect of each of the New Partnerships to be created for the Transaction, the Filer will also cause the issuance to TGGP of class B general partnership units having the same attributes, in all material respects, as the Class B GP Units (including cash distribution entitlement described in paragraph 8 hereof as required by the non-competition agreement) (collectively with the Class B GP Units, the **GP Units**).

14. The Transaction is subject to the applicable requirements of MI 61-101 relating to, among other things, preparation of a formal valuation of the non-cash assets involved in the Transaction (the **Non-Cash Valuation Requirements**) and the approval by a majority of the votes cast by disinterested unitholders of the Filer entitled to vote on the Transaction at a duly constituted meeting of unitholders (the **Unitholders**) of the Filer held to consider the Transaction (collectively with the Non-Cash Valuation Requirements, the **Minority Protections**).

15. A committee of independent trustees of the Filer (the **Special Committee**) has been established by the Filer for the purpose of supervising the preparation of a formal valuation of the Acquisition Properties (the **Acquisition Properties Valuation**) and the Notes (the **Notes Valuation**).

16. The Special Committee has retained CB Richard Ellis, Limited and Stonecap Securities Inc. (**Stonecap**) to prepare the Acquisition Properties Valuation and the Notes Valuation, respectively, under the supervision of the Special Committee, which to the knowledge of the Filer and the Special Committee has been prepared in accordance with MI 61-101.

17. The Special Committee has also retained Stonecap to act as an independent financial advisor to the Special Committee in evaluating the Transaction and Stonecap has prepared a formal 'fairness opinion' that speaks to fairness from a financial point of view, of the consideration of the Transaction, to the Unitholders.

18. An annual and special meeting of Unitholders will be held to obtain the approval of the Transaction by a majority of the minority Unitholders (the **Unitholder Meeting**) as required by MI 61-101.

19. The information circular to be mailed to Unitholders in connection with the Unitholder Meeting (the **Information Circular**) will comply with the requirements of applicable securities law and will disclose, among other matters, that the Filer has no knowledge of any material non-public information concerning Filer or its securities that has not been generally disclosed, in accordance with subsection 6.3(2)(b) of MI 61-101.

20. The Exchangeable LP Units are, and shall be, in all material respects, economically equivalent to the Units:

    a. The Exchangeable LP Units are, and shall be, exchangeable on a one-for-one basis for Units (subject to customary anti-dilution adjustments) at any time at the option of the holder thereof.

    b. The distributions to be made on the Exchangeable LP Units are, and shall be, equal to the distributions that the holder of the Exchangeable LP Units would have received if it was holding Units that may be obtained upon the exchange of such Exchangeable LP Units.

    c. Each Exchangeable LP Unit are, and shall be, accompanied by a Special Voting Unit of the Filer so that the holder of the Exchangeable LP Units is provided with voting rights on matters respecting the Filer equal to the number of Units that may be obtained upon the exchange of the Exchangeable LP Units to which such Special Voting Units are attached.

21. The Exchangeable LP Units represent, and shall represent, part of the equity value of the Filer and, moreover, the economic interests that underlie the Exchangeable LP Units are, and shall be, based solely upon the assets and operations held directly or indirectly by the operating entities of the Filer.

22. The Exchangeable LP Units are not, and shall not be, listed and posted for trading on the Toronto Stock Exchange or any other stock exchange.

23. Although TransGlobe was granted additional rights at the time of the Filer's IPO including pre-emptive rights, registrations rights, tag/drag rights, board appointment rights and limited approval rights, these rights are based on ownership thresholds that treat Exchangeable LP Units and Units on a combined basis. As a result, by acquiring Exchangeable LP Units in connection with the Transaction rather than Units, TransGlobe does not gain any additional or unique rights or benefits that they would not otherwise have. Any additional rights attached to the Exchangeable LP Units arise solely by virtue of the Exchangeable LP Units being limited partnership units and would be customary rights associated with limited partnership units. Other than the rights described above, the Exchangeable LP Units would carry no other rights that would impact their value.

24. The Filer is a reporting issuer or the equivalent thereof in each Jurisdiction and is not in default of any requirement of Canadian securities legislation.

25. The issue of GP Units is solely ancillary to the Transaction in order to support the external management structure of the Filer which structure was established as part of the IPO of the Filer. This external management structure was disclosed in the prospectus for the IPO of the Filer.

26. A related party transaction that is subject to MI 61-101 may be exempt, pursuant to Section 5.5(a) of MI 61-101, from the Minority Protections, among other requirements, if at the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction exceeds 25% of the issuer's market capitalization.

27. The Filer may not be entitled to rely on the automatic transaction size exemptions available from the requirements relating to related party transactions in MI 61-101 because although the definition of market capitalization in MI 61-101 includes the value of equity securities of the issuer that are convertible into listed equity securities of the issuer, it does not contemplate securities of another entity that are exchangeable into equity securities of the issuer.

28. If the Exchangeable LP Units are not included in the market capitalization of the Filer, the equity value of the Filer will be understated by the value of TransGlobe's aggregate limited partnership interest in the Partnerships, currently being approximately 18%. As a result, related party transactions by the Filer that are entered into indirectly by the Filer may be subject to the Minority Protections in circumstances where the fair market value of the transactions are effectively less than 25% of the fully diluted market capitalization of the Filer.

29. Section 6.3(2)(a) of MI 61-101 provides an exemption from the Non-Cash Valuation Requirement where the non-cash consideration or assets are securities of a reporting issuer or are securities of a class for which there is a published market.

30. Stonecap has confirmed that it agrees with the facts set out in this application.

Decision

Market Cap Relief

The principal regulator is satisfied that the decision meets the test set out in MI 61-101 for the principal regulator to make the decision.

The decision of the principal regulator is that the Market Cap Relief is granted provided that:

(a) the transaction would qualify for the market capitalization exemption contained in MI 61-101 if the Exchangeable LP Units were considered an outstanding class of equity securities of the Filer that were convertible into Units;

(b) there be no material change to the terms of the Exchangeable LP Units and the Special Voting Units, as described above; and

(c) any annual report or equivalent of the Filer that is required to be filed in accordance with applicable securities laws, contain the following disclosure, with any immaterial modifications as the context may require:

> *"Multilateral Instrument 61-101 – Protection of Minority Security Holders in Special Transactions ("**MI 61-101**") provides a number of circumstances in which a transaction between an issuer and a related party may be subject to valuation and minority approval*

*requirements. An exemption from such requirements is available when the fair market value of the transaction is not more than 25% of the market capitalization of the issuer. TransGlobe Apartment Real Estate Investment Trust (the "**REIT**") has applied for exemptive relief from the requirements of MI 61-101 that, subject to certain conditions, would permit it to be exempt from the minority approval and valuation requirements for transactions that would have a value of less than 25% of the REIT's market capitalization if TransGlobe's indirect economic and voting interest in the REIT was included in the calculation of the REIT's market capitalization. As a result, the 25% threshold above which the minority approval and valuation requirements would apply would be increased to reflect the approximately 18% indirect interest in the REIT held by TransGlobe."*

Valuation Relief

The principal regulator is satisfied that the decision meets the test set out in MI 61-101 for the principal regulator to make the decision.

The decision of the principal regulator is that the Valuation Relief is granted provided the Filer complies with subsection 6.3(2) of Multilateral Instrument 61-101 other than clause (a) thereof.

"Naizam Kanji"
Deputy Director, Corporate Finance
Ontario Securities Commission

2.2 Orders

2.2.1 Deutsche Bank Securities Limited

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

AND

IN THE MATTER OF
DEUTSCHE BANK SECURITIES LIMITED

AND

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

ORDER

WHEREAS on December 7, 2009, the Investment Industry Regulatory Organization of Canada ("IIROC") issued a Notice of Hearing (the "Notice") in the matter of Deutsche Bank Securities Ltd. ("DBSL"), alleging two contraventions of the Rules of the Investment Dealers Association (the "IDA", now part of IIROC) in relation to DBSL's role in the third party asset-backed commercial paper market;

AND WHEREAS on September 1, 2010, DBSL brought a motion before a hearing panel of the Ontario District Council of IIROC (the "Hearing Panel") to set aside the Notice and requesting an order: i) dismissing or staying the Notice; ii) for further and better disclosure; and iii) for an adjournment (the "Motion");

AND WHEREAS the hearing of the Motion took place on September 27, 2010 and October 6 and 7, 2010;

AND WHEREAS the Hearing Panel dismissed the request for a stay orally, with Reasons for the Decision issued on October 13, 2010 (the "Decision");

AND WHEREAS the Hearing Panel granted the adjournment request of DBSL to allow counsel to review disclosure, and ordered that a hearing date be set for after April 4, 2011;

AND WHEREAS on November 2, 2010, DBSL made an application to the Ontario Securities Commission (the "Commission") for a hearing and review of the Decision (the "Application"), pursuant to section 21.7 of the Ontario Securities Act, R.S.O. 1990, c. S.5, as amended (the "Act");

AND WHEREAS on December 23, 2010, the Secretary of the Commission issued a Notice of Hearing for a hearing of the Application to commence at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on Friday, January 7, 2011 at 10:00 a.m.;

AND WHEREAS on January 7, 2011, counsel for DBSL and IIROC and Staff of the Commission appeared before a panel of the Commission and made submissions;

AND WHEREAS the panel of the Commission reserved their decision;

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

IT IS HEREBY ORDERED that any further proceedings before the IIROC Hearing Panel are stayed, effective from the date of this order until a decision of the Commission has been released.

DATED at Toronto this 10th day of January, 2011.

"Mary G. Condon"

"Paulette L. Kennedy"

2.2.2 Orbus Pharma Inc. – s. 144

Headnote

Section 144 – application for variation of cease trade order – issuer cease traded due to failure to file with the Commission annual financial statements – issuer has applied for a variation of the cease trade order to permit the issuer to proceed with a proposal under the Bankruptcy and Insolvency Act – 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, CHAPTER S.5, AS AMENDED (the ACT)

AND

IN THE MATTER OF
ORBUS PHARMA INC.

ORDER
(Section 144)

WHEREAS the securities of Orbus Pharma Inc. (the **Filer**) are subject to a temporary cease trade order made by the Director dated May 10, 2010 under paragraph 2 of subsection 127(1) and subsection 127(5) of the Act and a further cease trade order issued by the Director on May 21, 2010 pursuant to subsection 127(1) of the Act (together, the **Cease Trade Order**) directing that trading in the securities of the Filer cease until the Cease Trade Order is revoked;

AND WHEREAS the Filer has applied to the Ontario Securities Commission (the **Commission**) pursuant to section 144(1) of the Act for a partial revocation of the Cease Trade Order;

AND WHEREAS the Filer has represented to the Commission that:

1. The Filer is a corporation existing under the *Business Corporations Act* (Alberta) formed pursuant to an amalgamation on June 1, 2006.

2. The Filer's head office is located in Markham, Ontario.

3. The Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec and Nova Scotia.

4. The Filer is engaged in the business of generic drug development and manufacturing.

5. The authorized capital of the Filer consists of an unlimited number of common voting shares (the **Common Shares**) and an unlimited number of Class A Preferred Shares, of which 15,235,717 Common Shares are currently issued and outstanding.

6. The Filer has issued $7.3 million of convertible secured subordinated debentures which bear interest at 10.0% per annum and which have a maturity date of August 15, 2011 (the **Debentures**).

7. The Common Shares were suspended from trading on the TSX NEX Exchange on April 30, 2010 for failure to maintain minimum TSX NEX Exchange listing requirements.

8. The Cease Trade Order was issued as a result of the Filer's failure to file its annual audited financial statements, annual management's discussion and analysis, and certification of annual filings for the year ended December 31, 2009 (the **Unfiled Documents**).

9. In addition to the Unfiled Documents, the Filer has subsequently failed to file its interim unaudited financial statements, interim management's discussion and analysis, and certification of interim filings, for the three-month periods ended March 31, 2010, June 30, 2010 and September 30, 2010 (together with the Unfiled Documents, the **Unfiled Continuous Disclosure**).

10. The Filer is also subject to cease trade orders issued by the securities regulators in the Provinces of British Columbia, Manitoba, Alberta and Québec for failure to file required filings under applicable securities laws (the **Other Cease Trade Orders**). The Filer has applied for and expects to be granted concurrently with this partial revocation order, a partial revocation of the cease trade order issued by the Alberta Securities Commission (the **Alberta Cease Trade Order**) to permit the trades contemplated by the Proposal (as defined below).

11. The Filer is also included on the list of defaulting issuers maintained by the Saskatchewan Financial Services Commission and is also in default in Nova Scotia with respect to the Unfiled Continuous Disclosure.

12. Other than the failure to file the Unfiled Continuous Disclosure, the Filer is not in default of any of the requirements of the Act or the rules and regulations made pursuant thereto.

13. On May 17, 2010. the Filer was granted protection from its creditors under the *Bankruptcy and Insolvency Act* (the **BIA**). The protection afforded by the BIA has been extended several times pursuant to orders granted by the Ontario Superior Court of Justice, In Bankruptcy and Insolvency (the **Court**). The purpose of seeking protection from creditors under the BIA was to

allow the Filer time to file with the official receiver a proposal to effect a compromise and arrangement of all claims of the Filer's creditors against the Filer.

14. On September 7, 2010, the Filer filed a proposal (the **Proposal**) with the Official Receiver in accordance with the BIA, naming RSM Richter Inc. as the Proposal trustee (the **Trustee**).

15. The steps of implementation of the Proposal include a reorganization of the Filer's share capital and trades of securities of the Filer in Alberta, Saskatchewan, Ontario and the State of New York. The Common Shares, the Debentures and other securities in the capital of the Filer have no value as a result of the Filer's insolvency.

16. The Proposal will involve the issuance of additional Common Shares and shares of a new class to eight secured creditors (the **Affected Creditors**) and payments of cash to unsecured creditors (the **Unsecured Creditors**). The Filer will issue approximately 7,311,638 additional Common Shares at a deemed price of $0.05 and 196,500,260 new Class B non-voting common shares (Class B Shares) at a deemed price of $0.04 to the Affected Creditors in settlement of approximately $8,225,592 in debt.

17. According to the Proposal, of the $9,139,547 of debt owed as of July 31, 2010 to the Affected Creditors and which is to be settled or arranged under the Proposal, the Affected Creditors will settle 4% of their claims in exchange for Common Shares, 86% of their claims for Class B Shares and the remaining 10% of their claims shall continue after implementation of the Proposal. All outstanding share purchase warrants and stock options of the Filer will be cancelled for no consideration. Unsecured creditors will receive a cash payment from a pool of $250,000 contributed by Trimac Investments Limited Partnership, the Proposal sponsor (the **Proposal Sponsor**).

18. The Affected Creditors will receive the Common Shares and Class B Shares pursuant to section 2.11 of National Instrument 45-106 *Prospectus and Registration Exemptions* and sign acknowledgments that the Filer's securities are currently subject to the Cease Trade Order and the Other Cease Trade Orders.

19. Seven of the Affected Creditors are at arms-length to the Filer. The remaining creditor, the Proposal Sponsor is a "related party" of the Filer as such term is defined in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**"). Provided that the Proposal is approved and proceeds, the Proposal Sponsor and related parties will hold 4,743,326 Common Shares (representing 21.0% of the outstanding Common Shares) and 65,887,068 Class B Shares (representing 33.5% of the Class B Shares).

20. The Filer is exempt from the formal valuation and minority approval requirements of MI 61-101 pursuant to sections 5.5(f) and 5.7(d), respectively, of MI 61-101. The Proposal was subject to Court approval, the Court was advised of the requirements of MI 61-101 for related party transactions and the Court did not require compliance with section 5.4 or 5.6.

21. The Proposal has been approved by the creditors of the Corporation on September 28, 2010 and the Court on October 18, 2010 as required under the BIA.

22. After the completion of the Proposal, the filer intends to file the Unfiled Continuous Disclosure, pay all outstanding fees and apply to the applicable securities regulator to have the Cease Trade Order and the Other Cease Trade Orders fully revoked.

23. The Filer's SEDAR and SEDI profiles are up to date.

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

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

IT IS ORDERED, pursuant to section 144 of the Act, that the Ontario CTO is partially revoked solely to permit trades in securities of the Filer (including for greater certainty, acts in furtherance of trades in securities of the Filer) that are necessary for and are in connection with the Proposal, provided that, prior to the completion of the Proposal:

(a) Each Affected Creditor resident in Ontario:

(i) receives a copy of the Proposal;

(ii) receives a copy of the Cease Trade Order;

(iii) receives a copy of this order; and

(iv) receives written notice from the Filer, and provides a written acknowledgement to the Filer, that all of the Filer's securities, including the Common Shares and the Class B Shares issued in connection with the Proposal, will remain subject to the Cease Trade Order until it is revoked, and that the granting of this order does not guarantee the issuance of a full revocation in the future; and

(b) the Filer undertakes to make available copies of the written acknowledgements to staff of the Commission on request.

DATED at Toronto this 13th day of January, 2011.

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

2.2.3 Paladin Capital Markets Inc. et al.

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

AND

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

ORDER

WHEREAS on January 12, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Act*") in relation to Claudio Fernando Maya ("Maya");

AND WHEREAS Maya entered into a settlement agreement with Staff of the Commission ("Staff") dated January 12, 2011 (the "Settlement Agreement"), a copy of which is attached as Schedule "A" to this Order, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, and upon hearing submissions from counsel for Staff and Maya;

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

IT IS ORDERED THAT:

1. The Settlement Agreement is approved;

2. Maya is prohibited for a period of three years (commencing from the date of the temporary order dated June 2, 2009) from trading in securities, pursuant to s. 127(1)2 of the *Act*;

3. Any exemptions contained in Ontario securities law not to apply to Maya for a period of three years (commencing from the date of the temporary order dated June 2, 2009), pursuant to s. 127(1)3 of the *Act*;

4. Maya is reprimanded, pursuant to s. 127(1)6 of the *Act*;

5. Maya is prohibited for a period of three years (commencing from the date of the temporary order dated June 2, 2009) from becoming or acting as a director or officer of a registrant pursuant to s. 127(1)8.2;

6. Maya is prohibited for a period of three years (commencing from the date of the temporary order dated June 2, 2009) from becoming or acting as a director or officer of an investment fund manager, pursuant to s. 127(1)8.4 of the *Act*; and

7. Maya is prohibited for a period of three years (commencing from the date of the temporary order dated June 2, 2009) from becoming or acting as a registrant, as an investment fund manager or promoter, pursuant to s. 127(1)8.5 of the *Act*.

DATED at Toronto this 14th day of January 2011.

"Carol S. Perry"
Commissioner

Schedule "A"

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

SETTLEMENT AGREEMENT
(Claudio Fernando Maya)

PART I – INTRODUCTION

1. By Notice of Hearing to be issued, the Ontario Securities Commission (the "Commission") will announce that it will hold a hearing to consider whether, pursuant to section 127 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 make certain orders in respect of Claudio Fernando Maya ("Maya").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding against Maya in accordance with the terms and conditions set out below. Maya consents to the making of an order against him in the form attached as Schedule "A" on the basis of the facts set out below.

PART III – AGREED FACTS

3. Maya agrees with the facts and conclusions set out in Parts III and IV herein. Except to the extent outlined in paragraph 27 of this Settlement Agreement, the facts and admissions of this Settlement Agreement are without prejudice to Staff and Maya in any other proceedings including, without limitation, any civil, administrative, quasi-criminal or criminal actions or proceedings that may be brought by any person or agency. Except to the extent outlined in paragraph 27 of this Settlement Agreement, no other person or agency may raise or rely upon the terms of this Settlement Agreement, any agreement as to facts stated herein, or any admissions made herein, whether or not this Settlement Agreement is approved by the Commission.

A. Background

i. Paladin

4. Paladin Capital Markets Inc. ("Paladin") was registered with the Commission as a limited market dealer from February 27, 2007 to June 2, 2009, when a temporary order was made suspending its registration. It was not registered in any other jurisdiction. Its business location was 275 Richmond Street West, Suite 1, Toronto.

5. Paladin's primary business activity was to source capital for small-cap companies in the resources, industrial and environmental sectors. Since inception until December 31, 2008, it raised about $640,000 for five issuers and earned about $40,000 in fees.

6. John David Culp ("Culp") was the President, CEO, designated compliance officer and sole director of Paladin. He was the only individual at Paladin who was registered to trade in securities. Culp was Paladin's sole shareholder.

ii. Maya

7. Paladin hired Maya as a consultant in June 2007. Maya was not registered in any capacity with the Commission at the time. However, Maya was a registrant prior to the material time. Maya was registered in Ontario as a salesperson in the category of registered representative from January 25, 1999 until December 20, 2004 and as a salesperson in the category of broker and investment dealer from December 23, 2004 until June 23, 2006.

B. Sale of Securities of Paladin

8. Paladin issued $400,000 in promissory notes (the "Notes") entitled Paladin Capital Markets Inc. Non Profit Participation Convertible Promissory Note to five Ontario investors (the "Investors"), between August 23, 2007 to September 12, 2007, as a means of raising working capital for Paladin.

9. Paladin did not seek from the Commission nor have a prospectus with which to distribute the Notes in compliance with s. 53 of the Act. The sale of the Notes was not permitted under the terms of Paladin's registration.

10. Paladin sold the Notes to the following individuals:

    1. Investor 1 – $25,000

    2. Investor 2 – $25,000

    3. Investor 3 – $50,000

    4. Investor 4 – $50,000

    5. Investor 5 – $250,000

11. The Notes were non-profit-participating, convertible to equity promissory notes with a rate of interest of 10% for a 12-month term. In the event that Paladin were to fail to make payment when due, interest would be payable at 15%.

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

13. Four of the five Investors exercised their rights according to the terms of the Notes to repayment of principal and interest. Paladin has not made any of the required repayments to the Investors and is insolvent.

Maya was Paladin's Representative and Solicited Investors to Buy the Notes

14. Between August 23, 2007 to September 12, 2007, Maya solicited the Investors to buy the Notes. He obtained $40,000 in commission payments from Paladin for his role.

15. While Culp, as Paladin's CEO and sole compliance officer, had the primary responsibility to ensure Maya was registered, Maya failed to exercise sufficient due diligence in order to confirm his registration status prior to soliciting the sale of the Notes.

16. Maya met with investors, most of whom were his clients when he was formerly a registrant, and solicited on behalf of Paladin the purchases of the Notes by the Investors. Maya told them that they were investing in Paladin, which in turn would provide them access to invest in deals relating to Paladin's underlying business. Mr. Maya characterized the investment as low risk to some investors when in fact he had not undertaken any due diligence in respect of the investment and did not know the true risks of the Notes.

Maya's Cooperation with Staff's Investigation

17. Maya cooperated with Staff in its investigation by providing both documents and testimony on a voluntary basis. Such cooperation is contemplated in Staff Notice 15-702 "Credit for Cooperation".

Temporary Order

18. Maya has been subject to a temporary cease trade order made by the Commission on June 2, 2009.

Judgment by Investor Against Paladin

19. Pursuant to a claim against Paladin, Maya and Maya's wife, Investor 5 obtained a default judgment against Paladin solely on January 5, 2009 in court file CV-08-00368216-0000 in the Ontario Superior Court of Justice for $287,883.56 plus costs and post-judgment interest at 15%.

Death of Culp and Settlement by Paladin

20. On July 17, 2010, Culp died.

21. On August 5, 2010, Staff's settlement agreement with Paladin was approved by order of the Commission. In respect of admissions of breaches of sections 25 and 53 of the Act, as well as acting contrary to the public interest, the terms of settlement were the following:

    i. Paladin's registration is terminated pursuant to s. 127(1)1 of the Act;

    ii. trading in any securities by Paladin shall cease permanently, pursuant to s. 127(1)2 of the *Act*;

    iii. any exemptions contained in Ontario securities law shall not apply to Paladin permanently, pursuant to s. 127(1)3 of the *Act*;

    iv. Paladin shall pay an administrative penalty of $100,000, pursuant to s. 127(1)9 of the *Act*, to be allocated to or for the benefit of third parties who suffered losses as a result of the activities of Paladin described in the Settlement Agreement, pursuant to s. 3.4(2)(b) of the *Act*;

    v. Paladin shall pay disgorgement in the amount of $400,000, pursuant to s. 127(1)10 of the *Act*, to be allocated to or for the benefit of third parties who suffered losses as a result of the activities of Paladin described in the Settlement Agreement, pursuant to s. 3.4(2)(b) of the *Act*; and

    vi. Paladin shall pay the Commission's costs of the investigation and hearing in the amount of $15,000.

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

22. By engaging in the conduct described above, including acts in furtherance of trades of the Notes without being registered as a salesperson, Maya has breached Ontario securities law by contravening subsection 25(1)(a) of the *Act* and has acted contrary to the public interest.

PART V – RESPONDENT'S POSITION

23. Maya asserts that he believed Culp, as Paladin's CEO and designated compliance officer, was responsible for compliance with Ontario securities law, and in particular for obtaining the proper registration status for Maya to solicit the sale of the Notes.

24. Further, Maya asserts that he is impecunious and has no funds available to him with which he could pay disgorgement for the benefit of the Investors. Maya acknowledges that, absent his complete inability to pay, a judgment against Paladin obtained by Investor 5 described, and the order for disgorgement and administrative penalty made against Paladin on August 5, 2010 in the full amount raised from investors in the Notes, he would have been subject to orders to pay disgorgement, an administrative penalty, and costs.

PART VI – TERMS OF SETTLEMENT

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

26. The Commission will make an order pursuant to s. 127(1):

    i. Approving the settlement agreement;

    ii. that Maya be prohibited for a period of three years (commencing from the date of the temporary order dated June 2, 2009) from trading in securities, pursuant to s. 127(1)2 of the *Act*;

    iii. that any exemptions contained in Ontario securities law do not apply to Maya for a period of three years (commencing from the date of the temporary order dated June 2, 2009), pursuant to s. 127(1)3 of the *Act*;

    iv. that Maya be reprimanded, pursuant to s. 127(1)6 of the *Act*;

    v. that Maya be prohibited for a period of three years (commencing from the date of the temporary order dated June 2, 2009) from becoming or acting as a director or officer of a registrant pursuant to ss. 127(1)8.2

vi. that Maya be prohibited for a period of three years (commencing from the date of the temporary order dated June 2, 2009) from becoming or acting as a director or officer of an investment fund manager, pursuant to ss. 127(1)8.4 of the *Act*; and

vii. that Maya be prohibited for a period of three years (commencing from the date of the temporary order dated June 2, 2009) from becoming or acting as a registrant, as an investment fund manager or promoter, pursuant to ss. 127(1)8.5 of the *Act*.

27. Maya undertakes that he will consent to an Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in subparagraphs 26(ii),(iii),(v),(vi), and (vii) above. This prohibition may be modified to reflect the provisions of the relevant provincial or territorial securities law. Maya further undertakes to provide reasonable notice to Staff of any transfer whatsoever of an interest in 500,000 shares of FrontierAlt Capital Corporation he possesses or controls (the "Shares"). Maya asserts that the Shares currently have no value and are illiquid. In the case of a transfer of an interest in the Shares, Maya undertakes that, in the absence of any legal duty or order that would otherwise prevent him from doing so, prior to any completion of the transfer, he will irrevocably direct a payment to Staff to be allocated to or for the benefit of third parties who suffered losses as a result of his conduct described herein. The amount of the payment shall be no more than $40,000. If the proceeds of any transfer contemplated herein are less than $40,000, the amount of the payment shall be the entirety of the proceeds.

PART VII – STAFF COMMITMENT

28. If this agreement is approved by the Commission, Staff will not initiate any proceeding under Ontario securities law in relation to the facts set out in Part III of this agreement, subject to the provisions of paragraph 30 below.

29. If this settlement agreement is approved by the Commission and at any subsequent time Maya fails to honour the terms of the settlement set out in paragraphs 26 and 27, Staff reserve the right to bring proceedings under Ontario securities law against Maya based on, but not limited to, the facts set out in Part III of this settlement agreement, as well as the as the breach of the settlement agreement.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

30. Approval of this settlement will be sought at a public hearing before the Commission, in accordance with the procedures set out in this settlement agreement and the Commission's Rules of Procedure.

31. Staff and Maya agree that this settlement agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding Maya's conduct in this matter, unless the parties agree that further facts should be submitted at the Settlement Hearing.

32. If this settlement agreement is approved by the Commission, Maya agrees to waive his rights to a full hearing, judicial review, or appeal of this matter under the *Act*.

33. If this settlement agreement is approved by the Commission, no party will make any public statement that is inconsistent with this settlement agreement.

34. Whether or not this settlement agreement is approved by the Commission, Maya agrees that he will not, in any proceeding, refer to or rely upon this 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 IX – DISCLOSURE OF AGREEMENT

35. If, for any reason whatsoever, this settlement agreement is not approved by the Commission, or an order in the form attached as Schedule "A" to this settlement agreement is not made by the Commission:

i. this settlement agreement and its terms, including all discussions and negotiations between Staff and Maya leading up to their presentation at the Settlement Hearing, shall be without prejudice to Staff and Maya; and

ii. each of Staff, Maya will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations to be contained in the Statement of Allegations, unaffected by this agreement or the settlement discussions/negotiations.

36. The terms of this settlement agreement will be treated as confidential by both parties until approved by the Commission. Any obligations of confidentiality will terminate upon approval of this settlement agreement by the

Commission. The terms of this settlement agreement will be treated as confidential forever if this settlement agreement is not approved for any reason whatsoever by the Commission, except with the written consent of both Maya and Staff or as may be required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

37. This agreement may be signed in one or more counterparts which together will constitute a binding agreement.

38. A facsimile copy of any signature will be as effective as an original signature.

Dated this 12th day of January 2011.

STAFF OF THE ONTARIO SECURITIES COMMISSION

"Tom Atkinson"
Tom Atkinson
Director, Enforcement Branch

CLAUDIO FERNANDO MAYA

"Claudio Fernando Maya"
Claudio Fernando Maya

"Samreen Beg"
Witness (Print name below)

2.2.4 OANDA (Canada) Corporation ULC – s. 74(1)

Headnote

Application by investment dealer (Applicant) for relief from prospectus requirement in connection with distribution of foreign exchange contracts to permit investors resident in Ontario to enter into foreign exchange transactions with Applicant, subject to four-year sunset clause and other terms and conditions – Applicant acts as both market intermediary and as principal or counterparty to forex transaction with client – Applicant registered in Ontario as investment dealer and a member of the Investment Industry Regulatory Organization of Canada (IIROC) – Applicant complies with IIROC Rules and IIROC acceptable practices applicable to offerings of forex contracts – Applicant seeking relief to permit Applicant to offer forex contracts to investors in Ontario on the basis of clear and plain language risk disclosure document rather than a prospectus – risk disclosure document contains disclosure substantially similar to risk disclosure document required for recognized options in OSC Rule 91-502 Trades in Recognized Options, the regime for OTC derivatives contemplated by former proposed OSC Rule 91-504 OTC Derivatives (which was not adopted), and the Quebec Derivatives Act – Relief consistent with relief contemplated by OSC Staff Notice 91-702 Offerings of contracts for difference and foreign exchange contracts to investors in Ontario(OSC SN 91-702) – Relief granted, subject to terms and conditions as described in OSC SN 91-702 including four-year sunset clause.

Legislation Cited

Securities Act,R.S.O. 1990, c. S.5, as am., ss. 53, 74(1)
NI 45-106 Prospectus and Registration Exemptions, s. 2.3.
OSC Rule 91-502 Trades in Recognized Options.
OSC Rule 91-503 Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario.
Proposed OSC Rule 91-504 OTC Derivatives

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

AND

IN THE MATTER OF
OANDA (CANADA) CORPORATION ULC

ORDER
(Subsection 74(1) of the Act)

UPON the application (the **Application**) of OANDA (Canada) Corporation ULC (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to subsection 74(1) of the Act, that the Applicant and its respective officers, directors and representatives be exempt from the prospectus requirement of section 53 of the Act in respect of the distribution of foreign exchange contracts including spot foreign exchange contracts, FXBoxOptions™ and other similar over-the-counter foreign exchange contracts (referred to herein as **Forex Transactions**) to investors resident in Ontario (the **Requested Relief**) subject to the terms and conditions below;

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

AND UPON the Applicant having represented to the Commission that:

OANDA Group of Companies

1. The Applicant and its affiliates (**OANDA**) have developed one of the world's largest historical, high-frequency, filtered currency databases with tick-by-tick exchange rate information for virtually all currency pairs since 1990. Today, its proprietary OANDA Rates® have been the benchmark for corporations, tax authorities, auditing firms and even central banks.

2. The Applicant is a wholly-owned subsidiary of OANDA Corporation. OANDA Corporation was incorporated in the State of Delaware in 1996 and was co-founded by Dr. Michael Stumm, a professor of Computer Engineering at the University of Toronto, and Dr. Richard Olsen of The Olsen Ltd., a leading econometric research and development firm.

3. OANDA Corporation has been registered as a Futures Commission Merchant in the Forex Dealer Member category with the Commodity Futures Trading Commission (**CFTC**) and a member of the National Futures Association (**NFA**)

since March 2003. As a regulated entity, OANDA Corporation is subject to weekly, monthly and annual reporting to the CFTC and NFA.

4. Possessing one of the world's largest and most accurate databases of currency rates, OANDA was the first in 1995 to offer a broad range of currency exchange-rate information free of charge over the web. Currently, it handles more than a million queries a day. In 1997 OANDA became an internet-based business-to-business application service provider (**ASP**) and currently services over 75,000 ASP clients around the world.

5. OANDA introduced the first graphical-based forex trading platform in 2001 known as FXTrade™ (**FXTrade**) allowing customers to participate directly in the forex markets.

OANDA (Canada) Corporation ULC

6. The Applicant is a corporation incorporated under the laws of Alberta with its principal office in Toronto, Ontario. The Applicant is registered as a dealer in the category of investment dealer in Ontario and British Columbia (application pending in Quebec) and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**).

7. The Applicant is required by IIROC to maintain a certain level of capital to address the business risks associated with its activities. The capital reporting required by IIROC (as per the calculation in the Joint Regulatory Financial Questionnaire (the **JRFQ**) and the Monthly Financial Reports to IIROC) is based predominantly on the generation of financial statements and calculations as to ensure capital adequacy. The Applicant as an IIROC member is required to have a specified minimum capital which includes having any additional capital required with regards to margin requirements and other risks. This risk calculation is summarized as a risk adjusted capital calculation which is submitted in the firm's JRFQ and required to be kept positive at all times.

8. As a member of IIROC, the Applicant is only permitted to enter into Forex Transactions pursuant to IIROC Rules. The Applicant is not, to the best of its knowledge, in default of any IIROC Rules.

9. In addition, IIROC has communicated to its members certain additional expectations as to acceptable business practices (**IIROC acceptable practices**) as articulated in IIROC's "Regulatory Analysis of Contracts for Differences (CFDs)" published by IIROC on June 6, 2007 (the **IIROC CFD Paper**), as amended on September 12, 2007, for any IIROC member proposing to offer CFDs or foreign exchange contracts to investors. To the best of its knowledge, the Applicant is in compliance with IIROC acceptable practices in offering the Forex Transactions. The Applicant will continue to offer Forex Transactions in accordance with IIROC acceptable practices as may be established from time to time.

10. In Québec, the Applicant has applied for an order from the *Autorité des marchés financiers* (the **AMF**) to offer foreign exchange contracts to both accredited and retail investors pursuant to the provisions of the *Derivatives Act* (Québec) (the **QDA**). The final AMF Order will, if granted, exempt the Applicant from the qualifying requirement set forth in section 82 of the QDA relating to the creation or marketing of foreign exchange contracts offered to the public, subject to certain terms and conditions.

11. The Applicant has previously offered Forex Transactions to investors, including retail investors, in Ontario on the basis of a good faith determination that the Forex Transactions did not constitute securities for the purposes of Ontario securities law. Consequently, such offerings were made in compliance with applicable IIROC Rules and other IIROC acceptable practices but were not made under a prospectus or an exemption from the prospectus requirement of Ontario securities law. In October 2009, OSC staff published OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors* (**OSC SN 91-702**). The Applicant has considered the guidance in OSC SN 91-702 and wishes to continue to offer Forex Transactions to investors, including retail investors, in Ontario on the basis of the exemptive relief contemplated by OSC SN 91-702.

