

The Ontario Securities Commission

# OSC Bulletin

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

**The Ontario Securities Commission**

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# Chapter 1

## Notices / News Releases

### 1.1 Notices

#### 1.1.1 Current Proceedings Before The Ontario Securities Commission

May 6, 2011

#### CURRENT PROCEEDINGS

#### BEFORE

#### ONTARIO SECURITIES COMMISSION

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

The Harry S. Bray Hearing Room  
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Paulette L. Kennedy	—	PLK
Edward P. Kerwin	—	EPK
Vern Krishna	—	VK
Christopher Portner	—	CP
Charles Wesley Moore (Wes) Scott	—	CWMS

### SCHEDULED OSC HEARINGS

May 10, 2011	2:30 p.m.	Cicccone Group, Medra Corporation, 990509 Ontario Inc., Tadd Financial Inc., Cachet Wealth Management Inc., Vince Cicccone, Darryl Brubacher, Andrew J. Martin., Steve Haney, Klaudiusz Malinowski and Ben Giangrosso
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s. 127

M. Vaillancourt in attendance for Staff

Panel: JDC

May 12, 2011	10:00 a.m.	Magna Partners Ltd.
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s. 21.7

M. Vaillancourt in attendance for Staff

Panel: JEAT/CP

May 13, 2011	10:00 a.m.	Goldbridge Financial Inc., Wesley Wayne Weber and Shawn C. Lesperance
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s. 127

C. Johnson in attendance for Staff

Panel: MCH/MGC

May 16, 2011	10:00 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
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s. 127

H. Craig/C. Rossi in attendance for Staff

Panel: MGC

May 16, 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

H. Craig in attendance for Staff

Panel: JDC

May 16-18, May 25, May 27-31 and June 3, 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**

May 26, 2011  
2:00 p.m.

s. 127

P. Foy in attendance for Staff

Panel: JEAT/MCH

May 17, 2011  
10:00 a.m.

**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: CP

May 17, 2011  
11:00 a.m.

**Heir Home Equity Investment Rewards Inc.; FFI First Fruit Investments Inc.; Wealth Building Mortgages Inc.; Archibald Robertson; Eric Deschamps; Canyon Acquisitions, LLC; Canyon Acquisitions International, LLC; Brent Borland; Wayne D. Robbins; Marco Caruso; Placencia Estates Development, Ltd.; Copal Resort Development Group, LLC; Rendezvous Island, Ltd.; The Placencia Marina, Ltd.; and The Placencia Hotel and Residences Ltd.**

s. 127

A. Perschy in attendance for Staff

Panel: CP

May 19, 2011  
10:00 a.m.

**Andrew Rankin**

s. 144

S. Fenton/K. Manarin in attendance for Staff

Panel: JEAT/PLK/CP

May 24, 2011  
2:30 p.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)

H. Craig in attendance for Staff

Panel: MGC

May 25, 2011  
9:00 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: CP/PLK

May 25-31, 2011  
10:00 a.m.

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

s. 127

C. Rossi in attendance for Staff

Panel: JDC/CWMS

May 31, 2011 11:00 a.m.	<b>Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton</b>  s. 127  H. Craig in attendance for Staff  Panel: CP	June 7, 2011 2:30 p.m.	<b>Peter Sbaraglia</b>  s. 127  S. Horgan/P. Foy in attendance for Staff  Panel: TBA
June 1-2, 2011 10:00 a.m.	<b>Hector Wong</b>  s. 21.7  A. Heydon in attendance for Staff  Panel: EPK/PLK	June 10, 2011 10:00 a.m.	<b>QuantFX Asset Management Inc., Vadim Tsatskin, Lucien Shtromvaser and Rostislav Zemlinsky</b>  s. 127  C. Rossi in attendance for Staff  Panel: MGC
June 6 and June 8-9, 2011 10:00 a.m.	<b>Lehman Brothers &amp; Associates Corp., Greg Marks, Kent Emerson Lounds and Gregory William Higgins</b>  s. 127  C. Rossi in attendance for Staff  Panel: CP/CWMS	June 14 and June 17, 2011 10:00 a.m.	<b>Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Leverage Pro Inc., Prosporex Investment Club Inc., Prosporex Investments Inc., Prosporex Ltd., Prosporex Inc., Prosporex Forex SPV Trust, Networth Financial Group Inc., and Networth Marketing Solutions</b>  s. 127 and 127.1  H. Daley in attendance for Staff  Panel: JDC/MCH
June 6, June 8-10, and June 15-16, 2011 10:00 a.m.	<b>Innovative Gifting Inc., Terence Lushington, Z2A Corp., and Christine Hewitt</b>  s. 127	June 20 and June 22-30, 2011 10:00 a.m.	<b>Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk</b>  s. 37, 127 and 127.1  C. Price in attendance for Staff  Panel: JDC/MCH
June 7, 2011 2:00 p.m.	M. Vaillancourt in attendance for Staff  Panel: JDC/MCH		
June 6, 2011 11:00 a.m.	<b>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</b>  s. 127	June 22, 2011 10:00 a.m.	<b>Energy Syndications Inc., Green Syndications Inc., Syndications Canada Inc., Land Syndications Inc. and Douglas Chaddock</b>  s. 127  C. Johnson in attendance for Staff  Panel: JEAT
June 8-10, June 14-17 and June 22-23, 2011 10:00 a.m.			
June 13 and June 20, 2011 11:00 a.m.	H. Craig/C. Watson in attendance for Staff  Panel: VK/EPK		

June 29, 2011 3:00 p.m.	<b>Bernard Boily</b>  s. 127 and 127.1  M. Vaillancourt/U. Sheikh in attendance for Staff  Panel: VK	September 6-12, September 14-26 and September 28, 2011  10:00 a.m.	<b>Anthony Ianno and Saverio Manzo</b>  s. 127 and 127.1  A. Clark in attendance for Staff  Panel: EPK/PLK
July 15, 2011 10:00 a.m.	<b>Hillcorp International Services, Hillcorp Wealth Management, Suncorp Holdings, 1621852 Ontario Limited, Steven John Hill, and Danny De Melo</b>  s. 127  A. Clark in attendance for Staff  Panel: TBA	September 8, 2011  10:00 a.m.	<b>American Heritage Stock Transfer Inc., American Heritage Stock Transfer, Inc., BFM Industries Inc., Denver Gardner Inc., Sandy Winick, Andrea Lee McCarthy, Kolt Curry and Laura Mateyak</b>  s. 127  J. Feasby in attendance for Staff  Panel: JEAT
July 20, 2011 10:00 a.m.	<b>Peter Beck, Swift Trade Inc. (continued as 7722656 Canada Inc.), Biremis, Corp., Opal Stone Financial Services S.A., Barka Co. Limited, Trieme Corporation and a limited partnership referred to as "Anguilla LP"</b>  s. 127  B. Shulman in attendance for Staff  Panel: JEAT	September 12, 14-26 and September 28-30, 2011  10:00 a.m.	<b>FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun</b>  s. 127  C. Price in attendance for Staff  Panel: TBA
July 26, 2011 11:00 a.m.	<b>Marlon Gary Hibbert, Ashanti Corporate Services Inc., Dominion International Resource Management Inc., Kabash Resource Management, Power to Create Wealth Inc. and Power to Create Wealth Inc. (Panama)</b>  s. 127  S. Chandra in attendance for Staff  Panel: TBA	September 14-23, September 28 – October 4, 2011  10:00 a.m.	<b>Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)</b>  s. 127 and 127.1  D. Ferris in attendance for Staff  Panel: VK/MCH
July 29, 2011 10:00 a.m.	<b>North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti</b>  s. 127  M. Vaillancourt in attendance for Staff  Panel: TBA	October 12-24 and October 26-27, 2011  10:00 a.m.	<b>Helen Kuszper and Paul Kuszper</b>  s. 127 and 127.1  U. Sheikh in attendance for Staff  Panel: JDC/CWMS



October 17-24 and October 26-31, 2011	<b>Richvale Resource Corp., Marvin Winick, Howard Blumenfeld, John Colonna, Pasquale Schiavone, and Shafi Khan</b>	December 5 and December 7-16, 2011	<b>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.</b>
10:00 a.m.	s. 127(7) and 127(8)  C. Johnson in attendance for Staff  Panel: EPK/MCH	10:00 a.m.	
November 7, November 9-21, November 23 – December 2, 2011	<b>Majestic Supply Co. Inc., Suncastle Developments Corporation, Herbert Adams, Steve Bishop, Mary Kricfalusi, Kevin Loman and CBK Enterprises Inc.</b>		s. 127  M. Britton in attendance for Staff  Panel: EPK/PLK
10:00 a.m.	s. 37, 127 and 127.1  D. Ferris in attendance for Staff  Panel: EPK/PLK	TBA	<b>Yama Abdullah Yaqeen</b>  s. 8(2)  J. Superina in attendance for Staff  Panel: TBA
November 14-21 and November 23-28, 2011	<b>Shaun Gerard McErlean, Securus Capital Inc., and Acquisce Investments</b>	TBA	<b>Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell</b>
10:00 a.m.	s. 127  M. Britton in attendance for Staff  Panel: TBA		s. 127  J. Waechter in attendance for Staff  Panel: TBA
December 1-5 and December 7-15, 2011	<b>Marlon Gary Hibbert, Ashanti Corporate Services Inc., Dominion International Resource Management Inc., Kabash Resource Management, Power to Create Wealth Inc. and Power to Create Wealth Inc. (Panama)</b>	TBA	<b>Frank Dunn, Douglas Beatty, Michael Gollogly</b>
10:00 a.m.	s. 127  S. Chandra in attendance for Staff  Panel: TBA		s. 127  K. Daniels in attendance for Staff  Panel: TBA
		TBA	<b>MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric</b>
			s. 127 and 127(1)  D. Ferris in attendance for Staff  Panel: TBA

TBA	<p><b>Goldpoint Resources Corporation, Pasqualino Novielli also known as Lee or Lino Novielli, Brian Patrick Moloney also known as Brian Caldwell, and Zaida Pimentel also known as Zaida Novielli</b></p> <p>s. 127(1) and 127(5)</p> <p>C. Watson in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Gold-Quest International, Health and Harmony, Iain Buchanan and Lisa Buchanan</b></p> <p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmony, Harmony Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale</b></p> <p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Brilliant Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York</b></p> <p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Lyndz Pharmaceuticals Inc., James Marketing Ltd., Michael Eatch and Rickey McKenzie</b></p> <p>s. 127(1) and (5)</p> <p>J. Feasby/C. Rossi in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Abel Da Silva</b></p> <p>s. 127</p> <p>C. Watson in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>M P Global Financial Ltd., and Joe Feng Deng</b></p> <p>s. 127 (1)</p> <p>M. Britton in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Sextant Capital Management Inc., Sextant Capital GP Inc., Otto Spork, Robert Levack and Natalie Spork</b></p> <p>s. 127</p> <p>T. Center in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Shane Suman and Monie Rahman</b></p> <p>s. 127 and 127(1)</p> <p>C. Price in attendance for Staff</p> <p>Panel: TBA</p>		<p><b>Paul Azeff, Korin Bobrow, Mitchell Finkelstein, Howard Jeffrey Miller and Man Kin Cheng (a.k.a. Francis Cheng)</b></p> <p>s. 127</p> <p>T. Center/D. Campbell in attendance for Staff</p> <p>Panel: TBA</p>