12. The Applicant wishes to offer the Forex Transactions to investors, including retail investors, in Ontario on a similar basis as in Québec and on substantially the same terms and conditions as articulated in the QDA and in the AMF Order. For the Interim Period (defined below), the Applicant is seeking the Requested Relief in connection with this proposed offering in Ontario.

Forex Transactions and FXTrade

13. OANDA's FXTrade platform is a proprietary and fully automated internet-based trading platform that serves as the basis for OANDA's private and white label forex trading solutions. As of April 13, 2010, more than 609,000,000 transactions have been executed on OANDA's FXTrade platform.

14. The Applicant utilizes the FXTrade trading platform to process Forex Transactions under a software license and services agreement with its parent company, OANDA Corporation.

15. The Applicant is a market maker in OTC forex contracts in Canada. It is also the counterparty to its clients' forex trades – it does not act as an intermediary, broker or trustee. Clients place trades with the Applicant electronically over the internet. The Applicant does not trade on behalf of clients or manage any discretionary accounts. Nor does it provide any trading advice or recommendations. The FXTrade platform is similar to those developed for on-line brokerages in that the client trades without other communication with, or advice from, the dealer.

16. The Applicant provides clients with exposure to the exchange rate fluctuation in the selected currency pairing. No physical settlement of the underlying currency is required or expected. There is no fixed duration of a forex contract purchased from the Applicant, and a client may retain an open position in a particular currency pair for as long as they like. The client may liquidate any forex position instantly by initiating a sell order. Settlement is immediate. There is no limit on trade size or trade lot except that no individual order may exceed CAD 10 million.

17. The Applicant manages the risk in its client positions by simultaneously placing the identical Forex Transaction on a back-to-back basis with OANDA Corporation, an "acceptable counterparty" (as that term is defined in IIROC Rules). OANDA Corporation, in turn, automatically offsets each position against other client positions on a second-by-second basis, and either "hedges" its net exposure by trading with liquidity providers (banks) or using its equity capital, or both. By virtue of this risk management functionality inherent in the FXTrade platform, the Applicant minimizes counterparty risk. This also means that the Applicant does not have an inherent conflict of interest with its clients, since it does not profit on a position if the client losses on that position, and vice versa. The Applicants is compensated solely by the "spread" between the bid and ask prices it offers for any currency pair. It does not charge any account opening or maintenance fees, commissions, or other charges of any kind.

18. The Forex Transactions are over-the-counter (**OTC**) and are not transferable.

19. The ability to lever an investment is one of the principal features of foreign exchange contracts. Leverage allows clients to magnify investment returns (or losses) by reducing the initial capital outlay required to achieve the same market exposure that would be obtained by investing directly in the underlying currency. The risk management functionality of the FXTrade platform ensures that client positions are closed out when the client no longer maintains sufficient margin in their account to support the position, thereby preventing the client from being placed in a margin call situation or losing more than their stated risk capital or cumulative loss limit. This functionality also ensures that the Applicant does not incur any credit risk vis-a-vis its customers.

20. IIROC Rules and IIROC acceptable practices set out detailed requirements and expectations relating to leverage and margin for offerings of foreign exchange contracts. The degree of leverage may be amended in accordance with IIROC Rules and IIROC acceptable practices as may be established from time to time.

21. Pursuant to Section 13.12 *Restriction on lending to clients* of National Instrument 31-103 *Registration Requirements* which came into force as of September 28, 2009, only those firms that are registered as investment dealers (a condition of which is to be a member of IIROC) may lend money, extend credit or provide margin to a client.

22. Clients conduct Forex Transactions through the Applicant's on-line trading platform, FXTrade. The Applicant's on-line platform is similar to those developed for on-line brokerages and day-trading in that the client trades without other communication with, or advice from, the dealer. The FXTrade platform is not a "marketplace" as defined in National Instrument 21-101 *Marketplace Operation* since a marketplace is any facility that brings together multiple buyers and sellers by matching orders in fungible contracts in a nondiscretionary manner. FXTrade does not bring together multiple buyers and sellers; rather it offers clients direct access to interbank prices.

Forex Transactions in Ontario

23. Foreign exchange contracts and similar OTC derivative contracts, including Forex Transactions, when offered to investors in Ontario, may be considered to be "securities" under the Act.

24. Investors wishing to enter into Forex Transactions must open an account with the Applicant

25. Prior to a client's first Forex Transaction and as part of the account opening process, the Applicant will provide the client with a separate risk disclosure document that clearly explains, in plain language, the transaction and the risks associated with the transaction (the risk disclosure document). The risk disclosure document includes the required risk disclosure set forth in Schedule A to the Regulations to the QDA and leverage risk disclosure required under IIROC Rules. The risk disclosure document contains disclosure that is substantially similar to the risk disclosure statement required for recognized options in OSC Rule 91-502 *Trades in Recognized Options* (which provides both registration

and prospectus exemptions) (**OSC Rule 91-502**) and the regime for OTC derivatives contemplated by OSC SN 91-702 and proposed OSC Rule 91-504 *OTC Derivatives* (which was not adopted) (**Proposed Rule 91-504**). The Applicant will ensure that, prior to a client's first trade in a Forex Transaction, a complete copy of the risk disclosure document provided to that client has been delivered, or has previously been delivered, to the Commission.

26. Prior to the client's first Forex Transaction and as part of the account opening process, the Applicant will obtain a written or electronic acknowledgement from the client confirming that the client has received, read and understood the risk disclosure document. Such acknowledgment will be separate and prominent from other acknowledgements provided by the client as part of the account opening process.

27. As customary in the industry, and due to the fact that this information is subject to factors beyond the control of the Applicant (such as changes in IIROC Rules), information such as the specific margin or leverage rates would not be disclosed in the risk disclosure document but are part of a client's account opening package and are available on both the Applicant's website and the on-line trading platform.

28. The role of the Applicant is limited to acting as an execution-only dealer. In connection with its role as execution-only dealer, the Applicant is, among other things, responsible for marketing, trade execution, administration of account opening and investor approval (including know-your-client diligence and suitability confirmations) for all Canadian clients.

29. IIROC Rules exempt member firms that provide execution-only services such as discount brokerages from the obligation to determine whether each trade is suitable for the client. However, IIROC has exercised its discretion to impose additional requirements on members proposing to trade in foreign exchange contracts and requires that:

    (a) Applicable risk disclosure documents and client suitability waivers provided must be in a form acceptable to IIROC.

    (b) The firm's policies and procedures, amongst other things, must assess the depth of investment knowledge and trading experience of the client to assess whether the product is appropriate for the client before an account is approved to be opened. IIROC has also imposed its proficiency requirements for futures trading on the Applicant's registered salespeople, who conduct the know your client and initial product suitability analysis, as well as their supervisory trading officer.

    (c) Cumulative loss limits for each client's account must be established (this is a measure normally applied by IIROC in connection with futures trading accounts).

30. The Forex Transactions are offered in compliance with applicable IIROC Rules and other IIROC acceptable practices.

Rationale for the Requested Relief

31. The Requested Relief, if granted, would substantially harmonize the Commission's position on the offering of foreign exchange contracts to investors in Ontario with how those products are offered to investors in Quebec under the QDA. The QDA provides a legislative framework to govern derivatives activities within the province. Among other things, the QDA requires such products to be offered to investors through an IIROC member and the distribution of a standardized risk disclosure document rather than a prospectus in order to distribute foreign exchange contracts to investors resident in Quebec.

32. The Requested Relief, if granted, would be consistent with the guidelines articulated by OSC Staff in OSC SN 91-702. OSC SN 91-702 provides guidance with regards to the distributions of contracts for difference (**CFDs**), foreign exchange contracts (forex or FX contracts) and similar OTC derivative products to investors in Ontario.

33. The Commission has previously recognized that the prospectus requirement may not be well suited for the distribution of certain derivative products to investors in Ontario, and that alternative requirements, including requirements based on clear and plain language risk disclosure, may be better suited for certain derivatives. Both OSC Rule 91-502 and OSC Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario* (**OSC Rule 91-503**) provide for a prospectus exemption for the trading of derivative products to clients. The Requested Relief is consistent with the principles and requirements of OSC Rule 91-502, OSC Rule 91-503 and Proposed Rule 91-504.

34. The Applicant also submits that the Requested Relief, if granted, would harmonize the Commission's position on the offering of foreign exchange contracts with certain other foreign jurisdictions that have concluded that a clear, plain language risk disclosure document is appropriate for retail clients seeking to trade in foreign exchange contracts.

35. The Applicant is of the view that requiring compliance with the prospectus requirements in order to enter into Forex Transactions with retail clients in Ontario would not be appropriate since the disclosure of a great deal of the information required under the prospectus and under the reporting issuer regime is not material to a client seeking to enter into a Forex Transaction. The information to be given to such a client should principally focus on enhancing the client's appreciation of product risk including counterparty risk. In addition, most Forex Transactions are of short duration (positions are generally opened and closed on the same day and are in any event marked to market and cash settled daily).

36. The Applicant is regulated by IIROC which has a robust compliance regime including specific requirements to address market, capital and operational risks.

37. The Applicant submits that the regulatory regimes developed by the AMF and IIROC for foreign exchange contracts, including Forex Transactions, adequately addresses issues relating to the potential risk to the client of the Applicant acting as counterparty. In view of these regulatory regimes, investors would receive little or no additional benefit from requiring the Applicant to also comply with the prospectus requirement.

38. The Requested Relief is conditional on the Applicant being registered as an investment dealer with the Commission and maintaining its membership with IIROC and that all Forex Transactions be conducted pursuant to IIROC Rules and in accordance with IIROC acceptable practices.

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

IT IS ORDERED, pursuant to subsection 74(1) of the Act, that for the duration of the Interim Period (as defined below) the Requested Relief is granted, provided that:

(a) all Forex Transactions with residents in Ontario shall be executed through the Applicant;

(b) the Applicant remains registered as a dealer in the category of investment dealer with the Commission and a member of IIROC;

(c) all Forex Transactions with clients resident in Ontario shall be conducted pursuant to IIROC Rules imposed on members seeking to trade in foreign exchange contracts and in accordance with IIROC acceptable practices, as amended from time to time;

(d) all Forex Transactions with clients resident in Ontario be conducted pursuant to the rules and regulations of the QDA and the AMF, as amended from time to time, unless and to the extent there is a conflict between i) the rules and regulations of the QDA and the AMF, and ii) the requirements of Ontario securities law, the IIROC Rules and IIROC acceptable practices, in which case the latter shall prevail;

(e) prior to a client first entering into a Forex Transaction, the Applicant has provided to the client the risk disclosure document described in paragraph 25 and have delivered, or have previously delivered, a copy of the risk disclosure document provided to that client to the Commission;

(f) prior to the client's first Forex Transaction and as part of the account opening process, the Applicant has obtained a written or electronic acknowledgement from the client, as described in paragraph 26, confirming that the client has received, read and understood the risk disclosure document;

(g) the Applicant has furnished to the Commission the name and principal occupation of its officers or directors, together with either the personal information form and authorization of indirect collection, use and disclosure of personal information provided for in National Instrument 41-101 *General Prospectus Requirements* or the registration information form for an individual provided for in Form 33-109F4 of National Instrument 33-109 *Registration Information Requirements* completed by any officer or director;

(h) the Applicant shall promptly inform the Commission in writing of any material change affecting the Applicant, being any change in the business, activities, operations or financial results or condition of the Applicant that may reasonably be perceived by a counterparty to a derivative to be material;

(i) the Applicant shall promptly inform the Commission in writing if a self-regulatory organization or any other regulatory authority or organization initiates proceedings or renders a judgment related to disciplinary matters against the Applicant concerning the conduct of activities with respect to Forex;

(j) within 90 days following the end of its financial year, the Applicant shall submit to the Commission the audited annual financial statements of the Applicant and a statement presenting the number of transactions concluded with Ontario residents for any Forex offering to the public during the most recent financial year; and

(k) the Requested Relief shall immediately expire upon the earliest of

(i) four years from the date that this Order is issued;

(ii) the issuance of an order or decision by a court, the AMF or other similar regulatory body that suspends or terminates the ability of the Applicant to offer foreign exchange contracts to clients in Quebec; and

(iii) the coming into force in Ontario of legislation or a rule regarding the distribution of OTC derivatives to investors in Ontario (the **Interim Period**).

January 14, 2011

"Vern Krishna"
Commissioner
Ontario Securities Commission

"James D. Carnwath"
Commissioner
Ontario Securities Commission

2.2.5 Paul Azeff et al.

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

AND

**IN THE MATTER OF
PAUL AZEFF, KORIN BOBROW,
MITCHELL FINKELSTEIN,
HOWARD JEFFREY MILLER AND
MAN KIN CHENG (a.k.a. FRANCIS CHENG)**

ORDER

WHEREAS on September 22, 2010, the Ontario Securities Commission ("Commission") issued a Notice of Hearing, pursuant to s.127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "*Securities Act*"), accompanied by a Statement of Allegations with respect to the Respondents Howard Jeffrey Miller and Man Kin Cheng for a hearing to commence on October 18, 2010;

AND WHEREAS the Respondents were served with the Notice of Hearing and Statement of Allegations dated September 22, 2010 on September 22, 2010;

AND WHEREAS at a hearing on October 18, 2010, counsel for Staff, counsel for the Respondent Man Kin Cheng, and Howard Jeffrey Miller, appearing on his own behalf, consented to the scheduling of a confidential pre-hearing conference on January 11, 2011 at 3:00 p.m.;

AND WHEREAS on November 11, 2010, the Commission issued a Notice of Hearing, pursuant to s. 127 and 127.1 of the *Securities Act*, accompanied by an Amended Statement of Allegations which added the Respondents Paul Azeff, Korin Bobrow and Mitchell Finkelstein, for a hearing to commence on January 11, 2011;

AND WHEREAS the Respondents were served with the Notice of Hearing and Statement of Allegations dated November 11, 2010 on November 11, 2010;

AND WHEREAS following a hearing on January 11, 2011, counsel for Staff, counsel for the Respondents Paul Azeff, Korin Bobrow, Mitchell Finkelstein, Man Kin Cheng, and Howard Jeffrey Miller, appearing on his own behalf, attended a confidential pre-hearing conference;

AND WHEREAS at the confidential pre-hearing conference on January 11, 2011 all parties made submissions regarding the disclosure made by Staff;

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

IT IS ORDERED, on consent of all parties, that:

1. Staff shall provide a written proposal to address the disclosure issues raised by the Respondents on or by January 18, 2011;

2. The Respondents shall provide a written response to the proposal of Staff by January 25, 2011;

3. If necessary, a motion regarding disclosure issues will take place on February 22, 2011 at 10:00 a.m.

DATED at Toronto this 17th day of January, 2011.

"Patrick J. LeSage"

2.2.6 Global Energy Group, Ltd. et al. – ss. 127(7), 127(8)

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

AND

**IN THE MATTER OF
GLOBAL ENERGY GROUP, LTD.,
NEW GOLD LIMITED PARTNERSHIPS,
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**

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

WHEREAS on July 10, 2008, the Ontario Securities Commission (the "Commission") issued a temporary order, pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), that all trading by Global Energy Group, Ltd. ("Global Energy") and the New Gold Limited Partnerships (the "New Gold Partnerships") (together, the "Corporate Respondents") and their officers, directors, employees and/or agents in securities of the New Gold Partnerships shall cease (the "First Temporary Order");

AND WHEREAS on July 10, 2008, the Commission ordered that the First Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS on July 15, 2008, the Commission issued a Notice of Hearing to consider, among other things, the extension of the First Temporary Order, such hearing to be held on July 23, 2008 at 11:00 a.m.;

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

AND WHEREAS a hearing was held on July 23, 2008 at 11:00 a.m. where Staff and counsel for Global Energy appeared but no counsel appeared for the New Gold Partnerships;

AND WHEREAS on July 23, 2008, the First Temporary Order was continued until August 6, 2008 and the hearing in this matter was adjourned until August 5, 2008 at 3:00 p.m. on consent of Staff and counsel for Global Energy;

AND WHEREAS a hearing was held on August 5, 2008 at 3:00 p.m. where Staff and counsel for Global Energy appeared but no counsel appeared for the New Gold Partnerships;

AND WHEREAS on August 5, 2008, the First Temporary Order was continued until December 4, 2008 and the hearing in this matter was adjourned until December 3, 2008 at 10:00 a.m. on consent of Staff and counsel for Global Energy;

AND WHEREAS on December 3, 2008, on the basis of the record for the written hearing and on consent of Staff and counsel for Global Energy, a Panel of the Commission ordered that the First Temporary Order be extended until June 11, 2009 and that the hearing in this matter be adjourned to June 10, 2009, at 10:00 a.m.;

AND WHEREAS on June 10, 2009, Staff advised the Commission that Victor Tsatskin, a.k.a. Vadim Tsatskin ("Tsatskin"), an agent of Global Energy, would not be attending the hearing and was not opposed to Staff's request for the extension of the First Temporary Order and no counsel had communicated with Staff on behalf of the New Gold Partnerships;

AND WHEREAS on June 10, 2009, on hearing the submissions of Staff, a Panel of the Commission ordered that the First Temporary Order be extended until October 9, 2009 and that the hearing in this matter be adjourned to October 8, 2009, at 10:00 a.m.;

AND WHEREAS on October 8, 2009, on hearing the submissions of Staff, a Panel of the Commission ordered that the First Temporary Order be extended until March 11, 2010 and that the hearing in this matter be adjourned to March 10, 2010, at 10:00 a.m.;

AND WHEREAS on March 10, 2010, on hearing the submissions of Staff, a Panel of the Commission ordered that the First Temporary Order be extended until July 12, 2010 and that the hearing in this matter be adjourned to July 9, 2010, at 11:30 a.m.;

AND WHEREAS on April 7, 2010, the Commission issued a temporary cease trade order pursuant to subsections 127(1) and 127(5) of the Act ordering the following (the "Second Temporary Order"):

i) Christina Harper ("Harper"), Howard Rash ("Rash"), Michael Schaumer ("Schaumer"), Elliot Feder ("Feder"), Tsatskin, Oded Pasternak ("Pasternak"), Alan Silverstein ("Silverstein"), Herbert Groberman ("Groberman"), Allan Walker ("Walker"), Peter Robinson ("Robinson"), Vyacheslav Brikman ("Brikman"), Nikola Bajovski ("Bajovski"), Bruce Cohen ("Cohen") and Andrew Shiff ("Shiff") (collectively, the "Individual Respondents"), shall cease trading in all securities; and

ii) that any exemptions contained in Ontario securities law do not apply to the Individual Respondents.

AND WHEREAS, on April 7, 2010, the Commission ordered that the Second Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS on April 14, 2010, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Second Temporary Order, to be held on April 20, 2010 at 3:00 p.m;

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

AND WHEREAS on April 20, 2010, a hearing was held before the Commission and none of the Individual Respondents appeared before the Commission to oppose Staff's request for the extension of the Second Temporary Order;

AND WHEREAS on April 20, 2010, the Commission was satisfied that Staff had served or made reasonable attempts to serve each of the Individual Respondents with copies of the Second Temporary Order, the Notice of Hearing, and the Evidence Brief of Staff as evidenced by the Affidavit of Kathleen McMillan, sworn on April 20, 2010, and filed with the Commission;

AND WHEREAS on April 20, 2010, the Commission considered the evidence and submissions before it and the Commission was of the opinion that: in the absence of a continuing cease-trade order, the length of time required to conclude a hearing could be prejudicial to the public interest; and, it was in the public interest to extend the Second Temporary Order;

AND WHEREAS on April 20, 2010, pursuant to subsections 127(7) and (8) of the Act, the Second Temporary Order was extended to June 15, 2010 and the hearing in this matter was adjourned to June 14, 2010, at 10:00 a.m.;

AND WHEREAS on June 14, 2010, a hearing was held before the Commission and the Commission ordered that the Second Temporary Order be extended until September 1, 2010 and the hearing be adjourned to September 1, 2010, at 1:00 p.m.;

AND WHEREAS on July 9, 2010, on hearing the submissions of Staff, a Panel of the Commission ordered that the First Temporary Order be extended until September 1, 2010 and that the hearing in this matter be adjourned to September 1, 2010, at 1:00 p.m.;

AND WHEREAS on September 1, 2010, the Commission considered the evidence and submissions before it and the Commission was of the opinion that: in the absence of a continuing cease-trade order, the length of time required to conclude a hearing could be prejudicial to the public interest;

AND WHEREAS on September 1, 2010, pursuant to subsections 127(7) and 127(8) of the Act, the First Temporary Order and Second Temporary Order were extended to November 9, 2010 and the hearing in this matter was adjourned to November 8, 2010 at 10:00 a.m.;

AND WHEREAS on September 1, 2010, it was further ordered pursuant to subsections 127(1) and (2) of the Act that, notwithstanding the Second Temporary Order, Feder is permitted to trade securities in an account in his own name or in an account of his registered retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which he has the sole legal and beneficial ownership, provided that:

(i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) which is a reporting issuer; and

(ii) he carries out any permitted trading through a dealer registered with the Commission (which dealer must be given a copy of this order) and through accounts opened in his name only (the "Amended Second Temporary Order").

AND WHEREAS on November 8, 2010, Staff, Schaumer, Shiff, Silverstein, counsel for Rash, and counsel for Pasternak, Walker and Brikman, attended the hearing; and whereas Harper and Groberman had each advised Staff that they would not be attending the hearing; and whereas no person attended on behalf of the Corporate Respondents; and whereas Tsatskin, Bajovski and Cohen did not appear;

AND WHEREAS on November 8, 2010, counsel for Feder removed himself from the record due to a conflict of interest, and new counsel for Feder advised the Commission that he would need to satisfy himself that he was able to represent Feder, and would advise Staff accordingly as soon as possible;

AND WHEREAS on November 8, 2010, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest that the First Temporary Order and the Amended Second Temporary Order be extended to December 8, 2010 and the hearing in this matter be adjourned to December 7, 2010 at 2:30 p.m.;

AND WHEREAS on December 7, 2010, Staff, Schaumer, Silverstein, counsel for Pasternak, Walker and Brikman, and agent for new counsel for Feder attended the

hearing; and whereas no person appeared on behalf of the Corporate Respondents; and whereas Harper, Rash, Tsatskin, Groberman, Bajovski, Cohen and Shiff did not appear;

AND WHEREAS on December 7, 2010, the Commission was satisfied that all of the Respondents had been properly served with notice of the hearing;

AND WHEREAS on December 7, 2010, Staff requested the extension of the First Temporary Order against the Corporate Respondents and the Amended Second Temporary Order against the Individual Respondents, and Schaumer, Silverstein, and counsel for Pasternak, Walker and Brikman consented to the extension of the Amended Second Temporary Order;

AND WHEREAS on December 7, 2010, agent for new counsel for Feder informed the Commission that he did not have instructions as to whether Feder consented to an extension of the Amended Second Temporary Order;

AND WHEREAS on December 7, 2010, Staff informed the Commission that depending on settlement efforts, Staff might seek to bring an application to hold the next hearing in this matter in writing;

AND WHEREAS on December 7, 2010, the Commission directed that the First Temporary Order against the Corporate Respondents, and the Amended Second Temporary Order against the Individual Respondents, be consolidated into a single temporary order (the "Temporary Order");

AND WHEREAS on December 7, 2010, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest to make this order;

IT IS HEREBY ORDERED THAT:

1. Pursuant to subsection 127(7) and 127(8) of the Act, the Temporary Order is extended to March 3, 2011, without prejudice to Feder to bring a motion if he opposes the extension; and

2. The hearing in this matter is adjourned to February 16, 2011 at 2:00 p.m. or on such other date as provided by the Secretary's Office and agreed to by the parties.

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

"Mary G. Condon"

2.2.7 Global Energy Group, Ltd. et al. – s. 127

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

AND

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

ORDER
(Section 127 of the Securities Act)

WHEREAS on June 8, 2010, the Commission issued a Notice of Hearing pursuant to sections 37, 127 and 127.1 of the Act accompanied by a Statement of Allegations dated June 8, 2010, issued by Staff of the Commission ("Staff") with respect to Global Energy Group, Ltd. ("Global Energy"), New Gold Limited Partnerships, ("New Gold"), Christina Harper ("Harper"), Michael Schaumer ("Schaumer"), Elliot Feder ("Feder"), Vadim Tsatskin ("Tsatskin"), Oded Pasternak ("Pasternak"), Alan Silverstein ("Silverstein"), Herbert Groberman ("Groberman"), Allan Walker ("Walker"), Peter Robinson ("Robinson"), Vyacheslav Brikman ("Brikman"), Nikola Bajovski ("Bajovski"), Bruce Cohen ("Cohen") and Andrew Shiff ("Shiff") (collectively, the "Respondents");

AND WHEREAS the Notice of Hearing stated that a hearing would be held at the offices of the Commission on June 14, 2010;

AND WHEREAS on June 14, 2010, Staff confirmed that the Commission had received the affidavit of Kathleen McMillan sworn June 11, 2010 which indicated that service of the Notice of Hearing and Statement of Allegations was attempted on all Respondents personally, electronically, through their counsel or at their last known address;

AND WHEREAS on June 14, 2010, Staff, Schaumer, Silverstein, Brikman, Shiff, counsel for Feder and an agent for counsel for Robinson attended the hearing;

AND WHEREAS on June 14, 2010, Staff informed the Commission that they had received messages from Harper and Groberman that they would not be attending the hearing;

AND WHEREAS on June 14, 2010, Staff informed the Commission that they had received a message from Tsatskin stating that his lawyer would be unable to appear at the hearing;

AND WHEREAS on June 14, 2010, Staff informed the Commission they had received a message from counsel for Pasternak, Walker and Brikman that he would not be attending the hearing;

AND WHEREAS on June 14, 2010, upon hearing submissions from Staff and counsel for Feder, the hearing was adjourned to September 1, 2010;

AND WHEREAS on September 1, 2010, a hearing was held before the Commission, and Staff, Shiff, counsel for Feder, counsel for Robinson and counsel for Pasternak, Walker and Brikman attended the hearing;

AND WHEREAS on September 1, 2010, upon hearing the submissions of Staff, Shiff, counsel for Feder, counsel for Robinson and counsel for Pasternak, Walker and Brikman, it was ordered that the hearing be adjourned to November 8, 2010, at 10:00 a.m. for a pre-hearing conference;

AND WHEREAS on November 5, 2010, a settlement agreement between Staff and Robinson was approved by the Commission;

AND WHEREAS on November 8, 2010, Staff confirmed that the Commission had received the affidavit of Charlene Rochman sworn November 8, 2010, which indicated that service of Staff's Pre-Hearing Conference Submissions was attempted on all Respondents, except for Bajovski or Cohen, personally, electronically, through their counsel or at their last known address;

AND WHEREAS Staff had no current effective address for service for Bajovski or Cohen;

AND WHEREAS on November 8, 2010, Staff, Schaumer, Shiff, Silverstein, and counsel for Pasternak, Walker and Brikman, attended the hearing; **and whereas** Harper and Groberman had each advised Staff that they would not be attending the hearing;

AND WHEREAS on November 8, 2010, counsel for Feder removed himself from the record due to a conflict of interest, and new counsel for Feder advised the Commission that he would need to satisfy himself that he is able to represent Feder, and he would advise Staff accordingly as soon as possible;

AND WHEREAS on November 8, 2010, upon hearing the submissions of Staff, Schaumer, Shiff, Silverstein, and counsel for Pasternak, Walker and Brikman, it was ordered that the hearing be adjourned to December 7, 2010 at 2:30 p.m. to continue the pre-hearing conference.

AND WHEREAS on December 7, 2010, Staff confirmed that the Commission had received the affidavit of Charlene Rochman sworn December 7, 2010, which indicated that all parties, except for Bajovski or Cohen, had been served with notice of the pre-hearing conference personally, electronically, through their counsel or at their last known address;

AND WHEREAS Staff continue to have no current effective address for service for Bajovski and Cohen;

AND WHEREAS on December 7, 2010, Staff, Schaumer, Silverstein, counsel for Pasternak, Walker and Brikman, and an agent for new counsel for Feder attended the hearing;

AND WHEREAS on December 7, 2010, Staff informed the Commission that, depending on settlement efforts, Staff might seek to bring an application to hold the hearing on the merits in writing;

IT IS ORDERED, upon hearing submissions from Staff, Schaumer, Silverstein, counsel for Pasternak, Walker and Brikman, and the agent for counsel for Feder:

1) that the hearing is adjourned to February 16, 2011 at 2:00 p.m. or on such other date as provided by the Office of the Secretary and agreed to by the parties, to set dates for the hearing on the merits;

2) that Staff will renew efforts to obtain an effective address for service on Bajovski and Cohen providing notice of any future hearings or orders that may be made by the Commission to set dates for the hearing on the merits.

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

"Mary G. Condon"

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Borealis International Inc. et al.

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

AND

IN THE MATTER OF
BOREALIS INTERNATIONAL INC.,
SYNERGY GROUP (2000) INC.,
INTEGRATED BUSINESS CONCEPTS INC.,
CANAVISTA CORPORATE SERVICES INC.,
CANAVISTA FINANCIAL CENTER INC.,
SHANE SMITH, ANDREW LLOYD, PAUL LLOYD,
VINCE VILLANTI, LARRY HALIDAY, JEAN BREAU,
JOY STATHAM, DAVID PRENTICE, LEN ZIELKE,
JOHN STEPHAN, RAY MURPHY,
ALEXANDER POOLE, DEREK GRIGOR,
EARL SWITENKY, MICHELLE DICKERSON,
DEREK DUPONT, BARTOSZ EKIERT,
ROSS MACFARLANE, BRIAN NERDAHL,
HUGO PITTOORS AND LARRY TRAVIS

REASONS FOR DECISION

Hearing:	January 19-22, 25-27, and 29, 2010 February 1, 3-5, 2010 March 1 and 5, 2010		
Decision:	January 13, 2011		
Panel:	Patrick J. LeSage	–	Chair of the Panel
	Paulette L. Kennedy	–	Commissioner
Appearances:	Yvonne B. Chisholm Usman Sheikh	–	For Staff of the Commission
	Hugh DesBrisay	–	Counsel for Borealis International Inc., Integrated Business Concepts Inc., Vince Villanti, Larry Haliday
	Alistair Crawley Bruce O'Toole	–	Counsel for Synergy Group (2000) Inc., Canavista Corporate Services Inc., Shane Smith, Andrew Lloyd, David Prentice, Jean Breau
	Self-Represented:	–	Paul Lloyd
	Paul Lloyd appeared on behalf of:	–	Canavista Financial Centre Inc.

No one attended on behalf of these respondents:	–	Joy Statham Len Zielke John Stephen Ray Murphy Alexander Poole Derek Grigor Earl Switenky Michelle Dickerson Derek Dupont Bartosz Ekiert Ross Macfarlane Brian Nerdahl Hugo Pittoors Larry Travis

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6. Jean Breau
7. Joy Statham
8. David Prentice
9. Len Zielke
10. John Stephan
11. Ray Murphy
12. Derek Grigor
13. Earl Switenky
14. Michelle Dickerson
15. Derek Dupont
16. Alexander Poole
17. Bartosz Ekiert
18. Ross Macfarlane
19. Brian Nerdahl
20. Hugo Pittoors
21. Larry Travis

C. THE CORPORATE RESPONDENTS
1. Borealis International Inc.
2. Synergy Group (2000) Inc.
3. Integrated Business Concepts Inc.
4. Canavista Corporate Services Inc.
5. Canavista Financial Center Inc.

V. CONCLUSION

REASONS FOR DECISION

I. INTRODUCTION

[1] This was a hearing before the Ontario Securities Commission (the "Commission") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether the 26 respondents referred to below in Part II (the "Respondents") of these reasons for decision (the "Reasons for Decision") were involved in a scheme to sell securities for which no prospectus had been issued and no exemptions were available. Staff also allege, among other allegations, that this scheme was fraudulent and therefore some of the respondents violated not only the trading sections of the Act, but also the fraud section of the Act. The product in question is a Borealis Guaranteed Return Investment Certificate ("Borealis GRIC"). It offered an annual return of between 10% to 18%. All of the more than $16 million of the Borealis GRIC was sold on the basis of an 18% annual return, payable at 4.5% quarterly.

[2] This proceeding was commenced by a Statement of Allegations and Notice of Hearing dated November 15, 2007. An Amended Statement of Allegations and Amended Notice of Hearing were subsequently issued on May 22, 2008.

[3] The investors were advised that the monies raised through the Borealis GRIC would be placed in a trust company, Atlantic Trust Company Inc. ("Atlantic"). The monies so placed would permit Atlantic to provide loans to small and medium-sized businesses, in particular businesses with a connection to Vince Villanti ("Villanti") and/or Integrated Business Concepts Inc. ("IBC").

[4] Villanti owned and operated IBC, through which he has provided coaching, mentoring and other services to small and medium-sized business since IBC was incorporated in 1994. Including his work with IBC, Villanti has been involved in providing these services to small and medium-sized businesses for some 30 years. In 2003, in his capacity of business coach and mentor, Villanti met Shane Smith ("Smith"), who was involved in mutual fund and life insurance sales and operated Synergy Group (2000) Inc. ("Synergy"). Villanti's advice to Smith and other small/medium-sized business owners included preparation of business plans, budgets, marketing plans, hiring practices, structuring accounting systems, business growth, etc.

[5] Villanti, through IBC, would on occasion provide bridge financing to clients. He believed that if more funds were available for these clients, his approximately 600 small/medium-sized business client revenue base could be significantly expanded.

[6] Over a period of time, Villanti discussed his concern about inadequate financing for his clients with Smith and with others. Villanti and Smith postulated that if they could create, or purchase a bank or trust company to raise money from investors, those monies could then be loaned out to the small businesses who were, or hopefully would become, clients of IBC. This would have the potential to create a significant expansion of Villanti/IBC's business and provide Smith, who had a network of clients interested in high-yield fixed-return investments in a bank or bank-like product, with substantial commissions from the sale of such product.

[7] In late 2006, Villanti through a Montréal lawyer, Robert Dostie ("Dostie"), became aware of the possibility of purchasing a dormant trust company, Atlantic. Atlantic was incorporated in Prince Edward Island under provincial legislation. The dormant company was owned by investors in Montréal whose spokesperson was Yan Mecca ("Mecca"). On learning of this, Villanti revived his earlier discussions with Smith and it was decided that Villanti would pursue the purchase of Atlantic.

[8] Borealis International Inc. ("Borealis") was incorporated on February 16, 2007, with Villanti as President and sole director. Borealis was to be the vehicle through which a purchase of Atlantic would be accomplished.

[9] Negotiations, through Dostie, for the purchase of Atlantic continued from late 2006 into early 2007. The purchase negotiations for Atlantic were protracted, in part, because Villanti was having trouble ascertaining exactly what Atlantic could and could not legally do. Suffice it to say that Atlantic could not satisfy the requirements that Villanti was seeking, which included: (a) a broad capacity to receive deposits and (b) the capacity to make loans to small and medium-sized businesses. On February 6, 2007, Ravi Chaudhary ("Chaudhary"), an employee of IBC, emailed Dostie to advise they would no longer deal with Dostie regarding the purchase of Atlantic, although they were prepared to deal directly with the owners of Atlantic. Further negotiations continued on this basis until May 2007, without any agreement and with little headway being made. This was partly because it was, or at very least ought to have been, clear to Villanti early on, that Atlantic was not, and could not be, in a position, without a major overhaul and probably a new Charter, to accept deposits and to make loans.

[10] Notwithstanding that even by early June, 2007, no constructive or concrete progress had been made to purchase or form a firm alliance with Atlantic, Smith and David Prentice ("Prentice") who together operated Synergy, began in March 2007 to market the Borealis GRIC product. The formal launch for the product occurred in Hull, Québec, in late March 2007. At that meeting, Smith and Prentice described via PowerPoint the features of the Borealis GRIC. The features described included:

1. Borealis had purchased a Bank … Atlantic;

2. Investors' funds would sit in a trust account at Atlantic which could be leveraged to provide loans to struggling small to medium-sized businesses to keep them afloat;

3. The investment was subject to no risk;

4. Atlantic was the first level of guarantee;

5. As a federally-regulated trust company Atlantic would have $100,000 Canada Deposit Insurance Corporation ("CDIC") coverage for each investor;

6. Atlantic mitigated risk by placing a performance bond;

7. The balance of any investment would be insured through SwissRe, Credit Suisse and/or Lloyds of London;

8. Synergy had arranged a proprietary strategic alliance with Borealis/Atlantic/Laiki Group; and

9. Regulation of Borealis would come under The Financial Consumer Agency of Canada ("FCAC").

[11] None of those above statements, except that Synergy had arranged an alliance with Borealis, were true at the time presented (March 2007). Furthermore, none came to be true between then (March 2007) and December 2007 when the Commission froze the Borealis bank account at the Royal Bank of Canada ("RBC") in which most of the more than $16 million raised from investors had been deposited.

[12] It is very important to note that the presenters at the Hull, March 2007 meeting, Smith and Prentice, told the audience that the arrangements had not yet been completed, however, in the words of one investor, attendees were informed that "the lawyers were in the final process of dotting all the Is and crossing all the Ts, but by the time [the investors] got home, it should be all *fait accompli*". (Hearing Transcript, January 21, 2010 at page 149)

[13] The Borealis GRIC was principally promoted and sold by Smith and Prentice through Synergy and its network of agents across Canada. The Borealis/Synergy promotional documents for this GRIC were very descriptive and stressed throughout the 'guaranteed' component of the product. In particular, they stressed the levels of insurance which included reinsurance. For example, the Borealis website described in part the investment as follows:

> **What protection is in place for clients?**
>
> There are four layers of protection in place:
>
> 1) Bank guarantee of repayment (Principal and Interest)
>
> 2) CDIC (Canadian Deposit Insurance Corporation – up to $100,000 principal and interest per account. Only applies to Canadian dollar deposits)
>
> 3) Performance Bond ("Sinking Fund") – collateral is put up from the parties to the contract, to pay interest as it becomes due
>
> 4) Re-Insurance Company (insures 100% of both principal and interest in the event of a failure to pay)
>
> (Borealis website, www.borealisglobal.com, April 17, 2007)

[14] Investors consistently testified that they were each promised their investment was guaranteed, with multiple levels of protection that included CDIC protection and reinsurance coverage.

[15] The sales documents included a Participation Agreement, a Transfer Agent Agreement, and a Business Referral Agreement. These documents were the creation of Synergy, Smith and Prentice. These documents, were, even if intended to be accurate when they were drafted, misleading and false in important characteristics. For example, Item 8 in the Participation Agreement states:

> **Insurance,** A copy of the insuring policy which guarantees ROI and principal, issued to client. (Policy is not individual).

[16] The only insurance coverage for the more than $16 million deposited in the Borealis account with RBC was $100,000 CDIC coverage. The beneficiary for that insurance was not the investors, but rather Borealis, the account holder.

[17] In addition, the Transfer Agent Agreement at Item 1 makes reference to Atlantic as the final recipient of the investors' funds.

[18] As earlier indicated, Atlantic never received any of the investments, nor was it ever in a position to receive any of the investments. Further, there was never any real connection between Borealis, IBC, Synergy and any of Atlantic, SwissRe, Credit Suisse or Lloyds of London, as had been purported.

[19] Notwithstanding the misrepresentations in the sales pitch, in the material provided both orally and by way of a Borealis and/or Synergy website, and the PowerPoint presentations at meetings held in the provinces of Ontario, Québec and Alberta, none of the investors lost any money. The investors were repaid their capital and in addition were paid the promised and generous (18%) interest rate for their investments. This satisfactory result occurred not because any of the money was utilized as advertised (i.e., to leverage or create loans for small and medium-sized businesses) but solely because Villanti, the President of Borealis, and his company, IBC, paid, out of their own pockets, an amount probably in excess of $2 million to honour the payment terms of the Borealis GRIC.

[20] Mr. O'Toole, counsel for Synergy, Canavista Corporate Services Inc., Smith, Prentice, Andrew Lloyd and Jean Breau ("Breau"), set out the issues as follows:

1. Were any of the Borealis GRIC or the arrangements with investors 'securities'?

2. If, and only if, any of them was a 'security,' could the Respondents even have possibly violated the trading provisions or fraud provisions of the Act?

3. Is this an appropriate case for the panel to consider making an order pursuant to its "public interest" jurisdiction?

[21] Mr. DesBrisay, counsel for Villanti, Larry Haliday ("Haliday"), IBC and Borealis, adopts the position of Mr. O'Toole and, in addition, submits that it must be remembered:

(a) That Villanti treated the investors' money as trust funds and kept them in a segregated account;

(b) That IBC never received any funds;

(c) That none of IBC, Villanti or Haliday were involved in sales or sales presentations; and

(d) That Villanti had been mislead by Dostie and Mecca as to the ease and the effect of purchasing Atlantic.

[22] That now brings us to review the participation of each of the Respondents to determine whether or not they breached any of the sections of the Act as alleged by staff of the OSC.

II. THE RESPONDENTS

A. The Corporate Respondents

[23] Borealis is an Ontario company which was incorporated on February 16, 2007. Borealis is not a reporting issuer and has never been registered with the Commission.

[24] Synergy is an Ontario company which was incorporated on June 15, 2004. Synergy is not a reporting issuer and has never been registered with the Commission.

[25] IBC is an Ontario company which was incorporated on June 14, 1994. IBC is not a reporting issuer and has never been registered with the Commission.

[26] Borealis, Synergy and IBC share the same registered address: 235 Yorkland Boulevard, Suite 202, North York, Ontario.

[27] Canavista Corporate Services Inc. ("Canavista Corporate") is an Ontario company which was incorporated on September 1, 2005. Canavista Corporate is not a reporting issuer and has never been registered with the Commission.

[28] Canavista Financial Center Inc. ("Canavista Financial") is an Ontario company which was incorporated on July 31, 1996. Canavista Financial is not a reporting issuer and has never been registered with the Commission.

[29] Canavista Corporate and Canavista Financial share the same registered address: 311 George Street North, Peterborough, Ontario. Borealis and Synergy also have offices at this address.

B. The Individual Respondents

[30] Smith is a resident of Peterborough, Ontario. Smith is not currently registered with the Commission.

[31] Smith was also a respondent in a Commission proceeding (the "Sabourin Proceeding"). At the time of the hearing, Smith was subject to a cease trade order which was issued by the Commission on December 7, 2006 and extended by further orders of the Commission on December 20, 2006, June 14, 2007 and April 7, 2008 (the "Sabourin Cease Trade Order."). The Commission has since released its Reasons and Decision on Sanctions and Costs in the Sabourin Proceeding, in which Smith was ordered to cease trading in securities permanently.

[32] Smith held himself out to be President of Synergy and on occasion held himself out as President of Borealis.

[33] Andrew Lloyd is a resident of Peterborough, Ontario. He is not currently registered with the Commission.

[34] Andrew Lloyd is a respondent in the Sabourin Proceeding and was subject to the Sabourin Cease Trade Order. In the Commission's Reasons and Decision on Sanctions and Costs in the Sabourin Proceeding, Smith was ordered to cease trading in securities permanently.

[35] Andrew Lloyd acts as Synergy's Regional Manager (GTA and Central Ontario) and as the Regional Manager and Regional Contact for Borealis in Central and North Ontario. Andrew Lloyd is also a director of Canavista Corporate and the Vice-President and a director of Canavista Financial.

[36] Paul Lloyd is Andrew Lloyd's father and is a resident of Peterborough, Ontario. Paul Lloyd is a director of Canavista Corporate and the President and a director of Canavista Financial. Paul Lloyd is not currently registered with the Commission.

[37] Villanti is a resident of Whitby, Ontario. Villanti is the President and director of Borealis, and the Executive Director and a director of IBC. Villanti has never been registered with the Commission.

[38] Haliday is a resident of Richmond Hill, Ontario. Haliday is a director of IBC. Haliday has never been registered with the Commission.

[39] Breau is a resident of Whitby, Ontario. During part of the period relevant to these allegations, Breau was the 'nominal' President and a director of Synergy. Breau has never been registered with the Commission.

[40] Joy Statham ("Statham") is a resident of Ottawa, Ontario. Statham is not currently registered with the Commission.

[41] Prentice is a resident of Mississauga, Ontario. Prentice holds himself out as the Executive Vice-President of Synergy. Prentice has never been registered with the Commission.

[42] Len Zielke ("Zielke") is a resident of Richmond, British Columbia. Zielke holds himself out as Synergy's Regional Manager and Regional Contact for British Columbia, Alberta and Saskatchewan. Zielke has never been registered with the Commission.

[43] John Stephan ("Stephan") is a resident of London, Ontario. Stephan holds himself out as Synergy's Regional Manager for Western and South-Western Ontario and the Borealis Regional Contact for Western Ontario. Stephan is not currently registered with the Commission.

[44] Ray Murphy ("Murphy") is a resident of Kingston, Ontario. Murphy holds himself out as Synergy's Regional Manager for Eastern Ontario, Quebec and the Maritimes and as Borealis' Regional Contact for Quebec, Maritimes, Manitoba and Eastern Ontario. Murphy is not currently registered with the Commission.

[45] Alexander Poole ("Poole") is a resident of Waterloo, Ontario and is currently registered with the Commission as a salesperson in the categories of mutual fund dealer and limited market dealer.

[46] Derek Grigor ("Grigor") is a resident of Okotoks, Alberta. Grigor has never been registered with the Commission.

[47] Earl Switenky ("Switenky") is a resident of Kelowna, British Columbia. Switenky has never been registered with the Commission.

[48] Michelle Dickerson ("Dickerson") is a resident of Napanee, Ontario. Dickerson has never been registered with the Commission.

[49] Derek Dupont ("Dupont") is a resident of Nepean, Ontario. Dupont is not currently registered with the Commission.

[50] Bartosz Ekiert ("Ekiert") is a resident of Kitchener, Ontario. Ekiert has never been registered with the Commission.

[51] Ross Macfarlane ("Macfarlane") is a resident of Powell River, British Columbia. Macfarlane has never been registered with the Commission.

[52] Brian Nerdahl ("Nerdahl") is a resident of Elmira, Ontario. Nerdahl is not currently registered with the Commission.

[53] Hugo Pittoors ("Pittoors") is a resident of Calgary, Alberta. Pittoors has never been registered with the Commission.

[54] Larry Travis ("Travis") is a resident of Chatham, Ontario. Travis has never been registered with the Commission.

III. STAFF'S ALLEGATIONS

[55] Staff make the following allegations against the Respondents:

(i) The activities of the Respondents constitute trading in securities without registration in respect of which no exemption was available, contrary to section 25 of the Act.

(ii) The activities of the Respondents constitute distributions of securities for which no preliminary prospectus and prospectus were issued nor receipted by the Director, contrary to section 53 of the Act.

(iii) Each of the individuals who are directors and officers of the corporate respondents, including *de facto* directors and officers of the corporate respondents, have authorized, permitted or acquiesced in the corporate respondents' non-compliance with Ontario securities law, and accordingly, failed to comply with Ontario securities law contrary to section 129.2 of the Act.

(iv) Each of the Respondents has directly or indirectly engaged or participated in an act, practice or course of conduct relating to securities which he, she or it knows, or reasonably ought to know, has perpetrated a fraud on investors in the Borealis GRIC, contrary to section 126.1 of the Act.

(v) Smith and Andrew Lloyd breached the Sabourin Cease Trade Order.

(vi) Smith, Andrew Lloyd and Poole traded in securities in breach of the temporary cease trade order issued in these proceedings on November 15, 2007 and continued by orders of the Commission on November 28, 2007 and January 11, 2008 (the "Borealis Cease Trade Order").

(vii) The Respondents' conduct is contrary to the public interest and harmful to the integrity of the Ontario capital markets.

IV. ANALYSIS

A. The Applicable Sections of the Act

[56] The relevant sections of the Act are set out below.

[57] Subsection 25(1)(a) of the Act prohibits trading in securities without being registered:

> **25. (1) Registration for trading** – No person or company shall,
>
> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer …

[58] Subsection 53(1) of the Act sets out the prospectus requirement for trades that comprise a distribution:

> **53. (1) Prospectus required** – No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

[59] A significant issue raised by counsel was whether the Borealis GRIC constitutes a security within its definition under subsection 1(1) of the Act.

[60] Staff submit that the product was an "investment contract" and as such a security as defined in subsection 1(1)(n) of the Act. They set out what they say is the test the Supreme Court of Canada created in *Pacific Coast Coin Exchange of Canada Ltd. v. Ontario (Securities Commission)* [1977] S.C.J. No. 117 (S.C.C.), at pages 9-10 (Q.L.) where an investment contract is described as one involving:

> (a) the advancement of money by an investor;
>
> (b) with an intention or expectation of profit;
>
> (c) in a common enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those who solicit the capital or third parties; and
>
> (d) where the efforts made by those other than the investors are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.

[61] All counsel agree that this hearing is premised on the law that the onus is on Staff to prove their allegations on the balance of probabilities with clear and convincing evidence. Mr. O'Toole and Mr. DesBrisay submit that the Borealis investments all went to, and were advertised as going to, a Bank or Trust Company. They were deposited at RBC, a Bank under the *Bank Act* (Canada). Later investments were deposited at the Croatian Credit Union ("CCU") governed by the *Provincial Loan and Trusts Corporations Act* and/or the *Credit Unions and Caisses Populaires Act, 1994* which would put the investments beyond the enforcement purview of the Ontario Securities Commission; see subsection (e)(ii) of the definition of "security" within subsection 1(1) of the Act.

[62] The transactions with the CCU which for the most part occurred after the Commission froze the RBC Borealis account, are significantly different in both substance and structure. In those transactions the investors had a direct connection with CCU as a financial institution. Because of our decision regarding the transactions already relating to all of the other transactions, we have determined it unnecessary to examine those Borealis/CCU transactions. Our decision therefore will not deal with investments made via the CCU. Similarly, we do not consider whether transactions with the CCU constituted breaches of the Borealis Cease Trade Order by Smith, Andrew Lloyd or Poole.

[63] We find that none of the more than $16 million that went to RBC were contracts with Atlantic nor was the $16 million investment contracts between the investors and RBC, or any other entity, that could exclude them from the definition of "security"; see subsection (e)(ii) of the definition of "security" within subsection 1(1) of the Act.

[64] These were not investment contracts with Atlantic, nor were they investment contracts with RBC. They were, each and every one, a contract between Borealis and the investor. The investors were placing their money with Borealis on the understanding that Borealis would place the investments with Atlantic or failing that, another Trust company or Bank, to generate loans to small and medium-sized businesses and for which the investor would receive a very high interest rate return for his/her participation in this "Alternative Income Strategies Program." This was not a contract between RBC and the investor, nor between Atlantic and the investor, nor between any entity governed by the *Bank Act* (Canada), the *Loan and Trust Corporations Act*, or the *Credit Unions and Caisses Populaires Act, 1994*. We have no hesitation in concluding that the Borealis GRIC was an investment contract and a "security" as defined in subsection 1(1)(n) of the Act.

[65] Fraud involving securities is found at section 126.1(b) of the Act, which states:

> **126.1 Fraud and market manipulation** – A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,
>
> …
>
> (b) perpetrates a fraud on any person or company.

[66] In recent decisions, the Commission has adopted the British Columbia Court of Appeal's interpretation of the substantially identical fraud provision in the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418, as amended in *Anderson v.*

British Columbia (Securities Commission), 2004 BCCA 7, leave to appeal denied by the Supreme Court ([2004] S.C.C.A. No. 81) (see *Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 and *Re Global Partners Capital* (2010), 33 O.S.C.B. 7783).

[67] The legal test for criminal fraud is set out in *R. v. Théroux*, [1993] 2 S.C.R. 5 ("***Théroux***"). In *Théroux*, the elements of fraud are summarized at paragraph 27 as:

> … the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
>
> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
>
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

[68] Section 129.2 provides that a director or officer is deemed to be liable for a breach of securities law by the issuer where the director or officer authorized, permitted or acquiesced in the issuer's non-compliance with the Act. Section 129.2 of the Act states:

> **129.2 Directors and officers** – For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

[69] Directors and officers are defined in the Act under subsection 1(1) as follows:

> **"director"** means a director of a company or an individual performing a similar function or occupying a similar position for any person;
>
> …
>
> **"officer"**, with respect to an issuer or a registrant, means
>
> (a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager,
>
> (b) every individual who is designated as an officer under a by-law or similar authority of the registrant or issuer, and
>
> (c) every individual who performs functions similar to those normally performed by an individual referred to in clause (a) or (b); …

[70] Individuals who are not directors or officers of a corporation, but are de facto directors or officers, performing functions similar to the functions of officers or directors as contemplated in the definitions found in subsection 1(1), can nonetheless violate section 129.2 of the Act if they permit, authorize or acquiesce in the corporation's breaches of Ontario securities law.

B. The Individual Respondents

[71] Not all the respondents were represented or appeared at the hearing. However, we relied on subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended which provides that a tribunal may proceed in the absence of a party when that party has been given adequate notice:

> Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

[72] We are satisfied based on the evidence provided that the Respondents received adequate notice of these proceedings.

1. Shane Smith

[73] Smith has had probably greater involvement in the Borealis GRIC program than any of the other individual respondents. Smith was a catalyst, along with Villanti, in the creation of the Borealis GRIC program. He, as President and *de facto* operating mind of Synergy, and Prentice, were the marketing and sales organizers for this product. Smith and Villanti had known one another since 2003, when Smith, who was involved in mutual funds and life insurance sales, became a client of Villanti's company, IBC, which mentors, coaches and advises small and medium-sized businesses.

[74] Smith and Prentice, both directly and through Synergy and its representatives across the country, became the principal, if not sole, marketers of the Borealis product. Smith received over $1 million for his participation in the sale of the Borealis GRIC. As indicated earlier, Smith and Prentice began the sales pitch by way of websites and meetings in late March 2007. They continued their marketing and sales of the Borealis product until the Commission froze the Borealis RBC account in December 2007. (They continued even after the Commission froze the RBC account by engaging in sales through CCU, which as earlier indicated we will not consider in these reasons.)

[75] In December 2006, Smith became subject to the "Sabourin Cease Trade Order", referred to above at paragraph 36, relating to another product and remained subject to that order throughout the period when he was organizing, marketing and overseeing the sale of Borealis.

[76] Further, we accept that Smith was provided, either directly or indirectly, the information contained in a May 4, 2007 letter from CDIC sent by courier and regular mail to Atlantic, as well as to Borealis, "Borealis Global", Synergy, and "the Synergy Group", at their addresses in Toronto, Peterborough and Richmond, British Columbia. That letter had as its re line: "**RE: UNAUTHORIZED REFERENCES TO CDIC**." The letter stated in part:

> During the past few weeks the Corporation has received a number of inquiries from the public concerning whether or not [Atlantic], The Synergy Group or similarly named entities are member institutions of CDIC. We are writing to all of you because the inquiries and our review of the websites of Borealis International and Borealis Global … point to a possible alliance among [Atlantic] and one or all of the Borealis and Synergy Group companies.

The letter went on to explain what CIDC understood to be representations made by Borealis and Synergy regarding the Borealis GRIC and its connection to CDIC. The letter continued:

> **The representations … are inaccurate, since none of the Atlantic Trust, Borealis, The Synergy Group or Synergy Group (2000) Inc. are member institutions of CDIC and money held by Atlantic Trust, Borealis, The Synergy Group or Synergy Group (2000) Inc. is not insured by CDIC.** [emphasis in original]

That letter required the recipients to cease and desist making any use of the CDIC name or trade name.

[77] It is to be noted that on May 4, 2007 a Consumer Alert was issued by the Financial Consumer Agency of Canada ("FCAC") which said in part:

> **COMMISSIONER'S ADVISORY**
> **FCAC: Beware of "investment opportunities" that sound too good to be true**
>
> … (FCAC) is advising all Canadians to use extreme caution with regard to Internet and phone investment schemes that claim to offer very high "guaranteed" returns on investment …

[78] Smith and Synergy were also sent an early May 2007 Warning Notice from the Office of the Superintendent of Financial Institutions of Canada ("OSFI") which stated in part as follows:

> Borealis International is soliciting deposits which it claims are "guaranteed by a Canadian Trust, to grow 10% – 18% Per Year". Material previously posted to the above web site claimed that such deposits were "insured by one of the world's 3 largest re-insurance companies. [CDIC] only protects the first $100,000 Cda$ in banking products. We protect you beyond that."

The Warning Notice continued on in part as follows:

> Members of the public should note the following facts:
>
> …
>
> 2. Atlantic Trust is not authorized to accept deposits and is not a member of the Canada Deposit Insurance Corporation.
>
> 3. OSFI has been advised by Atlantic Trust that there is no arrangement between Borealis International (or any related entity) and Atlantic Trust as described in the Borealis International material on the above web sites.

[79] On May 16, 2007, the Federal Deposit Insurance Corporation ("FDIC") issued a special alert. In essence, this alert replicated the CDIC warning notice earlier referred to and again stated in part as follows:

> The Borealis Web site also indicated that deposit taking was offered through "Atlantic Trust Company." Other names associated with Borealis International are "The Laiki Group" and "The Synergy Group."
>
> Borealis International is not insured by the Canada Deposit Insurance Corporation. Any proposed transactions involving this entity or persons purported to represent that entity should be viewed with extreme caution.

[80] In June 2007, SwissRe advised Borealis, Synergy and others, including Smith that they were not providing insurance to support the Borealis GRIC and they had no connection or no involvement with Borealis.

[81] Also in June 2007, the Alberta Securities Commission issued a cease trade order against Borealis, Synergy, Smith, Prentice, and others.

[82] We are satisfied that most if not all of those notices and orders would have come to the attention of Synergy, Smith and Prentice. Notwithstanding all of those warnings, orders, cease and desist directions, Smith continued to market the Borealis GRIC to investors on a very large scale and without changing the contractual documents that investors utilized to purchase that product. In other words, the documents continued to misrepresent the form of insurance, reinsurance and general 'security.'

[83] It is no defence for Smith or others to say or to infer that the invested monies were safe, because they were at least substantially invested with RBC, and that at the end of the day no investor lost money and they were paid the promised interest rate. The marketing of the Borealis GRIC was fraudulent, it was deceitful. The investors were both advised and led to believe by the written and spoken comments of Smith/Synergy that the money would be deposited with Atlantic, that the money would be used for the purpose of leveraging loans to small and medium-sized businesses, that the principal and interest (18% annually) was secure because each of the investors' monies was both insured by a Bank or Trust Company, CDIC or equivilant, and additional insurance would cover any excess not covered by CDIC or similar institutional insurance. All of that was false.

[84] An example of the approach Smith and Synergy had taken throughout is found in a letter sent to the Borealis GRIC investors on December 20, 2007. This letter was sent after all the aforementioned warnings, cease and desist directions, and after the Commission had frozen Borealis's RBC bank account. The letter written on Synergy letterhead and signed by Smith stated in part as follows:

> December 20, 2007.
>
> Dear Borealis Client,
>
> As you are aware, The Securities Commission (OSC, ASC) has been issuing warnings to the public regarding our program which was still in development throughout 2007. While we were working to launch a fully compliant product this year, we were unable to reach our goals as expected due to the intervention of the regulatory bodies within Canada.
>
> … As you know, your capital has been safely on deposit with the Royal Bank of Canada in Toronto, so that we could maintain our fiduciary responsibility and safeguard your capital until our structure was complete and compliant. … In fact, we have taken extreme steps to not only protect your capital within a chartered Bank, but to also insure your money above the CDIC threshold of $100,000.

…

Respectfully,

Shane D. Smith B.Sc.
President
The Synergy Group

[85] The reality is that the investors' money in the RBC account (approximately $16 million) was covered by insurance to a total of $100,000 only, not $100,000 per investor as inferred in Smith's December 20, 2007 letter and as clearly inferred in all of the earlier documentation, including the investment agreements. Smith repeats the fallacy that the investors were also protected beyond the $100,000 when he states in this letter: "but to also insure your money above the CDIC threshold of $100,000". Smith qualified that statement somewhat by prefacing his comments about the reinsurance or additional insurance when he wrote: "In fact we have taken extreme steps to not only protect your capital within a chartered bank, but to also insure your money about the CDIC threshold of $100,000." If any extreme steps were taken to protect the investments as described by Smith, we have seen or heard no evidence of same. Further, the sentence is structured to, at very least, infer that excess insurance was in place. There was none. The clear inference of the letter that there was such excess insurance in place is clearly and knowingly false.

[86] Mr. O'Toole on behalf of Smith submits that Smith was honestly following through on a process, doing his best to ensure that the monies were kept secure and safe, that the information he had was consistent with the information he had disseminated and that when he knew a circumstance to be untrue, such as the money going to Atlantic, he was aware of the fact that Haliday (after the investors placed their money with Borealis) had advised all of the investors of that fact. He submits, therefore, that Smith neither knew, nor ought he to have known, that any information provided to the investors was deceitful or misleading.

[87] On the totality of the evidence we are satisfied that clear and convincing evidence has been adduced that establishes on the balance of probabilities that Smith actually knew or, at the very least, reasonably ought to have known, that notwithstanding the monies were kept secure by Villanti and the interest paid by Villanti and IBC, that the investors were unequivocally misled as to what their money was in fact being used for, and more importantly, what security for that investment was in place, or more specifically, that no excess insurance was in place.

[88] Only the depositor, Borealis, was insured. Investors were never insured. There was only $100,000 CDIC coverage for the $16 million investment; there was no reinsurance or any insurance in addition to the CDIC $100,000. The investors were neither told nor kept advised as to what exactly was happening. Smith continued to make sales throughout that whole period where the contractual documents represented a false state of affairs, both as to where the money was being placed; what, if anything, it was being used for; and most importantly, what security was in place, to protect the investors. His participation and involvement in the sales and marketing of this product clearly represents a deceit on the investors by direct and indirect fraudulent misrepresentations. Smith is therefore found to have transgressed subsection 126.1(b) of the Act.

[89] The evidence is overwhelming, and in some regards, uncontradicted that Smith was trading in a security without being registered as well as being the subject of the Sabourin Cease Trade Order issued by the Commission in 2006, and that no prospectus had been issued for the security. For all these reasons, we find that he is in violation of both sections 25(1) and 53(1) of the Act.

[90] It is clear that Smith represented himself to be President of both Synergy and Borealis to investors in the Borealis GRIC. Smith, through his actions as *de facto* President of Synergy and a *de facto* officer of Borealis, authorized, permitted and acquiesced in those corporations' failures to comply with sections 25, 53 and 126.1(b), thereby breaching section 129.2 of the Act.

2. Andrew Lloyd

[91] Andrew Lloyd was a director of Canavista Corporate and Vice-President and Director of Canavista Financial, both of which are located in Peterborough, Ontario (in the same office building as Synergy.) He was as well Regional Manager, GTA & Central Ontario for Synergy, which made Borealis GRIC Product Sales. In December 2006, the Commission issued the Sabourin Cease Trade Order against Andrew Lloyd, Smith and others in an unrelated matter. Andrew Lloyd was involved in sales of Borealis GRIC to four investors totalling in excess of $610,000. Although Andrew Lloyd in his affidavit stated he only referred these investors to Borealis, he signed two of the three documents effecting the purchase of the Borealis GRIC for one of these investors as 'agent' and he signed all three documents as 'witness'. Further, he continued advising and making representations about Borealis, up to and including the December 2007 Commission freeze order of the Borealis RBC account. Whilst it is true, as submitted by his counsel, that Andrew Lloyd did not take any further steps to directly facilitate purchase of Borealis GRIC after mid-May 2007, he did, as earlier mentioned, have contact with that same investor re his Borealis GRIC investments throughout 2007. Andrew Lloyd received commissions and overrides in excess of $42,000 which one would

reasonably conclude are reflective of his involvement in the sale of Borealis GRIC. He therefore 'traded' in securities contrary to subsection 25(1) and section 53(1) of the Act. These trades took place while Andrew Lloyd was subject to the Sabourin Cease Trade Order, and therefore breached the order, contrary to the public interest.

[92] The evidence of his specific involvement at specific times is insufficient for us to conclude that he violated the fraud section, 126.1(b) of the Act.

[93] As discussed below, when considering the allegations against Canavista Corporate and Canavista Financial, we concluded that these corporations did not contravene Ontario securities law. Accordingly, we do not find that Andrew Lloyd violated section 129.2 of the Act.

3. Paul Lloyd

[94] Paul Lloyd has a connection to the Canavista offices in Peterborough, Ontario, which are located in the same building as Synergy. The principal evidence relating to Paul Lloyd relates to phone exchanges with Colin McCann ("McCann"), an Assistant Manager in the Enforcement Branch of the Commission who used an alias in his contacts with Paul Lloyd. McCann contacted the Borealis website-provided telephone number and left a message and phone number for them to call back. The next day, April 18, 2007, Paul Lloyd called McCann. McCann did his best to transcribe the conversation. It is not verbatim and therefore not precise. McCann acknowledges that the questions that gave rise to the answers by Paul Lloyd as transcribed to the best of McCann's ability would have given a better context to those answers. Paul Lloyd made mention of 'accredited investor', and that an investment of (at least) $150,000 would help ensure the purchaser was accredited. From the conversation it is clear that Paul Lloyd was familiar with the Borealis GRIC and even proffered information about his personal knowledge of the Laiki Bank. However, Paul Lloyd cautioned McCann to do his own due diligence and the conversation is consistent with Paul Lloyd not being a sales representative but rather assisting others in his office, which included advising McCann that the product was not yet ready to go. Paul Lloyd could be seen to be a conduit and one could conclude that he was trading in the Borealis product. However, we also believe there is an equal probability that he was assisting others before the product was ready to be sold. The evidence does not satisfy us that the onus on staff to prove on balance that Paul Lloyd participated in trades of Borealis GRIC has been met.

[95] As discussed below, when considering the allegations against Canavista Corporate and Canavista Financial, we concluded that these corporations did not contravene Ontario securities law. Accordingly, we do not find that Paul Lloyd violated section 129.2 of the Act.

[96] In conclusion, all the allegations against Paul Lloyd are dismissed.

4. Vince Villanti

[97] Villanti for over 30 years has run a very successful business of mentoring and advising small to medium-sized business clients. He provides guidance to these small to medium-sized entrepreneurs by assisting and advising them in preparation of business plans, budgets, marketing, hiring employees, structuring accounting systems, etc.

[98] Since 1983 these services have been provided through Villanti's incorporated entity IBC. This has been both a successful and profitable undertaking for Villanti, who has upward of 600 business clients for whom he provides his services for a percentage of their gross revenue.

[99] An area in which Villanti has often felt frustrated is the inability of these small to medium-sized business owners to develop adequate credit lines and bridge financing, to more successfully operate their businesses. It was his desire to better serve his clientele that caused him to create Borealis and the Borealis GRIC as a means to raise and make funds available to assist his clients, both current and future.

[100] The Borealis GRIC concept had its origin in discussions between Villanti and Smith as earlier referenced. The Borealis bank/trust concept took on a potential reality when Villanti in late December 2006, by coincidence, met Dostie, a Montréal lawyer, who advised he had connections with a client that controlled a trust company (Atlantic) that was for sale.

[101] Without repeating much of the background described in the Smith and Andrew Lloyd portions of this decision, we accept that Villanti had a good faith intention to purchase a deposit-taking, lending-capable, bank or trust institution, to acquire deposits which could be loaned to small to medium-sized business. The scheme was not one created to bilk or take advantage of public investors. Rather, what Villanti had in mind was to offer investors an extremely generous rate of interest for their investments which would be utilized to make loans to both existing IBC clients and to entice a new and enlarged client base for IBC. The result would be to enhance Villanti's business income. What followed, however, were a series of events which saw millions of dollars invested in Borealis GRIC 'securities' sold by mostly unregistered agents connected to Synergy, for which no prospectus was filed, the proceeds of which were never utilized to assist the small to medium-sized business client as initially intended.

[102] Staff alleges, and we concur, that the investors were misled by false representations concerning the nature and the extent of the security of the investment vehicle, particularly as it related to the purported insurance/reinsurance for both principal and interest. As we have earlier referenced in paragraph 13, the promotional material for this Borealis GRIC was very specific and stressed throughout the 'guaranteed' component of the product. In particular, the materials stressed the levels of insurance, which included reinsurance as well as 'bank guarantee' and 'CDIC performance bond'. The three part investment contract each investor signed as part of the Borealis GRIC program states in part as follows: "**Insurance.** A copy of the insuring policy which generates ROI [rate of interest] and principal, issued to client. (Policy is not individual).", and "The Purchaser … appoints [Borealis] … to forward these funds to Atlantic Trust for enactment of the [GRIC] transaction."

[103] There is no doubt that from December 2006 until early June 2007, Villanti engaged in serious (if sometimes perhaps naïve) negotiations to purchase Atlantic. However, those discussions never resulted in a contract of purchase for a number of reasons but we believe principally because Villanti realized that Atlantic had no legal or regulatory authority to achieve the intended objects of the Borealis GRIC scheme. Discussions, but discussions only, took place with other bank/trust companies but no significant results flowed from those discussions. There is little or no evidence that any discussions, let alone substantial or meaningful discussions, occurred between Villanti, Borealis, IBC, and any secondary or reinsurer.

[104] Notwithstanding Villanti's testimony that he was not aware that the Borealis GRIC promoters, Synergy and its representatives, began a series of meetings in March 2007 to sell the Borealis GRIC, we conclude that he not only ought reasonably to have known but that he actually knew that millions of dollars of the Borealis GRIC were being sold over a period of almost nine months when the underlying premise of the product simply did not exist. He made the deposits of investor funds to the RBC account. The underlying premise of the product was: (a) it was a high interest yield; (b) it would be placed in Atlantic; (c) that it was insured by CDIC or comparable 'provincial trust company' insurance, widely recognized as up to $100,000; (d) that any amount over $100,000 was covered by supplementary insurance by a separate insurer or reinsurer; and (e) the monies were to be loaned to small to medium-sized businesses thus substantiating the rationale and legitimacy of the program.

[105] In reality, "(a)" was correct; "(b)" was false; "(c)" very misleading; "(d)" false and "(e)" correct as to intention but incorrect as to what was actually and knowingly occurring.

[106] Borealis received all of the investment contracts, totally some $16 million, all of the cheques, which they deposited, made all of the interest payments on the investments, and corresponded with each of the investors. We recognize that most of the clerical work was executed by Haliday. We also recognize that IBC and Borealis were small organizations. Although Villanti had health problems that required hospitalization during a part of the period between April and December 2007, we conclude he had knowledge of the content of the investment contracts and the terms of the investment contracts and did nothing to curtail Synergy and its agents from selling the product. IBC, through Haliday continued to accept and depoit investor funds. We also recognize that Haliday, on behalf of Borealis, sent the post-May 31, 2007 investors, after Borealis had received their money, a letter explaining the negotiations with Atlantic had not been finalized and they would be kept informed of the status of these negotiations. This was at best, an understatement and, more realistically, a substantially misleading statement. The reality was that the Atlantic negotiations had substantially floundered by that time and no further advice was provided to the investors of the complete collapse of those negotiations. There was also no mention made to the investors that they did not, as promised in their contracts, each have the benefit of the CDIC or provincial equivalent insurance and that there was no supplementary or reinsurance in place. Villanti knew the information provided the investors was incorrect yet failed to advise those same investors that the terms of the investment contract were substantially incorrect and false. Further, he failed to insure that the Borealis GRIC not be sold by Synergy and others with the false/misleading statements contained in the investment contract documents.