TBA	<p><b>Maple Leaf Investment Fund Corp.,</b>  <b>Joe Henry Chau (aka: Henry Joe Chau, Shung Kai Chow and Henry Shung Kai Chow), Tulsiani Investments Inc., Sunil Tulsiani and Ravinder Tulsiani</b></p> <p>s. 127</p> <p>A. Perschy/C. Rossi in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin</b></p> <p>s. 127</p> <p>T. Center in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiants Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group</b></p> <p>s. 127 and 127.1</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Alexander Christ Doulis (aka Alexander Christos Doulis, aka Alexandros Christodoulidis) and Liberty Consulting Ltd.</b></p> <p>s. 127</p> <p>S. Horgan in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Vadim Tsatskin, Michael Schaumer, Elliot Feder, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff</b></p> <p>s. 37, 127 and 127.1</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Rezwealth Financial Services Inc., Pamela Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc., Sylvan Blackett, 1778445 Ontario Inc. and Willoughby Smith</b></p> <p>s. 127(1) and (5)</p> <p>A. Heydon in attendance for Staff</p> <p>Panel: TBA</p>
TBA		TBA	<p><b>Simply Wealth Financial Group Inc., Naida Allarde, Bernardo Giangrosso, K&amp;S Global Wealth Creative Strategies Inc., Kevin Persaud, Maxine Lobban and Wayne Lobban</b></p> <p>s. 127 and 127.1</p> <p>C. Johnson in attendance for Staff</p> <p>Panel: TBA</p>

TBA      **Uranium308 Resources Inc.,  
Michael Friedman, George  
Schwartz, Peter Robinson, and  
Shafi Khan**

s. 127

H. Craig/C.Rossi 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. 127

H. Craig/C. Rossi in attendance for  
Staff

Panel: TBA

  

TBA      **Paul Donald**

s. 127

C. Price in attendance for Staff

Panel: TBA

  

TBA      **David M. O'Brien**

s. 37, 127 and 127.1

B. Shulman in attendance for Staff

Panel: TBA

  

TBA      **L.T.M.T. Trading Ltd. also known  
as L.T.M.T. Trading and Bernard  
Shaw**

s. 127

A. Heydon in attendance for Staff

Panel: TBA

TBA      **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

**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. Boulton and Peter Y. Atkinson**

## 1.1.2 CSA Staff Notice 11-314 – Update of CSA Instruments



Canadian Securities  
Administrators

Autorités canadiennes  
en valeurs mobilières

### CANADIAN SECURITIES ADMINISTRATORS STAFF NOTICE 11-314 UPDATE OF CSA INSTRUMENTS

**May 6, 2011**

From time to time, a local jurisdiction may amend a national or multilateral instrument to reflect changes that affect activity only in that particular local jurisdiction. Such local amendments may nonetheless be of interest or importance beyond the local jurisdiction. The CSA recognize that publicly-available consolidated versions of the affected instruments, kept current to reflect the local amendments from all CSA jurisdictions, will be useful.

To that end, CSA staff intend from time to time to issue notices that:

- identify the sections of national and multilateral instruments affected by local amendments; and
- set out the text of the local amendments in various jurisdictions and their source.

Annex A to this notice sets out a number of changes that have already been made locally to the indicated instruments. The text of rule consolidations on the websites of CSA members will now be updated, as necessary, to reflect these local amendments.

Questions regarding this notice may be directed to:

Mark Wang  
British Columbia Securities Commission  
Tel: (604) 899-6658  
mwang@bcsc.bc.ca

Simon Thompson  
Ontario Securities Commission  
Tel: (416) 593-8261  
sthompson@osc.gov.on.ca

Kari Horn  
Alberta Securities Commission  
Tel: (403) 297-4698  
kari.horn@asc.ca

Sylvia Pateras  
Autorité des marchés financiers  
Tel: (514) 395-0337, extension 2536  
sylvia.pateras@lautorite.qc.ca

Manon Losier  
New Brunswick Securities Commission  
Tel: (506) 643-7690  
manon.losier@nbsc-cvmnb.ca

Barbara Shourounis  
Saskatchewan Financial Services Commission  
Tel: (306) 787-5842  
bshourounis@sfsc.gov.sk.ca

Chris Besko  
The Manitoba Securities Commission  
Tel: (204) 945-2561  
Chris.Besko@gov.mb.ca

Shirley Lee  
Nova Scotia Securities Commission  
Tel: (902) 424-5441  
leesp@gov.ns.ca

**May 6, 2011**

## Annex A

National or Multilateral Instrument	Local Amending Rules	Details of Changes in National/Multilateral Instrument
Multilateral Instrument 11-102 <i>Passport System</i>	Amendment to 11-102 consequential to the Repeal and Replacement of <i>Alberta Securities Commission Rules (General)</i> (Alberta)	<b>Appendix D was amended by:</b>  <b>(1) replacing “s. 28 of ASC Rules (General)” in the row entitled “Compensation or contingency trust fund” under the subheading “Registration” by “s. 6 of ASC Rules (General)”;</b> and <b>(2) repealing “s. 129.1 of ASC Rules (General) and” in the row entitled “Filing report of exempt distribution” under the subheading “Requirements when using prospectus exemptions”.</b>
	81-513 (British Columbia)	<i>Appendix D was amended, in the first four rows of the British Columbia column underneath the subheading “Investment Funds – Self-Dealing”, by:</i>  <b>(1) replacing “s.121” by “s.6 of BC Instrument 81-513 Self-Dealing”;</b> <b>(2) replacing “s.122” by “s.7 of BC Instrument 81-513 Self-Dealing”;</b> <b>(3) replacing “s.124” by “s.8 of BC Instrument 81-513 Self-Dealing”;</b> and <b>(4) replacing “s.126” by “s.9 of BC Instrument 81-513 Self-Dealing”.</b>
	11-801 (Northwest Territories)	<b>Appendix D was amended by replacing, in the Northwest Territories column, in the row located below the subheading “Insider Reporting”, “s.2 of Local Rule 55-501” by “s.104”.</b>
	11-802 (Prince Edward Island)	<b>Appendix D was amended by replacing, in the Prince Edward Island column, in the row located below the subheading “Insider Reporting”, “s.1 of Local Rule 55-501” by “s.104”.</b>
<i>Note: These changes to MI 11-102 updated, for passport purposes, the list of relevant local equivalent provisions in Alberta, British Columbia, Northwest Territories and Prince Edward Island.</i>		
National Instrument 13-101 <i>System for Electronic Document Analysis and Retrieval (SEDAR)</i>	13-802 (New Brunswick)  11-801 (Northwest Territories)  11-801 (Nunavut)  13-801 (Prince Edward Island)  11-803 (Yukon)	<b>Item 6 of Appendix A.III was amended, by replacing, in the list of applicable jurisdictions corresponding to that Item, “NS &amp; Nfld” by “NB, NS, Nfld, NWT, Nun, PEI &amp;YT”.</b>
<i>Note: These changes to NI 13-101 provided for the electronic filing of Securities Acquisition (Early Warnings) Press Release and Report, for the purposes of the securities laws of New Brunswick, Northwest Territories, Prince Edward Island, Nunavut and Yukon.</i>		
National Instrument 14-101 <i>Definitions</i>	11-801 (Nunavut)	<b>1. Subsection 1.1 (3) was amended by adding the following paragraph to the definition of “person or company”, after paragraph (c):</b>  (c.1) in Nunavut, a “person” as defined in section 1 of the <i>Securities Act</i> (Nunavut);  <b>2. Appendix C and Appendix D were each amended by replacing, in the Nunavut row, “Registrar” by “Superintendent”.</b>
<i>Note: The first change to NI 14-101 made Nunavut law consistent with that of other jurisdictions. The second updated Nunavut contact information.</i>		
National Instrument 41-101 <i>General Prospectus Requirements</i>	Amending Instrument to 41-101 (Alberta)	<b>Schedule 3 of Appendix A was amended by replacing the address of the Alberta Securities Commission with “Suite 600, 250 – 5<sup>th</sup> Street SW, Calgary, AB T2P 0R4”.</b>

National or Multilateral Instrument	Local Amending Rules	Details of Changes in National/Multilateral Instrument
	41-801 (Prince Edward Island)	<b>Schedule 3 of Appendix A was amended by replacing, in the Prince Edward Island row, “Deputy Registrar, Securities Division” by “Superintendent of Securities”, and adding just below “Government of Prince Edward Island”.</b>
	11-803 (Yukon)	<b>Schedule 3 of Appendix A was amended by replacing the text of the Regulator column of the Yukon row after the first line of the text by the following:</b>  Department of Justice Andrew A. Philipsen Law Centre 2130 – 2nd Avenue, 3rd Floor Whitehorse, Yukon Y1A 5H6 Telephone: (867) 667-5225 <a href="http://www.community.gov.yk.ca/corp/secureinvest.html">www.community.gov.yk.ca/corp/secureinvest.html</a>
<i>Note: These changes to NI 41-101 updated contact information specific to Alberta, Prince Edward Island and Yukon.</i>		
National Instrument 45-102 Resale of Securities	Amending Instrument to 45-102 (Alberta)	<b>Form 45-102F1 was amended by replacing the address of the Alberta Securities Commission by “Suite 600, 250 – 5<sup>th</sup> Street SW, Calgary, AB T2P 0R4”.</b>
	Amending Instrument to 45-102 (Northwest Territories)	<b>Appendix A was amended by replacing, in the Northwest Territories row, “Definition of “control person” and paragraph (iii) of the definition of “distribution” contained in subsection 1(1) of Blanket Order No. 1 of the Registrar of Securities” by “Definition of “control person” in subsection 1(1) and paragraph (c) of the definition of “distribution” contained in subsection 1(1) of the Securities Act (Northwest Territories)”.</b>
	11-801 (Nunavut)	<b>Appendix A was amended by replacing, in the Nunavut row, “Definition of “control person” and paragraph (iii) of the definition of “distribution” contained in subsection 1(1) of Blanket Order No.1 of the Registrar of Securities” by “Definition of “control person” in subsection 1.1 and paragraph (c) of the definition of “distribution” contained in subsection 1(1) of the Securities Act (Nunavut)”.</b>
	45-802 (Prince Edward Island)	<b>Appendix A was amended by replacing, in the Prince Edward Island row, “Clause (iii) of the definition of distribution in section 1” by “Clause 1(e) and subclause 1(k)(iii)”.</b>
<i>Note: The first change to NI 45-102 was an address update of the Alberta Securities Commission. The remaining changes to NI 45-102 were updates of Northwest Territories, Nunavut and PEI legislative references to control distributions. The update of the Northwest Territories legislative reference need only been made to the Ontario consolidation, as it is already reflected in other consolidations.</i>		
National Instrument 45-106 Prospectus and Registration Exemptions	Amending Instrument to 45-106 (Alberta)	<b>Form 45-106F1 was amended by replacing the address of the Alberta Securities Commission by “Suite 600, 250 – 5<sup>th</sup> Street SW, Calgary, AB T2P 0R4”.</b>
<i>Note: The above change was an address update of the Alberta Securities Commission.</i>		
National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI)	55-804 (New Brunswick)	<b>1. Section 1.1 was amended by replacing, in paragraph (a) of the definition of “transfer report”, “In Alberta, Saskatchewan, Ontario, Nova Scotia or Newfoundland” by “In Alberta, Saskatchewan, Ontario, New Brunswick, Northwest Territories, Nova Scotia, Prince Edward Island, Newfoundland, Nunavut or Yukon”.</b>
	11-801 (Northwest Territories)	
	11-801 (Nunavut)	<b>2. Section 3.2(1) was amended by replacing “In Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia or Newfoundland” by “In Alberta, Saskatchewan, Ontario, New Brunswick, Northwest Territories, Quebec, Nova Scotia, Prince Edward Island, Newfoundland, Nunavut or Yukon”.</b>
	55-802 (Prince Edward Island)	