[107] We recognize that Villanti at substantial personal expense, and along with IBC and another company, made every investor whole, not only as to their capital investment, but also their lucrative high rate of interest. The question is, does that change the fundamental issue? Was the product sold under false premises and did Villanti know, or ought he reasonably to have known, those false premises, re security, insurance and reinsurance, were expressed to be facts upon which investors would obviously assign great weight before making these very substantial investments. 'Security' was not some 'irrelevant puffery' being touted by Borealis, Synergy and the sales agents, it was an important component of the investors' decision to purchase the GRIC. Neither Villanti, Haliday nor any of the Synergy sales team advised investors that their money was not being utilized to generate loans to small and medium-sized businesses. Neither were the investors advised that their investment was generating approximately 4% interest at the RBC whilst they were to receive 18% interest; a fact, which if known, would have caused any sensible investor to question the logic, never mind the security, of their investment.

[108] We conclude that 'security' of the investment was a material circumstance which the investor did, and should be entitled to, rely upon. The fact that, at the end of the day, they suffered no loss, is not and should not be determinative. The investors put their money at risk on the assurance that not only their capital, but also their interest was "guaranteed." It was not. It was not, notwithstanding that they received both the interest and the principal, as promised. That occurred only because of the 'good will' of Villanti and his company, IBC. It occurred not because of the contractual obligation, that the Borealis GRIC was secured, insured or reinsured. It occurred in spite of the fact that the GRIC was not invested as promised, to generate funds through loans to small and medium businesses. The contractual obligation entered into with the investors was based on a number of false premises. It was misleading. It was fraudulent. Borealis, Villanti and Haliday's 'after the fact' letter did not

change the fact that the investment contracts entered into, with the acquiescence of Villanti were false and misleading. For all these reasons, we, therefore, notwithstanding Villanti's original honourable intention, conclude that he violated subsection 126.1(b) of the Act. Further, we find that Villanti, by his participation, in creating, managing and marketing the product, violated both subsections 25(1) and 53(1) of the Act.

[109] As discussed below, we find that Villanti, through his actions described above and as President and director of Borealis and as President of IBC, permitted or acquiesced in Borealis's breaches of sections 25, 53 and 126.1 of the Act and IBC's breaches of sections 25 and 53 of the Act, and that he therefore breached section 129.2 of the Act.

5. Larry Haliday

[110] Haliday is an employee of Villanti and of IBC. He described himself as the administrator of Borealis and the "Borealis Fund" and was described as Chief Information Officer who coordinated all of IBC and Borealis office functions. Haliday was a director of IBC but became a director only because Villanti added his name when Villanti mistakenly believed that it was necessary to have a second director. We accept that he was not in an operating or governance sense a director of IBC. Haliday, as the Administrator and Office Manager of IBC and Borealis was intimately involved in the operation of Borealis. Cheques for Borealis GRIC Investments, whether or not they were delivered directly to Borealis did come into Haliday's possession when they were sent to Borealis from Synergy and its agents. Haliday received the investment documents along with the cheque, or payment in whatever form on behalf of Borealis and sent a letter of acknowledgement to the investor on behalf of Borealis.

[111] The early investors were simply advised of receipt of the payment and when their quarterly interest would be paid. After May 31, 2007, the acknowledgement letter from Haliday was substantially the same, except it added the following:

> Our initial documentation cited a "GRIC" or Guaranteed Return Investment Certificate to be issued to you.
>
> We are presently still in negotiations with Atlantic Trust and will advise you as the status changes. At present no certificates are being issued. We are honoring [sp] the stated Borealis rate of return.

The letter continued with a paragraph related to the processing of the payments.

[112] The catalyst for this amendment to the letter was no doubt the earlier referred to letters: from CDIC to Borealis and Synergy directing them to cease and desist 'unauthorized use' of reference to CDIC; the FCAC Consumer Alert about schemes that offer a very high 'guaranteed' return on investments; and the OFSI "Warning Notice" advising that Atlantic is not authorized to take deposits, nor is it a member of CDIC, and that Borealis has no arrangement with Atlantic. In addition, there was the May 16, 2007 FDIC Special Alert with the subject line: "Borealis International May Be Conducting Banking Operations in Canada or the United States Without Authorization" and stated that Borealis was not insured by CDIC.

[113] Meanwhile, the Borealis website, as of May 17, 2007 advised "One of our primary partners in P.E.I. coincidentally has the same name as a company in the U.S.A., which has caused problems." Further, on May 23, 2007, Dostie wrote a letter to Villanti, Chaudhary, Haliday and IBC ordering they cease making reference to Atlantic as an entity with whom Borealis has a business relationship. We can only conclude that Haliday's new 'form letter' as of May 31, 2007 was changed because he was aware of the official and unofficial, public and private, 'warnings' and 'alerts' about connecting Borealis with Atlantic.

[114] Had Haliday been more forthright, or some may say honest, he would not have included in his letter, which he continued to repeat until the Commission stepped-in in mid-November 2007: "We are presently still in negotiations with Atlantic …". Haliday's letter makes no mention of the fact that there was no reinsurance and that the only insurance was the $100,000 that would have been attached to the RBC GIC, through CDIC. That $100,000 was the only insurance to cover the $16 million invested with Borealis. His letter did not, as one might reasonably have expected, to advise the investors along the lines of:

> We have no relationship with Atlantic Trust, we have no reinsurance (with Lloyds, Swiss Re or anyone else) that we have no business relationship with the Laiki Group, that the money is not being used to leverage loans for small to medium-sized business.

[115] Haliday could also have sent back the Participation Agreement and the Transfer Agent Agreement containing amended and correct information along with the investors' cheque inviting them to resubmit their cheque along with the 'accurate' investment documents.

[116] Haliday may have been a passive 'trader' but he was an important participant in the sale of the security. When reviewing the evidence, we are satisfied that he violated both sections 25 and 53 of the Act.

[117] Did he violate section 126.1 of the Act? By providing incomplete information, misinformation and failing to provide accurate information, Haliday clearly misled the investors in Borealis by failing to advise:

(a) that there was no working relationship of any sort with Atlantic;

(b) that there was only $100,000 in total CDIC coverage;

(c) that there was no reinsurance or supplementary-insurance of the investors money above and beyond their proportional share of the $100,000;

(d) that the Laiki Bank had no connection to Borealis;

(e) that the money being invested in its current form could not be used to in any way assist in granting loans or leveraging loans to small and medium-sized business.

[118] This partial information, this misinformation, and the failure to correctly and accurately inform clearly constitutes deceit and material misrepresentation. Haliday, therefore, violated section 126.1 of the Act.

[119] As discussed above, when considering Haliday's actual role with IBC, we found that he was not for practical purposes a director of IBC. Accordingly, we do not consider whether Haliday violated section 129.2 of the Act with respect to IBC.

6. Jean Breau

[120] Breau was nominally the President and sole director of Synergy. He was a business colleague of Villanti. During the relevant period he was not listed as part of the management team of Synergy. The evidence does not establish he was involved in the marketing, sale or distribution of any Borealis product. Borealis made no payments to him.

[121] The evidence does not establish that he knew, ought to have known, or even acquiesced in the marketing, sale or distribution of Borealis product. His involvement appears to have been only at the early stages when Villanti and Borealis were attempting to acquire Atlantic. Those actions are not sufficient to satisfy us on balance that he violated any of the sections of the Act. All of the allegations against Breau are therefore dismissed.

7. Joy Statham

[122] Statham sold $550,000 of Borealis GRIC product for which she received commissions in excess of $36,000. By those actions, she traded in the security and therefore violated subsection 25(1) and subsection 53(1) of the Act.

[123] The evidence does not support a finding that Ms. Statham violated the fraud sections of the Act and those allegations against her will be dismissed.

8. David Prentice

[124] Prentice held himself out to be Executive Vice President of Synergy and described himself as VP of Borealis. He was a co-presenter at public meetings of investors, and received more than $250,000 from Borealis in commissions and overrides. Villanti described him as a 'concept originator', as Smith's most senior person and an Administrator who dealt with the paper side of things. He participated in sales seminars for the Borealis GRIC product in Ottawa/Hull and Calgary and was directly involved as the "expert" in the sale of Borealis GRIC to investor A.

[125] Prentice was kept informed of Villanti's discussions regarding the acquisition of Atlantic. When Prentice met with the investor A in the summer and fall of 2007, he advised that the investment was fully insured. It was not; Prentice had been advised by SwissRe that they had no connection to this Borealis GRIC. There was no reinsurance. He also knew, or ought reasonably to have known, that the monies on deposit at RBC were collectively insured for $100,000 by CDIC, not for the several million dollars that were then, and would later be, in the account.

[126] Because of Prentice's role at the centre of this Borealis GRIC project, he was aware of the numerous issues surrounding this product. At the very least, he was aware of problems and the subsequent break-off of negotiations re the purchase of and/or any working agreement with Atlantic. He knew of the OSFI warning – the CDIC warning – the SwissRe cease and desist – the Alberta Securities Commission cease trade order. Throughout this period, he continued as a senior manager of Synergy, organizing, handling the paperwork and assisting in overseeing the sales of the Borealis GRIC product. He failed to disclose to any of the investors the problems and the falsity of the information in the investment contracts. Whilst it is true that he, at least sometimes, advised investors of "problems" with Atlantic, and of "problems" with the reinsurance, he at the same time advised that suitable alternatives were or would be in place. There was no basis in fact for his assertions that suitable alternatives were or would be in place. Even when he did not explicitly express that position, it was clearly the inference he left with the investors. Although it is true that the monies were deposited at RBC, the client/investor had no control or direct claim on those funds. Further, the funds were not being used, nor were they capable of being used for the very purpose of this whole

scheme, i.e., loans to small businesses for which the investor stood to share in the profits. Prentice played a pivotal role in this whole project. for which Borealis paid him well in excess of $250,000.

[127] Prentice traded without registration, in securities, for which no prospectus had been issued. He therefore violated section 25 and section 53 of the Act. Prentice was *de facto* Executive Vice President of Synergy and *de facto* VP of Borealis, and authorized and acquiesced in those corporations' failure to comply with sections 25 and 53, thereby breaching section 129.2 of the Act.

[128] Prentice misled and deceived not only investor A, but also all the investors who read the misleading literature on the Synergy and Borealis websites and the investor contracts, because of the role he played, as described at paragraph 124. He therefore also violated subsection 126.1(b) by the aforementioned deceit, false and misleading statements to the persons who invested in the Borealis GRIC.

9. Len Zielke

[129] Zielke described himself as the Western Regional Manager for Borealis and Synergy. He sold $400,000 of Borealis GRIC to investors. He received commissions and override from Borealis in excess of $133,000.

[130] In January 2008, in response to Staff's allegations, Zielke advised Staff that at the Borealis GRIC seminars in which he participated, he clearly informed those in attendance that the Borealis product was "not currently for sale and this was an information session only". We accept that that was said. Nevertheless, the evidence clearly establishes that Zielke traded in the security without being registered and for which no exemption applies and no prospectus was issued and therefore contravened subsection 25(1) and section 53(1) of the Act.

[131] Although Zielke received a phone message from Anthony Mormino ("Mormino") of SwissRe in June 2007, it is unclear whether he was directly informed of SwissRe's position with respect to the Borealis GRIC. We are of the view that the evidence does not clearly establish that he violated subsection 126.1(b) of the Act.

10. John Stephan

[132] Stephan sold $850,000 of Borealis GRIC product to three investors. (On December 4, 2007, he also sold one investor a Borealis/CCU product.) Stephan had a long-term relationship with investor E. After many discussions, on August 2, 2007, investor E purchased a $150,000, two-year, 18% Borealis GRIC from Stephan. He did so on Stephan's advice, and his promise that there was virtually 'no risk', in part because both principal and interest were insured through multiple layers of insurance with the Laiki Group and SwissRe. Although investor E knew, because of his repeated questioning of Stephan, that Atlantic was not involved and the money would be deposited at RBC, he believed that there was ample (multiple layers) insurance (with Laiki Group and SwissRe) to cover risk. This was false and Stephan as a Regional Manager knew, or ought reasonably to have known, it was false. This is particularly so since Mormino contacted Andrew Lloyd, Zielke and Stephan, by telephone or e-mail to specifically address Borealis's claim that SwissRe insured the Borealis product, and subsequently sent a cease and desist letter to Borealis, Synergy, Smith and Murphy on June 21, 2007.

[133] It is worth noting that an email from Stephan on December 26, 2007 clearly acknowledges his engagement with the Borealis GRIC. This e-mail, although generally factual, like so many of his communications with investors, is incorrect in a number of specific ways. It stated, for example that: "their monies were merely deposited into an escrow account which was held in trust at the Royal Bank" (emphasis added). Both of those assertions were false.

[134] Stephan was clearly an integral and active participant in selling the Borealis GRIC and had Regional Management responsibility of others who sold the product in his region. For this he received over $127,000 from Borealis as commissions.

[135] His participation was such that he, a non-registrant, violated both subsections 25(1) and 53(1) of the Act by trading in a security for which no prospectus was issued.

[136] His conduct, his misleading and false statements, which he knew or at the very least ought reasonably to have known, were both misleading and false, were material concerning the Borealis investment, especially as it concerns the 'security' it provided. That conduct and those actions put him clearly in violation of section 126.1 of the Act.

11. Ray Murphy

[137] Murphy sold two Borealis GRICs, having a value of $400,000. As a Regional Representative he received commissions and overrides of just more than $71,000.

[138] One of the persons with whom he worked was Dickerson, who will be referred to later in this decision. The evidence relating to Murphy consists of his attending at investor B's home in December 2007 with Dickerson to sell Borealis GRIC; that he

had a telephone conversation with Mormino of SwissRe and was copied on a 'cease and desist' letter from Mormino dated June 21, 2007 which notified Borealis, Synergy, Smith and Murphy that SwissRe did not insure them and had no business connection with them; and that he attended a meeting at an Ottawa Senator's hockey game in January 2008 with Prentice, Smith, Dupont and investors. Murphy continued to receive commission and override payments for sales of the Borealis GRIC after receiving SwissRe's cease and desist letter, which also referred to the OSFI Warning Notice and the FDIC Special Alert.

[139] This evidence, when considered along with the fact he sold two Borealis GRICs and received compensation in excess of $70,000, clearly establishes that Murphy was a part of the Borealis/Synergy sales team that traded in securities without being registered to do so, which trades were not in any exemptive category and for which no prospectus was issued. He therefore breached subsections 25(1) and 53(1) of the Act.

[140] Murphy continued to receive override commission payments after being informed that the SwissRe security promised investors was not in place, including for one Borealis GRIC sale made on June 26, 2007, after his phone call with Mormino. Murphy's conduct as a Regional Manager for Synergy establishes that he violated section 126.1 of the Act.

12. Derek Grigor

[141] The evidence against Grigor, although suggestive of his being engaged in trading is not clear and convincing evidence that would justify a finding adverse to him.

13. Earl Switenky

[142] The evidence against Switenky, although highly suggestive of being engaged in trading, is not clear and convincing evidence that would justify a finding adverse to him.

14. Michelle Dickerson

[143] Dickerson sold over $1 million in Borealis GRIC securities, for which she received approximately $39,000 in commissions. Dickerson's contacts and communications with CDIC unequivocally informed her that the investments were not insured by CDIC. The same communications also disclosed that she was doing her best to inform herself of the true state of affairs, *vis à vis*, the product she was selling. These inquiries, however, do not relate to the fundamental question of whether she was selling a 'security' which may only be traded by a registrant.

[144] Although we believe her intentions were honest, she nevertheless did 'trade in securities' without registration and for which no prospectus was issued and thus violated subsections 25(1) and 53(1) of the Act.

[145] The evidence does not establish that she violated subsection 126.1(b) of the Act.

15. Derek Dupont

[146] Dupont sold $740,000 of the Borealis product to three investors and received just over $55,000 in commissions. In October 2007, investor C met with Dupont at Synergy offices regarding 'tax strategies.' Investor C inquired of other investments. Dupont advised investor C about the Borealis GRIC, which was insured both as to principal and interest. Dupont said money would be placed in Atlantic and loans would be leveraged. He said they were negotiating with SwissRe to cover the guarantee of principal and interest. Dupont also at the very least inferred that the Borealis investment would be part of a 'tax strategy'.

[147] On October 19, 2007, investor C, through Dupont, invested $425,000 in a Borealis GRIC. In late November, investor C received a letter dated November 14, 2007 from Haliday which indicated that Borealis was "presently still in negotiations with Atlantic Trust and will advise you as to the status changes. At present no certificates are being issued. We are honouring the stated Borealis rate of return." After receipt of that letter, investor C arranged a meeting in Toronto in early December with Dupont, Smith, himself and two other investors. At that meeting Smith advised that discussions with Atlantic floundered because they discovered Atlantic was not federally regulated. Smith advised that Prentice could not attend because he was occupied negotiating with another trust company or bank. Smith also showed investor C a deposit slip with RBC showing $425,000 deposit in investor C's name, "in trust".

[148] There is no evidence that such an account existed and the paper document trail causes us to conclude that one did not.

[149] On the same day as the December meeting with Smith, Dupont, and others, investor C was introduced to Villanti who they met in a restaurant following the above-mentioned meeting. Villanti was described to investor C as being the President of IBC. There was no mention of any connection between Villanti and Borealis.

[150] In January 2008, investor C attended a Senator's game in Ottawa where he was hosted by Dupont, Smith, Prentice and Ray Murphy in a private box. Prior to the game, Smith and Prentice made a presentation about Synergy and about Borealis.

[151] Subsequent to investor C recovering his initial investment from the Court-appointed Receiver, PriceWaterhouseCooper, he re-invested through Dupont with the CCU and still later through Dupont with IBC.

[152] It is clear beyond doubt that Dupont traded in the Borealis GRIC, a security where no exemption was available and for which no prospectus had issued. He therefore breached subsections 25(1) and 53(1) of the Act.

[153] We do not conclude the threshold for fraud has been established.

16. Alexander Poole

[154] Poole sold more than $1 million Borealis GRIC securities to foreign investors for which he received commissions in excess of $83,000. He also negotiated with investors for $600,000 to be deposited in the CCU.

[155] According to investor D, Poole, who advised him on tax strategies, in March or April 2007, introduced him to the Borealis GRIC product. Poole advised that the money invested in the GRIC would be placed in Atlantic, owned by the partners, and that the investment was insured, first by CDIC up to $100,000 and the excess was insured by SwissRe. Poole also advised that not everything was "in place", presumably including Atlantic and SwissRe, but they were working on it.

[156] On or about April 23, 2007, investor D invested $340,000 in a Borealis GRIC. Investor D believed that by this time, April 23, 2007, the bank, trust company and insurance uncertainty had been resolved by Borealis and the investment and interest were both guaranteed and insured. The extent, if any, that Poole contributed to this false belief is unclear.

[157] In June 2007 when investor D discovered the OSFI Warning Notice, he telephoned Poole. Poole advised him "not to worry, everything is safe." Poole continued by advising that "the problem was related to a confusion because of a similarly-named Atlantic Trust in the US." When the Commission froze the Borealis RBC account in early December 2007, Poole, when contacted by investor D, advised again that there was "nothing to worry about" and left investor D with the impression that Borealis was purchasing or had purchased a credit union.

[158] Poole at no time advised investor D that he and others connected to the Borealis investment were ordered to cease trading, nor that they were the subject of Staff's allegations as of mid-November 2007.

[159] On the proven facts, because Poole was a registrant, we do not find that he violated subsection 25(1) of the Act, but we find that he violated subsection 53(1) of the Act.

[160] Although many of his acts and declarations are evidence of fraud in the sense of misleading by commission and omission, we cannot be satisfied on balance of clear and convincing evidence that the fraud threshold has been reached to find Poole liable under section 126.1.

17. Bartosz Ekiert

[161] The evidence establishes that Ekiert, along with Poole, met with investors F and G at their home in mid to late November 2007 for the purpose of selling them Borealis GRIC securities. Poole and Ekiert attempted to persuade investors F and G to invest $1 million. When investor F, a farmer with significant assets but limited cash, and no investment knowledge, advised he did not have $1 million to invest, Poole suggested he get some friends together who would collectively invest $1 million. Investor F declined. Poole then advised he would permit them to invest $150,000 if it was invested by December 1, 2007. On November 29, 2010, Poole and Ekiert returned to the home of investors F and G, had the investment documents signed and received their cheque for $150,000. Because of the actions of the Commission, stepping in and seizing the Borealis bank account, their cheque was returned in mid-December and at the suggestion of Poole and Ekiert it was rewritten designating the payee as CCU. Poole did not disclose to investor F at any time that he was subject to a cease trade order in relation to Borealis as of November 15, 2007.

[162] It is important to note that Poole advised investor F that Atlantic played no part in the Borealis GRIC and that the insurance was not yet in place, but they were working on it. Further, they advised investor F that they were looking into buying a bank but had not yet done so.

[163] In our view, it is difficult to determine what specific role Ekiert played in investors F and G's transaction. Poole was unquestionably the leading sales person. Nevertheless, the records advise that Ekiert participated in the $150,000 investment transaction involving investors F and G and other transactions which totalled an additional $300,000 and for which he received total commissions slightly in excess of $5,400. That commission is only about 1% of the $450,000 investment in which Ekiert played some part. We are not satisfied that there is sufficient clear and convincing evidence to establish on balance of

probabilities that Ekiert did play a part that would result in a violation of either section 25 or section 53 of the Act. The allegations against Ekiert will therefore be dismissed.

18. Ross Macfarlane

[164] The documentary evidence establishes without a doubt that Macfarlane sold more than $3.5 million in Borealis GRIC securities to about a dozen and a half investors. He received commissions of more than $200,000 from those sales. He was not registered and no exemptions were available. There was no prospectus. He therefore violated subsections 25(1) and 53(1) of the Act.

19. Brian Nerdahl

[165] Nerdahl sold more than $2.2 million in Borealis GRIC securities to at least ten investors. For those efforts he received more than $136,000 in commissions.

[166] The witness investor H testified he dealt with Nerdhal in or about May/June 2007. Nerdhal advised investor H that negotiations were not yet finalized with Atlantic. In June 2007 investor H invested $216,000 and in November 2007 he invested a further $250,000. The money for the purchase came from placing a second mortgage on his parents' home and the proceeds from the sale of his own condo. Although Smith, who also spoke with investor H, was not straightforward with him, there is no clear evidence that Nerdhal deceived investor H. The evidence therefore does not support a finding of fraud but does establish that Nerdhal did trade in securities for which there had been no prospectus and he was not a registrant. He therefore violated subsections 25(1) and 53(1) of the Act.

20. Hugo Pittoors

[167] Pittoors sold over $2 million of Borealis securities and received commissions from Borealis of more than $135,000.

[168] Although some of the evidence in this regard is hearsay, it nevertheless leads, on the balance of probabilities, to the logical conclusion that Pittoors actively participated in the sale of the Borealis security whilst unregistered and for which no exemption was available and for which no prospectus was issued. He therefore violated subsections 25(1) and 53(1) of the Act.

[169] The evidence however does not support a finding of fraud against Pittoors.

21. Larry Travis

[170] Travis received commissions of almost $12,000 from Borealis for the sale of the Borealis GRIC.

[171] Investor A, who testified at the hearing, agreed in cross-examination that his memory of these events to which he testified is somewhat foggy. In any event, it appears not to be in question that investor A invested $300,000 in mid-October 2007. About five weeks later, because of serious doubts he had about the investment, he requested and received a full refund.

[172] There is no question that Travis was the salesperson who persuaded investor A and his wife to invest. Travis brought Prentice, who he described as 'the expert' to meet with investor A and to assist Travis in his sales pitch. There is little evidence, direct or circumstantial, that informs of Travis' involvement and the extent of his knowledge regarding what was, and perhaps more importantly, what was not occurring concerning the structuring of Borealis or the reliability of the information he was presenting to investor A.

[173] The only clear and unequivocal finding that can be determined from the evidence adduced is that Travis traded in the security, without registration, and for which no exemption was available. He therefore contravened subsection 25(1) of the Act. Further, the product in which he traded was not supported by a prospectus and therefore contravened subsection 53(1) of the Act.

[174] The evidence adduced does not support a finding of fraud against Travis.

C. The Corporate Respondents

1. Borealis International Inc.

[175] The evidence against the Corporate Respondent Borealis is the evidence that relates to all of the transactions that involved Borealis directly; i.e., in the creation of the corporation to be the vehicle to process the Borealis GRIC product and the solicitations misleading and deceitful advertising by Synergy on behalf of Borealis. In addition, its direct involvement in having its name on a website using its name and corporate structure as the vehicle for this product, and for the involvement of Borealis in receiving, acknowledging and putting into their corporate bank account at RBC the investors money, we are satisfied on the

balance of probabilities, on the clear and convincing evidence that the corporation has violated subsections 25(1), 53(1) and 126.1(b) of the Act.

2. Synergy Group (2000) Inc.

[176] Because of the pivotal and fundamental role in the sale of the Borealis GRIC product played by Synergy as the corporate umbrella entity which was responsible for the sales of more than $16 million of the product, we are satisfied on balance by clear and convincing evidence that Synergy has violated subsections 25(1), 53(1) and 126.1(b) of the Act.

3. Integrated Business Concepts Inc.

[177] The evidence as set out earlier in this decision clearly makes frequent and almost constant references to IBC. The actual participation of IBC, however, is somewhat unclear. Funds did flow between the Borealis bank account and IBC's bank account, with the net result being that approximately $400,000 went from IBC to Borealis to 'top up' the Borealis account. In addition, a Staff witness testified that commissions were paid using funds from IBC. We also heard evidence that one investor was refunded his investment of $150,000 through a cheque from IBC in June 2007.

[178] The evidence of IBC's involvement is sufficient for us to find that it breached subsections 25(1) and 53(1) through its activities in furtherance of trades in the Borealis GRIC.

[179] We are on balance left with doubt as to whether Staff has established by clear and convincing evidence on the balance of probabilities that IBC had a significant causal connection to the misleading deceitful statements to satisfy us that they have violated subsection 126.1(b) of the Act.

4. Canavista Corporate Services Inc.

[180] Their involvement in the violations of the Act that we have earlier referred to is both peripheral and insubstantial. We therefore do not find them liable of any violations of the Act.

5. Canavista Financial Center Inc.

[181] Their involvement in the violations of the Act that we have earlier referred to is both peripheral and insubstantial. We therefore do not find them liable of any violations of the Act.

V. CONCLUSION

[182] Accordingly, given our analysis above, we make the following findings with respect to the Respondents:

(a) we find that Smith traded in securities without being registered, contrary to subsection 25(1) of the Act; that he made illegal distributions contrary to subsection 53(1) of the Act; that he engaged in conduct relating to securities that he knew or reasonably ought to have known was fraudulent, contrary to subsection 126.1(b) of the Act; that as a *de facto* director and officer of Synergy and Borealis, he authorized permitted and acquiesced in Synergy's and Borealis's breaches of the Act, contrary to section 129.2 of the Act; and that he breached the Sabourin Cease Trade Order; all of which is contrary to the public interest;

(b) we find that Andrew Lloyd traded in securities without being registered, contrary to subsection 25(1) of the Act; that he made illegal distributions contrary to subsection 53(1) of the Act; and that he breached the Sabourin Cease Trade Order; all of which is contrary to the public interest;

(c) we dismiss the allegations against Paul Lloyd;

(d) we find that Villanti traded in securities without being registered, contrary to subsection 25(1) of the Act; that he made illegal distributions contrary to subsection 53(1) of the Act; that he engaged in conduct relating to securities that he knew or reasonably ought to have known was fraudulent, contrary to subsection 126.1(b) of the Act; that as a director and officer of Borealis and IBC, he authorized, permitted and acquiesced in Borealis's and IBC's breaches of the Act, contrary to section 129.2 of the Act; and that he acted contrary to the public interest;

(e) we find that Haliday traded in securities without being registered, contrary to subsection 25(1) of the Act; that he made illegal distributions contrary to subsection 53(1) of the Act; that he engaged in conduct relating to securities that he knew or reasonably ought to have known was fraudulent, contrary to subsection 126.1(b) of the Act; and that he and that he acted contrary to the public interest;

(f) we dismiss the allegations against Breau;

(g) we find that Statham traded in securities without being registered, contrary to subsection 25(1) of the Act; that she made illegal distributions contrary to subsection 53(1) of the Act; and that she acted contrary to the public interest;

(h) we find that Prentice traded in securities without being registered, contrary to subsection 25(1) of the Act; that he made illegal distributions contrary to subsection 53(1) of the Act; that he engaged in conduct relating to securities that he knew or reasonably ought to have known was fraudulent, contrary to subsection 126.1(b) of the Act; that as a *de facto* officer of Synergy and Borealis, he authorized permitted and acquiesced in Synergy's and Borealis's breaches of the Act, contrary to section 129.2 of the Act; and that he acted contrary to the public interest;

(i) we find that Zielke traded in securities without being registered, contrary to subsection 25(1) of the Act; that he made illegal distributions contrary to subsection 53(1) of the Act; and that he acted contrary to the public interest;

(j) we find that Stephan traded in securities without being registered, contrary to subsection 25(1) of the Act; that he made illegal distributions contrary to subsection 53(1) of the Act; that he engaged in conduct relating to securities that he knew or reasonably ought to have known was fraudulent, contrary to subsection 126.1(b) of the Act; and that he acted contrary to the public interest;

(k) we find that Murphy traded in securities without being registered, contrary to subsection 25(1) of the Act; that he made illegal distributions contrary to subsection 53(1) of the Act; that he engaged in conduct relating to securities that he knew or reasonably ought to have known was fraudulent, contrary to subsection 126.1(b) of the Act; and that he acted contrary to the public interest;

(l) we dismiss the allegations against Grigor;

(m) we dismiss the allegations against Switenky;

(n) we find that Dickerson traded in securities without being registered, contrary to subsection 25(1) of the Act; that she made illegal distributions contrary to subsection 53(1) of the Act; and that she acted contrary to the public interest;

(o) we find that Dupont traded in securities without being registered, contrary to subsection 25(1) of the Act; that he made illegal distributions contrary to subsection 53(1) of the Act; and that he acted contrary to the public interest;

(p) we find that Poole made illegal distributions contrary to subsection 53(1) of the Act; and that he acted contrary to the public interest;

(q) we dismiss the allegations against Ekiert;

(r) we find that Macfarlane traded in securities without being registered, contrary to subsection 25(1) of the Act; that he made illegal distributions contrary to subsection 53(1) of the Act; and that he acted contrary to the public interest;

(s) we find that Nerdahl traded in securities without being registered, contrary to subsection 25(1) of the Act; that he made illegal distributions contrary to subsection 53(1) of the Act; and that he acted contrary to the public interest;

(t) we find that Pittoors traded in securities without being registered, contrary to subsection 25(1) of the Act; that he made illegal distributions contrary to subsection 53(1) of the Act; and that he acted contrary to the public interest;

(u) we find that Travis traded in securities without being registered, contrary to subsection 25(1) of the Act; that he made illegal distributions contrary to subsection 53(1) of the Act; and that he acted contrary to the public interest;

(v) we find that Borealis traded in securities without being registered, contrary to subsection 25(1) of the Act; that it made illegal distributions contrary to subsection 53(1) of the Act; that it engaged in conduct relating to

securities that it knew or reasonably ought to have known was fraudulent, contrary to subsection 126.1(b) of the Act; and that it acted contrary to the public interest;

(w) we find that Synergy traded in securities without being registered, contrary to subsection 25(1) of the Act; that it made illegal distributions contrary to subsection 53(1) of the Act; that it engaged in conduct relating to securities that it knew or reasonably ought to have known was fraudulent, contrary to subsection 126.1(b) of the Act; and that it acted contrary to the public interest;

(x) we find that IBC traded in securities without being registered, contrary to subsection 25(1) of the Act; that it made illegal distributions contrary to subsection 53(1) of the Act; and that it acted contrary to the public interest;

(y) we dismiss the allegations against Canavista Corporate; and

(z) we dismiss the allegations against Canavista Financial.

[183] To protect the personal information of all investors, we request that Staff provide a redacted version of the record.

[184] The parties against whom findings have been made are directed to contact the Office of the Secretary within 10 days to set a date for a sanctions and costs hearing, failing which a date will be set by the Office of the Secretary.

Dated at Toronto this 13th day of January, 2011.

“Patrick J. LeSage”

“Paulette L. Kennedy”

3.1.2 Magna International Inc. et al. – s. 127 of the Act and Rule 1.8 of the OSC's Rules of Procedure

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

AND

IN THE MATTER OF
MAGNA INTERNATIONAL INC.

AND

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

REASONS FOR ORDERS REGARDING
MOTIONS FOR LEAVE TO INTERVENE
(Section 127 of the Act and Rule 1.8 of the OSC's Rules of Procedure)

Motions Hearing Dates:	June 18 and 21, 2010		
Decisions:	June 18 and 21, 2010		
Panel:	James E. A. Turner	–	Vice-Chair
Counsel:	James Sasha Angus Cullen Price Shannon O'Hearn Naizam Kanji Erin O'Donovan	–	For Staff of the Ontario Securities Commission
	Larry Lowenstein Allan Coleman Laura Fric Jean M. Fraser Emmanuel Pressman Jeremy Fraiberg (Osler, Hoskin & Harcourt LLP)	–	For Magna International Inc.
	Peter F. C. Howard Ed Waitzer Ellen Snow Brian Pukier (Stikeman Elliott LLP)	–	For Stronach Trust and 446 Holdings Inc.
	Samuel Rickett David Hausman Murray Braithwaite (Fasken Martineau DuMoulin LLP)		For the Special Committee of Magna International Inc.
	James D. G. Douglas David Di Paolo Margot Finley Paul G. Findlay Caitlin Sainsbury (Borden Ladner Gervais LLP)	–	For Ontario Teachers' Pension Plan Board, Canada Pension Plan Investment Board, OMERS Administration Corporation, Alberta Investment Management Corporation, Letko, Brosseau & Associates Inc. and British Columbia Investment Management Corporation

Kelly McKinnon James Camp (Gowling Lafleur Henderson LLP)	–	For Goodman & Company Investment Counsel Limited
R. Paul Steep Iain Scott (McCarthy Tétrault LLP)	–	For Mason Capital Management LLC
Joseph Groia (Groia and Company)	–	For FAIR Canada

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I. INTRODUCTION

[1] On June 15, 2010, the Commission issued a Notice of Hearing in this matter pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") in connection with a Statement of Allegations issued by Staff of the Commission ("**Staff**") against Magna International Inc. ("**Magna**"), the Stronach Trust and 446 Holdings Inc. ("**446**") (collectively, the "**Respondents**"). This matter relates to a proposed transaction that would eliminate Magna's dual class share structure by way of a plan of arrangement (the "**Proposed Transaction**").

[2] In the Statement of Allegations, Staff alleged the following against the Respondents:

(i) the Magna Management Information Circular/Proxy Statement dated May 31, 2010 (the "**Circular**") relating to the Proposed Transaction does not contain specific financial information obtained by the special committee of independent directors of Magna (the "**Special Committee**") from their financial advisors;

(ii) the Circular fails to provide sufficient information concerning the desirability or fairness of the Proposed Transaction and the board of directors of Magna (the "**Magna Board**") has not made useful recommendations regarding the arrangement in the Circular; and

(iii) the purchase by Magna of the 726,829 Class B shares of Magna held by the Stronach Trust (the "**Class B Shares**") as part of the Proposed Transaction, in these novel and unprecedented circumstances, is contrary to the public interest and should be cease traded because:

(a) the holders of the Class A subordinate voting shares (the "**Subordinate Voting Shares**") are being asked to approve the arrangement resolution without a recommendation from the Board and without sufficient information to form a reasoned judgment concerning the Proposed Transaction; and

(b) the approval and review process followed by the Board in negotiating the arrangement and proposing it to the holders of the Subordinate Voting Shares was inadequate.

[3] On the basis of these allegations, Staff sought an order of the Commission under subsection 127(1)2 of the Act cease trading the issuance of securities pursuant to the Proposed Transaction, for such period as the Commission deemed necessary, on the grounds that the Proposed Transaction was contrary to the public interest. Staff also sought an order under subsection 127(1)3 of the Act that the exemptions contained in clauses 5.5(a) and 5.7(1) (a) of Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") do not apply to Magna in respect of the Proposed Transaction, and an order under subsection 127(1)5 of the Act compelling Magna to amend its Circular.

[4] Prior to the hearing on the merits in this matter, five motions were brought for leave to intervene. Four motions were heard and determined on June 18, 2010, and one motion was heard and determined on June 21, 2010.

[5] On June 18, 2010, following a hearing on the motions, I issued an order granting intervenor status to the Special Committee to make submissions to the Commission but not to adduce evidence in this proceeding, to cross-examine witnesses or otherwise become a party to this proceeding (referred to as "***Torstar* standing**"). The order was subject to the following conditions: (i) the Special Committee shall make full and proper production of documents on a timely basis as agreed upon by the parties or as required by the Commission; (ii) the Special Committee shall not duplicate the submissions of Magna; and (iii) the Special Committee shall abide by the timetable agreed to by the other parties to this proceeding, including delivery of any submissions or factums they intend to rely upon on the same dates as the Respondents.

[6] I granted *Torstar* standing to Ontario Teachers' Pension Plan Board ("**Teachers**"), Canada Pension Plan Investment Board, OMERS Administration Corporation ("**OMERS**"), Alberta Investment Management Corporation, Letko, Brosseau & Associates Inc., and British Columbia Investment Management Corporation (the "**Opposing Shareholders**") on June 18, 2010, subject to the condition that they make full and proper production of documents on a timely basis as agreed upon by the parties or as required by the Commission.

[7] I also granted *Torstar* standing to Goodman & Company Investment Counsel Limited ("**Goodman**") on June 18, 2010 and to Mason Capital Management LLC ("**Mason**") on June 21, 2010, on the condition that each of them make full and proper production of documents on a timely basis as agreed upon by the parties or as required by the Commission.

[8] I dismissed the motion for leave to intervene made by the Canadian Foundation for the Advancement of Investor Rights ("**FAIR Canada**").

[9] These are my reasons for the orders granting intervenor status to the Special Committee, the Opposing Shareholders, Goodman and Mason, and for my decision dismissing the motion for leave to intervene made by FAIR Canada.

II. BACKGROUND

A. The Proposed Transaction

[10] On May 6, 2010, Magna issued a press release (the "**May 6 Press Release**") announcing that it had entered into a transaction agreement with the Stronach Trust under which it is proposed that Magna's dual class share structure be eliminated by means of a plan of arrangement.

[11] The May 6 Press Release stated that, if the arrangement resolution is approved by minority shareholders and the Ontario Court of Justice, Magna would: (i) purchase for cancellation all Class B Shares held indirectly by the Stronach Trust and the Stronach Trust would receive 9,000,000 newly issued Subordinate Voting Shares and US$300 million in cash; (ii) amend the consulting agreements under which Mr. Stronach's services are provided to Magna and related entities; and (iii) establish a joint venture with the Stronach Trust related to Magna's electric vehicle initiative.

B. The Parties

1. Staff

[12] Staff of the Commission ("**Staff**") made a series of allegations set out in the Statement of Allegations dated June, 15, 2010.

2. Magna International Inc.

[13] Magna is a corporation existing under the Ontario *Business Corporations Act* and is a reporting issuer under the Act. Magna develops, designs and manufactures automotive systems, modules, assemblies and components and engineers and assembles vehicles, principally for sale to original equipment manufacturers of cars and light trucks in North America, Europe and elsewhere.

3. The Stronach Trust and 446 Holdings Inc.

[14] The Stronach Trust is a trust under the laws of Ontario. The Stronach Trust has legal and effective control of Magna through its indirect ownership of all the issued and outstanding Class B Shares. Although the Stronach Trust owns only 0.6% of the total shareholder equity of Magna, the Stronach Trust holds 66% of Magna's voting rights. Mr. Frank Stronach, the founder and Chairman of Magna, and certain members of his immediate family, are the trustees of the Stronach Trust and are members of the class of potential beneficiaries of the Stronach Trust.

C. The Applicants for Leave to Intervene

1. The Special Committee of Magna

[15] The Special Committee was comprised of Mr. Michael Harris (Chair), Mr. Louis Lataif and Mr. Donald Resnick, all directors of Magna that the Magna Board has determined were independent of Mr. Stronach and the Stronach Trust. The mandate of the Special Committee was to review and consider the Proposed Transaction for submission initially to the Stronach Trust and, if acceptable to the Stronach Trust, to report to the Magna Board as to whether the Proposed Transaction should be submitted to the holders of Magna's Subordinate Voting Shares for their consideration.

2. The Opposing Shareholders

[16] The Opposing Shareholders consisted of some of the largest institutional shareholders in Canada and collectively hold and/or manage approximately 2,788,000 Magna Subordinate Voting Shares, which had a pre-announcement market value of approximately $180 million. However, there were significant differences in the number of Subordinate Voting Shares held by each of the Opposing Shareholders. We understood that, at the date of the motions hearing, Teachers owned just one Subordinate Voting Share and OMERS owned 500 Subordinate Voting Shares. The Opposing Shareholders were represented by the same legal counsel and proposed to make joint submissions at the hearing on the merits.

3. Goodman & Company Investment Counsel Limited

[17] Goodman is a Canadian investment company offering comprehensive investment services. Goodman manages over $30 billion of assets. As of May 25, 2010, Goodman owned or held 5,000,000 Subordinate Voting Shares.

4. Mason Capital Management LLC

[18] Mason is a New York-based fund manager that invests on behalf of pensions, endowments and foundations and has significant investments in Canadian public issuers, including issuers with dual class share structures. Mason owned or held under management approximately 100,000 Subordinate Voting Shares.

5. FAIR Canada

[19] FAIR Canada is an independent national non-profit organization that seeks to advance the interests of retail investors and the integrity and fairness of Canadian capital markets. FAIR Canada is independent of government, securities regulators and the financial industry. Its purpose is to be a pro-active voice representing Canadian retail investors and shareholders. FAIR Canada filed a motion for leave to intervene in this matter and sought to make submissions with respect to the implications of the Proposed Transaction to investors and capital markets.

III. OVERVIEW OF SUBMISSIONS

A. The Special Committee

[20] The Special Committee sought *Torstar* standing. The Special Committee submitted that it had a perspective that was distinct from that of Magna and the Stronach Trust. It said that it had a direct interest in any findings by the Commission concerning the adequacy of the Special Committee's process in connection with the review of the Proposed Transaction. Staff alleged in the Statement of Allegations that the Special Committee's review process was inadequate.

[21] The Special Committee submitted that Canadian law has long recognized that an independent board committee represents a perspective independent of management and directors who may have a conflict of interest in the particular circumstances.

[22] In support of its request for standing, the Special Committee referred us to *Re Hollinger* (2005), 29 OSCB 7071 ("***Hollinger***"), in which the Commission granted full standing to Hollinger's Independent Directors Committee (the "**IDC**"). The Special Committee noted that in *Hollinger* the IDC took no position as to the fairness of the transaction in question, was not prepared to make a recommendation to shareholders, and had determined that the transaction ought to be put to shareholders for a vote.

[23] The Special Committee stated that its participation in the hearing would not delay or cause prejudice to the parties, that it was prepared to rely on the evidentiary record submitted by Magna, and that it would not make any duplicative submissions.

B. The Opposing Shareholders

[24] The Opposing Shareholders sought full standing, including the opportunity to adduce evidence and cross-examine witnesses. The Opposing Shareholders submitted that the nature of the proceeding, a public interest hearing and not a disciplinary hearing, was such that intervention with full standing for shareholders with a financial interest in the outcome was appropriate.

[25] The Opposing Shareholders submitted that they would make a unique and useful contribution to the proceeding in that they represented some of the largest institutional shareholders in Canada. They further submitted that they were uniquely positioned to advance arguments relevant to the preservation of the integrity of the capital markets in Canada, including the potential impact of the Proposed Transaction if it were allowed to proceed and the precedent that it would establish for similar future transactions.

[26] The Opposing Shareholders stated that granting their motion for standing would not prejudice the interests of the other parties because the Opposing Shareholders would abide by the schedule and timetable established by the Commission.

C. Goodman and Mason

[27] Each of Goodman and Mason sought *Torstar* standing.

[28] Goodman submitted that it ought to be granted standing because it had a substantial and direct financial interest in the outcome of this proceeding as a significant shareholder of Magna. Goodman also submitted that it would make a unique and useful contribution to the proceeding without unfairness to the other parties. Goodman submitted that its participation would not cause delay or prejudice to the other parties.

[29] Mason submitted that it ought to be granted standing because it had a substantial and direct financial interest in the outcome of this proceeding as a holder of Subordinate Voting Shares and that it would make a unique and useful contribution on the issues raised in the Statement of Allegations. Mason submitted that its intervention would facilitate a fair hearing of the varying views of the persons affected by the Proposed Transaction without resulting in delay or prejudice to the other parties.

D. FAIR Canada

[30] FAIR Canada sought *Torstar* standing. FAIR Canada submitted that it would make a useful contribution to this proceeding. It sought to comment on the effect that the Proposed Transaction would have on the capital markets in general. FAIR Canada stated that the transaction would set a dangerous precedent in Canadian capital markets for other public companies with dual class share structures, and that the Proposed Transaction would have a long term negative impact on minority shareholders and confidence in the integrity and fairness of the capital markets.

[31] FAIR Canada submitted that it was well positioned to represent investor concerns before the Commission because it is an independent national non-profit organization with an experienced board of directors which seeks to advance the interest of retail investors and the integrity and fairness of Canadian capital markets.

[32] FAIR Canada submitted that it had an indirect interest in the outcome of this proceeding in that it represents retail investors who would be directly affected by the Proposed Transaction. It also submitted that, while having a direct economic interest in the outcome of a proceeding is a factor in obtaining full standing before the Commission, an economic interest is not necessary in order to be granted *Torstar* standing. FAIR Canada referred me to *Hollinger* and *Re Berry* (2008), 31 OSCB 12027 for that proposition.

[33] FAIR Canada also stated that its participation would not cause delay or prejudice to the other parties. It was willing to adhere to any hearing date or timetable set by the Commission.

E. Staff

[34] Staff did not oppose the granting of *Torstar* standing to the Special Committee. However, Staff opposed full standing for the Special Committee because, in Staff's view, the Special Committee would not advance any argument or issues that would not also be advanced by Magna.

[35] Staff did not oppose the motion by the Opposing Shareholders for full standing.

[36] Staff did not oppose *Torstar* standing for each of Goodman and Mason.

[37] Staff opposed granting standing to FAIR Canada. Staff submitted that FAIR Canada's intervention would likely be duplicative of Staff's position and that of the Opposing Shareholders. Therefore, in Staff's view, FAIR Canada would not make a unique or useful contribution to this proceeding. Staff expressed concern that Commission hearings of this nature not be unduly affected by the participation of public-interest advocacy groups through requests for intervenor status.

[38] Staff submitted that in applying the legal tests for determining standing, the Commission should give considerable weight to the impact that multiple intervenors would have on the Commission's ability to consider the issues at the merits hearing, which was to be held over a period of just two days.

F. Magna

[39] Magna submitted that the Canada Pension Plan Investment Board, the British Columbia Investment Management Corporation and the Alberta Investment Management Corporation should be denied full intervenor status on the basis that they would not make any unique or useful contribution, but did not oppose granting them *Torstar* standing.

[40] Magna opposed the granting of any form of standing to Teachers or OMERS, characterizing their share holdings in Magna as nominal and acquired for the sole purpose of intervening in and opposing the Proposed Transaction. Magna said that Teachers and OMERS would not be directly affected by the outcome of this proceeding, and that Commission hearings would become unmanageable if interventions by entities with no financial interest in the outcome were permitted.

[41] Magna opposed the granting of any form of standing to FAIR Canada for reasons similar to those advanced by Staff.

[42] Magna did not oppose the Special Committee's application for full standing.

G. The Stronach Trust and 446 Holdings Inc.

[43] The Stronach Trust and 446 Holdings Inc. made substantially the same submissions as those made by Magna.

IV. ANALYSIS

A. Scope of Intervention

[44] Rule 1.8 of the *Ontario Securities Commission Rules of Procedure* (2010), 33 OSCB 8017 (the "***Rules***") sets out the procedure for bringing a motion for leave to intervene in a matter before the Commission. Rule 1.8 reads as follows:

> **1.8 Intervenors**
>
> **1.8.1 Motion for Leave to Intervene** – (1) A motion for leave to intervene in a proceeding shall be made pursuant to Rule 3.
>
> **(2)** A motion for leave to intervene shall set out:
>
> (a) the title of the proceeding in which the person making the request wishes to intervene;

(b) the name and address of the person making the request;

(c) a concise statement of the scope of the proposed intervention, the issue that directly affects that person and the extent to which that person wishes to intervene; and

(d) the reasons why intervenor status should be granted.

(3) A Panel may grant leave to intervene or refuse the request on any terms and conditions that it deems appropriate.

(4) Factors – In considering a motion for leave to intervene, a Panel may consider factors such as:

(a) the nature of the matter;

(b) the issues;

(c) whether the person or company is directly affected;

(d) the likelihood that the person or company will be able to make a useful and unique contribution to the Panel's understanding of the issues;

(e) any delay or prejudice to the parties; and

(f) any other factor the Panel considers relevant.

1.8.2 Application of the Rules – Once a person has been granted intervenor status, the Rules, including those with respect to the service and filing of documents, apply to the intervenor as if it were a party, subject to the order of a Panel.

[45] Accordingly, the *Rules* provide that a Panel has discretion to grant leave to intervene or refuse the request on any terms and conditions that it deems appropriate (Rule 1.8.1(3) of the *Rules*). The *Rules* also provide that once a person is granted intervenor status, the Rules apply to that person as if it were a party, subject to the Panel's order (Rule 1.8.2 of the *Rules*).

[46] Although Rule 1.8 came into effect on April 1, 2009, Commission decisions have in the past recognized three general types of intervention: (i) full standing, (ii) *Torstar* standing, and (iii) "modified *Torstar* standing" or "enhanced standing" (*Hollinger*, supra at paras. 54-57; see also *Re Torstar Corp.* (1985), 8 OSCB 5067 (the "***Torstar Corp.* decision**").

[47] "*Torstar* standing" takes its name from the *Torstar Corp.* decision. As noted above, *Torstar* standing refers to a party who is given standing to make submissions to the Commission, but not to tender evidence or cross-examine any witnesses.

[48] In *Hollinger*, the Commission granted "modified *Torstar* standing" to certain parties so they could make submissions and adduce limited evidence on specific issues (*Hollinger*, *supra* at paras. 53-57).

[49] In prior decisions, the Commission has set limits on the participation of intervenors in a hearing, including (i) time limits for filing submissions, (ii) limits on the evidence that can be adduced by intervenors, and (iii) limits on the issues in respect of which intervenors may adduce evidence or make submissions (*Hollinger*, *supra* at paras. 53-57).

B. The Test to be Applied

[50] As noted above, the *Rules* provide that, in considering a motion for leave to intervene, a Panel may consider various factors (see Rule 1.8.1(4) of the *Rules*). The factors identified in the Rules as considerations in assessing intervenor status are consistent with, and in effect codify, the principles recognized in prior decisions of the Commission such as *Hollinger* and *Re Albino* (1991), 14 OSCB 365 ("***Albino***").

[51] In *Albino*, the Commission considered the relevance of a direct financial effect of a Commission decision on the assessment of a proposed intervenor's request for standing:

> [w]here a would-be intervenor has a direct financial interest, in that that person may acquire a benefit or incur a loss as an immediate result of a Commission decision, full standing is appropriate. The clearest application of that principle is to security holders and to those who have

> announced an intention (i.e., offerors in take-over bids) to acquire securities. Where the intending intervenor has a clear financial interest – most obviously, as a holder of securities of the subject issuer – but that interest will not be immediately affected by the decision the Commission may make, then only restricted (i.e., *Torstar*) standing is to be granted …
>
> (*Albino*, *supra*, at p. 425-426, cited in *Hollinger*, *supra* at para. 44.)

[52] In considering whether a proposed intervenor will make a useful or unique contribution to the proceedings, the Commission will consider whether the proposed intervenor will advance evidence or arguments that may not otherwise be presented (see *Hollinger*, *supra*, at para. 48). Where a party with standing can adequately advance a position, interventions may be neither helpful nor necessary (see *Hollinger*, *supra* at para. 49).

C. Balancing the Legal Principles and the Limited Time Available

[53] It goes without saying that, in a public interest hearing of this nature, the Commission wants to hear the views of those persons that may be directly affected by the outcome of the hearing or who may be able to make a useful and unique contribution to our understanding of the issues.

[54] At the same time, we must be fair to the Respondents. This matter relates to a challenge by Staff to a *bona fide* corporate transaction. Interventions should not prejudice the Respondents by unduly delaying the hearing or by expanding the allegations that must be met. Only Staff is entitled, as a matter of right, to bring a public interest application before the Commission. The fact that Staff has brought such an application should not, through interventions by third parties, expand the range of issues before the Commission that the Respondents are required to meet.

[55] The "piling on effect" from multiple intervenors can be potentially unfair to respondents. As stated in *Hollinger*:

> [t]he Commission must always be mindful of the need to deal fairly with the existing parties to the proceeding in considering applications for intervenor status. Excessive interventions may unduly protract the proceedings and thus unfairly prejudice existing parties, as noted in Albino at page 426.
>
> (*Hollinger*, *supra* at para. 49.)

[56] In this case, the hearing was to be heard only a few days in advance of the Magna shareholders' meeting scheduled for Monday, June 28, 2010 at which shareholders will vote on the Proposed Transaction. While the timing of the shareholders' meeting is not the determining factor in deciding a matter such as this, the Commission should not take lightly causing a possible delay in that meeting. Those opposed to the Proposed Transaction have no particular interest in bringing this matter on expeditiously and would likely not object to a delay.

[57] In my view, the key consideration in this case was the short timeframe available for the hearing on the merits. This matter was scheduled to be heard over a period of two days. In these circumstances, having multiple intervenors participate fully in the hearing process had the potential to delay the hearing on the merits and, therefore, the Magna shareholders' meeting called for June 28, 2010.

D. Decisions

[58] I granted *Torstar* standing to the Special Committee. The Special Committee had an interest in the outcome of this matter, as the adequacy of the process followed by the Special Committee had been called into question by Staff's allegations. The Special Committee has an interest that is distinct from that of Magna and the other respondents. They had the potential to make a useful and unique contribution to the determination of this matter.

[59] In the unique circumstances of this case, I believed that Staff was in a position to establish an appropriate evidentiary record upon which the Opposing Shareholders could effectively make their submissions. While Staff had ultimate control over what evidence was submitted by them, I requested that Staff co-operate with the Opposing Shareholders in that respect. I also indicated that the Opposing Shareholders could bring a subsequent motion before the Panel hearing the matter on the merits to request permission to tender evidence if they believed that some crucial evidence was not being submitted by Staff. I also noted that the testimony of witnesses and the cross-examination of those witnesses at the merits hearing would be very limited.

[60] I also ordered that all documents tendered in evidence at the hearing on the merits be delivered to all parties with standing in this proceeding, including *Torstar* standing.

[61] Shareholders of Magna would be directly affected by the outcome of this matter. That is a basis for granting standing that is well accepted by the Commission. While it is obvious that we cannot grant standing to every shareholder who may have a view, I concluded that the Opposing Shareholders on the one hand, and Goodman and Mason on the other, would likely make a useful and unique contribution to the hearing on the merits and would represent the views of shareholders on both sides of the issues before us.

[62] It appears that Teachers and OMERS were not significant shareholders of Magna and may have purchased Magna shares for the purpose of intervening in this matter. That is not a strategy that should determine the outcome of a motion for standing. I might not have granted standing to Teachers or OMERS had they not been represented by the same legal counsel as the other Opposing Shareholders. The Opposing Shareholders proposed to make joint submissions through that one legal counsel. I determined, in the circumstances, that it was appropriate to grant *Torstar* standing to all of the Opposing Shareholders.

[63] Consistent with the foregoing, I also granted *Torstar* standing to Goodman and Mason. Goodman and Mason held a significant number of shares of Magna and would make submissions as to why the Proposed Transaction should be submitted to shareholders for a vote. As a result, I determined that it was likely they would provide a useful and unique perspective.

[64] I denied standing to FAIR Canada. FAIR Canada did not have a direct financial interest in the outcome of this matter. That is not to say, however, that their perspective might not have been relevant to or of assistance to the Commission. In the circumstances, however, I concluded that the interests of retail investors in these circumstances were not significantly different from those of institutional shareholders. The Opposing Shareholders represent a cross-section of major Canadian institutional investors, including pension plans and others with obligations and responsibilities to individual Canadians. Those institutions have an interest in ensuring that the Commission fully understands the broader capital markets implications of the Proposed Transaction and its effect on investors. In my view, the submissions of Staff, the Opposing Shareholders and FAIR Canada would likely overlap.

[65] I would add that I am not aware that the Commission has, in the past, granted standing to a shareholder advocacy organization such as FAIR Canada in a public interest application brought by Staff to challenge a specific transaction. That is not to say that the Commission would not grant such standing in appropriate circumstances.

[66] I concluded, on balance, that FAIR Canada would likely not provide a useful or unique contribution to the Panel's understanding of the issues in this matter given the participation by Staff and the Opposing Shareholders.

V. CONCLUSIONS

[67] For the reasons discussed above, I issued orders granting Torstar standing in this matter to the Special Committee, the Opposing Shareholders, Goodman and Mason. I dismissed the motion by FAIR Canada for standing.

Dated at Toronto this 14th day of January, 2011.

"James E. A. Turner"

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
Q2 Gold Resources Inc.	14 Jan 11	26 Jan 11		

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
Mint Technology Corp.	07 Jan 11	19 Jan 11			
Pure Energy Visions Corporation	06 Dec 10	17 Dec 10	17 Dec 10	12 Jan 11	
Seprotech Systems Incorporated	04 Jan 11	17 Jan 11	17 Jan 11		

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	17 Dec 10	12 Jan 11	
Cathay Forest Products Corp.	08 Dec 10	20 Dec 10	20 Dec 10		
Seprotech Systems Incorporated	04 Jan 11	17 Jan 11	17 Jan 11		
Mint Technology Corp.	07 Jan 11	19 Jan 11			

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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
12/31/2010	45	ACM Commercial Mortgage Fund - Units	2,848,651.89	25,936.83
01/02/2010 to 12/01/2010	10	Agilith North American Diversified Fund L.P. - Units	1,340,000.00	1,340.00
12/15/2010	32	Anheuser-Busch InBev Worldwide Inc. - Debentures	599,765,730.00	600,000,000.00
12/08/2010	6	Avante Logixx Inc. - Common Shares	335,000.00	1,340,000.00
12/22/2010	84	Avino Silver & Gold Mines Ltd. - Units	5,130,001.00	2,700,000.00
12/20/2010	1	Bank of America Corporation - Notes	1,000,000.00	1,000.00
11/24/2010	4	Barkerville Gold Mines Ltd. - Common Shares	5,000,000.20	3,846,154.00
12/30/2010	42	Blue Vista Technologies Inc. - Flow-Through Units	700,000.00	7,000,000.00
12/30/2010	9	Blue Vista Technologies Inc. - Units	190,000.00	3,800,000.00
01/10/2011	1	Blue Vista Technologies Inc. - Units	10,000.00	200,000.00
12/16/2010	12	BluEarth Renewables Inc. - Units	1,875,004.26	3,293,905.00
03/31/2010 to 11/30/2010	10	Bristol Gate US Dividend Growth Fund LP - Limited Partnership Units	834,700.00	7,825.74
12/16/2010	44	Canada Fluorspar Inc. - Special Warrants	5,500,000.00	11,000,000.00
12/17/2010	58	Cannon Point Resources Ltd. - Units	5,025,000.00	33,500,000.00
12/17/2010	58	Cannon Point Resources Ltd. - Units	5,025,000.00	33,500,000.00
01/01/2011	5	Capital Direct I Income Trust - Trust Units	220,500.00	22,050.00
12/14/2010	10	Claim Post Resources Inc. - Flow-Through Units	1,175,000.00	3,916,666.00
12/23/2010	2	Clairvest Equity Partners IV-A Limited Partnership - Limited Partnership Units	12,000,000.00	12,000.00
04/29/2010	1	Clareste LP - Limited Partnership Units	50,000.00	50.00
12/17/2010	3	CMC Metals Ltd. - Units	500,000.00	1,250,000.00
01/01/2010 to 12/07/2010	15	Di Tomasso Equilibrium Fund - Units	5,371,854.15	140,709.35
12/23/2010	29	Divestco Inc. - Units	3,481,547.74	909,100.00
12/16/2010	24	EquiGenesis 2010 Preferred Investment LP - Limited Partnership Interest	9,107,840.00	266.00
12/30/2010	22	FairWest Energy Corporation - Common Shares	1,337,300.00	19,104,288.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/01/2010 to 12/01/2010	8	Fairwind Currency Fund LP - Units	1,470,000.00	10,219.41
12/29/2010 to 01/04/2011	2	First Leaside Mortgage Fund - Trust Units	108,278.00	108,278.00
12/29/2010 to 01/04/2011	39	First Leaside Wealth Management Fund - Limited Partnership Interest	3,287,189.00	3,287,189.00
01/11/2011	1	Flatiron Trust - Trust Units	400,000.00	210.70
12/23/2010	8	Frontline Gold Corporation - Flow-Through Shares	537,400.00	3,161,176.00
12/23/2010	73	Frontline Gold Corporation - Units	3,205,712.00	22,897,945.00
12/16/2010	4	Geminare Incorporated - Common Shares	450,007.90	405,413.00
12/31/2010	1	Georgian Capital Partners Corporation - Limited Partnership Units	175,000.00	1,750.00
12/23/2010	59	Gilead Power Corporation - Units	4,092,248.50	991,166.00
12/07/2010	1	Gold World Resources Inc. - Units	100,000.00	2,000,000.00
03/01/2010	1	Groundlayer Capital Inc. The Alpha Fund L.P. - Units	2,000,000.00	8.98
12/01/2010	52	Heatherdale Resources Ltd. - Units	7,889,500.00	7,889,500.00
12/30/2010	42	Knick Exploration Inc. - Common Shares	1,323,050.00	4,863,496.00
06/30/2010	1	Lepercq-Amcur Sicav Fis - Common Shares	896,506.05	N/A
12/16/2010	2	Lord Lansdowne Holdings Inc. - Units	950,003.80	950,380.00
12/22/2010	43	Macquarie Power & Infrastructure Income Fund - Trust Units	68,394,300.00	9,079,250.00
01/10/2011	1	Merrill Lynch International & Co. C.V. - Warrants	1,100,990.00	5,000.00
12/03/2010	53	Microbix Biosystems Inc. - Units	600,250.00	1,175,000.00
12/22/2010	20	Natcore Technology Inc. - Units	1,852,000.00	2,469,333.00
01/04/2011	31	Natcore Technology Inc. - Units	1,172,425.00	1,563,233.00
12/16/2010	84	Nevado Resources Corporation - Flow-Through Units	3,740,190.00	5,588,969.00
12/07/2010 to 12/17/2010	41	Newport Canadian Equity Fund - Trust Units	1,188,048.00	151.69
12/07/2010 to 12/17/2010	7	Newport Fixed Income Fund - Trust Units	278,337.47	1,643.48
12/13/2010	2	Newport Global Equity Fund - Trust Units	59,300.00	976.03
12/07/2010 to 12/17/2010	27	Newport Yield Fund - Trust Units	2,295,740.62	2,491.96
11/25/2010	1	Patinex Inc. - Common Shares	17,500.00	100,000.00
12/16/2010	22	Platinex Inc. - Common Shares	378,598.00	2,380,000.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
12/22/2010	33	Ratel Gold Limited - Receipts	40,016,000.00	32,800,000.00
12/21/2010	96	Ratel Group Limited - Receipts	10,000,000.00	100,000,000.00
01/01/2010 to 12/31/2010	30	RCM Special Situations Fund - Limited Partnership Interest	12,258,848.68	N/A
12/24/2010	57	Riva Gold Corporation - Units	10,506,725.25	6,003,843.00
12/23/2010	612	Sandstorm Metals & Energy Ltd. - Special Warrants	100,035,000.80	222,300,000.00
12/30/2010	86	SGX Resources Inc. - Units	2,688,176.00	768,050.00
01/01/2011	2	Stacey Muirhead Limited Partnership - Limited Partnership Units	52,000.00	1,312.91
01/01/2011	1	Stacey Muirhead RSP Fund - Trust Units	500.00	47.88
12/15/2010	125	Strait Gold Corporation - Units	1,890,000.00	14,000,000.00
03/31/2010 to 12/31/2010	3	Successful Investor American Fund - Trust Units	374,109.23	38,465.26
01/29/2010 to 12/31/2010	11	Successful Investor Canadian Fund - Trust Units	1,391,453.21	82,361.36
11/30/2010	1	Successful Investor China Plus Fund - Trust Units	250,100.00	25,010.00
01/29/2010 to 12/31/2010	12	Successful Investor Growth & Income Fund - Trust Units	439,161.38	16,585.74
01/31/2010 to 12/31/2010	8	Successful Investor Stock Picker Fund - Trust Units	853,788.73	26,459.27
12/15/2010 to 12/21/2010	35	Sundance Energy Corporation - Common Shares	1,407,500.00	6,175,000.00
12/31/2010	27	Takara Resources Inc. - Units	461,250.00	1,845,000.00
12/16/2010 to 12/22/2010	1	Tamerlane Ventures Inc. - Common Shares	150,000.00	500,000.00
12/16/2010 to 12/22/2010	1	Tamerlane Ventures Inc. - Debentures	1,257,000.00	N/A
12/23/2010	3	Tenneco Inc. - Notes	252,375.00	250,000.00
12/23/2010	1	The Coboconk Solar Power Limited Partnership - Limited Partnership Units	5,000,000.00	15,000,000.00
03/31/2010 to 05/01/2010	2	The Group I Balanced Fund LP - Limited Partnership Units	325,000.00	27,751.40
12/31/2010	2	The McElvaine Investment Trust - Trust Units	508,000.00	30,778.00
01/07/2011	21	Theralase Technologies Inc. - Common Shares	737,500.00	1,180,000.00
12/01/2010	18	Tim Hortons Inc. - Debentures	100,000,000.00	100,000.00
11/30/2010	4	Tonus Capital Inc. - Units	460,000.00	4,211.00
12/21/2010 to 12/23/2010	171	United Mining Group, Inc. - Units	7,291,701.00	8,101,889.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
12/30/2010	23	Volcanic Metals Corp. - Flow-Through Shares	450,000.00	2,250,000.00
12/30/2010	10	Volcanic Metals Corp. - Non-Flow Through Units	99,999.90	555,555.00
12/21/2010	101	Western Potash Corp. - Units	20,000,201.40	18,182,000.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Allbanc Split Corp. II
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 14, 2011
NP 11-202 Receipt dated January 17, 2011
Offering Price and Description:
2,175,206 Class B Preferred Shares, Series 1
Price: $* per Class B Preferred Share, Series 1
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Promoter(s):
Scotia Managed Companies Administration Inc.
Project #1686974

Issuer Name:
Asia Bio-Chem Group Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 18, 2011
NP 11-202 Receipt dated January 18, 2011
Offering Price and Description:
$10,080,000 - 7,200,000 Common Shares
PRICE: $1.40 PER Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Dundee Securities Corporation
Jennings Capital Inc.
Mackie Research Capital Corporation
Octagon Capital Corporation
Raymond James Ltd.
Northern Securities Inc.
Promoter(s):
-
Project #1687798

Issuer Name:
Bengal Energy Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated January 18, 2011
NP 11-202 Receipt dated January 18, 2011
Offering Price and Description:
$7,980,060 - 6,650,050 Common Shares
Price: $1.20 per Common Share
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Wellington West Capital Markets Inc.
Toll Cross Securities Inc.
Promoter(s):
-
Project #1687812

Issuer Name:
Canada Fluorspar Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 17, 2011
NP 11-202 Receipt dated January 18, 2011
Offering Price and Description:
$5,500,000 - 11,000,000 Common Shares and 5,500,000 Common Share Purchase Warrants on Exercise of 11,000,000 Special Warrants
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
GMP Securities L.P.
Jennings Capital Inc.
Paradigm Capital Inc.
Promoter(s):
-
Project #1687344

Issuer Name:
Canada Lithium Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 17, 2011
NP 11-202 Receipt dated January 17, 2011
Offering Price and Description:
$110,025,000 - 73,350,000 Common Shares
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Macquarie Capital Markets Canada Ltd.
Casimir Capital Ltd.
Cormark Securities Inc.
Dundee Securities Corporation
Jacob Securities Inc.
Promoter(s):
-
Project #1687272

Issuer Name:
Hillcrest Resources Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated January 11, 2011
NP 11-202 Receipt dated January 12, 2011
Offering Price and Description:
$1,800,000 - 9,000,000 Common Shares
Price: $0.20 per Common Share

Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
Don Currie
Project #1685775

Issuer Name:
Horizons AlphaPro Income Plus ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 17, 2011
NP 11-202 Receipt dated January 18, 2011
Offering Price and Description:
Class E Units @ net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
AlphaPro Management Inc.
Project #1687603

Issuer Name:
IBI Group Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 12, 2011
NP 11-202 Receipt dated January 12, 2011
Offering Price and Description:
$50,000,000 - 6.00% Convertible Unsecured Subordinated Debentures
Price $1,000 per Debenture
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
TD Securities Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
Raymond James Ltd.
Desjardins Securities Inc.
Laurentian Bank Securities Inc.
Macquarie Capital Markets Canada Ltd.
NCP Northland Capital Partners Inc.
Dundee Securities Corp.
Northern Securities Inc.
Stonecap Securities Inc.
Promoter(s):
-
Project #1685989

Issuer Name:
Landry Morin Canadian Momentum Fund
Landry Morin U.S. Momentum Fund
Landry Morin World Momentum Fund
Principal Regulator - Quebec
Type and Date:
Preliminary Simplified Prospectuses, Annual Information Form and Fund Facts dated January 13, 2011
NP 11-202 Receipt dated January 14, 2011
Offering Price and Description:
Classes B and G Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Landry Morin Inc.
Project #1686393

Issuer Name:
Norrep Performance 2011 Flow-Through Limited Partnership
Principal Regulator - Alberta
Type and Date:
Preliminary Long Form Prospectus dated January 17, 2011
NP 11-202 Receipt dated January 17, 2011
Offering Price and Description:
$50,000,000 (Maximum Offering) $5,000,000 (Minimum Offering)
A minimum of 500,000 Limited Partnership Units and a maximum of 5,000,000 Limited Partnership Units
Price: $10.00 per Unit
Minimum Purchase: 500 Units ($5,000)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Canaccord Genuity Corp.
Macquarie Capital Markets Ltd.
Raymond James Ltd.
Promoter(s):
Hesperian Capital Management Ltd.
Project #1687355

Issuer Name:
Pengrowth Energy Corporation
Principal Regulator - Alberta
Type and Date:
Preliminary Shelf Prospectus dated January 12, 2011
NP 11-202 Receipt dated January 12, 2011
Offering Price and Description:
$1,500,000,000
Common Shares
Subscription Receipts
Warrants
Options
Rights
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1686113

Issuer Name:
Pure Industrial Real Estate Trust
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated January 13, 2011
NP 11-202 Receipt dated January 14, 2011
Offering Price and Description:
$30,000,000 - 7,500,000 Units
Price: $4.00 Per Unit
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Dundee Securities Corporation
RBC Dominion Securities Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
GMP Securities L.P.
Macquarie Capital Markets Canada Ltd.
Promoter(s):
Sunstone Industrial Advisors Inc.
Project #1686550

Issuer Name:
Quetzal Energy Ltd. (formerly Southampton Ventures Inc.)
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated January 13, 2011
NP 11-202 Receipt dated January 13, 2011
Offering Price and Description:
$30,000,000 - * Common Shares
Price: $* per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
All Group Financial Services Inc.
Jennings Capital Inc.
Promoter(s):
-
Project #1686551