National or Multilateral Instrument	Local Amending Rules	Details of Changes in National/Multilateral Instrument
NI 55-102 (cont'd)	<p>11-803 (Yukon)</p> <p>See previous references.</p>	<p><b>3. Forms 55-102F1, 55-102F2, 55-102F3 were each amended,</b></p> <p><b>(1) in the paragraph under the heading “Notice – Collection and Use of Personal Information” by:</b></p> <p><b>(a) adding “Northwest Territories” after “Ontario”;</b></p> <p><b>(b) adding “Prince Edward Island” after “Nova Scotia”; and</b></p> <p><b>(c) replacing “and Newfoundland” by “Newfoundland and Yukon”; and</b></p> <p><b>(2) near the end of each of those forms, by adding, in alphabetical order determined with reference to the name of the province or territory, the following:</b></p> <p>Superintendent of Securities Department of Justice Government of the Northwest Territories 1<sup>st</sup> Floor, Stuart M. Hogson Building 5009-49<sup>th</sup> Street P.O. Box 1320 Yellowknife, Northwest Territories, X1A 2L9 Attention: Deputy Superintendent of Securities Tel:(867) 920-3318</p> <p>Government of Nunavut Legal Registries Division P.O. Box 100, Station 570 1<sup>st</sup> Floor, Brown Building Iqaluit, Nunavut, X0A 0H0 Contact person : Superintendent of Securities Tel: (867) 975-6590 Fax: (867) 975-6595 Email: legal.registries@gov.nu.ca</p> <p>Superintendent of Securities Government of Prince Edward Island 4<sup>th</sup> Floor, Shaw Building 95 Rochford Street P.O. Box 2000 Charlottetown PE C1A 7N8 Tel: (902) 368-4550</p> <p>Yukon Securities Office Government of Yukon 3<sup>rd</sup> Floor – 2130 Second Avenue Whitehorse, Yukon Y1A 2C6 (C-6) Attention: Superintendent of Securities Tel:(867) 667-5505</p> <p><b>4. Form 55-102F6 was amended,</b></p> <p><b>(1) in the box entitled “Notice – Collection and Use of Personal Information”, by:</b></p>



National or Multilateral Instrument	Local Amending Rules	Details of Changes in National/Multilateral Instrument
NI 55-102 (cont'd)	See previous references.	<p>(a) <b>adding</b> "Northwest Territories" <b>after</b> "Ontario";</p> <p>(b) <b>adding</b> "Prince Edward Island" <b>after</b> "Nova Scotia"; <b>and</b></p> <p>(c) <b>replacing</b> "and Newfoundland" <b>by</b> "Newfoundland and Yukon";</p> <p><b>(2) in Box 4 entitled "JURISDICTION(S) WHERE THE ISSUER IS A REPORTING ISSUER OR THE EQUIVALENT", by adding, in alphabetical order each of:</b></p> <p><input type="checkbox"/> PRINCE EDWARD ISLAND</p> <p><input type="checkbox"/> NORTHWEST TERRITORIES</p> <p><input type="checkbox"/> YUKON</p> <p><b>(3) in the Instructions box by replacing</b> "the Northwest Territories, Nunavut, Prince Edward Island or the Yukon" <b>by</b> "Nunavut."; <b>and</b></p> <p><b>(4) near the end by adding, in alphabetical order determined with reference to the name of the province or territory, the following:</b></p> <p>Superintendent of Securities Department of Justice Government of the Northwest Territories 1st Floor, Stuart M. Hodgson Building 5009-49th Street P.O. Box 1320 Yellowknife, Northwest Territories, X1A 2L9 Attention: Deputy Superintendent of Securities Tel: (867) 920-3318 Facsimile: (867) 873-0243</p> <p>Government of Nunavut Legal Registries Division P.O. Box 100, Station 570 1st Floor, Brown Building Iqaluit, Nunavut, X0A 0H0 Contact person: Superintendent of Securities Tel: (867) 975-6590 Fax: (867) 975-6595 Email: legal.registries@gov.nu.ca</p> <p>Superintendent of Securities Government of Prince Edward Island 4th Floor, Shaw Building 95 Rochford Street P.O. Box 2000 Charlottetown PE C1A 7N8 Tel: (902) 368-4550</p> <p>Yukon Securities Office Yukon Government Law Centre, 3rd Floor 2130 Second Avenue (PO Box 2703) Whitehorse, YT Y1A 5H6 Attn: Superintendent of Securities Tel: (867) 667-5466 Fax: (867) 393-6251</p>

National or Multilateral Instrument	Local Amending Rules	Details of Changes in National/Multilateral Instrument						
Notes: There are two types of change to NI 55-102 set out above. First, amendments specific to New Brunswick, Northwest Territories, Nunavut, Prince Edward Island and Yukon relating to the definition and filing of “transfer report” have been made for consistency with other CSA jurisdictions. Second, amendments specific to Northwest Territories, Prince Edward Island and Yukon have also been made to the forms of NI 55-102 for similar consistency. More limited amendments, specific to Nunavut, have also been made to the same forms.								
National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI)	Amending Instrument to 55-102 (Alberta)	<p><b>1. Form 55-102 F1 Insider Profile is amended by replacing the address of the Alberta Securities Commission by “Suite 600, 250 – 5<sup>th</sup> Street SW, Calgary, AB T2P 0R4”.</b></p> <p><b>2. Form 55-102 F2 Insider Report was amended by replacing the address of the Alberta Securities Commission with “Suite 600, 250 – 5<sup>th</sup> Street SW, Calgary, AB T2P 0R4”.</b></p> <p><b>3. Form 55-102 F3 Issuer Profile Supplement was amended by replacing the address of the Alberta Securities Commission with “Suite 600, 250 – 5<sup>th</sup> Street SW, Calgary, AB T2P 0R4”.</b></p> <p><b>4. Form 55-102 F6 Insider Report was amended by replacing the address of the Alberta Securities Commission by “Suite 600, 250 – 5<sup>th</sup> Street SW, Calgary, AB T2P 0R4”.</b></p>						
Note: The above changes to forms in NI 55-102 updated the address of the Alberta Securities Commission.								
National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues	11-801 (Nunavut)	<p><b>Appendix A was amended by adding, below the row for Nova Scotia, the following row:</b></p> <table><tr><td>NUNAVUT</td><td>Paragraph (c) of the definition of “distribution” contained in subsection 1(1) of the Securities Act (Nunavut).</td></tr></table>	NUNAVUT	Paragraph (c) of the definition of “distribution” contained in subsection 1(1) of the Securities Act (Nunavut).				
NUNAVUT	Paragraph (c) of the definition of “distribution” contained in subsection 1(1) of the Securities Act (Nunavut).							
Note: This change to NI 62-103 updated a Nunavut-specific legislative reference to “control block distribution”.								
National Instrument 81-107 Independent Review Committee	81-513 (British Columbia)  11-801 (Nunavut)  11-803 (Yukon)  81-807 (Prince Edward Island)	<p><b>1. Appendix A was amended by:</b></p> <p><b>(1) replacing in the British Columbia row, “Part 15 – Self-Dealing of the Securities Act (British Columbia)” by “BC Instrument 81-513 Self-Dealing”;</b></p> <p><b>(2) adding, below the row for Nova Scotia, the following row:</b></p> <table><tr><td>Nunavut</td><td>Part 11 Insider Reporting and Early Warning of the Securities Act (Nunavut) ;</td></tr></table> <p><b>(3) adding, below the row for Ontario, the following row:</b></p> <table><tr><td>Prince Edward Island</td><td>Part 11 Insider Reporting and Early Warning of the Securities Act (Prince Edward Island); <b>and</b></td></tr></table> <p><b>(4) adding, below the row for Saskatchewan, the following row:</b></p> <table><tr><td>Yukon</td><td>Part 11 Insider Reporting and Early Warning of the Securities Act (Yukon).</td></tr></table> <p><b>2. Appendix B was amended by:</b></p> <p><b>(1) deleting in the British Columbia row , “Section 127(1)(b) of the Securities Act (British Columbia)”;</b> <b>and</b></p>	Nunavut	Part 11 Insider Reporting and Early Warning of the Securities Act (Nunavut) ;	Prince Edward Island	Part 11 Insider Reporting and Early Warning of the Securities Act (Prince Edward Island); <b>and</b>	Yukon	Part 11 Insider Reporting and Early Warning of the Securities Act (Yukon).
Nunavut	Part 11 Insider Reporting and Early Warning of the Securities Act (Nunavut) ;							
Prince Edward Island	Part 11 Insider Reporting and Early Warning of the Securities Act (Prince Edward Island); <b>and</b>							
Yukon	Part 11 Insider Reporting and Early Warning of the Securities Act (Yukon).							

National or Multilateral Instrument	Local Amending Rules	Details of Changes in National/Multilateral Instrument
		<b>(2) deleting in the Prince Edward Island row,</b> “Section 38.1(6) of Securities Act Regulations”.

*Note: Appendices A and B to NI 81-107 have been changed to update British Columbia and Prince Edward Island legislative references in connection with conflicts of interests/self-dealing and inter-fund self dealing. Appendix A to NI 81-107 was updated to reflect new Nunavut and Yukon legislative references to conflicts of interests/self-dealing.*

**1.1.3 Revisions to CSA Staff Notice 24-305 – Frequently Asked Questions About National Instrument 24-101 – Institutional Trade Matching and Settlement and Related Companion Policy**

**REVISIONS TO CSA STAFF NOTICE 24-305 –  
FREQUENTLY ASKED QUESTIONS ABOUT  
NATIONAL INSTRUMENT 24-101 – INSTITUTIONAL  
TRADE MATCHING AND SETTLEMENT  
AND RELATED COMPANION POLICY**

CSA Staff Notice 24-305 (FAQs Notice) published on December 14, 2007 sets out questions and answers to assist market participants in complying with National Instrument 24-101 *Institutional Trade Matching and Settlement* (NI 24-101).

The FAQs Notice has been revised as a result of amendments made to NI 24-101 effective July 1, 2010 and new inquiries received by staff since the original FAQs Notice (including some challenges faced by advisers and dealers in calculating their DAP/RAP trade-matching statistics for purposes of completing Form 24-101F1).

**CSA Staff Notice 24-305 – Frequently Asked Questions About NI 24-101 and Related Companion Policy (Revised – First published December 14, 2007)**

**CANADIAN SECURITIES ADMINISTRATORS (CSA)  
STAFF NOTICE 24-305**

**FREQUENTLY ASKED QUESTIONS ABOUT  
NATIONAL INSTRUMENT 24-101 — *INSTITUTIONAL TRADE MATCHING AND SETTLEMENT*  
AND RELATED COMPANION POLICY**

First published December 14, 2007 and revised May 6, 2011

To assist market participants in complying with National Instrument 24-101 - *Institutional Trade Matching and Settlement* (NI 24-101 or the Instrument), we have compiled some frequently asked questions (FAQs) with our responses. This list of FAQs is not exhaustive, but includes issues and questions raised by stakeholders.

Some terms we have used in these FAQs are defined in NI 24-101, in related Companion Policy 24-101CP (CP), or in National Instrument 14-101 *Definitions*.

We have divided the FAQs into the following categories:

- A. Definitions, interpretation and concepts
- B. Application
- C. Trade matching requirements – general policies and procedures
- D. Trade matching documentation (Sections 3.2 and 3.4 of the Instrument)
- E. Trade matching requirements specific to advisers
- F. Trade matching requirements – cross-border trade orders
- G. Reporting requirements for registered firms
- H. CSA contacts

**A. Definitions, interpretation and concepts**

A-1 Q: What types of trades are typically considered as “DAP/RAP trades”?

A: DAP/RAP trades are trades for a delivery-against-payment or receipt-against-payment (or similarly named) account of an institutional investor that are generally settled through a separate custodian on the books of the clearing agency, CDS Clearing and Depository Services Inc. (CDS). The Instrument applies to all types of DAP/RAP trades except those described in section 2.1 of the Instrument.

A-2 Q: Who is an “institutional investor” under the Instrument?

A: An institutional investor is a client of a dealer that has been granted DAP/RAP trading privileges by the dealer, which typically include investment funds, pension plans, and financial institutions.

A-3 Q: GHI Mutual Fund is a client of Specialized Broker (SB), a dealer that provides specialized trade execution services. SB is not a participant of CDS and has a clearing arrangement with Clearing Broker (CB), a dealer that provides clearing, settlement and custody services for SB. GHI Mutual Fund has a direct custodial arrangement with the Custodian Trust Company, which holds GHI Mutual Fund's investments. Would trades executed by SB and cleared by CB for GHI Mutual Fund be DAP/RAP trades? If so, which dealer would be required to comply with Parts 3 and 4 of the Instrument for these trades, and who would be “trade-matching parties”?

A: Trades executed by SB and cleared by CB for GHI Mutual Fund would be DAP/RAP trades because these trades would be settled for the client on a delivery-against-payment or receipt-against-payment basis through the facilities of a clearing agency by Custodian Trust Company. SB would be required to comply with Parts 3 and 4 of the Instrument in this case. In addition to SB, each of CB, GHI Mutual Fund and Custodian Trust Company would be trade-matching parties under the Instrument. Trade matching parties are encouraged to enter into a trade-matching agreement with, or provide a trade-matching statement to, SB. See section 3.2 of the Instrument. The purpose of such agreements or statements is to promote among trade-matching parties policies and procedures designed to achieve matching as soon as practical after a trade is executed. See the definitions of “trade-matching agreement” and “trade-matching statement” in section 1.1 of the Instrument.

A-4 Q: DEF Hedge Fund is a client of ABC Broker, a full-service dealer that provides prime brokerage services for DEF Hedge Fund and other hedge funds, including custodial functions. DEF Hedge Fund uses ABC Broker to execute all of

its trades. Do the matching requirements of NI 24-101 apply to these trades?

A: No. These are not DAP/RAP trades because ABC Broker is both executing and settling the trades on behalf of DEF Hedge Fund. A separate custodian is not involved in the trades.

A-5 Q: Assume the same facts as above (A-4), except that DEF Hedge Fund sometimes uses other dealers in addition to ABC Broker to execute its trades. Do the matching requirements of NI 24-101 apply to the trades executed by the other dealers for DEF Hedge Fund?

A: Yes. If another dealer (e.g., XYZ Broker) executes a trade for DEF Hedge Fund, this trade will likely fall within the Instrument's definition of a DAP/RAP trade. This trade is likely settled for DEF Hedge Fund on a delivery-against-payment or receipt-against-payment basis through CDS, involving the accounts of both ABC Broker (as the custodian) and XYZ Broker (as the executing dealer).<sup>1</sup>

A-6 Q: What if, in the above scenario (A-5), XYZ Broker "gives up" a trade executed for DEF Hedge Fund in favour of ABC Broker. Would such a trade still be a DAP/RAP trade?

A: We understand that in a trade "give up" the executing dealer places a trade on behalf of another dealer as if the latter had actually executed the trade itself. Sometimes an institutional client may ask the executing dealer to relinquish or assign the trade (a binding contract) to its prime broker. If the "give up" arrangement is in place prior to execution of the trade and does not involve a trade that is settled for the client on a delivery-against-payment or receipt-against-payment basis through the facilities of a clearing agency by a separate custodian, then we would not view such trades as DAP/RAP trades.

A-7 Q: How are partial fills (i.e., orders that are filled over several days) treated under the matching requirements of NI 24-101?

A: The answer depends on the terms of the agreement governing the trading relationship between the dealer and the investment manager. If the investment manager is contractually bound by a partial fill, thus triggering a notice of execution (NOE) from the dealer either intra-day or at the end of the trading day, that trade is subject to the matching requirements of NI 24-101. If, on the other hand, the investment manager is not bound by the order until it is complete and the NOE is triggered only when the dealer advises the investment manager of the fill, the matching requirements of NI 24-101 only come into effect when the complete order has been filled.<sup>2</sup>

A-8 Q: We are a mutual fund management group that uses a separate registered portfolio manager (PM) to process our trades on behalf of each of our mutual funds through various executing dealers. Are we a "trade-matching party"?

A: No, so long as a PM is acting for your mutual funds in processing their trades. See paragraphs (a) and (b) of the definition "trade-matching party" in section 1.1 of the Instrument.

A-9 Q: We are a mutual fund management group that uses separate domestic and foreign sub-advisers to process our trades on behalf of our mutual funds through various executing dealers. The sub-advisers are responsible for the trades, including the clearing and settlement process. Would all the sub-advisers be "trade-matching parties"?

A: If a sub-adviser is dealing with a registered dealer directly to process DAP/RAP trades on behalf of the mutual funds, the sub-adviser would meet the definition of a trade-matching party in section 1.1 of the Instrument. This applies to all sub-advisers regardless of whether they are based or registered in Canada.

As a trade-matching party, your sub-advisers are encouraged to either enter into a trade-matching agreement with the dealer, or provide a trade-matching statement to the dealer. You may need to work with your sub-advisers to identify your respective roles and responsibilities in the processing of the trades of your mutual funds.

In addition to being a trade-matching party, those sub-advisers that are registered firms are subject to sections 3.3, 3.4 and 4.1 of the Instrument.

A-10 Q: In the above scenario (A-9), some of our U.S.-based sub-advisers may be trading in the Canadian markets for our funds. They usually do not deal directly with a Canadian registered dealer for DAP/RAP trades in Canada, but instead give trade orders to a U.S. broker-dealer, who in turn deals directly with a Canadian registered dealer for DAP/RAP trades in Canada. Would these sub-advisers be "trade-matching parties"?

<sup>1</sup> If XYZ Broker is not a direct participant of CDS, then settlements would involve the accounts of ABC Broker (as custodian) and XYZ Broker's corresponding clearing broker maintained at CDS.

<sup>2</sup> This answer is consistent with industry best practices and standards for institutional trade processing. See section 2.4(1) of the CP.

A: The U.S.-based sub-advisers would not be considered to be trade-matching parties in this case. However, the U.S. broker-dealer dealing directly with the Canadian registered dealer for executing DAP/RAP trades may be considered a trade-matching party under paragraph (b) of the definition of that term in section 1.1 of the Instrument. See Part F for more cross-border questions.

A-11 Q: Does “matching” under the Instrument mean when both sides of a trade report the same details of the trade into a system, and the system itself performs the matching?

A: The concept of matching for the purposes of the Instrument is broader. See section 1.2(1) of the Instrument. Conceptually, it is the *end result* of either a sequential confirmation and affirmation process or a “virtual matching” process among trade-matching parties. As a result, the Instrument contemplates, and is neutral towards, either matching approach, which is consistent with the industry’s best practices and standards.

## B. Application

B-1 Q: The Instrument does not apply to trades “to be settled outside Canada” (see section 2.1(g) of the Instrument). What do you mean by that?

A: Trades that are cleared and settled through the facilities of a clearing agency based outside of Canada would be trades settled outside of Canada.

B-2 Q: Are trades in investment products that normally do not settle through the facilities of a clearing agency subject to the Instrument (e.g., partnership units)?

A: The trade matching requirements of the Instrument (Parts 3 and 4) apply to DAP/RAP trades, which, by definition, are trades that settle on a delivery-against-payment or receipt-against-payment basis through the facilities of a clearing agency. Therefore, trades in investment products that do not settle through the facilities of a clearing agency would not be subject to such requirements. However, the trade settlement requirement of Part 7 of the Instrument may apply to these trades.

## C. Trade matching requirements – general policies and procedures

C-1 Q: The CP says that when establishing appropriate policies and procedures, a party should consider the industry’s generally adopted best practices and standards for institutional trade processing. My PM firm has developed and designed specific policies and procedures that are unique to our own business structure and risk profile in the trading and investing of securities. While my firm’s policies and procedures may differ from those of other firms, they are adequate to meet the requirements of NI 24-101. Is my firm complying with NI 24-101?

A: Yes, provided that your policies and procedures are reasonably designed to meet the requirements of NI 24-101. See section 2.4(1) of the CP. We recognize that market participants may have different policies and procedures for their unique business circumstances. See section 2.4(2) of the CP.

C-2 Q: A number of logistical issues are associated with compliance with NI 24-101, for example:

- What do we have to cover in our trade matching policies and procedures?
- What systems and processes do we have to change to comply with the Instrument?
- What are some of the systems or service providers available to help us comply?
- Are we going to have to retrain or hire additional staff?