Issuer Name:
TransGlobe Energy Corporation
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated January 14, 2011
NP 11-202 Receipt dated January 14, 2011
Offering Price and Description:
$75,000,000 - 5,000,000 Common Shares
Price: $15.00 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Capital Markets Canada Ltd.
Dundee Securities Corporation
GMP Securities L.P.
Canaccord Genuity Corp.
FirstEnergy Capital Corp.
Fraser Mackenzie Limited
Peters & Co. Limited
Promoter(s):
-
Project #1686908

Issuer Name:
Canadian Convertible Bond Fund
Criterion Global Clean Energy Fund
Criterion Global Dividend Fund
Criterion REIT Income Fund
Criterion Water Infrastructure Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectuses and Annual Information Form dated January 11, 2011 amending and restating the Final Simplified Prospectuses and Annual Information Form dated June 4, 2010
NP 11-202 Receipt dated January 14, 2011
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Criterion Investments Inc.
Project #1574727

Issuer Name:
CMP 2011 Resource Limited Partnership
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 14, 2011
NP 11-202 Receipt dated January 14, 2011
Offering Price and Description:
$125,000,000 (maximum) - 125,000 Limited Partnership Units @ $1,000 per Unit
$10,000,000 (minimum) - 10,000 Limited Partnership Units @ $1,000 per Unit
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Genuity Corp.
Desjardins Securities Inc.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Macquarie Capital Markets Canada Ltd.
Raymond James Ltd.
Wellington West Capital Markets Inc.
Promoter(s):
CMP 2011 Corporation
Goodman & Company, Investment Counsel Ltd.
Project #1678980

Issuer Name:
Criterion Utility Plus Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated January 11, 2011
NP 11-202 Receipt dated January 14, 2011
Offering Price and Description:
Class A and Class F units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Criterion Investments Inc.
Project #1673558

Issuer Name:
EnerVest Diversified Income Trust
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated January 14, 2011
NP 11-202 Receipt dated January 17, 2011
Offering Price and Description:
Warrants to Subscribe for up to 23,798,003 Units at a Subscription Price of $15.27
Underwriter(s) or Distributor(s):
-
Promoter(s):
Canoe Financial LP
Project #1662067

Issuer Name:
First National Financial Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated January 18, 2011
NP 11-202 Receipt dated January 18, 2011
Offering Price and Description:
$100,000,000 - 4,000,000 Class A Preference Shares, Series 1
Price: $25.00 per Series 1 Share to yield initially 4.65% per annum
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Jennings Capital Inc.
Promoter(s):
-
Project #1685640

Issuer Name:
Front Street Flow-Through 2011-I Limited Partnership
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 13, 2011
NP 11-202 Receipt dated January 17, 2011
Offering Price and Description:
$150,000,000 - (Maximum Offering – 6,000,000 Units)
$10,000,000 - (Minimum Offering - 400,000 Units)
Subscription Price: $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:
Jov Prosperity Canadian Equity Fund
Jov Prosperity Canadian Fixed Income Fund
Jov Prosperity International Equity Fund
Jov Prosperity U.S. Equity Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated January 6, 2011
NP 11-202 Receipt dated January 18, 2011
Offering Price and Description:
Series A, F and I Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
JovInvestment Management Inc.
Project #1668346

Issuer Name:
Phillips, Hager & North Canadian Equity Underlying Fund
Phillips, Hager & North Canadian Precious Metals Underlying Fund
Phillips, Hager & North LifeTime 2015 Fund
Phillips, Hager & North LifeTime 2020 Fund
Phillips, Hager & North LifeTime 2025 Fund
Phillips, Hager & North LifeTime 2030 Fund
Phillips, Hager & North LifeTime 2035 Fund
Phillips, Hager & North LifeTime 2040 Fund
Phillips, Hager & North LifeTime 2045 Fund
Phillips, Hager & North Long Inflation-linked Bond Fund
Phillips, Hager & North Short Inflation-linked Bond Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated January 11, 2011
NP 11-202 Receipt dated January 12, 2011
Offering Price and Description:
Series O units
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #1659914

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Quadrexx Asset Management Inc.	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	January 12, 2011
Change in Registration Category	Milford Capital Management Inc.	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	January 12, 2011
Change in Registration Category	Cidel Financial Group Inc.	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	January 12, 2011
New Registration	Axcess Capital Advisors Inc.	Exempt Market Dealer	January 12, 2011
Consent to Suspension (Pending Surrender)	Kingsway Capital of Canada Inc.	Exempt Market Dealer	January 12, 2011
Change in Registration Category	Groundlayer Capital Inc.	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager and Investment Manager	January 13, 2011
Change in Registration Category	Clareste Wealth Management Inc.	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	January 13, 2011

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Nuveen Investments Canada Co.	From: Mutual Fund Dealer To: Exempt Market Dealer	January 13, 2011
Change in Registration Category	Full Cycle Energy Investments Management Limited	From: Exempt Market Dealer, Portfolio Manager and Commodity Trading Manager To: Exempt Market Dealer, Portfolio Manager, Commodity Trading Manager and Investment Fund Manager	January 14, 2011
Consent to Suspension (Pending Surrender)	CFT Securities, LLC	Exempt Market Dealer	January 17, 2011
Change in Registration Category	Chau Associates Management Inc.	From: Exempt Market Dealer and Portfolio Manager To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	January 17, 2011
Consent to Suspension (Pending Surrender)	Chasson Financial Inc.	Exempt Market Dealer	January 19, 2011
Consent to Suspension (Pending Surrender)	Gersan Capital Corp.	Exempt Market Dealer	January 19, 2011

Chapter 13

SROs, Marketplaces and Clearing Agencies

13.1 SROs

13.1.1 Notice of Commission Approval – Amendments to MFDA Rule 3.1.1 (Capital – Minimum Levels) and Form 1 – Financial Questionnaire and Report

MUTUAL FUNDS DEALERS ASSOCIATION OF CANADA

AMENDMENTS TO MFDA RULE 3.1.1 (CAPITAL – MINIMUM LEVELS)
AND FORM 1 – FINANCIAL QUESTIONNAIRE AND REPORT

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission has approved the amendments to MFDA Rule 3.1.1 (Capital – Minimum Levels) and Form 1 – Financial Questionnaire and Report. In addition, The Alberta Securities Commission, Saskatchewan Financial Services Commission, Manitoba Securities Commission, Nova Scotia Securities Commission and New Brunswick Securities Commission have approved the amendments, and the British Columbia Securities Commission did not object to the MFDA's proposal.

Summary of Material Rule

The amendments are intended to harmonize MFDA's minimum capital requirements with those under National Instrument 31-103 – *Registration Requirements and Exemptions* and to align financial reporting required under Form 1 with International Financial Reporting Standards.

The amendments are subject to the condition that the MFDA will submit proposed amendments to Form 1 to include a definition of "market value" of securities to the recognizing regulators for review and approval by March 31, 2011.

Summary of Public Comments

The MFDA's proposed amendments and its explanatory notice were published for a 60 day comment period on August 13, 2010. The MFDA received one comment letter on the proposed amendments. The MFDA summarized the comments it received and provided a response which are summarized in Appendix A.

Revisions to the Proposed Rule

We attach at Appendix B a copy of the blacklined version of Form 1 showing the changes to the version published in August 2010.

APPENDIX A

Summary of Public Comments Respecting Request for Comment on Proposed Amendments to MFDA Rule 3.1.1 and MFDA Form 1

On August 13, 2010 the British Columbia Securities Commission published proposed amendments to MFDA Rule 3.1.1 (Capital – Minimum Levels) and MFDA Form 1 – Financial Questionnaire and Report (the "**Proposed Amendments**") for a 60-day public comment period that expired on October 12, 2010.

One submission was received during the public comment period:

Mouvement des caisses Desjardins ("MCD")

A copy of the comment submission may be viewed on the MFDA website at: www.mfda.ca.

The following is a summary of comments received together with the MFDA's responses.

Deposit Certificates

MCD suggested including deposit certificates issued by caisses in the Notes and Instructions of Form 1. The commenter expressed the view that deposit certificates issued by caisses should be given the same treatment as those issued by banks.

MFDA Response

The purpose of the proposed amendments to the margin rates in Form 1 was to align the rates with those required under National Instrument 31-103 ("NI 31-103") to ensure the MFDA's minimum capital requirements at least met the minimum capital requirements of other registrants subject to the requirements of NI 31-103. Currently, the margin rates specified for bank paper under NI 31-103 relate only to those products issued by a Canadian chartered bank (and of Canadian chartered bank acceptances) and do not extend to deposit certificates issued by credit unions or caisses. A thorough review and analysis of all margin rates outlined in the Notes and Instructions to Schedule 1 of the Form would need to be undertaken to consider the appropriateness of extending these rates to paper issued by credit unions and caisses. MFDA staff will consider whether such a review should be undertaken in the future.

Amount of Receivables and Regulatory Capital Requirements

The commenter noted that the total of receivables is currently included on Line 7 of Form 1 in the "Other Allowable Assets" section. MCD expressed the view that as a result of the proposed amendments, MCD will be penalized by the inclusion of "due from related parties" in line 18 of Statement A. MCD noted that the nature of the subsidiary relationship between Desjardins Cabinet de services financiers inc. and the network of caisses exists in the normal course of business and is related to how it offers investment fund and money market services.

MCD expressed the view that the addition of this proposed amount will have an impact on its regulatory capital.

MFDA Response

The primary objective of the proposed amendments was to change the basis of presentation of the Form 1 from Canadian Generally Accepted Accounting Principles to International Financial Reporting Standards, except as modified by the MFDA. Consequently, with the exception of specific changes to the capital formal to ensure the MFDA's minimum capital requirements at least met those prescribed under NI 31-103, no other changes to the capital formula were intended. Therefore, given current MFDA requirements permit receivable balances generated from trading activity with a related company that meets the definition of an "Acceptable Entity", as defined in the General Notes and Definitions to the Form 1, to be reported as "Other Allowable Assets", this classification will continue. To clarify, the following addition to the Notes and Instructions to Statement A, line 18 in the Form 1 has been made: *"Inter-company receivables generated from trading activity may be reported as allowable assets if the criteria for such reporting are otherwise satisfied."*

APPENDIX B

FORM 1 – TABLE OF CONTENTS

_____
(Member Name)

_____
(Date)

GENERAL NOTES AND DEFINITIONS

CERTIFICATE OF PARTNERS OR DIRECTORS

INDEPENDENT AUDITORS' REPORT FOR STATEMENTS A, D, E AND F *[at audit date only]*

INDEPENDENT AUDITORS' REPORT FOR STATEMENTS B AND C [at audit date only]

PART I
STATEMENT

A	Statement of financial position
B	Statement of risk adjusted capital
C	Statement of early warning excess
D	Statement of income and comprehensive income
E	Statement of changes in capital and retained earnings (corporations) or undivided profits (partnerships)
F	Statement of changes in subordinated loans
	Notes to the Form 1 financial statements

PART II
REPORT ON COMPLIANCE FOR INSURANCE AND SEGREGATION OF CASH AND SECURITIES *[at audit date only]*

SCHEDULE

1	Analysis of securities owned and sold short at market value
2	Analysis of clients' debit balances
3	Current Income taxes
4	Insurance
5	Early warning tests
6	Other supplementary information *[not required at audit date]*

FORM 1 – GENERAL NOTES AND DEFINITIONS

GENERAL NOTES:

1. Each Member must comply with the requirements in Form 1 as approved and amended from time to time by the board of directors of the Mutual Fund Dealers Association of Canada (the Corporation).

   Form 1 is a special purpose report that includes financial statements and schedules, and is to be prepared in accordance with International Financial Reporting Standards (IFRS), except as prescribed by the Corporation. Each Member must complete and file all of these statements and schedules.

2. The following are Form 1 IFRS departures as prescribed by the Corporation:

	Prescribed IFRS departure
Trading balances	When reporting ~~client and~~ trading balances relating to Member and client securities and other investment transactions, the Corporation allows the netting of receivables from and payables to the same counterparty.
Preferred shares	Preferred shares issued by the Member and approved by the Corporation are classified as shareholders' capital.
Presentation	Statements A and D contain terms and classifications (such as allowable and non-allowable assets) that are not defined under IFRS. In addition, specific balances may be classified or presented on Statement A and D in a manner that differs from IFRS requirements. The General Notes and Definitions, and the applicable Notes and Instructions to the Statements, should be followed in those instances where departures from IFRS presentation exists. Statements B, C, E and F are supplementary financial information, which are not statements contemplated under IFRS.
Separate financial statements on a non-consolidated basis	Consolidation of subsidiaries is not permitted for regulatory reporting purposes except for related companies that meet the definition of "related Member" in MFDA By-law No. 1 and the Corporation has approved the consolidation. Because Statement D only reflects the operational results of the Member, a Member must not include the income (loss) of an investment accounted for by the equity method.
Statement of cash flow	A statement of cash flow is not required as part of Form 1.
Valuation	~~The "market value" definition has been retained. While the "market value" definition is similar in most respect to the IFRS "fair value" valuation approach there are differences that will result in the valuation of illiquid securities, whereby a value must be assigned under the IFRS "fair value" approach and a determination that the "value is not determinable" would be acceptable under the Corporation's "market value" valuation approach.~~Securities are to be valued and reported at "market value".

3. The following are Form 1 prescribed accounting treatments based on available IFRS alternatives:

	Prescribed accounting treatment
Hedge accounting	Hedge accounting is not permitted for regulatory reporting purposes. All security and derivative positions of a Member must be marked-to-market at the reporting date. Gains or losses of the hedge positions must not be deferred to a future point in time.

GENERAL NOTES AND DEFINITIONS (continued)

	Prescribed accounting treatment
Securities owned and sold short as held-for-trading	A Member must categorize all investment positions as held-for-trading financial instruments. These security positions must be marked-to-market. Because the Corporation does not permit the use of available for sale and hold-to-maturity categories, a Member must not include other comprehensive income (OCI) and will not have a corresponding reserve account relating to marking-to-market available for sale security positions.
Valuation of a subsidiary	A Member must value subsidiaries at cost.

4. These statements and schedules should be read in conjunction with the Corporation's Bylaws, Rules and Policies.

5. For purposes of these statements and schedules, the accounts of related companies that meet the definition of "related Member" in MFDA By-law No. 1 may be consolidated.

6. For purposes of the statements and schedules, the capital calculations must be on a trade date reporting basis unless specified otherwise in the Notes and Instructions to Form 1.

7. Comparative figures on all statements are required only at the audit date. As a transition exemption for the changeover to International Financial Reporting Standards (IFRS) from Canadian Generally Accepted Accounting Principles (CGAAP), Members are not required to file comparative information for the preceding financial year as part of the first audited Form 1 under IFRS.

8. All statements and schedules must be expressed in Canadian dollars and must be rounded to the nearest dollar.

9. Supporting details should be provided, as required, showing a breakdown of any significant amounts that have not been clearly described on the statements and schedules.

10. **Mandatory security counts.** Securities held in segregation and safekeeping must be counted once in the year in addition to the count as at the year-end audit date.

11. **Mandatory reconciliations.** Reconciliations must be performed monthly in addition to the year-end audit date between the Member's records and the records of the depository or custodian where the Member holds its own and client securities in nominee name accounts.

DEFINITIONS :

1. **"acceptable entity"** means:

(a) Acceptable institutions.

(b) Government of Canada, the Bank of Canada and Provincial Governments.

(c) Insurance companies licensed to do business in Canada or a province thereof.

(d) Canadian provincial capital cities and all other Canadian cities and municipalities, or their equivalents.

(e) All crown corporations, instrumentalities and agencies of the Canadian federal or provincial governments which are government guaranteed as evidenced by a written unconditional irrevocable guarantee or have a call on the consolidated revenue fund of the federal or provincial governments.

(f) Canadian pension funds which are regulated either by the Office of Superintendent of Financial Institutions or a provincial pension commission.

(g) Corporations (other than Regulated Entities) with a minimum net worth of $75 million on the last audited balance sheet, provided acceptable financial information with respect to such corporation is available for inspection.

(h) Members of the Corporation.

(i) Regulated entities.

2. **"acceptable institutions"** means:

(a) Canadian banks, Quebec savings banks, trust companies licensed to do business in Canada or a province thereof.

(b) Credit and central credit unions and regional caisses populaires.

3. **"acceptable securities locations"** means those entities considered suitable to hold securities on behalf of a Member, for both ~~investment~~ inventory and client positions, without capital penalty, given that the locations meet the requirements outlined in the segregation Bylaws, Rules or Policies of the Corporation including, but not limited to, the requirement for a written custody agreement outlining the terms upon which such securities are deposited and including provisions that no use or disposition of the securities shall be made without the prior written consent of the Member and the securities can be delivered to the Member promptly on demand. The Corporation will maintain and regularly update a list of those foreign depositories and clearing agencies that comply with these criteria. The entities are as follows:

(a) Depositories

i.	Canada	CDS Clearing and Depository Services Inc.
ii.	United States	Depository Trust Company

(b) Government of Canada, the Bank of Canada and Provincial Governments.

(c) Canadian banks, Quebec savings banks, trust companies and loan companies licensed to do business in Canada or a province thereof.

(d) Credit and central credit unions and regional caisses populaires.

(e) Insurance companies licensed to do business in Canada or a province thereof.

(f) Mutual Funds or their Agents – with respect to security positions maintained as a book entry of securities issued by the mutual fund and for which the mutual fund is unconditionally responsible.

(g) Regulated entities.

4. **"regulated entities"** means those that are Members covered by the Canadian Investor Protection Fund or Members of recognized exchanges and associations. For the purposes of this definition, recognized exchanges and associations are those that are identified as a "regulated entity" by the Investment Industry Regulatory Organization of Canada.

~~5. **"market value of securities"** means:~~

~~(a) In a fully transparent marketplace, the published price quotation for the security using:~~

~~i. for listed securities, the last bid price of a long security and, correspondingly, the last ask price of a short security, as shown on the exchange quotation sheets as of the close of business on the relevant date or last trading date prior to the relevant date, as the case may be, subject to an appropriate adjustment where an unusually large or unusually small quantity of securities is being valued. If not available, the last sale price of a board lot may be used.~~

~~ii. for unlisted and debt securities, and precious metals bullion, a value determined as reasonable from published market reports or inter-dealer quotation sheets on the relevant date or last trading day prior to the relevant date, or based on a reasonable yield rate.~~

~~iii. for commodity futures contracts, the settlement price on the relevant date or last trading day prior to the relevant date.~~

iv. for money market fixed date repurchases (no borrower call feature), the price determined by applying the current yield for the security to the term of maturity from the repurchase date. This will permit calculation of any profit or loss based on the market conditions at the reporting date.

v. for money market open repurchases (no borrower call feature), the price determined as of the reporting date or the date the commitment first becomes open, whichever is the later. The value is to be determined as in (iv) and commitment price is to be determined in the same manner using the yield stated in the repurchase commitment.

vi. for money market repurchases with borrower call features, the borrower call price.

(b) Where a marketplace does not exist or is inactive, the value is determined by using a valuation technique that includes inputs other than published price quotations that are observable for the security, either directly or indirectly.

(c) Where a marketplace does not exist or is inactive and there are no observable market data-related inputs for the security, the value determined by using unobservable inputs and assumptions.

(d) Where insufficient recent information is available and/or there is a wide range of possible value measurements and cost represents the best estimate of market value within that range, cost.

(e) Where value cannot be reliably measured under Items (a) through (d) above (including where cost does not represent the best estimate of value), no value shall be assigned.

FORM 1 – CERTIFICATE OF PARTNERS OR DIRECTORS

_____
(Member Name)

I/We have examined the attached statements and schedules and certify that, to the best of my/our knowledge, they present fairly the financial position and capital of the Member at _____ and the results of operations for the period then ended, and are in agreement with the books of the Member.

I/We certify that the following information is true and correct to the best of my/our knowledge for the period from the last audit to the date of the attached statements which have been prepared in accordance with the current requirements of the Corporation:

ANSWERS

1. Do the attached statements fully disclose all assets and liabilities including the following:
   - (a) All future purchase and sales commitments? ..... _____
   - (b) Writs issued against the Member or partners or any other litigation pending? ..... _____
   - (c) Income tax arrears? ..... _____
   - (d) Other contingent liabilities, guarantees, accommodation, endorsements or commitments affecting the financial position of the Member? ..... _____
2. Does the Member promptly segregate clients' cash and securities in accordance with the Rules and Policies? ..... _____
3. Does the Member determine on a regular basis its segregation amount and act promptly to segregate assets as appropriate in accordance with the Rules and Policies? ..... _____
4. Does the Member carry insurance of the type and in the amount required by the Rules and Policies? .. _____
5. Does the Member monitor on a regular basis its adherence to early warning requirements in accordance with the Rules and Policies? ..... _____
6. Does the Member perform regular reconciliations of its trust accounts in accordance with the Rules and Policies? ..... _____
7. Does the Member perform regular reconciliations of its ~~mutual fund~~ transactions with fund company and other financial institution records in accordance with the Rules and Policies? ..... _____
8. Does the Member have adequate internal controls in accordance with the Rules and Policies? ..... _____
9. Does the Member maintain adequate books and records in accordance with the Rules and Policies? .. _____

_____
[date]

Name and Title – Please print	**Signature**
_____	_____
_____	_____
_____	_____
_____	_____

CERTIFICATE OF PARTNERS OR DIRECTORS
NOTES AND INSTRUCTIONS

1. Details must be given for any “no” answers.

2. To be signed by two of either:

   (a) Ultimate Designated Person (UDP)
   (b) Chief Executive Officer
   (c) Chief Financial Officer
   (d) Chief Accountant
   (e) One Director or Partner not included in (a), (b), (c) or (d) above.

   Where there is only one individual that meets the qualifications of the positions listed above, this individual must sign the certificate.

3. Two copies with original signatures must be provided to the Corporation.

FORM 1 – AUDITORS' REPORT

To: Mutual Fund Dealers Association of Canada and MFDA Investor Protection Corporation

We have audited the accompanying Statements of Form 1 (the "Statements") of _____(*Member name*) (the "Member") as at _____(*date*) and for the year then ended. The Statements have been prepared for purposes of complying with the By-laws, Rules and Policies of the Mutual Fund Dealers Association of Canada.

Management's responsibility for the Statements

Management is responsible for the preparation and fair presentation of the Statements of Form 1 in accordance with its financial reporting obligations on the basis as described in Note ____. This responsibility includes designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditors' responsibility

Our responsibility is to express an opinion on the accompanying Statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the Statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the Statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the Statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Member's preparation and fair presentation of the Statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Member's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the Statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the accompanying Statements A, D, E and F present fairly, in all material respects, the financial position of the "Member" as at _____(*date*) and the "Member's" financial performance for the period then ended in accordance with the basis as described in Note ____.

Statements B and C of Form 1 present fairly in all material respects the risk adjusted capital and early warning excess as at _____(*date*) in accordance with the applicable By-laws, Rules and Policies of the Mutual Fund Dealers Association of Canada.

Our audit was conducted for the purpose of forming an opinion on the accompanying Statements taken as a whole. The accompanying supplemental information presented in schedules 1 to 5 is presented for purposes of additional analysis and is not a required part of the Statements of Form 1, but is supplementary information required by the Rules of the Mutual Fund Dealers Association of Canada. Such information has been subjected to the auditing procedures applied in the audit of the Statements of Form 1 and, in our opinion, is fairly stated in all material respects in relation to the Statements taken as a whole.

Emphasis of Matter

(Going concern matter to be described, if any).

(EFS to allow for auditor to provide wording on other potential Emphasis of Matter should one be required to be included in the auditors' report. Such wording would be agreed upon with Corporation prior to the filing of Form 1).

Basis of Accounting

Without modifying our opinion, we draw attention to Note ____ to the Statements which describes the basis of accounting. The Statements are prepared to meet the requirements of the Mutual Fund Dealers Association of Canada. As a result, the Statements may not be suitable for another purpose.

~~[Audit Firm]~~

~~[Date]~~

~~[Address]~~

FORM 1 – INDEPENDENT AUDITORS' REPORT FOR STATEMENTS A, D, E AND F

To: The Mutual Fund Dealers Association and MFDA Investor Protection Corporation

We have audited the accompanying Statements of _____ (*Member name*) (the "Member"), which comprise the statement of financial position as at _____ (*date*) (Statement A) and the statement of income and comprehensive income (Statement D) and statement of changes in capital and retained earnings for the year then ended (Statement E) and the statement of changes in subordinated loans (Statement F), and a summary of significant accounting policies and other explanatory information. These Statements have been prepared by management based on the financial reporting provisions of the Notes and Instructions to Form 1 prescribed by the Mutual Fund Dealers Association of Canada ("MFDA").

Management's Responsibility for the Statements

Management is responsible for the preparation and fair presentation of these Statements in accordance with the financial reporting provisions of the Notes and Instructions to Form 1 prescribed by the MFDA and for such internal control as management determines is necessary to enable the preparation of Statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these Statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the Statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the Statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the Statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the Statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the Statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the Statements present fairly, in all material respects, the financial position of the Member as at _____ (*date*), and the results of its operations and its changes in subordinated loans for the year then ended in accordance with the financial reporting provisions of the Notes and Instructions to Form 1 prescribed by the MFDA.

Going Concern [MFDA to allow for auditor to include emphasis of matter paragraph for Going Concern – this is an option for auditors but not part of the standard report]

Without modifying our opinion, we draw attention to Note _____ in the Statements which indicates that the Member incurred a net loss of _____ during the year ended _____ (date) and, as of that date, the Member's current liabilities exceeded its total assets by _____. These conditions, along with other matters as set forth in Note_____, indicate the existence of a material uncertainty that may cast significant doubt about the Member's ability to continue as a going concern.

(EFS to allow for auditor to include other potential Emphasis of Matter and Other Matter paragraphs should one be required under the CASs or determined appropriate by the auditor to be included in the auditors' report. Such wording would be agreed upon with MFDA prior to the filing of Form 1).

Basis of Accounting and Restriction on Use

Without modifying our opinion, we draw attention to Note _____ to the Statements which describes the basis of accounting. The Statements are prepared to assist the Member to meet the requirements of the MFDA. As a result, the Statements may not be suitable for another purpose. Our report is intended solely for the Member, the MFDA and the MFDA Investor Protection Corporation and should not be used by parties other than the Member, the MFDA and the MFDA Investor Protection Corporation.

Unaudited Information

We have not audited the information in Schedule 5 of Part II of Form 1 and accordingly do not express an opinion on this schedule.

[Audit Firm]

[Date]

[Address]

FORM 1 – INDEPENDENT AUDITORS' REPORT FOR STATEMENTS B AND C

To: The Mutual Fund Dealers Association and MFDA Investor Protection Corporation

We have audited the accompanying Statements of Form 1 (the "Statements") of _____ (Member name) (the "Member") as at _____ (year end date).

Statement B – Statement of Risk Adjusted Capital
Statement C – Statement of Early Warning Excess

These Statements have been prepared by management based on the financial reporting provisions of the Notes and Instructions to Form 1 prescribed by the Mutual Fund Dealers Association ("MFDA").

Management's Responsibility for the Statements

Management is responsible for the preparation of the Statements of Form 1 in accordance with the financial reporting provisions of the Notes and Instructions to Form 1 prescribed by the MFDA, and for such internal control as management determines is necessary to enable the preparation of Statements that are free from material misstatement, whether due to fraud or error.

Auditors' responsibility

Our responsibility is to express an opinion on the Statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the Statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the Statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the Statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation of the Statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the Statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial information in Statements B and C of Form 1 as at _____ *(year end)* is prepared, in all material respects, in accordance with the financial reporting provisions of the Notes and Instructions to Form 1 prescribed by the MFDA.

Basis of Accounting and Restriction on Use

Without modifying our opinion, we draw attention to Note _____ to the Statements which describes the basis of accounting. The Statements are prepared to assist the Member to meet the requirements of the MFDA. As a result, the Statements may not be suitable for another purpose. Our report is intended solely for the Member, the MFDA and the MFDA Investor Protection Corporation and should not be used by parties other than the Member, the MFDA and the MFDA Investor Protection Corporation.

[Audit Firm]

[Date]

[Address]

FORM 1 – INDEPENDENT AUDITORS' REPORTS
NOTES AND INSTRUCTIONS

A measure of uniformity in the form of the auditors' reports is desirable in order to facilitate identification of circumstances where the underlying conditions are different. Therefore, when auditors are able to express an unqualified opinion, their reports should take the form of the auditors' reports shown above.

Any limitations in the scope of the audit must be discussed in advance with the Corporation. Discretionary scope limitations will not be accepted. Any emphasis of matter in the auditors' reports must be discussed in advance with the Corporation.

Two copies with original signatures must be provided to the Corporation.

FORM 1, PART I – STATEMENT A

_____
(Member Name)
STATEMENT OF FINANCIAL POSITION
at _____

REFERENCE			NOTES	(CURRENT YEAR) C$	(PREVIOUS YEAR) C$
	LIQUID ASSETS:				
1.		Cash on deposit with acceptable institutions		$	$
2.		Client funds held in trust with acceptable institutions			
3.	Sch.1	Securities owned at market value			
4.		Receivable from carrying dealer or mutual fund			
5.		Trading balances			
6.		TOTAL LIQUID ASSETS			
	OTHER ALLOWABLE ASSETS *[Receivables from Acceptable Entities]*:				
7.		Interest and dividends receivable			
8.	Sch.3	Current income tax assets			
9.		Recoverable and overpaid taxes			
10.		Other receivables *[provide details]*			
11.		TOTAL OTHER ALLOWABLE ASSETS			
12.		TOTAL ALLOWABLE ASSETS *{[line 6 plus line 11}]*			
	NON ALLOWABLE ASSETS:				
13.	Sch.2	Client debit balances			
14.		Deferred tax assets			
15.		Intangible assets			
16.		Property, plant and equipment			
17.		Finance lease assets			
18.		Due from related parties *[provide details]*			
19.		Investments in subsidiaries and affiliates			
20.		Other assets *[provide details]*			
21.		TOTAL NON ALLOWABLE ASSETS			
22.		TOTAL ASSETS *{[line 12 plus line 21}]*		$	$

FORM 1, PART I – STATEMENT A (CONTINUED)

REFERENCE			NOTES	(CURRENT YEAR) C$	(PREVIOUS YEAR) C$
	CURRENT LIABILITIES:				
23.		Overdrafts and loans		$	$
24.	Sch.1	Securities sold short at market value			
25.		Trust liabilities			
26.		Trading balances			
27.		Provisions			
28.	Sch.3	Current income tax liabilities			
29.		Variable compensation payable			
30.		Bonuses payable			
31.		Accounts payable and accrued expenses			
32.		Other current liabilities *[provide details]*			
33.		TOTAL CURRENT LIABILITIES			
	NON-CURRENT LIABILITIES:				
34.		Provisions			
35.		Deferred tax liabilities			
36.		Other non-current liabilities *[provide details]*			
37.		TOTAL NON-CURRENT LIABILITIES			
	OTHER LIABILITIES				
38.		Finance leases and lease-related liabilities *[provide details]*			
39.		Due to related parties *[provide details]*			
40.	F-6	Subordinated loans			
41.		TOTAL OTHER LIABILITIES			
412.		TOTAL LIABILITIES *[line 33 plus lines 37 ~~to~~ plus 410]*			
	CAPITAL AND RESERVES:				
432.	Stmt. E	Issued capital			
434.	Stmt. E	Reserves			
445.	Stmt. E	Retained earnings or undivided profits			
456.		TOTAL CAPITAL			
476.		TOTAL LIABILITIES AND CAPITAL *~~{~~[line 412 plus line 456~~}~~]*			

FORM 1, PART I – STATEMENT A
NOTES AND INSTRUCTIONS

Accrual basis of accounting

Members are required to use the accrual basis of accounting.

Allowable assets are those assets which, due to their nature, location or source, are either readily convertible into cash or from such creditworthy entities as to be allowed for capital purposes.

Line 4 – In the case of the salesperson's portion of gross commissions or fees receivable, as recorded on lines 10 (Other receivables) and 20 (Other assets), to the extent that there is written documentation that the Member does not have a liability to pay the salesperson's commission until it is received, the salesperson's portion of the gross commission or fee receivable is an allowable asset.

Line 5 – Include amounts owed to the Member for the sale of nominee name client securities.

Line 8 – Include **only** overpayment of prior years' income taxes or current year installments. Taxes recoverable due to current year losses may be included to the extent that they can be carried back and applied against taxes previously paid.

Line 9 – Include GST and HST receivables, capital tax, Part IV tax, sales and property taxes.

Line 11 – Include **only** to extent receivable from Acceptable Entities (for definition, see General Notes and Definitions) but do not include subordinated loans receivable from other Members which should be shown on line18.

Line 15 – Start-up and organizational costs cannot be capitalized. Examples of intangible assets include goodwill and client lists.

Line 17 – Assets arising from a finance lease (also known as a capitalized lease).

Line 18 – Receivables from related parties which are generated from trading activity, can be reported as allowable assets if the criteria for such reporting is otherwise satisfied.

A Member must report non-trading inter-company receivables on a gross basis unless the criteria for netting are met.

Line 19 – Investments in subsidiaries and affiliates must be valued at cost.

Line 20 – Including but not limited to such items as:

- prepaid expenses
- commissions and other receivables from other than acceptable entities
- cash surrender value of life insurance
- advances to employees (gross)
- cash on deposit with non acceptable entities
- provincial contingency/fund deposits

Line 21 – Non-allowable assets mean those assets that do not qualify as allowable assets.

Line 26 – Includes amounts owed by the Member for the purchase of nominee name client securities.

Line 27 – Recognize a liability to cover specific expenditures relating to legal and constructive obligations. A Member cannot hold provisions as a general reserve to be applied against some other unrelated expenditure.

Line 30 – Include discretionary bonuses payable and bonuses payable to shareholders.

Line 32 – Include all other current liabilities excluding those reported on lines 38, 39 and 40.

Line 36 – Include all other non-current liabilities excluding those reported on lines 38, 39 and 40.

Line 40 – Subordinated loans mean approved loans, pursuant to an agreement in writing in a form satisfactory to the Corporation, obtained from a source approved by the Corporation, the payment of which is deferred in favour of other creditors and is subject to regulatory approval.

A Member must not pay a debt owed to any of its creditors contrary to any subordination or other agreement to which it and the Corporation are parties.

Line 434 – Reserve is an amount set aside for future use, expense, loss or claim. It includes an amount appropriated from retained earnings. It also includes accumulated other comprehensive income (OCI).

Line 445 – Retained earnings represent the accumulated balance of income less losses arising from the operation of the business, after taking into account dividends and other direct charges or credits.

FORM 1, PART I – STATEMENT B

_____
(Member Name)

STATEMENT OF RISK ADJUSTED CAPITAL

at _____

REFERENCE			NOTES	(CURRENT YEAR) C$	(PREVIOUS YEAR) C$
	LIQUID ASSETS:				
1.	A-12	Total Allowable Assets		$	$
2.	A-33	**Deduct:** Total Current Liabilities			
3.		ALLOWABLE WORKING CAPITAL		$	$
4.	A-39	**Deduct:** Due to related parties			
5.		ADJUSTED ALLOWABLE WORKING CAPITAL		$	$
6.		**Deduct:** Minimum capital			
7.		SUBTOTAL			
8.	A-37	**Deduct:** 10% of_____ Non-current liabilities			
9.		SUBTOTAL			
		Deduct: Margin required:			
10.	Sch.1	Securities owned and sold short			
11.	Sch.4	Financial institution bond deductible *[greatest under any clause]*			
12.		Securities held at non-acceptable securities locations *[see note]*			
13.		Guarantees *[provide details]*			
14.		Unresolved differences in nominee name accounts			
15.		Unresolved differences in trust accounts			
16.		Other *[provide details]*			
17.		TOTAL MARGIN REQUIRED *[lines 10 through 16]*			
18.		RISK ADJUSTED CAPITAL *[line9 minus line 17]*		$	$

FORM 1, PART I – STATEMENT B
NOTES AND INSTRUCTIONS

Capital Adequacy

A MEMBER MUST HAVE AND MAINTAIN AT ALL TIMES RISK ADJUSTED CAPITAL IN AN AMOUNT NOT LESS THAN ZERO.