A: NI 24-101 is generally a principles-based rule. It does not prescribe in detail what a market participant’s policies and procedures should cover. However, the CP does provide some useful guidance on this question. See section 2.4 and 2.3(2)(b) of the CP. The industry has made suggestions to assist market participants in this area. Based on those suggestions, we recommend that trade-matching parties follow these basic steps:

1. Review your current systems capabilities and processes to identify what may prevent your firm from achieving the Instrument’s requirements;
2. Develop policies and procedures to achieve the target set out in section 4.1 of the Instrument;
3. Identify what changes need to be made to the services provided by third party vendors, or whether third party service providers could assist you in complying with the Instrument;
4. Develop with your trade-matching parties a form of trade-matching statement or agreement;
5. Put in place monitoring processes to assess your own and other trade-matching parties’ compliance with the Instrument including the required timelines;
6. Plan to meet the exception reporting target for each calendar quarter;

7. Make and test any systems and process changes needed; and
8. Enter into any agreements and/or receive any statements from other trade matching parties.

Some service providers will likely be matching service utilities (MSUs) operating in the Canadian institutional marketplace. These MSUs may facilitate the matching process for certain trade-matching parties. See section 2.5 of the CP. In the short term, you may need to retrain or hire additional back-office staff to comply with the matching requirements. If so, as you become more efficient, you may be able to re-allocate staff. In addition, you may need to upgrade your systems to enhance your *interoperability* with other trade matching parties. See section 2.4(2) of the CP.

C-3 Q: If I choose to, can I still match trades on a manual basis?

A: As noted, NI 24-101 is generally a principles-based rule and does not prescribe how you match trades. In assessing any trade matching process, you may want to consider how it fits into your firm's overall back-office processes and your trade-matching parties' systems in the long term.

#### **D. Trade matching documentation (sections 3.2 and 3.4 of the Instrument)**

D-1 Q: Does the Instrument prescribe the form of a trade-matching statement or trade-matching agreement?

A: No, the Instrument does not prescribe the form of the trade-matching statement or agreement, other than that it be in writing.

The CP provides guidance on the use and delivery of a trade-matching statement. See section 2.3(3) of the CP. A model trade-matching statement is posted on the website of the Investment Industry Association of Canada at: <http://www.iiac.ca>

The CP also provides guidance on the types of matters that a trade-matching agreement could address, as well as guidance on the use of an agreement (including that an agreement may be incorporated into the institutional account opening documentation). See section 2.3(2) of the CP. The trade-matching agreement is an alternative to the trade-matching statement. Parties may prefer to use a trade-matching agreement instead of a statement if they have unique trade processing issues and wish to clarify their roles and responsibilities in the matching process.

D-2 Q: We are a dealer that has many foreign institutional clients trading in the Canadian markets. We have policies and procedures in place for timely institutional trade matching, and we are attempting to obtain trade-matching statements from all of our clients pursuant to section 3.2 of the Instrument. However, some clients are reluctant to provide a trade-matching statement that confirms their compliance with NI 24-101. How do we resolve this issue?

A: We note that a trade-matching statement need only confirm that your client has policies and procedures designed to achieve matching as soon as practical after a trade is executed. If a dealer or adviser is unable to obtain a trade-matching agreement or statement from a trade-matching party, it should document its efforts in accordance with its policies and procedures. See section 2.3(1)(a) of the CP.

#### **E. Trade matching requirements specific to advisers**

E-1 Q: We are a PM firm that advises a number of mutual funds, hedge funds, and pension plans in managing their portfolio assets. Whom should we enter into a trade-matching agreement with? Alternatively, from whom should we ask for a trade-matching statement? And to whom should we give one?

A: If your PM firm is acting for an institutional investor in processing DAP/RAP trades, your policies and procedures must be designed to encourage the following trade-matching parties to (i) enter into a trade-matching agreement with your firm or (ii) provide to your firm a trade-matching statement:

- The dealer or dealers executing and clearing the DAP/RAP trades, and
- The custodian or custodians of the institutional investor that are settling the DAP/RAP trades.

E-2 Q: In the above situation (E-1), are the mutual funds, hedge funds, and pension plans trade-matching parties within the meaning of the Instrument that should enter into a trade-matching agreement or provide a trade-matching statement?

A: No. If the PM is acting for the funds or plans in processing the DAP/RAP trades, the funds or plans are not trade matching parties. An institutional investor is only a "trade-matching party" when an adviser *is not acting* for the institutional investor in processing DAP/RAP trades.



E-3 Q: When is a registered adviser “acting for the institutional investor in processing the trade” for the purposes of the definition “trade-matching party”?

A: A registered adviser will be acting for an institutional investor in processing a trade when it is involved in the post-trade execution functions of a trade on behalf of an institutional investor (e.g., the trade comparison, clearing, settlement and portfolio reconciliation functions of the institutional investor). A registered adviser that is merely providing advice to the institutional investor or placing a trade order to a dealer or through a marketplace for the institutional investor would not be a trade-matching party.

E-4 Q: How will a PM firm determine their record of trade matching performance by calendar quarter?

A: Registered advisers should maintain or obtain a record of their DAP/RAP trade matching performance to determine whether they will need to provide to the regulators an exception report on Form 24-101F1 for any given calendar quarter. As noted in section 3.1(b) of the CP, Form 24-101F1 requires registered advisers to provide, among other things, aggregate quantitative information on their equity and debt DAP/RAP trades. Tracking of a registered adviser's trade-matching statistics may be outsourced to another party, such as a custodian. See section 3.1(a) of the CP. Registered advisers may need to obtain from the custodians of their institutional investor clients the details of when each DAP/RAP trade is matched. We understand that custodians have developed standardized DAP/RAP trade matching performance reports for their clients.

#### **F. Trade matching requirements – cross-border trade orders**

F-1 Q: We are a foreign dealer that gives orders from time to time to various Canadian-based registered dealers to execute trades in the Canadian markets on behalf of our foreign institutional clients. Do the requirements of registered dealers in Parts 3 and 4 of the Instrument apply to us?

A: No. You are not subject to the requirements of registered dealers in Parts 3 and 4 of the Instrument if a Canadian registered dealer is executing DAP/RAP trades for you. However, you may be considered a trade-matching party, in which case you are encouraged to enter into a trade-matching agreement with, or provide a trade-matching statement to, the Canadian dealer. See sections 3.2 of the Instrument and 1.3(5) of the CP.

F-2 Q: We are a mid-sized Canadian dealer that has a significant foreign client base. We receive orders from various foreign institutional investors. Most of our foreign institutional clients use a foreign global custodian to hold their portfolio assets, which in turn uses a local Canadian custodian to hold their Canadian portfolio investments and process their DAP/RAP trades settled in Canada. Would our foreign institutional investor clients that trade on a DAP/RAP account basis in Canada be considered “trade-matching parties” under the Instrument?

A: Yes. Where a registered adviser is not acting for the foreign institutional investor in processing DAP/RAP trades, the foreign institutional investor will be a “trade-matching party.” See section 1.3(5) of the CP.

F-3 Q: In the above scenario (F-2), we often receive orders to trade securities on a Canadian marketplace directly from European institutional investors. Which other entities would be “trade-matching parties” to process the trade in this case and how is the matching deadline impacted?

A: In addition to the European institutional investor, you (the dealer) and the local Canadian custodian are trade-matching parties. See section 1.3(5) of the CP. Although the CP notes that a foreign global custodian would not normally be considered a trade-matching party in these circumstances, you, the foreign institutional investor or the local custodian may need to work with the global custodian in establishing, maintaining and enforcing your respective policies and procedures. If the European institutional investor's investment decisions or settlement instructions are usually made in and communicated from a geographical region outside of the North American region, the timeline is extended by a day to noon on T+2. See section 3.1(2) and the definition “North American region” in section 1.1 of the Instrument.

F-4 Q: We are a Canadian dealer that often receives orders to execute DAP/RAP trades from broker-dealers in the United States acting for various foreign institutional investors, but we do not always know who those foreign institutional investors are or where they are based (i.e., whether within or outside the North American region). Who are the “trade-matching parties” in these cases?

A: We would consider the U.S. broker-dealer as the “institutional investor” in the DAP/RAP trade in Canada for the purposes of the Instrument, not the underlying foreign institutional investor. Therefore, you (the dealer), the U.S. broker-dealer (in the capacity of institutional investor) and the local Canadian custodian would be considered the trade-matching parties.

F-5 Q: In the above scenario (F-4), to what extent are we required to match the details of the trades executed in Canada for the underlying foreign institutional investors?

A: You will likely match the details of the “Canadian component” of the trades in this scenario, which are the DAP/RAP trades placed by the U.S. broker-dealer with you and settled with the local Canadian custodian. You are not required to match the underlying “non-Canadian component” of the transactions among the U.S. broker-dealer, its foreign institutional investor clients, and their global custodian or custodians, if information required to match the underlying transactions (e.g., allocations to global custodian) is not needed to match the “Canadian component” of the transactions. We would view the non-Canadian component of the transactions as trades that are settled outside of Canada, to which the Instrument does not apply.

F-6 Q: In the above scenario (F-4), what is the timeline that applies?

A: Because we would likely consider the U.S. broker-dealer as an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from the U.S., the North American region timeline will apply. However, if you need information about the non-Canadian component of the transactions to match and settle the Canadian component of the transactions, you may want to find out from the U.S. broker-dealer where the underlying foreign institutional investor is based, so that you can determine whether the North American region or non-North American region timeline applies.

F-7 Q: Will our firm be required to track trade matching statistics for two separate streams of investors for exception reporting purposes, i.e., one for North American region institutional investors and the other for non-North American region institutional investors?

A: You are not required to track your trade matching statistics separately for the two streams of investors. Sections 3.1(2) and 3.3(2) of the Instrument aim to give the trade-matching parties in the DAP/RAP trades of non-North American region institutional investors more flexibility, by providing an extra day to achieve matching.

If your trading business for foreign non-North American region investors is a small percentage of your overall trading business, it may not be useful or efficient for you to track these trades separately to avoid exception reporting. If trading for foreign non-North American region investors is an important part of your overall trading business, you may want to track such trades separately, including working with any foreign dealer or global custodian to track these trades separately.

## **G. Reporting requirements for registered firms**

G-1 Q: If my firm delivers Form 24-101F1 to the regulators for a calendar quarter, does that mean we have not complied with the trade matching requirements of NI 24-101 for that quarter?

A: No. A requirement to provide Form 24-101F1 for a calendar quarter will not necessarily mean that you have failed to establish, maintain and enforce policies and procedures designed to achieve timely matching of DAP/RAP trades. Because there are multiple trade-matching parties involved in a DAP/RAP trade, your firm may not be responsible for failing to meet the NI 24-101 exception reporting targets. For example, the failure may have been due to poor policies and procedures of another trade-matching party. Exhibit B of Form 24-101F1 asks for such reasons.

G-2 Q: When would the regulators consider that my firm does not have adequate trade-matching policies and procedures in place to ensure the timely matching of DAP/RAP trades?

A: We may consider a firm to have an inadequate compliance program for the firm’s trade-matching processes if it consistently:

- Fails to meet the matching percentage targets and triggers the exception reporting, or
- Provides poor qualitative reporting.

These or other signs may show that either the policies and procedures of one or more of the trade-matching parties have not been properly designed or, if properly designed, have not been followed. See section 3.2(b) of the CP.

G-3 Q: If my firm is required to provide Form 24-101F1 to the regulators for a number of calendar quarters in a row, but it is apparent that the underlying causes for failing to achieve the percentage target for matched DAP/RAP trades within the timelines are poor policies and procedures of another trade-matching party or service provider that are involved in processing my DAP/RAP trades, what should my firm do?

A: The CP provides guidance in this area. See sections 2.3(4) and 3.1(c).

G-4 Q: Assuming we are required to complete Form 24-101F1, Exhibit A of the Form requires us to provide data for equity and debt DAP/RAP trades for each calendar quarter. Please explain what you require under the column headings “entered into CDS by deadline (to be completed by dealers only)” and “matched by deadline”.

A: We seek aggregate information on the DAP/RAP trades executed by you (if you are a dealer) or for you (if you are an adviser) during the calendar quarter, and submitted to CDS. See section 3.1(b) of the CP.

Dealer Perspective:

A dealer needs the following information to complete Exhibit A of Form 24-101F1:

1. Number and value of DAP/RAP trades entered into CDS by noon on T+1 during the quarter;
2. Number and value of DAP/RAP trades entered into CDS during the quarter (whether entered by noon on T+1 or not);
3. Number and value of DAP/RAP trades matched at CDS by noon on T+1 during the quarter;
4. Number and value of DAP/RAP trades matched at CDS during the quarter (whether matched by noon on T+1 or not).

If you are a dealer, you should show under the column heading “entered into CDS by deadline (to be completed by dealers only)” the aggregate number of DAP/RAP trades and the aggregate value of DAP/RAP trades that were executed by you and entered into CDS’ system within the deadline. The percentage columns should show the aggregate trade number or value entered into CDS by the deadline as a percentage of total number or value of trades entered into CDS’ system during the calendar quarter, whether entered by the deadline or not.

If you are an introducing broker that executes DAP/RAP trades that are cleared through a corresponding clearing broker, you should obtain the relevant data from your corresponding clearing broker.

Under the column heading “matched by deadline”, you should show the aggregate number and the aggregate value of trades executed by you that were matched by a dealer or custodian in CDS’ system by the deadline. The percentage is determined by dividing such number or value by the total number or value of your trades that were matched during the calendar quarter by a dealer or custodian in CDS’ system, whether on time or late.

Please see Appendix A for an example of the calculation to be performed by a dealer.

Adviser Perspective:

An adviser needs the following information to complete Exhibit A of Form 24-101F1:

1. Number and value of DAP/RAP trades matched at CDS by noon on T+1 during the quarter;
2. Number and value of DAP/RAP trades matched at CDS during the quarter (whether matched by noon on T+1 or not).

If you are an adviser you need only complete the column heading “matched by deadline”. Information about the number and value of DAP/RAP trades matched at CDS during the quarter should be provided to you by your institutional client’s custodian(s).

Under the column heading “matched by deadline”, you should have the aggregate number and the aggregate value of trades executed for you that were matched by a custodian in CDS’ system by the deadline. The percentage is determined by dividing such number or value by the total number or value of your trades that were matched during the calendar quarter by a custodian in CDS’ system, whether on time or late.

Please see Appendix B for an example of the calculation to be performed by an adviser.

G-5 Q: Assuming we are required to complete Form 24-101F1, Exhibit B of the Form requires us to provide information explaining the reasons for the failure to achieve the percentage target for matched equity and/or debt DAP/RAP trades within the deadline for a calendar quarter. If a particular trade-matching party that we regularly deal with is consistently matching trades late, and such party is unable or unwilling to explain why this is happening, what information do we include in Exhibit B?

A: You should explain this situation in Exhibit B, and generally follow the guidance set out in question G-3 above.

G-6 Q. We are a registered dealer that provides a range of services for our institutional investor clients. For some clients, we may provide trade execution and clearing services only. For others, we may provide only custodial and DAP/RAP

trade settlement agent services. Assuming we must report on Form 24-101F1 for the calendar quarter, should we combine our matching performance for DAP/RAP trades based on our dealer functions and custodial/settlement agent functions?

A. The roles of a dealer, adviser and custodian in DAP/RAP trading are quite different as they relate to NI 24-101. For a dealer, Form 24-101F1 is only required if the dealer did not achieve the target for the quarter for DAP/RAP trades for which it provided trade execution services. If this report is required, it should **not** include trades for which it provided only custodial and trade settlement agent services.

G-7 Q: How do we complete the exception reporting forms under the Instrument?

Registered firms may complete their Form 24-101F1 on-line in a secure manner that is accessible from the CSA's website at: <http://www.securities-administrators.ca>.

G-8 Q: As a registered dealer and direct participant of CDS, can we rely solely on the report of trade matching results provided to us by CDS?

A: In general, you should be able to rely on the trade matching report provided to you by CDS as your basis for determining whether you have achieved the trade matching target for a particular quarter. However, there are two important exceptions to this.

First, the CDS code trade for "client trades" captures slightly broader types of trades than the DAP/RAP trades defined in the Instrument. CDS will be able to identify some "client trades" that are excluded by the Instrument, such as same-day settled trades, and remove them from the data in CDS' Form 24-101F2 report. However, CDS will not be able to identify certain other types of trades, such as reorganizations and share conversions, that are coded as "client trades" but are excluded by the Instrument. For further information, see the joint IIROC (formerly IDA) and CDS notice MR0495 dated September 28, 2007 that sets out guidance on how dealers and other CDS participants should code their trades entered into CDS for the purposes of the Instrument and IIROC Member Regulation 800.49.

If you use any of these "excluded" trade types during a quarter, and if these trade types, taken together, make the difference between meeting the target and not meeting the target for that quarter, you should determine the number and value of these trades and report this on Form 24-101F1.

Second, to the extent that your trades are processed by an MSU and sent to CDS as matched trades, these will not be included in CDS' Form 24-101F2 report. As a result, you will need to combine your results from CDS with those of the MSU in order to determine whether or not you have achieved the trade matching target for the calendar quarter.

## H. CSA contacts

If you have any questions about the FAQs or NI 24-101 generally, please contact the following CSA staff:

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**May 6, 2011**

## Appendix A

### Dealer example of how to complete Exhibit A of Form NI 24-101F1

A dealer will need the following quarterly information:

Number of DAP/RAP trades entered into CDS	56,000
Number of DAP/RAP trades entered into CDS by deadline	50,000
Number of DAP/RAP trades matched at CDS	48,000
Number of DAP/RAP trades matched at CDS by deadline	35,000
Value of DAP/RAP trades entered into CDS	\$4,100,000
Value of DAP/RAP trades entered into CDS by deadline	\$3,700,000
Value of DAP/RAP trades matched at CDS	\$3,200,000
Value of DAP/RAP trades matched at CDS by deadline	\$2,900,000

#### Entered into CDS by Deadline:

Number of DAP/RAP trades entered into CDS by deadline: 50,000  
 Percentage of number of DAP/RAP trades entered into CDS by deadline:  
 $=50,000/56,000 \times 100 = 89\%$

Value of DAP/RAP trades entered into CDS by deadline: \$3,700,000  
 Percentage of value of DAP/RAP trades entered into CDS by deadline:  
 $=\$3,700,000/\$4,100,000 \times 100 = 90\%$

#### Matched by Deadline:

Number of DAP/RAP trades matched at CDS by deadline: 35,000  
 Percentage of number of DAP/RAP trades matched at CDS by deadline:  
 $=35,000/48,000 \times 100 = 73\%$

Value of DAP/RAP trades matched at CDS by deadline: \$2,900,000  
 Percentage of value of DAP/RAP trades matched at CDS by deadline:  
 $=\$2,900,000/\$3,200,000 \times 100 = 91\%$

## Appendix B

### Adviser example of how to complete Exhibit A of Form NI 24-101F1

An adviser will need the following quarterly information:

Number of DAP/RAP trades matched at CDS	55,000
Number of DAP/RAP trades matched at CDS by deadline	43,000
Value of DAP/RAP trades matched at CDS	\$6,800,000
Value of DAP/RAP trades matched at CDS by deadline	\$3,700,000

#### Matched by Deadline:

Number of DAP/RAP trades matched at CDS by deadline: 43,000  
 Percentage of number of DAP/RAP trades matched at CDS by deadline:  
 $=43,000/55,000 \times 100 = 78\%$

Value of DAP/RAP trades matched at CDS by deadline: \$3,700,000  
 Percentage of value of DAP/RAP trades matched at CDS by deadline:  
 $=\$3,700,000/\$6,800,000 \times 100 = 54\%$

1.2 Notices of Hearing

1.2.1 GrowthWorks Canadian Fund Ltd. and GrowthWorks Ltd. – s. 127(1) of the Act and Rule 16 of the OSC Rules of Procedure (2010), 33 O.S.C.B. 8017

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

AND

IN THE MATTER OF  
AN APPLICATION BY THE SPECIAL COMMITTEE OF  
DIRECTORS OF THE VENGROWTH FUNDS

AND

IN THE MATTER OF  
GROWTHWORKS CANADIAN FUND LTD. AND GROWTHWORKS LTD.

NOTICE OF HEARING  
(Subsection 127(1) of the *Act* and Rule 16 of the Ontario Securities Commission  
*Rules of Procedure* (2010), 33 O.S.C.B. 8017)

**TAKE NOTICE** that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to subsection 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 June 1, 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 for the Commission

1. to make an order permitting the application dated May 2, 2011 (the "Application") filed by the Special Committee of Directors of the The VenGrowth Investment Fund Inc., The VenGrowth II Investment Fund Inc., The VenGrowth III Investment Fund Inc., The VenGrowth Advanced Life Sciences Fund Inc., and The VenGrowth Traditional Industries Fund Inc. (the "VenGrowth Funds") to be heard;
2. to make an order pursuant to subsection 127(1)2 of the Act that trading in securities of GrowthWorks Canadian Fund Ltd. ("GrowthWorks") by or on behalf of the respondents, GrowthWorks and GrowthWorks Ltd., with respect to GrowthWorks' proposed acquisition of the VenGrowth Funds, cease for such period as is specified in the order;
3. to make an order pursuant to subsection 127(1)5 of the Act that GrowthWorks' information circular dated March 14, 2011, and its related support agreement and other documents sent to VenGrowth Shareholders or published on the GrowthWorks website not be provided by or on behalf of the respondents to any VenGrowth Shareholders and that these documents be removed from the GrowthWorks website, and
4. to make an order granting such further and other relief as counsel may request and the Commission may order.

**BY REASON** of the allegations set out in the Application 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

**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 that party is not entitled to any further notice of the proceeding.