Line 4 – Due to related parties

For purposes of this capital calculation, all amounts owing to related parties must be reported as a deduction to risk adjusted capital.

Line 6 – Minimum capital Rule 3.1.1~~(a)~~ requires the following minimum capital amounts:

Level 1 Member	$ 25,000
Level 2 Member	50,000
Level 3 Member	75,000
Level 4 Member	200,000

Notwithstanding the provisions of Rule 3.1.1~~(a)~~, a Member that is registered as an investment fund manager under securities legislation and is a Level 2 or 3 Dealer must maintain minimum capital of at least $100,000.

Line 12 – Securities held at non- acceptable locations

100% of the market value of securities must be provided in the case where client or firm securities are held at locations which do not qualify as acceptable securities locations (see General Notes and Definitions). Securities held by an entity with which the Member has not entered into a written custodial agreement as required by the By-laws and Rules of the Corporation shall be considered as being held at non-acceptable securities locations.

Line 13 – Guarantees

If the Member is guaranteeing the liability of another party, the total amount of the guarantee must be provided for in computing Risk Adjusted Capital.

The Member should maintain and retain the details of the margin calculations for guarantees for review by the Corporation.

Lines 14 and 15 – Unresolved differences

Items are considered unresolved unless a journal entry to resolve the difference has been processed as of the Due Date of the Form 1.

This does not include journal entries writing off the difference to profit or loss in the period subsequent to the date of the Form 1.

Margin must be provided for adverse unresolved differences in nominee name accounts in an amount equal to the market value of the securities short plus the applicable margin rates related to the security. If the deficiency has not been resolved within thirty days of being discovered, the Member shall immediately purchase the securities that are short.
For nominee name accounts, where a mutual fund company or financial institution does not provide a monthly statement or electronic file confirming all of the Member firm's positions, the Member shall provide margin equal to 100% of the market value of such mutual funds and other investment products held on behalf of clients.

All reconciliations must be properly documented and made available for review by Corporation staff and the Member’s auditor.

Line 16 – Other

This item should include all margin requirements not mentioned above as outlined in the By-laws and Rules of the Corporation.

FORM 1, PART I – STATEMENT C

_____
(Member Name)

STATEMENT OF EARLY WARNING EXCESS

at_____

REFERENCE			(CURRENT YEAR) C$
1.	B-18	RISK ADJUSTED CAPITAL	$
		LIQUIDITY ITEMS	
		DEDUCT:	
2.	A-11	Total other allowable assets	----------
		ADD:	
3.	B-8	10% of Non-current liabilities	----------
4.		EARLY WARNING EXCESS	$

FORM 1, PART I – STATEMENT C
NOTES AND INSTRUCTIONS

The early warning system is designed to provide advance warning of a Member encountering financial difficulties. It will anticipate capital shortages and/or liquidity problems and encourage Members to build a capital cushion.

Line 2 – Other allowable assets are deducted from RAC because they are illiquid or the receipt is either out of the firm's control or contingent.

Line 3 – Non-current liabilities are added back to RAC as they are not current obligations of the firm and can be used as financing.

FORM 1, PART I – STATEMENT D

_____
(Member Name)

STATEMENT OF INCOME AND COMPREHENSIVE INCOME
FOR THE PERIOD ENDED _____

		NOTES	(CURRENT YEAR/MONTH) C$	(PREVIOUS YEAR/MONTH) C$
COMMISSION REVENUE				
1.	Mutual Funds			
2.	Segregated Funds			
3.	Deposit Instruments			
4.	Limited Partnerships			
5.	Other securities *[provide details]*			
6.	Insurance			
OTHER REVENUE				
7.	Interest			
8.	Fees from clients			
9.	Management fees			
10.	Referral fees			
11.	Realized/unrealized ~~(~~gain~~)~~ (loss) on marketable securities			
12.	Other *[provide details]*			
13.	TOTAL REVENUE			
EXPENSES				
14.	Variable compensation			
15.	Commissions and fees paid to third parties			
16.	Interest expense on subordinated debt			
17.	Bad debt expense			
a18.	Financing costs			
19.	Operating expenses			
20.	Unusual items *[provide details]*			
21.	Profit (loss) for the year from discontinued operations			
22.	Profit (loss) for Early Warning test			
23.	Income – Asset revaluation			
24.	Expense – Asset revaluation			
25.	Interest expense on internal subordinated debt			
26.	Bonuses			
27.	**Net income (loss) before income tax ~~expense~~**			
28.	S-3(5) Income tax expense (recovery)			
29.	PROFIT [LOSS] FOR PERIOD			
OTHER COMPREHENSIVE INCOME				
30.	Gain (loss) arising on revaluation of properties			
31.	Actuarial gain (loss) on defined benefit pension plans		To E5a	
32.	Other comprehensive income for the period, net of tax [Lines 30 plus 31]		To E5b	
33.	**Total comprehensive income for the period** [Lines 29 plus 32]			

FORM 1, PART I – STATEMENT D
NOTES AND INSTRUCTIONS

Comprehensive Income

Comprehensive income represents ~~all~~ changes in equity during a period, including profit and loss for the period and other comprehensive income (OCI). OCI captures certain gains and losses outside of net income. For regulatory financial reporting, there are two acceptable sources of other comprehensive income (OCI):

- the use of the revaluation model for property, plant and equipment (PPE) and intangible assets; and
- actuarial gain (loss) on defined benefit pension plans.

Lines

1-12 Report all gross commission revenue earned in the appropriate lines.
Report all other revenue earned on a gross basis.
Commission paid to salespersons must be reported on line 14 (Expenses – Variable compensation)
Payouts to other parties must be reported on line 15 (Expenses – Commissions and fees paid to third parties).

1 Include all gross commissions and trailer fees earned on mutual fund transactions.

7 Include all interest revenue. Interest revenue earned by the Member from holding client cash balances should be reported on this line.

The related interest cost paid to clients should be reported on line 18 (Expenses – Financing costs).

8 Include portfolio service fees, RRSP fees and any charges to clients that are not related to commissions or interest.

9 Include fund management fees and consulting fees charged to parties other than clients.

10 Include all fees earned as a result of referring clients to another entity for products or services.

11 Include all trading profits or losses from principal trading activities and adjustment of marketable securities to market value.

12 Include foreign exchange profits or losses and all other revenue not reported above.

14 Include commissions, bonuses and other variable compensation of a contractual nature. Examples would encompass commission payouts to salespersons. All contractual bonuses should be accrued monthly. Discretionary bonuses should be reported separately on line 2~~5~~6 (Expenses – Bonuses).

15 Include payouts to other parties.

16 Include all interest on external subordinated debt, as well as non-discretionary contractual interest on internal subordinated debt.

18 Include the interest cost paid to clients.

19 Include all operating expenses except those mentioned elsewhere.

20 Unusual items result from transactions or events that are not expected to occur frequently over several years, or do not typify normal business activities.

Discontinued operations, such as a branch closure, should be reported separately on line 21 (Profit (loss) for the year from discontinued operations).

21 A discontinued operation is a business component that has either been disposed or is classified as held for sale and represents (or is part of a plan to dispose) a separate significant line of business or geographical area of operations. For example, a branch closure. The profit (loss) on discontinued operations for the year is on a pre-tax basis. The tax component is to be included as part of the income tax expense (recover) on Statement D line 28.

22 This is the profit (loss) number used for the Early Warning profitability tests.

23 When a Member uses the revaluation model for its PPE and intangible assets, changes to the fair value may result in recognizing income after considering accumulated depreciation (or amortization) and OCI surplus.

24 When a Member uses the revaluation model for its PPE and intangible assets, changes to the fair value may result in recognizing expense after considering accumulated depreciation (or amortization) and OCI surplus.

25 Include interest expense on subordinated debt with related parties for which the interest charges can be waived if required.

26 This category should include discretionary bonuses and all bonuses to shareholders in accordance with share ownership. These bonuses are in contrast to those reported on Line 14 (Expenses – Variable compensation).

28 Includes only income taxes. Realty and capital taxes should be included on line 19 (Expenses – Operating expenses). Also include the tax component relating to the profit (loss) on discontinued operations for the year.

30 When a Member uses the revaluation model to re-measure its PPE and intangible assets, changes to fair value may result in a change to shareholders' equity after considering accumulated depreciation (amortization) and income or expense from asset revaluation.

31 When a Member has a defined benefit pension plan and initially adopts a policy of recognizing actuarial gains and losses in full in OCI, the subsequent adjustments must be recognized in OCI.

FORM 1, PART I – STATEMENT E

_____
(Member Name)

STATEMENT OF CHANGES IN CAPITAL AND RETAINED EARNINGS (CORPORATIONS) OR UNDIVIDED PROFITS (PARTNERSHIPS)
FOR THE PERIOD ENDED _____

PART A. CHANGES IN ISSUED CAPITAL

		Notes	Share capital or Partnership capital	Share premium	Issued capital
			[a]	**[b]**	**[c] = [a] + [b]**
			C$	**C$**	**C$**
1	Beginning balance	–			
2	Increases (decreases) during the period {[*provide details*}]				
	(a)				
	(b)				
	(c)				
3	Ending balance	–			
					A 432

PART B. CHANGES IN RESERVES

		Notes	General	Properties revaluation	Employee benefits	Total reserves
			[a]	**[b]**	**[c]**	**[d] = [a] + [b] + [c]**
			C$	**C$**	**C$**	**C$**
4	Beginning balance	–				
5	Changes during the period					
	(a) Other comprehensive income for the period – properties revaluation (From D 30)		N/A		N/A	
	(b) Other comprehensive income for the period – actuarial gain (loss) on defined benefit pension plans (From D 31)		N/A	N/A		
	(c) Recognition of share-based payments (From D 19)		N/A	N/A		
	(d) Transfer from/to retained earnings (From/to E 12)			N/A	N/A	
	(e) Other {[*provide details*}]					
6	Ending balance	–				
						A 443

PART C. CHANGES IN RETAINED EARNINGS

		Notes	Retained earnings (current year/month)	Retained earnings (previous year/month)
			C$	**C$**
	~~**Changes in retained earnings**~~			
7	Beginning balance	–		
8	Effect of change in accounting policy *[{provide details}]*			
	(a)		N/A	
	(b)		N/A	
9	As restated	–	N/A	
10	Payment of dividends or partners drawings			
11	Profit or loss for the period (From D 29)	–		
12	Other direct charges or credits to retained earnings ~~{~~*[provide details}]*			
	(a)			
	(b)			
	(c)			
13	Ending balance	–		
			A 45~~4~~	

FORM 1, PART I – STATEMENT E
NOTES AND INSTRUCTIONS

PART A. CHANGES IN ISSUED CAPITAL

Share premium

When the Member sells its shares (initial issuance or from treasury), share premium is the excess amount received by the Member over the par value (or nominal value) of its shares. Share premium cannot be used to pay out dividends.

PART B. CHANGES IN GENERAL RESERVE

General reserve

A Member may want to transfer from retained earnings. The creation of a general reserve gives the Member an added measure of protection.

Reserve – Employee benefits

When a Member has a defined benefit pension plan and initially adopts a policy of recognizing actuarial gains and losses in full in other comprehensive income (OCI), all subsequent adjustments must be recognized as other comprehensive income and will be accumulated in a reserve account.

When a Member has stock option or share awards granted to its employees by issuing new shares, the Member recognizes the fair value of the option or new shares granted as an expense with a corresponding increase in the reserve account.

Reserve – Properties revaluation

When using the revaluation model for certain non-allowable assets (PPE and intangibles), a Member will account for the initial increase in value as other comprehensive income and will accumulate the increase (and subsequent changes) in a revaluation reserve account.

PART C. CHANGES IN RETAINED EARNINGS

Changes in accounting policy and retroactive adjustment of prior year's retained earnings

A change in accounting policy in the current year requires retroactive adjustment of the prior year's retained earnings.

The beginning balance of the current period must be the ending balance of the prior period.

FORM 1, PART I – STATEMENT F

_____
(Member Name)

STATEMENT OF CHANGES IN SUBORDINATED LOANS
FOR THE PERIOD ENDED _____

		Notes	C$
1.	Balance at last period-end		$
2.	Increases during period *[give name of lender and date of increase]*		
	(a)		
	(b)		
	(c)		
	(d)		
	(e)		
	(f)		
3.	Subtotal		
4.	Decreases during period *[give name of lender and date of decrease]*		
	(a)		
	(b)		
	(c)		
	(d)		
	(e)		
	(f)		
5.	Subtotal		
6.	Present subordinated loans		$

FORM 1, PART I – STATEMENT F
NOTES AND INSTRUCTIONS

1. **At the annual audit date only**, provide an attachment to Statement F showing the amount and the name of the lender for each subordinated loan outstanding.

2. **"subordinated loans"** means approved loans, pursuant to an agreement in writing in the form prescribed by the Corporation, the payment of which is deferred in favour of other creditors and is subject to regulatory approval.

FORM 1 – PART I – NOTES

_____
(Member Name)

NOTES TO THE FORM 1 FINANCIAL STATEMENTS

at _____

FORM 1, PART II
REPORT ON COMPLIANCE FOR INSURANCE AND SEGREGATION OF CASH AND SECURITIES

To: The Mutual Fund Dealers Association of Canada (the Corporation) and the MFDA Investor Protection Corporation

We have performed the following procedures in connection with the regulatory requirements for _____ to maintain minimum insurance and segregate client cash and securities
(Member firm)
as outlined in the By-laws, Rules, and Policies of the Corporation. Compliance with the Corporation By-laws, Rules, and Policies with respect to insurance and the segregation of client cash and securities is the responsibility of the management of the Member firm. Our responsibility is to perform the procedures requested by you.

1. We have read the Member firm's written internal control policies and procedures with respect to maintaining insurance coverage and segregation of client cash and securities to determine that such policies and procedures meet the minimum required, as prescribed by the Rules and Policies of the Corporation in regards to establishing and maintaining adequate internal controls.

2. We obtained representation from appropriate senior management of the Member firm that the Member firm's internal control policies and procedures with respect to insurance and segregation of client cash and securities meet the minimum required, as prescribed by the Policies of the Corporation in regards to establishing and maintaining adequate internal controls and that they have been implemented.

3. We read the Financial Institution Bond Form (the "FIB") insurance policy(s) to determine that the FIB policy(s) includes the minimum required clauses and coverage limits as prescribed in the By-laws, Rules and Policies of the Corporation.

4. We requested and obtained confirmation from the Member firm's Insurance Broker(s) as at _____ 20____
(period end date)
as to the FIB coverage maintained with the Insurance Underwriter(s) including:

(a)	clauses	(d)	name of insurer and insured
(b)	aggregate and single loss limits	(e)	claims made on the policy since last audit
(c)	deductible amounts	(f)	details of losses/claims outstanding

5. We traced the total client cash and securities held by the Member to the Member's books and records as at the audit date to check that the compilation of the total client cash and securities held by the Member is in accordance with the Notes and Instructions to Schedule 4 of Form 1.

6. We obtained a listing of all securities segregation locations used by the Member firm and determined that each location met the definition of "Acceptable Securities Locations" as defined in the General Notes and Definitions to Form 1.

7. We obtained a listing of all cash segregation locations used by the Member firm and determined that each location met the definition of "Acceptable Institutions" as defined in the General Notes and Definitions of Form 1 and that each account was designated as "in trust" and was interest bearing.

These procedures do not constitute an audit and therefore we express no opinion on the adequacy of the Member firm's insurance coverage, segregation of client cash and securities, or its internal control policies and procedures.

This report is for use solely by the Corporation and the MFDA Investor Protection Corporation to assist in their assessment of the Member firm's compliance with the requirements regarding maintaining minimum insurance and segregating client cash and securities as outlined in the Bylaws, Rules and Policies of the Corporation and not for any other purpose.

_____ _____
(auditing firm) *(date)*

_____ _____
(signature) *(place of issue)*

FORM 1, PART II – SCHEDULE 1

DATE:_____

_____
(Member Name)

ANALYSIS OF SECURITIES OWNED AND SOLD SHORT AT MARKET VALUE

	Category	Notes	Market Value Long C$	Market Value Short C$	Margin required C$
1.	Money market		$	$	$
	Accrued interest				NIL
	TOTAL MONEY MARKET				
2.	Money market mutual funds			NIL	
3.	Mutual funds (other than money market mutual funds)			NIL	
4.	Equities				
	Accrued interest on convertible debentures				NIL
	TOTAL EQUITIES				
5.	Debt				
	Accrued interest				NIL
	TOTAL DEBT				
6.	Other [(*provide details*)]				
	Accrued interest				NIL
	TOTAL OTHER				
7.	TOTAL		$	$	$
			A-3	A-24	B-10

FORM 1, PART II – SCHEDULE 1
NOTES AND INSTRUCTIONS

1. All securities are to be valued at market (see General Notes and Definitions) as of the reporting date. The margin rates to be used are those outlined below:

(a) Bonds, Debentures, Treasury Bills and Notes

(i) Bonds, debentures, treasury bills and other securities of or guaranteed by the Government of Canada, of the United Kingdom, of the United States of America and of any other national foreign government (provided such foreign government securities are currently rated Aaa or AAA by Moody's Investors Services Inc. or Standard & Poor's Corporation, respectively), maturing (or called for redemption):

within 1 year	1% of market value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year	5% of market value

(ii) Bonds, debentures, treasury bills and other securities of or guaranteed by any province of Canada and obligations of the International Bank for Reconstruction and Development, maturing (or called for redemption):

within 1 year	2% of market value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year	5% of market value

(iii) Bonds, debentures or notes (not in default) of or guaranteed by any municipal corporation in Canada or the United Kingdom maturing:

within 1 year	3% of market value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year	5% of market value

(iv) Other non-commercial bonds and debentures (not in default):

10% of market value

(v) All other bonds, debentures and notes (not in default):

within 1 year	3% of market value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year	10% of market value

(b) Bank Paper

Deposit certificates, promissory notes or debentures issued by a Canadian chartered bank (and of Canadian chartered bank acceptances) maturing:

within 1 year	2% of market value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year	10% of market value

(c) Mutual Funds

Securities of mutual funds qualified by prospectus for sale in any province of Canada shall be margined at the following rates:

Money Market Funds (as defined in NI81-102) – 5% of market value.

All Other Mutual Funds – 50% of market value.

(d) Stocks

On securities (other than bonds and debentures) including rights and warrants listed on any recognized stock exchange in Canada or the United States:

Long Positions – Margin Required

Securities selling at $2.00 or more – 50% of market value

Securities selling at $1.75 to $1.99 – 60% of market value

Securities selling at $1.50 to $1.74 – 80% of market value

Securities selling under $1.50 – 100% of market value

Short Positions – Credit Required

Securities selling at $2.00 or more – 150% of market value

Securities selling at $1.50 to $1.99 – $3.00 per share

Securities selling at $0.25 to $1.49 – 200% of market value

Securities selling at less than $0.25 – market value plus $0.25 per share

(e) FOR ALL OTHER SECURITIES – 100%.

2. Schedule 1 summarizes **all** securities owned and sold short by the categories indicated. Details that must be included for each category are total long market value, total short market value and total margin required as indicated.

3. The Examiners and/or Auditors of the Corporation may request additional details of securities owned or sold short as they, in their discretion, believe necessary.

Line 1 – Money market shall include Canadian & US Treasury Bills, Bankers Acceptances, Bank paper (Domestic & Foreign), Municipal and Commercial Paper or other similar instruments.

FORM 1, PART II – SCHEDULE 2

DATE:_____

_____
(Member Name)

ANALYSIS OF CLIENTS' DEBIT BALANCES

Line		Advanced Redemption Proceeds Receivable	Other Client Receivables	Client Debit Balances
		[a]	[b]	[c] = [a] + [b]
		C$	C$	C$
1.	Non – registered accounts			
2	RRSP and other registered accounts			
3	TOTAL			
				A-13

SUPPLEMENTARY DISCLOSURE:

NAME OF RRSP TRUSTEE(S)

1. _____

2. _____

3. _____

4. _____

FORM 1, PART II – SCHEDULE 2
NOTES AND INSTRUCTIONS

1. Rule 3.2.1 prohibits Members from lending or extending credit to a client unless the Member is in compliance with Rule 3.2.3 which provides for the advancement of redemption proceeds.

Supplementary Disclosure:
The name of the RRSP trustee(s) used by the Member must be provided. The RRSP or other similar balances held at a trustee must be insured by the Canada Deposit Insurance Corporation (CDIC) or Quebec Deposit Insurance Corporation (QDIC).

FORM 1, PART II – SCHEDULE 3

DATE:_____

_____
(Member Name)

CURRENT INCOME TAXES

A.	**INCOME TAX LIABILITY (ASSET)**		**C$**	**C$**
1.	Balance payable (recoverable) at last period-end			**$**
2.	(a)	Payments (made) or received relating to above balance	**$**	
	(b)	Adjustments, including reassessments, relating to prior periods *[provide details if significant]*		
3.	Total adjustment to prior periods' payable (recoverable) taxes during current period			
4.	Subtotal *[add or subtract line 3 from line 1]*			
5.	Income tax expense (recovery)		D-28	
6.	less: Current installments			
7.	Other adjustments *[provide details if significant]*			
8.	Total adjustment for current year's tax liabilities (assets)			
9.	TOTAL LIABILITY (ASSET)*[add or subtract line 8 from line 4]*			**$**

A-8 -- if asset
A-28 -- if liability

FORM 1, PART II – SCHEDULE 4

DATE: _____

_____
(Member Name)

INSURANCE

PART A. FINANCIAL INSTITUTION BOND (FIB) CLAUSES (A) TO (E) **C$**

1. Minimum coverage required for each clause:

LEVEL 1, 2 OR 3 DEALERS

(a) Lesser of $50,000 per Approved Person or $200,000 _ _ _ _ _ _ _

(b) Allowable assets (A-12) $========== x 1% _ _ _ _ _ _ _

Greater of (a) and (b) above **$==========**

The actual coverage required for each clause is the greater of (a)and (b) above to a maximum requirement of $25,000,000.

LEVEL 4 DEALERS

(a) Minimum coverage of $500,000

(b) Total client cash and securities held by the Member $========== x 1% _ _ _ _ _ _ _

(c) Allowable assets (A-12) $========== x 1% _ _ _ _ _ _ _

Greater of (a), (b) and (c) above **$==========**

The actual coverage required for each clause is the greater of (a), (b) and (c) above to a maximum requirement of $25,000,000.

2. Coverage maintained per FIB _ _ _ _ _ _ _ *[Notes 3&7]*

3. Excess / (Deficiency) in coverage $========== *[Note 4]*

4. Amount deductible under FIB (greatest under any clause) $========== *[Note 5]*

PART B. REGISTERED MAIL INSURANCE

1. Coverage per mail policy $========== [Note 6]

PART C. FIB AND REGISTERED MAIL POLICY INFORMATION *[Note 8]*

Insurance Company	Name of the Insured	FIB/ Registered Mail	Expiry Date	Coverage	Premium

FORM 1, PART II – SCHEDULE 4

_____
(Member Name)

INSURANCE

PART D. LOSSES AND CLAIMS *[Note 9]*

Date of Loss	Date of Discovery	Amount of Loss	Deductible Applying to Loss	Description	Claim Made?	Settlement	Date Settled

FORM 1, PART II – SCHEDULE 4
NOTES AND INSTRUCTIONS

1. Member firms must maintain minimum insurance in type and amounts as outlined in the By-laws, Rules and Policies of the Corporation.

2. Schedule 4 must be completed at the audit date.

3. The amounts of insurance required to be maintained by a Member firm shall as a minimum be by way of a Financial Institution Bond with a double aggregate limit or a provision for full reinstatement.

   For Financial Institution Bond policies containing an "aggregate limit" coverage, the actual coverage maintained should be reduced by the amount of reported loss claims, if any, during the policy period.

   Cash and securities held by a Member in its capacity as agent for the trustee must be included in the determination of total client cash and securities held by the Member.

4. The Certificate of Partners or Directors contains a question pertaining to the adequacy of insurance coverage. The Auditors' Report requires the auditor to state that the question has been fairly answered. The Corporation Rules also state: "Should there be insufficient coverage, firms shall be deemed to be complying with this Rule 4 provided that any such deficiency does not exceed 10% of the insurance requirement and that evidence is furnished within two months of the dates of completion of the monthly operations questionnaire and annual audit that the deficiency has been corrected. If the deficiency is 10% or more of the insurance requirement, action must be taken by the Member to correct the deficiency within 10 days of its determination and the Member shall immediately notify the Corporation."

5. A Financial Institution Bond maintained pursuant to the MFDA Rules may contain a clause or rider stating that all claims made under the bond are subject to a deductible, provided that the firm's margin requirement is increased by the amount of the deductible.

6. Every Member firm shall effect and keep in force Mail Insurance against loss arising by reason of any outgoing shipments of money, securities, or other property negotiable or non-negotiable, by first-class mail, registered mail, registered air mail, express or air express, such insurance to provide at least 100% coverage.

7. The aggregate value of securities in transit in the custody of any employee or any person acting as a messenger shall not at any time exceed the coverage per the Financial Institution Bond (Schedule 4, line 2).

8. List all Financial Institution Bond and Registered Mail underwriters, policies, coverage and premiums indicating their expiry dates. State type of aggregate limits, if applicable, or note that provision for full reinstatement exists.

9. List all losses reported to the insurers or their authorized representatives including those losses that are less than the amount of the deductible. Do not include lost document bond claims. Indicate in the "Amount of Loss" column if the amount of the loss is estimated or unknown as at the reporting date.

   Losses should continue to be reported on Schedule 4 Part D until resolved. In the reporting period where a claim has been settled or a decision has been made not to pursue a claim, the loss should be listed along with the amount of the settlement, if any.

   At the annual audit date, list all unsettled claims, whether or not the claims were initiated in the period under audit. In addition, list all losses and claims identified in the current or previous periods that have been settled during the period under audit.

FORM 1, PART II – SCHEDULE 5

DATE: _____

_____
(Member Name)

EARLY WARNING TESTS

				Early Warning
A.	**CAPITAL DEFICIENCY**			
B-18	**Is RAC less than 0?**			_____ **YES/NO**
B.	**LIQUIDITY TEST**			
C-4	**Is Early Warning Excess less than 0?**			_____ **YES/NO**
C.	**PROFITABILITY TEST** *{[note 3)]*			
	1.	Loss for current quarter	$==========	
B-18	2.	RAC *[at questionnaire date]*	$==========	
	Is line 2 less than line 1?			_____ **YES/NO**
D.	**FREQUENCY PENALTY**			
	Has the Member triggered Early Warning more than 2 times in the past 12 months?			_____ **YES/NO**

FORM 1, PART II – SCHEDULE 5
NOTES AND INSTRUCTIONS

1. The objective of the various Early Warning Tests is to measure characteristics likely to identify a firm heading into financial trouble and to impose restrictions and sanctions to reduce further financial deterioration and prevent a subsequent capital deficiency. “Yes” answers indicate Early Warning has been triggered.

2. The profit or loss figures to be used are before asset revaluation income and expense, bonuses, and income tax expense [Statement D, line 22 – Profit (loss) for Early Warning test]. Note that the “current quarter” figure must also reflect any audit adjustments made subsequent to the filing of the monthly FQR.

3. If the current quarter is profitable, enter a "No" answer for Part C.

FORM 1, PART II – SCHEDULE 6

DATE: _____

_____
(Member Name)

OTHER SUPPLEMENTARY INFORMATION

1. Number of salespersons

   (a) Registered only in Quebec ..... _____

   (b) Registered outside Quebec ..... _____

   Total ..... _____

2. Assets Under Administration at statement date ..... _____

FORM 1, PART II – SCHEDULE 6
NOTES AND INSTRUCTIONS

1. For individuals licensed in Quebec and also licensed in any other province, report on (b).

2. Assets under Administration means the market value of all mutual funds reflected in the client accounts (nominee and client name) of a Member in all provinces of Canada, excluding Quebec.

13.3 Clearing Agencies

13.3.1 OSC Notice and Request for Comment – CLS Bank International – Application for Exemption from Recognition as a Clearing Agency

OSC NOTICE AND REQUEST FOR COMMENT

CLS BANK INTERNATIONAL

APPLICATION FOR EXEMPTION FROM RECOGNITION AS A CLEARING AGENCY

A. Background

On March 1, 2011, subsection 21.2(0.1) of the *Securities Act* (Ontario) (OSA) will come into force. It will prohibit clearing agencies from carrying on business in Ontario unless they are recognized as a clearing agency or are exempt from the requirement to be recognized by order of the Ontario Securities Commission (Commission).

CLS Bank International (CLS) has applied (the Application) to the Commission for an order pursuant to section 147 of the OSA to exempt CLS from the requirement to be recognized as a clearing agency in subsection 21.2(0.1) of the OSA. CLS operates an international payment settlement system that currently settles payment instructions relating to underlying foreign exchange and derivatives transactions involving seventeen different currencies, including the Canadian dollar. CLS is a specialized banking institution based in the United States and subject to extensive regulatory oversight and/or supervision by the Board of Governors of the U.S. Federal Reserve System and the Federal Reserve Bank of New York (collectively, the U.S. Federal Reserve) and other central banks, including the Bank of Canada, whose currencies are eligible for settlement in CLS' system. The Bank of Canada has broad regulatory and oversight powers over the CLS system under the federal *Payment Clearing and Settlement Act.*

B. Draft Order

Subject to comments received, staff propose to recommend that the Commission grant an exemption substantially in the form of the draft order attached at Tab No. 4 (Draft Order) of the Application. The Draft Order grants the requested relief to CLS provided that, among other things, CLS and the CLS system continue to be supervised and regulated by the U.S. Federal Reserve and Bank of Canada, and CLS not engage in any clearing agency activity in Ontario that is not described in the Application without obtaining the prior approval of the Commission.

C. Comment Process

The Commission is publishing for public comment the Application and Draft Order. We are seeking comment on any aspect of the Application and Draft Order. You may provide your comments in writing by e-mail on or before February 20, 2011**,** addressed to the attention of the Secretary of the Commission, Ontario Securities Commission, 20 Queen Street West, Toronto, Ontario, M5H 3S8, e-mail: jstevenson@osc.gov.on.ca.

The confidentiality of submissions cannot be maintained as comments received during the comment period will be published.

Questions on this notice may be referred to:

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January 12, 2011

VIA EMAIL AND COURIER

Ontario Securities Commission
20 Queen Street West
Suite 1800
Toronto ON M5H 3S8

Attention: Secretary to the Commission

Dear Sirs/Mesdames:

Re: CLS Bank International - Application for an Exemption from Recognition as a Clearing Agency pursuant to Section 147 of the Securities Act (Ontario)

1.0 Background and Purpose

1.1 We act as counsel to CLS Bank International ("CLS Bank"). As described in greater detail below, CLS Bank was established in 1999 to develop a system to settle payment instructions relating to underlying foreign exchange transactions to reduce the settlement risk inherent in existing settlement mechanisms. CLS Bank began live operations in September 2002.

1.2 In 2007, CLS Bank extended its settlement services to payment instructions relating to underlying non-deliverable forward foreign exchange transactions ("NDF Instructions") and to payment instructions relating to over-the-counter ("OTC") derivative transactions ("Derivative Instructions") resulting in one-way payments across the books of CLS Bank. Settlement services in relation to Derivative Instructions are currently limited to underlying OTC credit derivative transactions but they could eventually include other types of underlying derivative transactions, such as interest rate swaps, equity derivatives and commodity derivatives subject to receipt of all necessary approvals. In the future, CLS Bank may also extend its settlement services to include payment instructions relating to underlying premium payments due on foreign exchange option transactions ("FX Option Premium Instructions").

1.3 In addition to the above-described payment settlement services, CLS Bank launched an aggregation service for FX spot transactions (the "Aggregation Service") last year.

1.4 The OTC derivative transactions underlying Derivative Instructions will be considered derivatives[1] for purposes of the *Securities Act* (Ontario) (the "Act") and can include transactions in relation to securities from time to time[2]. CLS Bank may therefore be considered to be carrying on the business of a clearing agency in Ontario when providing settlement services to certain Canadian financial institutions in respect of Derivative Instructions based upon the definition of "clearing agency" found in section 1(1) of the Act and Ontario Securities Commission ("OSC") *Staff Notice 24-702 Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*[3] ("OSC Notice 24-702"), a copy of which is attached at Tab No. 1.

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1 The term "derivative" is defined in section 1(1) of the Act to mean, in part, an option, swap, futures contract, forward contract or other financial or commodity contract or instrument whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest (including a value, price, rate, variable, index, event, probability or thing).

2 As a practical matter, when CLS Bank settles Derivative Instructions through its automated CLS system, described below, it is unable to determine whether the underlying OTC derivative transaction is a security because it does not have access to the information that would be required to make such a determination.

3 March 19, 2010 33 OSCB 2324.

1.5 As a result of recent amendments to the Act that became effective on December 8, 2010, the term "clearing agency" is now defined in section 1(1) of the Act with respect to both securities and derivatives. As regards securities, the term "clearing agency" is defined to mean a person or company that,

(a) acts as an intermediary in paying funds or delivering securities, or both, in connection with trades and other transactions in securities,

(b) provides centralized facilities for the clearing of trades and other transactions in securities, including facilities for comparing data respecting the terms of settlement of a trade or transaction, or

(c) provides centralized facilities as a depository of securities,

but does not include,

(d) the Canadian Payments Association or its successors,

(e) a stock exchange or a quotation and trade reporting system,

(f) a registered dealer, or

(g) a bank, trust company, loan corporation, insurance company, treasury branch, credit union or caisse populaire that, in the normal course of its authorized business in Canada, engages in an activity described in (a) above, but does not engage in an activity described in (b) or (c) above.

1.6 As regards derivatives, the term "clearing agency" is defined to mean a person or company that provides centralized facilities for the clearing and settlement of trades in derivatives that, with respect to a contract, instrument or transaction,

(a) enables each party to the contract, instrument or transaction to substitute, through novation or otherwise, the credit of the clearing agency for the credit of the parties,

(b) arranges or provides on a multilateral basis, for the settlement or netting of obligations resulting from such contracts, instruments or transactions executed by participants in the clearing agency, or

(c) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the clearing agency the credit risk arising from such contracts, instruments or transactions executed by the participants,

but does not include a person or company solely because the person or company arranges or provides for,

(d) settlement, netting or novation of obligations resulting from agreements, contracts or transactions on a bilateral basis and without a central counterparty,

(e) settlement or netting of cash payments through the Automated Clearing Settlement System or the Large Value Transfer System, or

(f) settlement, netting or novation of obligations resulting from a sale of a commodity in a transaction in the spot market.

1.7 OSC Notice 24-702 was published last year after amendments to the clearing agency recognition requirements of section 21.2 of the Act were proclaimed in force, effective March 1, 2011. As currently drafted, section 21.2(1) simply provides that the OSC may, on the application of a clearing agency, recognize the clearing agency if the OSC is satisfied that to do so would be in the public interest. Section 21.2(1) is therefore a permissive, rather than a mandatory, recognition provision. New section 21.2(0.1) will expressly prohibit clearing agencies from carrying on business in Ontario until they have become recognized as such by the OSC when it becomes effective on March 1, 2011.

1.8 OSC Notice 24-702 sets out OSC staff's regulatory approach to applications for both recognition, and exemptions from recognition, as a clearing agency. It provides, among other things, that a foreign-based clearing agency that offers to provide its services or facilities to a person or company resident in Ontario will be considered to be carrying on business in Ontario.[4] It further provides that OSC staff may recommend to the OSC that a foreign-based clearing agency be granted an exemption from recognition pursuant to section 147 of the Act if the clearing agency does not pose significant risk to the Ontario capital markets

[4] *Ibid* at p. 2326.

and is subject to an appropriate regulatory and oversight regime in a foreign jurisdiction.[5] Such an exemption from the clearing agency recognition requirements would effectively recognize that requiring foreign-based clearing agencies to comply with the regulatory framework applicable to domestic clearing agencies would be duplicative and inefficient when imposed in addition to the regulation of the home jurisdiction. OSC Notice 24-702 then goes on to provide that a foreign-based clearing agency that wishes to apply for an exemption from the Act's clearing agency recognition requirements must establish at the time of the application that it meets the same criteria that a domestic clearing agency must meet when applying for recognition as a clearing agency (the "Recognition Criteria") and that it must also provide a detailed description of the regulatory regime of the home jurisdiction and the regulatory requirements that are imposed on it in its home jurisdiction. The Recognition Criteria is attached as Appendix A to OSC Notice 24-702.

1.9 As described in greater detail below, CLS Bank is subject to extensive regulatory oversight and supervision by the Board of Governors of the U.S. Federal Reserve System and the Federal Reserve Bank of New York (collectively, the "U.S. Federal Reserve") as well as oversight by the central banks of those countries, including Canada, whose currencies are eligible for settlement in CLS Bank's payment system (the "Central Banks"). Within Canada, CLS Bank is also subject to supervision by the Bank of Canada as a result of its designation of the CLS system as a "clearing and settlement system" pursuant to section 4(1) of the *Payment and Clearing Settlement Act* ("PCSA").

1.10 Based upon this elaborate framework for the oversight and supervision of CLS Bank, and the related guidance provided by OSC Notice 24-702, we are writing on behalf of CLS Bank to apply for an order pursuant to section 147 of the Act exempting CLS Bank from the clearing agency recognition requirement that will be applicable to it effective March 1, 2011 as the result of the settlement services that it provides, and will continue to provide, in respect of Derivative Instructions. We have engaged in related pre-filing discussions with staff of the Market Regulation Branch respecting the information to be provided in support of the recognition exemption that is being sought pursuant to this application. As a result of these discussions, the information provided below focuses on the status and structure of CLS Bank, the operation of the CLS system, including the settlement services that CLS Bank provides in respect of Derivative Instructions, and the established framework for the regulatory oversight and supervision of CLS Bank in lieu of expressly addressing the Recognition Criteria.

2.0 CLS Bank

Status and Structure

2.1 CLS Bank is chartered as an Edge corporation under the laws of the United States. Edge corporations are banking institutions that are authorized to conduct international banking operations. They are supervised and regulated by the U.S. Federal Reserve.

2.2 CLS Bank and CLS Services Ltd. ("CLS Services") are subsidiaries of their UK parent, CLS UK Intermediate Holdings Ltd., which is in turn wholly-owned by a Swiss holding company, CLS Group Holdings AG, the ultimate holding company of the CLS Group. CLS Bank does not maintain any branches or offices other than its headquarters in New York. CLS Services is incorporated under the laws of England and Wales and is located in London. CLS UK Intermediate Holdings Ltd. is also incorporated under the laws of England and Wales, it is located in London and it maintains a representative office in Toyko.

2.3 CLS Bank operates the CLS system pursuant to the CLS Bank International Rules (the "Rules"). CLS Services provides CLS system operations and support, vendor support, information technology, security services and other support services to, and under the direction of, CLS Bank pursuant to a Master Services Agreement between CLS Bank and CLS Services.

2.4 CLS Bank permits participation in the CLS system by two different types of members. Members who maintain an account with CLS Bank (an "Account") are referred to as Settlement Members. Members who do not maintain an Account are referred to as User Members. Each User Member must be sponsored by a Settlement Member. Both Settlement Members and User Members (in either case a "Member") are required, as a condition of membership, to execute an agreement with CLS Bank. The Rules are governed by English law. Settlement Member Agreements and User Member Agreements are governed by New York law.

2.5 An applicant for approval as a Settlement Member must meet stringent membership requirements that are set forth in the Rules. Settlement Member membership requirements include, among other things, an established operating capability, acceptable regulatory oversight, minimum capital and capital ratio requirements and minimum credit ratings. As noted above, an applicant for approval as a Settlement Member must also establish a settlement account with CLS Bank.

2.6 CLS Bank currently settles payment instructions ("Instructions") relating to underlying transactions ("Transactions") involving seventeen different currencies ("Eligible Currencies") comprising the Australian dollar; Canadian dollar; Danish krone; euro; Hong Kong dollar; Israeli shekel; Japanese yen; Mexican peso; New Zealand dollar; Norwegian krone; Singapore dollar;

[5] *Ibid*.

South African rand; South Korean won; Swedish krona; Swiss franc; UK pound sterling; and U.S. dollar and it also intends to settle payment instructions relating to Transactions involving other currencies subject to receipt of all necessary approvals. It currently has Members that have their head or home offices located in Australia, Belgium, Canada, Denmark, England, France, Germany, Hong Kong, Israel, Italy, Japan, Luxembourg, Netherlands, Norway, Scotland, Singapore, South Africa, South Korea, Spain, Sweden, Switzerland and the United States.

2.7 Settlement Members with their head or home offices in Canada comprise four banks (the "Canadian Members"). Each Canadian Member is listed in Schedule 1 to the *Bank Act* (Canada) and is located in Ontario. It is also anticipated that an additional Schedule I bank will soon become a Settlement Member. It is also located in Ontario.

2.8 CLS Bank and/or the CLS system has been designated as follows in each of the following jurisdictions:

European Union	-	as a "designated system" under the EC Settlement Finality Directive.
Australia	-	as a "netting market" under the *Payment Systems and Netting Act 1998*.
Canada	-	as a "clearing and settlement system" under the *Payment Clearing and Settlement Act* (Canada).
Hong Kong	-	as a "designated system" under the Clearing and Settlement Systems Ordinance.
Israel	-	as a "designated supervised system" under the Payment Systems Law, 5768-2008.
New Zealand	-	as a "designated settlement system" under the *Reserve Bank of New Zealand Act*.
Singapore	-	as a "designated system" under the *Payment and Settlement Systems (Finality and Netting) Act 2002*.
South Africa	-	as a "designated settlement system" under the *National Payment Amendment Act, 2004*.
South Korea	-	as a "designated payment and settlement system" under the Law Concerning Debtor Rehabilitation and Bankruptcy.

The CLS System

2.9 CLS Bank has adopted a "continuous linked settlement" model as the basis for the CLS system. Continuous linked settlement is a process for settling payment instructions in respect of underlying Transactions that is intended to eliminate settlement risk attributable to the existence of time zones and their effects on the variable hours of operation of financial centres throughout the world.[6]

2.10 Each Member may participate in the CLS system by submitting Instructions in relation to a particular Transaction to the CLS system in accordance with a submission process that may or may not involve CLS proprietary software licensed to the Member. Each Member that submits Instructions identifies itself to CLS Bank through the use of an identification code. Each Instruction identifies, among other things, the parties to the underlying Transaction and the Member that is expected to submit a corresponding Instruction in relation to the same underlying Transaction. Each Instruction is processed by the CLS system (i.e. authenticated, edit checked, validated, and, in most cases, matched) and, if determined to be eligible for settlement, is settled across the books and records of CLS Bank by the simultaneous entry of debits and credits to the Accounts of the relevant Settlement Members identified in the Instructions.

2.11 As noted above, CLS Bank maintains an Account in respect of each Settlement Member. Each Account is a single, multi-currency account in respect of each Eligible Currency that is used for the settlement of all Instructions that are submitted by either the Settlement Member or a User Member that has been sponsored by the Settlement Member.

2.12 As regards each Account, the relevant Settlement Member may be permitted to have negative balances in some Eligible Currencies (each, a "Short Position") if there are offsetting positive balances in the other Eligible Currencies (each, a "Long Position"), such that the overall account balance of the Settlement Member (the "Account Balance") is positive. The Account Balance is calculated as the sum of the positive and negative balances for each Eligible Currency in the relevant Account (each, a "Currency Balance") after each Currency Balance has been converted to the base currency of U.S. dollars. In all cases, the obligations and entitlements of each of CLS Bank and a Settlement Member in respect of the Settlement Member's Account is a net amount that is equal to the Account Balance less all interest, fees, costs and expenses that are due from the Settlement Member.

[6] Crawford, Bradley, *Payment, Clearing and Settlement in Canada*, Volume 1, Canada Law Book Inc., 2002, p.616

2.13 The distinction between funding and settlement is critical to an appreciation of the CLS system. Funding occurs on a multilaterally netted basis between CLS Bank and each of its Settlement Members, while the settlement of Instructions occurs individually on a gross basis between Settlement Members across the books of CLS Bank. Although the two processes are separate, they are linked and run in parallel operationally.

2.14 Funding is the process by which a Settlement Member makes pay-ins of a currency to CLS Bank (a "Pay-In") through the payment systems that are approved by CLS Bank for effecting such payments. CLS Bank maintains an account with each Central Bank. In Canada, CLS Bank maintains its account with the Bank of Canada. Each Settlement Member's Account at CLS Bank consists of a Currency Balance for each Eligible Currency, and only Eligible Currencies are eligible for settlement across the books of CLS Bank. As part of the funding process, CLS Bank credits a Settlement Member's Account when it is notified of Pay-Ins received in CLS Bank's Central Bank accounts for the benefit of that Settlement Member. In connection with pay-outs to Settlement Members (each, a "Pay-Out"), CLS Bank disburses funds from its Central Bank accounts through the relevant Approved Payment Systems and debits the relevant Settlement Member's Account accordingly.

2.15 Settlement Members make Pay-Ins in accordance with Pay-In schedules issued by CLS Bank. CLS Bank settles Instructions and makes Pay-Outs of related proceeds throughout its operating process. Settlement occurs when CLS Bank simultaneously debits and credits the Accounts of the relevant Settlement Members in accordance with Instructions that were submitted by the Settlement Members and/or the User Members sponsored by them. As described above, each Instruction is settled individually on a gross basis and is not netted against other Instructions.

2.16 CLS Bank does not act as a central counterparty. CLS Bank does not guarantee settlement nor does it become a counterparty to any of the underlying Transactions to which Instructions are related. Settlement will not occur if Instructions are not eligible for settlement because, for example, an Account would not have a positive Account Balance post settlement. All settled Instructions are final and binding on each of the Members. Generally speaking, unsettled Instructions are rejected at the end of the relevant settlement date.

2.17 Settlement can be completed before all funding has been paid in because, as noted above, a Settlement Member may have one or more Short Positions in its Account provided it also has Long Positions that provide for a positive Account Balance. However, funding may continue for up to three hours after settlement has taken place, depending upon the Eligible Currency. Settlement Members are required to cover any Short Positions before the end of each business day by making Pay-Ins of outstanding amounts.

2.18 In the event CLS Bank does not have sufficient funds in a particular Eligible Currency to make a Pay-Out in that currency to Members, CLS Bank may draw upon liquidity facilities, by means of a foreign exchange swap or purchase, that it maintains with financial institutions ("Liquidity Facilities") to obtain the currency required to make the Pay-Out. CLS Bank draws on its Liquidity Facilities for the sole purpose of making Pay-Outs after Instructions have settled because Liquidity Facilities are not used for the purpose of settling Instructions. Insufficient funds in a particular Eligible Currency may arise where a Settlement Member has failed to satisfy its Pay-In obligations in respect of that currency. The costs associated with CLS Bank's draw on its Liquidity Facility are charged to the Settlement Member responsible for the currency shortfall.

2.19 In the event that a Settlement Member fails to meet its obligations to CLS Bank, any resulting loss to a Member or a Liquidity Provider is allocated to the other Members in accordance with loss allocation procedures that are prescribed by the Rules.

Settlement Services in Respect of Derivative Instructions

2.20 Prior to 2007, the settlement services offered by CLS Bank were limited to the settlement of Instructions in relation to underlying foreign exchange transactions that included, without limitation, single deliverable foreign exchange spot or forward transactions, a single leg of deliverable foreign exchange swap transactions, single exercised deliverable foreign exchange options and other similar deliverable foreign exchange transactions (collectively, "FX Transactions"). In 2007, CLS Bank extended its settlement services to the settlement of NDF Instructions and Derivative Instructions. CLS Bank's settlement services may also be further extended to include the settlement of FX Option Premium Instructions.

2.21 CLS Bank's settlement services were extended to include the settlement of Derivative Instructions following its selection as the Central Settlement Provider for a Trade Information Warehouse (the "Warehouse") that has been established by DTCC Deriv/SERV LLC ("DTCC"), a wholly-owned subsidiary of the Depository Trust & Clearing Corporation.

2.22 DTCC designed the Warehouse in response to concerns that had been expressed by certain regulatory authorities, in particular the U.S. Federal Reserve and the UK Financial Services Authority, regarding insufficient documentation in respect of OTC credit derivative transactions. The Warehouse is intended to provide a comprehensive, centralized trade database with the most up-to-date record of each OTC credit derivative transaction, as well as a central processing capability to standardize and automate "downstream" processing of payments and other post-confirmation processes. DTCC administers the Warehouse by:

- centrally calculating the payments for those OTC credit derivatives for which the Warehouse maintains the official legal record; and

- matching/affirming payments for those OTC credit derivative transactions for which the Warehouse maintains basic economic information.

2.23 As the central settlement provider for the Warehouse, CLS Bank settles Derivative Instructions received from The Warehouse Trust Company, LLC[7] ("Warehouse Trust") in relation to underlying OTC credit derivative transactions that are maintained in the Warehouse ("Warehouse Derivatives") in a manner that is similar to the manner in which it settles Instructions in relation to underlying FX Transactions. Members submit Instructions directly to the CLS system in relation to Warehouse Derivatives ("Warehouse Derivative Instructions") through Warehouse Trust. Each Warehouse Derivative Instruction specifies the payment amount in an Eligible Currency that is due under one or more Warehouse Derivatives. The payment amount may be a net amount between the two parties to one or more Warehouse Derivatives. If so, the netted amount is calculated by DTCC based upon records maintained for Warehouse Derivatives.

2.24 Only those institutions that are Members are eligible to participate in the settlement services that are provided by CLS Bank in respect of Warehouse Derivative Instructions utilizing Warehouse Trust as agent for the transmission of such Instructions. The underlying Warehouse Derivatives may, however, be proprietary to the Member or they may be third party customer transactions.

2.25 Like NDF Instructions, Warehouse Derivative Instructions are commingled with foreign exchange Instructions for settlement processing purposes. CLS Bank calculates funding requirements from its Settlement Members by taking into account Instructions in relation to all underlying Transactions that are in the process of being settled. Accordingly, all Pay-Ins and Pay-Outs relating to settlement for all Instructions, including Warehouse Derivative Instructions, continue to be made as between Settlement Members and CLS Bank. The settlement of Instructions involves CLS Bank's account with Bank of Canada only when a payment is required to be made in Canadian dollars by either a Settlement Member or CLS Bank.

2.26 At the present time, the Warehouse supports nine currencies comprising the Australian dollar; Canadian dollar; euro; Hong Kong dollar; Japanese yen; Singapore dollar; Swiss franc; UK pound sterling; and U.S. dollar, each of which is an Eligible Currency. Although the focus of the Warehouse is currently limited to OTC credit derivatives in these currencies, DTCC may expand its Warehouse services to other types of OTC derivatives transactions, and to other Eligible Currencies, in the future. This would serve to further enhance the range of settlement services that would be provided by CLS Bank in its role as central settlement provider for the Warehouse. CLS Bank would have to seek and obtain regulatory approval before agreeing to settle any payments related to such expanded activities.

2.27 As alluded to above, OTC derivative transactions underlying Derivative Instructions, including Warehouse Derivatives, would be considered derivatives and may, or may not, be considered transactions in relation to securities for purposes of the Act, and, in particular, the clearing agency recognition requirements of the Act that are described below.

The Aggregation Service

2.28 Last year, CLS Aggregation Services LLC ("CLSAS"), a separate company owned 51% by CLS Bank and 49% by Traiana Inc., began offering the Aggregation Service. The Aggregation Service is a stand-alone service offering from CLSAS that has no direct interface with the settlement services offered by CLS Bank. This initiative is intended to address potential Member middle/back office capacity issues caused by high frequency, low value FX trades attributable to, among other things, algorithmic trading and retail aggregators, as well as the desire to lower the Member's transaction process costs for such trades.

2.29 The Aggregation Service "aggregates" FX spot trades (FX forward trades, NDFs and FX option premium trades are not currently eligible for processing in the Aggregation Service). The Aggregation Service compresses into one or more aggregated transactions all matched FX spot trades between two trading parties that have not been previously aggregated by the Aggregation Service and involve the same buy currency from one trading party in exchange for another sell currency to the other trading party with respect to such matched FX trades. The result of the compression is one or more aggregated transactions that represent the cumulative amount of buy currency against the cumulative amount of sell currency from the two trading parties.

3.0 Regulatory Oversight and Supervision of CLS Bank

Oversight by U.S. Federal Reserve

3.1 As indicated above, CLS Bank is chartered as an Edge corporation under the laws of the United States and, as such, it is a U.S. banking institution that is authorized to conduct international banking operations. As an Edge corporation, CLS Bank is supervised and regulated by the U.S. Federal Reserve.

[7] Warehouse Trust is a limited purpose trust company that is wholly-owned by DTCC and regulated by the Board of Governors of the U.S. Federal Reserve and the New York State Banking Department.

Cooperative Oversight by Central Banks

3.2 The U.S. Federal Reserve and the Central Banks have established a cooperative oversight arrangement for CLS Bank that is governed by, and conducted in accordance with, the Protocol for the Cooperative Oversight Arrangement of CLS (the "Protocol"). The Protocol is premised upon the principles for international cooperative oversight that are contained in the "Central Bank Oversight of Payment and Settlement Systems" report of the Committee on Payment and Settlement Systems of the Group of Ten countries. The Protocol provides a mechanism for the mutual assistance of the participating Central Banks to facilitate the fulfilment of their individual responsibilities in pursuit of their shared public policy objectives for the safety and efficiency of payment and settlement systems and their focus on the stability of the financial system. The Core Principles for Systemically Important Payment Systems serve as minimum standards against which CLS Bank is assessed by participating Central Banks pursuant to the Protocol. A copy of the Protocol is attached at Tab No. 2. The Central Banks also receive extensive information regarding the CLS system through their participation on the CLS Oversight Committee established by the Protocol.

Oversight by Bank of Canada and OSFI

3.3 As the Canadian dollar is an Eligible Currency for purposes of the CLS system, Bank of Canada is a participating Central Bank under the Protocol. It also has a domestic responsibility for supervision of CLS Bank as a result of the PCSA which imposes a responsibility on Bank of Canada to supervise clearing and settlement systems that could be operated in a manner that could pose systemic risk. In keeping with such responsibility, Bank of Canada has designated the CLS system, as well as the Large Value Transfer System and CDSX, operated by CDS Clearing and Depository Services Inc., as clearing and settlement systems that could be operated in a manner that could pose systemic risk pursuant to section 4(1) of the PCSA. As a bank, CLS Bank is also subject to the prospect of regulatory oversight by the Office of the Superintendent of Financial Institutions ("OSFI") pursuant to the *Bank Act* (Canada).

Oversight by Other Central Banks

3.4 As described above, in addition to the CLS system's designation as a clearing and settlement system by Bank of Canada pursuant to Section 4(1) of the PCSA, CLS Bank and/or the CLS system have been the subject to similar designations in each of the European Union, Australia, Hong Kong, Israel, New Zealand, Singapore, South Africa and South Korea.

4.0 Clearing Agency Recognition Requirements

4.1 The Act regulates the activities of clearing agencies in Ontario by prescribing a process for their recognition pursuant to 21.2 of the Act. As currently drafted, section 21.2(1) simply provides that the OSC may, on the application of a clearing agency, recognize the clearing agency if the OSC is satisfied that to do so would be in the public interest. Although section 21.2(1) is currently permissive only, because it does not expressly prohibit a clearing agency from acting as such without being recognized by the OSC, new section 21.2(0.1) will impose a mandatory recognition requirement on clearing agencies effective March 1, 2011. Section 21.2(0.1) will provide that no person or company shall carry on business in Ontario as a clearing agency unless the person or company is recognized by the OSC under section 21.2(0.1) as a clearing agency.

5.0 Application for an Exemption from Clearing Agency Recognition Requirement

5.1 As described above, having extended its settlement services to include settlement services in relation to Derivative Instructions, CLS Bank is prepared to acknowledge that it is a clearing agency for purposes of the Act. Although the matter is not free from doubt, CLS Bank is also prepared to acknowledge that it will be considered to be carrying on the business of a clearing agency in Ontario for purposes of section 21.2(0.1) of the Act when it becomes effective on March 1, 2011 based upon related guidance that is provide by OSC Notice 24-702.[8]

5.2 As described above, CLS Bank is already subject to extensive regulatory oversight and/or supervision by the U.S. Federal Reserve, the Central Banks and Bank of Canada. These institutions have the requisite expertise to effectively monitor and supervise the payment settlement system that is operated by CLS Bank. It is therefore unlikely that any additional regulatory oversight by the OSC could make a meaningful contribution to the existing regulatory framework for CLS Bank.

5.3 In the light of the foregoing, CLS Bank hereby applies for an order pursuant to section 147 of the Act granting an exemption from the clearing agency recognition requirements of section 21.2 of the Act effective March 1, 2011 or such other date on which section 21.2(0.1) of the Act becomes effective.

[8] *Supra*, note 1 at p. 2326.

6.0 Submissions in Support of the Exemption Sought by CLS Bank

6.1 It is our submission that the exemptive relief sought by CLS Bank should be granted for the following reasons:

(a) Members of CLS Bank are, and will continue to be, limited to financial institutions that are capable of meeting the CLS Bank membership requirements that are set out in the Rules;

(b) the services that are offered by CLS Bank are, first and foremost, payment settlement services and any related clearing or data processing activity that is conducted by CLS Bank in connection with any underlying transaction in relation to derivatives and/or securities is entirely incidental to its primary function of settling Instructions, including Derivative Instructions, since CLS Bank has nothing to do with the entering into of underlying Transactions;

(c) as an Edge corporation operating an international payment system, CLS Bank and the CLS system are subject to regulatory oversight and supervision by the U.S. Federal Reserve;

(d) CLS Bank and the CLS system are also subject to a cooperative oversight arrangement among the U.S. Federal Reserve and the Central Banks, including Bank of Canada, that is governed by, and conducted in accordance with, the Protocol;

(e) Bank of Canada, and each of the other Central Banks, receive extensive information regarding the CLS system through their participation on the CLS Oversight Committee established by the Protocol;

(f) within Canada, CLS Bank is also subject to regulatory oversight by Bank of Canada and the prospect of regulatory oversight by OSFI pursuant to the PCSA and the Bank Act (Canada), respectively, and this regulatory framework is consistent with the way in which CLS Bank is regulated as a bank and/or the operator of the CLS system in all other jurisdictions; and

(g) there is no public interest to be served by adding an additional layer of oversight to the above-described regulatory framework.

7.0 Authorization Letter, Draft Decision Document and Filing Fees

7.1 In support of the clearing agency recognition exemption that is sought by way of this application, we attach or enclose the following:

(a) an authorization letter of CLS Bank authorizing the filing of this application by us and confirming the truth of the facts contained herein is attached at Tab No. 3;

(b) a draft order pursuant to section 147 of the Act (the "Draft Order") is attached at Tab No. 4; and

(c) a cheque payable to the OSC in the amount of $5,250 is enclosed in satisfaction of the applicable filing fee.

7.2 I invite you to call me at your convenience to discuss any questions or comments that you may have in relation to any aspect of this application or the Draft Order.

Yours truly,

"Michael C. Nicholas"
Michael C. Nicholas
MCN/cb

c: Maxime Paré
Antoinette Leung
Ontario Securities Commission

James Holdcroft
David Skoblow
Lauren Alter-Baumann
CLS Bank International

Henry Wiercinski
McCarthy Tétrault LLP

Tab No. 1

OSC STAFF NOTICE 24-702
REGULATORY APPROACH TO RECOGNITION
AND EXEMPTION FROM RECOGNITION OF CLEARING AGENCIES

OSC Staff Notice 24-702 can be viewed via the following link:
http://www.osc.gov.on.ca/documents/en/Securities-Category2/sn_20100319_24-702_clearing-agencies.pdf

Tab No. 2

PROTOCOL FOR THE COOPERATIVE OVERSIGHT ARRANGEMENT OF CLS

The Protocol for the Cooperative Oversight Arrangement of CLS can be viewed via the following link:
http://www.federalreserve.gov/paymentsystems/cls_protocol.htm

Tab No. 3

David V. Skoblow
Executive Vice President and General Counsel

39 Broadway
29th floor
New York, NY 10006

Tel: +1 (212) 943-2296
Fax: +1 (212) 363-6998
dskoblow@cls-bank.com

January 12, 2011

VIA COURIER

Ontario Securities Commission
20 Queen Street West
Suite 1800
Toronto ON M5H 3S8

Attention: Secretary to the Commission

Dear Sirs/Mesdames:

Re: CLS Bank International – Application for Exemption from Recognition as a Clearing Agency pursuant to Section 147 of the *Securities Act* (Ontario)

The undersigned hereby authorizes the making and filing of the attached application letter by McCarthy Tétrault LLP and confirms the truth of the facts contained therein.

CLS BANK INTERNATIONAL

"David V. Skoblow"
Name: David V. Skoblow
Title: Executive Vice President and General Counsel

Tab No. 4

DRAFT: January 18, 2011

March 1, 2011

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

AND

IN THE MATTER OF
CLS BANK INTERNATIONAL

AND

CLS SERVICES LTD.

DECISION

(Section 147 of the Act)

UPON the Ontario Securities Commission (the Commission) having received an application (the Application) from CLS Bank International (the Applicant) for a decision pursuant to section 147 of the Act exempting the Applicant and CLS Services Ltd. ("CLS Services") from the clearing agency recognition requirement of subsection 21.2(0.1) of the Act (the Requested Relief);

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is chartered as an Edge corporation under the laws of the United States and, as such, it is a banking institution that is authorized to conduct international banking operations.

2. The Applicant and CLS Services are wholly-owned subsidiaries of CLS UK Intermediate Holdings Ltd. (CLS Intermediate Holdings).

3. Each of CLS Services and CLS Intermediate Holdings is incorporated under the laws of England and Wales and is located in London, England. CLS Intermediate Holdings also maintains a representative office in Tokyo, Japan.

4. CLS Intermediate Holdings is a wholly-owned subsidiary of CLS Group Holdings AG, a Swiss company that is the ultimate holding company of the CLS Group.

5. The Applicant was established in 1999 to develop a system to settle payment instructions relating to underlying foreign exchange transactions to reduce the settlement risk inherent in then existing settlement mechanisms. It began live operations in September 2002 using its automated CLS system.

6. The Applicant currently settles payment instructions relating to underlying transactions (Transactions) that involve seventeen different currencies (Eligible Currencies) comprising the Australian dollar; the Canadian dollar; the Danish krone; the euro; the Hong Kong dollar; the Israeli shekel; the Japanese yen; the Mexican peso; the New Zealand dollar; the Norwegian krone; the Singapore dollar; the South African rand; the South Korean won; the Swedish krona; the Swiss franc; the UK pound sterling; and the US dollar and it also intends to settle payment instructions relating to Transactions involving other currencies subject to receipt of all necessary approvals.

7. The CLS system is a continuous linked settlement system for settling payments in relation to Transactions that is intended to eliminate settlement risk attributable to the existence of time zones.

8. The Applicant operates the CLS system pursuant to the CLS Bank International Rules (the Rules). The Rules are governed by English law.

9. CLS Services provides CLS system operations and support, vendor support, information technology, security services and other support services to, and under the direction of, the Applicant pursuant to a Master Services Agreement between the Applicant and CLS Services.

10. The Applicant permits participation in the CLS system by two different types of members. Members who maintain an account with the Applicant (an Account) are referred to as Settlement Members and members who do not maintain an Account are referred to as User Members. Each User Member must be sponsored by a Settlement Member. Both Settlement Members and User Members (in either case, a Member) are required, as a condition of membership, to execute an agreement with the Applicant that is governed by New York law.

11. An applicant for approval as a Settlement Member must meet stringent membership requirements that are set forth in the Rules and that include, among other things, an established operating capability, acceptable regulatory oversight, minimum capital and capital ratio requirements and minimum credit ratings.

12. Each Member participates in the CLS system by submitting payment instructions in relation to a Transaction to the CLS system in accordance with a submission process that identifies the Member to the Applicant through the use of an identification code. Each payment instruction identifies, among other things, the parties to the Transaction and the Member that is expected to submit a corresponding payment instruction in relation to the same Transaction. Each payment instruction is processed by the CLS system and, if determined to be eligible for settlement, is settled across the books and records of the Applicant by the simultaneous entry of debits and credits to the Accounts of the relevant Settlement Members identified in the payment instructions.

13. The Account that the Applicant maintains for each Settlement Member is a single, multi-currency account in respect of each Eligible Currency. The Account is used for the settlement of all payment instructions that are submitted by either the Settlement Member or a User Member that has been sponsored by the Settlement Member.

14. Within its Account a Settlement Member may be permitted to have negative balances in some Eligible Currencies if there are offsetting positive balances in the other Eligible Currencies such that the overall Account balance of the Settlement Member (the Account Balance) is positive. The Account Balance is calculated as the sum of the positive and negative balances for each Eligible Currency in the Account (each, a Currency Balance) after each Currency Balance has been converted to the base currency of U.S. dollars.

15. The Applicant maintains an account with the central monetary authority of each country that issues an Eligible Currency (each, a Central Bank). In Canada, the Applicant maintains its account with Bank of Canada. As part of the funding process for Accounts, the applicant credits the relevant Currency Balance within a Settlement Member's Account whenever the Applicant receives a pay-in of the relevant currency in the Applicant's relevant Central Bank account. The Applicant also disburses funds from its Central Bank accounts and debits the relevant Settlement Member's Account accordingly.

16. Settlement of payment instructions occurs when the Applicant simultaneously debits and credits the Accounts of the relevant Settlement Members in accordance with the payment instructions that were submitted by the Settlement Members and/or the User Members sponsored by them. Each payment instruction is settled individually on a gross basis and is not netted against other payment instructions.

17. The Applicant does not guarantee settlement nor does it become a counterparty to any of the Transactions to which payment instructions are related. Settlement will not occur if payment instructions are not eligible for settlement because, for example, an Account would not have a positive Account Balance post settlement. All settled payment instructions are final and binding on each of the Members. Generally speaking, unsettled payment instructions are rejected at the end of the relevant settlement date.

18. Members currently have their head or home offices in Australia, Belgium, Canada, Denmark, England, France, Germany, Hong Kong, Israel, Italy, Japan, Luxembourg, Netherlands, Norway, Scotland, Singapore, South Africa, South Korea, Spain, Sweden, Switzerland and the United States. In the future, it is likely that CLS Bank will have Members with their head or home offices in other jurisdictions provided CLS Bank's requirements are met including receipt of all necessary approvals.

19. Settlement Members located in Canada comprise four banks located in Ontario that are listed in Schedule 1 to the *Bank Act* (Canada).

20. As an Edge corporation, the Applicant is supervised and regulated by the Board of Governors of the U.S. Federal Reserve System and the Federal Reserve Bank of New York (collectively, the U.S. Federal Reserve).

21. The U.S. Federal Reserve and the Central Banks have established a cooperative oversight arrangement that is governed by, and conducted in accordance with, the Protocol for the Cooperative Oversight Arrangement of CLS (the Protocol). The Protocol is premised upon the principles for international cooperative oversight that are contained in the "Central Bank Oversight of Payment and Settlement Systems" report of the Committee on Payment and Settlement Systems of the Group of Ten countries. The Protocol provides a mechanism for the mutual assistance of the participating Central Banks to facilitate the fulfilment of their individual responsibilities in pursuit of their shared public policy objectives for the safety and efficiency of payment and settlement systems and their focus on the stability of the financial system.

22. Bank of Canada is a participating Central Bank under the Protocol. It also has a domestic responsibility for the supervision of CLS Bank as a result of its designation of the CLS system as a clearing and settlement system that could be operated in a manner that could pose systemic risk pursuant to section 4(1) of the *Payment Clearing and Settlement Act* (Canada) ("PCSA"). CLS Bank and/or the CLS system have been the subject of similar designations in each of the European Union, Australia, Hong Kong, Israel, New Zealand, Singapore, South Africa and South Korea.

23. Bank of Canada and the other Central Banks also receive extensive information regarding the CLS system through their participation on the CLS Oversight Committee established by the Protocol.

24. Prior to 2007, the settlement services offered by the Applicant were limited to the settlement of payment instructions in relation to underlying foreign exchange (FX) Transactions.

25. During 2007, the Applicant extended its settlement services to include the settlement of payment instructions in relation to underlying non-deliverable forward foreign exchange Transactions and the settlement of payment instructions in relation to underlying over-the-counter (OTC) derivative Transactions (Derivative Instructions) resulting in one-way payments across the books of CLS Bank. Settlement services in relation to Derivative Instructions are currently limited to underlying OTC credit derivative transactions but they could eventually include other types of underlying derivative transactions, such as interest rate swaps, equity derivatives and commodity derivatives subject to receipt of all necessary approvals. CLS Bank's settlement services may also be extended to include the settlement of FX option premium payment instructions.

26. The extension of CLS Bank's settlement services to the settlement of Derivative Instructions followed its selection as the central settlement provider for a Trade Information Warehouse (the Warehouse) that has been established by DTCC Deriv/SERV LLC (DTCC), a wholly-owned subsidiary of Depository Trust & Clearing Corporation.

27. The Warehouse was designed by DTCC in response to concerns expressed by certain regulatory authorities, including the U.S. Federal Reserve and the UK Financial Services Authority, regarding insufficient documentation in respect of OTC credit derivative transactions. The Warehouse is intended to provide a comprehensive, centralized trade database with the most up-to-date record of each OTC credit derivative transaction, as well as a central processing capability to standardize and automate "downstream" processing of payments and other post-confirmation processes.

28. As the central settlement provider for the Warehouse, the Applicant settles Derivative Instructions received from The Warehouse Trust Company, LLC (Warehouse Trust) in relation to underlying OTC derivative transactions that are maintained in the Warehouse (Warehouse Derivatives) in a manner that is similar to the manner in which it settles payment instructions in relation to underlying FX Transactions, although settlement only results in a one-way payment. Members submit instructions in relation to Warehouse Derivatives (Warehouse Derivative Instructions) directly to the CLS system through Warehouse Trust. Each Warehouse Derivative Instruction specifies the payment amount in an Eligible Currency that is due under one or more Warehouse Derivatives. Warehouse Trust is a limited purpose trust company that is wholly-owned by DTCC and regulated by the Board of Governors of the U.S. Federal Reserve System and the New York State Banking Department.

29. Only those institutions that are Members are eligible to participate in the settlement services that are provided by the Applicant in respect of Warehouse Derivative Instructions utilizing Warehouse Trust as agent for the transmission of the Warehouse Derivative Instructions. The underlying Warehouse Derivatives may, however, be proprietary to the Member or they may be third party customer transactions.

30. Although CLS Bank is currently settling Derivative Instructions submitted by Members through Warehouse Trust in relation to OTC credit derivatives involving nine Eligible Currencies, in the future DTCC may request CLS Bank to settle Derivative Instructions in relation to other types of OTC derivative transactions involving any Eligible Currencies or OTC credit derivatives involving other Eligible Currencies. CLS Bank would have to seek and obtain regulatory approval before agreeing to settle any payments related to such expanded activities.

31. OTC derivative transactions underlying Derivative Instructions, including Warehouse Derivatives, are considered derivatives and can include transactions in relation to securities for purpose of the Act and the Applicant may therefore be considered to be carrying on the business of a clearing agency in Ontario for purposes of the Act.

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

IT IS THE DECISION of the Commission pursuant to section 147 of the Act that the Requested Relief is hereby granted provided that:

1. the Applicant and the CLS system continue to be supervised and regulated by the U.S. Federal Reserve and Bank of Canada;

2. the Applicant does not engage in any clearing agency activity that is not described in the Application without obtaining the prior approval of the Commission;

3. the Applicant will provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission and its staff subject to any applicable privacy or other laws governing the sharing of information and the protection of personal information.

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