**DATED** at Toronto this 4th day of May, 2011.

"John P. 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  
AN APPLICATION BY THE SPECIAL COMMITTEE OF  
DIRECTORS OF THE VENGROWTH FUNDS

AND

IN THE MATTER OF  
GROWTHWORKS CANADIAN FUND LTD. AND GROWTHWORKS LTD.

NOTICE OF HEARING  
(Subsection 127(1) of the Act and Rule 16 of the Ontario Securities Commission  
Rules of Procedure (2010), 33 O.S.C.B. 8017)

APPLICATION

To: **THE SECRETARY OF THE COMMISSION**  
Ontario Securities Commission  
19th Floor, 20 Queen Street West  
Toronto, Ontario  
M5H 3S8

This application to the Ontario Securities Commission is brought by the applicant, the Special Committee of Directors of The VenGrowth Investment Fund Inc., The VenGrowth II Investment Fund Inc., The VenGrowth III Investment Fund Inc., The VenGrowth Advanced Life Sciences Fund Inc., and The VenGrowth Traditional Industries Fund Inc. (the "**VenGrowth Funds**").

This application will come on for a hearing on a date, at a time and at a place to be set by the Secretary of the Commission.

1. The applicant makes application for:
  - (a) an order permitting this application to be heard,
  - (b) an order pursuant to subsection 127(1)2 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") that trading in securities of GrowthWorks Canadian Fund Ltd. ("**GrowthWorks**") by or on behalf of the respondents, GrowthWorks and GrowthWorks Ltd., with respect to GrowthWorks' proposed acquisition of the VenGrowth Funds, cease for such period as is specified in the order,
  - (c) an order pursuant to subsection 127(1)5 of the Act that GrowthWorks' information circular dated March 14, 2011, and its related support agreement and other documents sent to VenGrowth Shareholders or published on the GrowthWorks website not be provided by or on behalf of the respondents to any VenGrowth Shareholders and that these documents be removed from the GrowthWorks website, and
  - (d) such further and other relief as counsel may request and the Commission may order.
2. The grounds for this application are:
  - (a) GrowthWorks is attempting to acquire the VenGrowth Funds by soliciting their shareholders (the "**VenGrowth Shareholders**") to sign support agreements giving GrowthWorks an irrevocable power of attorney to requisition shareholder meetings of the VenGrowth Funds and vote VenGrowth Shareholders' shares at such meetings,
  - (b) the solicitation is being made, in part, through an "information circular" dated March 14, 2011 and other documents and statements that are misleading and omit material information,
  - (c) GrowthWorks' solicitation is a solicitation of proxies that contravenes Ontario securities law and the *Canada Business Corporations Act* ("**CBCA**"),
  - (d) GrowthWorks' support agreement contravenes the CBCA and Ontario securities law and is itself misleading,

- (e) GrowthWorks' attempt to create an irrevocable proxy to enable it to acquire the VenGrowth Funds is inconsistent with the animating principles of the Act with respect to take-over bids and proxy solicitation,
- (f) it is in the public interest for the Commission to permit this application to be heard,
- (g) it is in the public interest for the Commission to make orders prohibiting the continuation of GrowthWorks' solicitation and other conduct in furtherance of its proposed acquisition of the VenGrowth Funds,
- (h) section 127 of the Act,
- (i) Rule 16 of the Ontario Securities Commission *Rules of Procedure*, and
- (j) such further and other grounds as counsel may advise.

3. The documentary evidence to be used at the hearing of this application is:

- (a) the Application Record,
- (b) any further material as may be necessary for the hearing of this Application,

Date: May 2, 2011

**PHILIP ANISMAN**

Barrister and Solicitor  
80 Richmond Street West, Suite 1704  
Toronto, Ontario M5H 2A4  
Telephone: 416.363.4200  
Fax: .416.363.6200  
Email: anismanphil@on.aibn.com  
LSUC 12234V

**MILLER THOMSON LLP**

Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, Ontario M5H 3S1

Jay M. Hoffman LSUC 26930S  
Telephone: 416.595.8508  
Fax: 416.595.8695  
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Emily Cole LSUC 34620Q  
Telephone: 416.595.8640  
Fax: 416.595.8695  
Email: ecole@millertthomson.com  
Fax: 416.595.8695

Counsel for the Applicant

TO: **GROWTHWORKS CANADIAN FUND LTD.**

c/o McCarthy Tetrault LLP  
Box 48, 5300-66 Wellington Street West  
Toronto Dominion Bank Tower  
Toronto, Ontario M5K 1E6

Jonathan R. Grant

AND TO: **GROWTHWORKS LTD.**

c/o Davies Ward Phillips & Vineberg LLP  
44th Floor, 1 First Canadian Place  
P.O. Box 63, Stn. 1st Canadian Place  
Toronto, Ontario M5X 1B1

J. Alex Moore

AND TO: **ONTARIO SECURITIES COMMISSION  
CORPORATE FINANCE BRANCH, MERGERS AND ACQUISITIONS**

Ontario Securities Commission  
19th Floor, 20 Queen Street West  
Toronto, Ontario  
M5H 3S8

Naizam Kanji, Deputy Director

AND TO: **ONTARIO SECURITIES COMMISSION**  
**INVESTMENTS FUNDS BRANCH**  
Ontario Securities Commission  
19th Floor, 20 Queen Street West  
Toronto, Ontario  
M5H 3S8

Vera Nunes, Assistant Manager

**1.3.1 Canadian Securities Regulators Propose  
Enhanced Policy Concerning Electronic  
Delivery of Documents**

**FOR IMMEDIATE RELEASE  
April 29, 2011**

**CANADIAN SECURITIES REGULATORS  
PROPOSE ENHANCED POLICY CONCERNING  
ELECTRONIC DELIVERY OF DOCUMENTS**

**Vancouver** – The Canadian Securities Administrators (CSA) today published for comment proposed amended National Policy (NP) 11-201 *Electronic Delivery of Documents* (formerly *Delivery of Documents by Electronic Means*). The proposed amendments aim to simplify the existing policy and recognize changes to provincial and federal corporate legislation.

The amended NP11-201 is intended to:

- alert stakeholders to changes in corporate legislation that impact the delivery of documents;
- remove guidance on issues that are outside the scope of securities legislation, including guidance on obtaining shareholder consent, that may be addressed in other legislation; and
- eliminate reference to particular technologies that are or may become obsolete.

“It is important that policies governing consent requirements are clear and that policies governing the receipt of electronic documents are up-to-date with regards to technology,” said Bill Rice, Chair of the CSA and Chair and CEO of the Alberta Securities Commission. “The amendments proposed today will help to ensure that our policies are practical and understandable to all stakeholders.”

The CSA is seeking comment from investors and industry on the proposed amendments. Please note that in Québec, the proposed NP 11-201 will replace *Notice 11-201 related to the Delivery of Documents by Electronic Means*. To comment, please refer to the CSA Notice and Request for Comment document on the proposed NP 11-201 amendments, which is available on the [websites of various CSA members](#). The comment period is open until June 29, 2011.

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

**For more information:**

Richard Gilhooley  
British Columbia Securities Commission  
604-899-6713

Mark Dickey  
Alberta Securities Commission  
403-297-4481

Sylvain Thériault  
Autorité des marchés financiers  
514-940-2176

Carolyn Shaw-Rimington  
Ontario Securities Commission  
416-593-2361

Ainsley Cunningham  
Manitoba Securities Commission  
204-945-4733

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

Natalie MacLellan  
Nova Scotia Securities Commission  
902-424-8586  
Jennifer Anderson  
Saskatchewan Financial Services Commission  
306-798-4160

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

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

Graham Lang  
Yukon Securities Registry  
867-667-5466

Louis Arki  
Nunavut Securities Office  
867-975-6587

Donn MacDougall  
Northwest Territories Securities Office  
867-920-898

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

**1.4.1 Irwin Boock et al.**

**FOR IMMEDIATE RELEASE  
April 27, 2011**

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

**AND**

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

**TORONTO** – The Commission issued an Order in the above named matter which provides that a pre-hearing conference will be held on Tuesday, May 24, 2011 at 3:30 p.m. or such other date or time as agreed upon by the parties and fixed by the Secretary's office.

A copy of the Order dated April 19, 2011 is available at **[www.osc.gov.on.ca](http://www.osc.gov.on.ca)**.

**OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY**

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

Dylan Rae  
Media Relations Specialist  
416-595-8934

For investor inquiries:

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

**1.4.2 American Heritage Stock Transfer Inc. et al.**

**FOR IMMEDIATE RELEASE  
April 28, 2011**

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

**AND**

**IN THE MATTER OF  
AMERICAN HERITAGE STOCK TRANSFER INC.,  
AMERICAN HERITAGE STOCK TRANSFER, INC.,  
BFM INDUSTRIES INC., DENVER GARDNER INC.,  
SANDY WINICK, ANDREA LEE MCCARTHY,  
KOLT CURRY AND LAURA MATEYAK**

**TORONTO** – The Commission issued an Order in the above named matter which provides that (1) the Temporary Order shall be extended until September 9, 2011, or until further order of the Commission; and (2) this matter shall return before the Commission on September 8, 2011, at 10:00 a.m. or on such other date and at such other time as specified by the Secretary's Office and agreed to by the parties.

A copy of the Order dated April 27, 2011 is available at **[www.osc.gov.on.ca](http://www.osc.gov.on.ca)**.

**OFFICE OF THE SECRETARY  
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**1.4.3 Bernard Boily**

**FOR IMMEDIATE RELEASE**  
**April 28, 2011**

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

**AND**

**IN THE MATTER OF  
BERNARD BOILY**

**TORONTO** – Following a hearing held today, the Commission issued an Order in the above named matter which provides that this matter is adjourned to June 29, 2011 at 3:00 p.m. or such other date as agreed by the parties and fixed by the Office of the Secretary.

A copy of the Order dated April 28, 2011 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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**1.4.4 Peter Sbaraglia**

**FOR IMMEDIATE RELEASE**  
**April 29, 2011**

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

**AND**

**IN THE MATTER OF  
PETER SBARAGLIA**

**TORONTO** – The Commission issued an Order in the above named matter which provides that the hearing is adjourned to June 7, 2011 at 2:30 p.m., or such other date as the Secretary's Office may advise and the parties agree to.

A copy of the Order dated April 28, 2011 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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**1.4.5 North American Financial Group Inc. et al.**

**FOR IMMEDIATE RELEASE**  
**April 29, 2011**

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

**AND**

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

**TORONTO** – The Commission issued an Order in the above named matter which provides that the Temporary Order as further amended is extended to August 2, 2011; and the hearing in this matter is adjourned to Friday, July 29, 2011 at 10:00 a.m.

A copy of the Order dated April 29, 2011 is available at **[www.osc.gov.on.ca](http://www.osc.gov.on.ca)**.

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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**1.4.6 Marlon Gary Hibbert et al.**

**FOR IMMEDIATE RELEASE**

**April 29, 2011**

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

**AND**

**IN THE MATTER OF  
MARLON GARY HIBBERT,  
ASHANTI CORPORATE SERVICES INC.,  
DOMINION INTERNATIONAL RESOURCE  
MANAGEMENT INC.,  
KABASH RESOURCE MANAGEMENT,  
POWER TO CREATE WEALTH INC. AND  
POWER TO CREATE WEALTH INC. (PANAMA)**

**TORONTO** – The Commission issued an order in the above named matter which provides that the hearing on the merits shall commence December 1, 2011 at 10:00 a.m.; a pre-hearing conference will be held on October 11, 2011 at 2:30 p.m.; and the exchange of documents for disclosure shall occur on August 12, 2011.

A copy of the Order dated April 27, 2011 is available at **[www.osc.gov.on.ca](http://www.osc.gov.on.ca)**.

OFFICE OF THE SECRETARY  
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**1.4.7 Borealis International Inc. et al.**

**FOR IMMEDIATE RELEASE  
May 2, 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** – The Commission issued its Reasons and Decision on Sanctions and Costs in the above noted matter.

A copy of the Reasons and Decision on Sanctions and Costs and an Order dated April 29, 2011, respectively are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

**OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
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**1.4.8 Biovail Corporation et al.**

**FOR IMMEDIATE RELEASE  
May 2, 2011**

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

**AND**

**IN THE MATTER OF  
BIOVAIL CORPORATION, EUGENE N. MELNYK,  
BRIAN H. CROMBIE, JOHN R. MISZUK AND  
KENNETH G. HOWLING**

**TORONTO** – Please note that the sanctions hearing in the above named matter scheduled to be held on Wednesday, May 4, 2011 is now scheduled to be held on Thursday, May 5, 2011 at 10:00 a.m. in the Large Hearing Room, 17th Floor at 20 Queen Street West, Toronto.

**OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY**

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**1.4.9 Innovative Gifting Inc. et al.**

**FOR IMMEDIATE RELEASE  
May 2, 2011**

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

**AND**

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

**TORONTO** – The Commission issued an Order in the above named matter which provides that the hearing on the merits of this matter is adjourned to June 6, 2011 and shall continue until June 10, 2011 and, if necessary, shall continue on June 15 and 16, 2011, commencing each day at 10:00 a.m., with the exception of June 7, 2011, which hearing day will commence at 2:00 p.m. and continue until 5 p.m.

A copy of the Order dated April 28, 2011 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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**1.4.10 Firestar Capital Management Corp. et al.**

**FOR IMMEDIATE RELEASE  
May 4, 2011**

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

**AND**

**IN THE MATTER OF  
FIRESTAR CAPITAL MANAGEMENT CORP.,  
KAMPOSSE FINANCIAL CORP.,  
FIRESTAR INVESTMENT MANAGEMENT GROUP,  
MICHAEL CIAVARELLA AND MICHAEL MITTON**

**TORONTO** – The Commission issued an Order in the above named matter which provides that the hearing to consider whether to continue the Temporary Orders is adjourned to May 31, 2011 at 11:00 a.m.; and the Temporary Orders currently in place as against Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton are further continued until June 1, 2011, or until further order of this Commission.

A copy of the Order dated April 26, 2011 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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**1.4.11 GrowthWorks Canadian Fund Ltd. and GrowthWorks Ltd.**

**FOR IMMEDIATE RELEASE  
May 4, 2011**

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

**AND**

**IN THE MATTER OF  
AN APPLICATION BY THE SPECIAL COMMITTEE OF  
DIRECTORS OF THE VENGROWTH FUNDS**

**AND**

**IN THE MATTER OF  
GROWTHWORKS CANADIAN FUND LTD. AND  
GROWTHWORKS LTD.**

**TORONTO** – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on June 1, 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 May 4, 2011 and the Application dated May 2, 2011 are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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1-877-785-1555 (Toll Free)

**1.4.12 David M O'Brien**

**FOR IMMEDIATE RELEASE  
May 4, 2011**

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

**AND**

**IN THE MATTER OF  
DAVID M. O'BRIEN**

**TORONTO** – The Commission issued an Order in the above named matter which provides that (a) the Temporary Cease Trade Order shall be extended until the conclusion of the hearing of the merits of this matter; and (b) O'Brien may, if he wishes to do so, apply to the Commission for an order revoking or varying this Order pursuant to s. 144 of the Act.

A copy of the Order dated April 21, 2011 and Decision (Motion on Disclosure) dated April 21, 2011 are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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## Chapter 2

# Decisions, Orders and Rulings

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### 2.1 Decisions

#### 2.1.1 Western Coal Corp. – s. 1(10)

##### Headnote

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

##### Ontario Statutes

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

April 27, 2011

Western Coal Corp.  
Suite 1000, 885 Dunsmuir Street  
Vancouver, BC V6C 1N5

Dear Sirs/Mesdames:

**Re: Western Coal Corp. (the Applicant) – application for a decision under the securities legislation of Ontario, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the Jurisdictions) that the Applicant is not a reporting issuer**

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

As the Applicant has represented to the Decision Makers that:

- (a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;
- (b) no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 Marketplace Operation;
- (c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

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

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

“Michael Brown”  
Assistant Manager, Corporate Finance  
Ontario Securities Commission

**2.1.2 Franconia Minerals Corporation – s. 1(10)**

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

**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).

April 26, 2011

J.R. Laffin  
Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, Ontario M5L 1B9

Dear Sirs/Mesdames:

**Re: Franconia Minerals Corporation (the Applicant)**  
**– application for a decision under the**  
**securities legislation of Ontario and Alberta**  
**(the Jurisdictions) that the Applicant is not a**  
**reporting issuer**

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

As the Applicant has represented to the Decision Makers that:

- the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;
- no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 – *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 is not a reporting issuer.

**2.1.3 Connor, Clark & Lunn Conservative Income & Growth Fund and Connor, Clark & Lunn Capital Markets Inc.**

**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 limited trading activities to be carried out by these parties in connection with a warrant offering by the investment fund – The limited trading activities involve: i) the forwarding of a short form (final) prospectus, and the distribution of warrants to acquire securities of the fund to existing holders of fund securities, and ii) the subsequent distribution of securities to holders of the warrants, upon their exercise of the warrants, through an appropriately registered dealer.

**Applicable Legislative Provisions**

Securities Act, R.S.O., c. S.5, as am., ss. 25(1), 74(1).  
Multilateral Instrument 11-102 Passport System, s. 4.7(1).  
National Instrument 45-106 Prospectus and Registration Exemptions, ss. 2.1, 3.1, 3.42, 8.5.  
National Instrument 31-103, Registration Requirements and Exemptions, s. 8.5.

**April 26, 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  
CONNOR, CLARK & LUNN  
CONSERVATIVE INCOME & GROWTH FUND  
(the Fund)**

**AND**

**CONNOR, CLARK & LUNN  
CAPITAL MARKETS INC. (the Manager)  
(collectively, the Filers)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the dealer registration requirements in the Legislation in

respect of certain trades (the **Warrant Offering Activities**) to be carried out by the Manager and the Investment Manager, on behalf of the Fund, in connection with a proposed distribution (the **Warrant Offering**) of warrants (the Warrants) to acquire units (the Units) of the Fund, such distribution to be made in Ontario and each of the Passport Jurisdictions (as defined below) pursuant to a (final) short form prospectus (the **Warrant Prospectus**) (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) each Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland and Labrador (collectively, the Passport 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 Filers:

- 1. The Fund is an investment trust established under the laws of the Province of Ontario pursuant to a trust agreement dated as of November 29, 2001 as amended (the **Trust Agreement**) between the Manager and RBC Dexia Investor Services Trust (the **Trustee**).
- 2. The Manager acts as the manager of the Fund. The Manager is part of the Connor, Clark & Lunn Financial Group. The head office of each of the Fund and the Manager is located at 181 University Avenue, Suite 300, Toronto, Ontario, M5H 3M7. The Manager is not in default of any of its obligations under securities legislation in any jurisdiction.
- 3. The authorized share capital of the Fund consists of an unlimited number of Units, each Unit representing an equal, undivided interest in the net assets of the Fund. The Units are listed and posted for trading on the Toronto Stock Exchange (the **TSX**).
- 4. The investment objectives of the Fund are to provide holders of Units (**Unitholders**) with: (a) an attractive yield through receipt of monthly distributions initially targeted to yield approxi-

- mately 6.0% of net asset value (**NAV**) per annum; (b) downside protection through diversification across multiple asset classes and a conservative approach to security selection; and (c) growth that outpaces inflation by investing in securities that provide both a high yield and capital appreciation potential.
5. The investment portfolio of the Fund consists of a diversified portfolio (the **Portfolio**) of high income investments across a broad range of income-oriented securities, which may include equities, income trusts, limited partnerships, real estate investment trusts (**REITs**), corporate bonds, convertible bonds, preferred shares, other income funds and other investments.
  6. The Fund has retained Connor, Clark & Lunn Investment Management Ltd. (the **Investment Manager**) to make the Fund's investment decisions in accordance with the Fund's investment objectives and investment strategy. The Investment Manager is registered as a Commodity Trading Manager, Exempt Market Dealer and Portfolio Manager with the Ontario Securities Commission. All trades in securities in connection with the investing activities of the Fund are conducted through registered dealers.
  7. The Investment Manager employs leverage in the Portfolio to enhance returns when it considers market conditions appropriate. The aggregate amount of borrowings and other leverage may not exceed 15% of the assets of the Fund.
  8. If the total amount borrowed or otherwise subject to leverage by the Fund exceeds 20% of the total assets of the Fund, indebtedness will be reduced immediately such that the amount borrowed or otherwise subject to leverage does not constitute more than 15% of the total assets of the Fund.
  9. The Fund does not engage in the continuous distribution of its securities.
  10. In connection with the Warrant Offering, the Fund has filed a preliminary short form prospectus dated April 8, 2011 under the securities legislation of the Province of Ontario and each Passport Jurisdiction. Under the Warrant Offering, each holder of Unit as at a specified record date will be entitled to receive, for no consideration, one Warrant for each Unit held by such holder.
  11. Holders of the Warrants will be entitled, upon the exercise of their Warrants, to subscribe for Units pursuant to subscription privileges provided for in the Warrants, at a subscription price to be specified in the Warrant Prospectus. Each Warrant will entitle the holder to subscribe for one Unit under a basic subscription privilege. Holders of Warrants who exercise their Warrants under the basic subscription privilege may also subscribe, *pro rata*, for additional Units that are not subscribed for by other holders under the basic subscription privilege pursuant to the terms of an additional subscription privilege. The Warrants (including both the basic subscription privilege and the additional subscription privilege) may be exercised on one business day monthly commencing on market open (Toronto time) until 5:00 p.m. (Toronto time) on the second business day following the last business day of each month until 5:00 p.m. (Toronto time) on November 2, 2011.
  12. The Fund intends to apply to list the Warrants to be distributed under the Warrant Prospectus on the TSX.
  13. The Warrant Offering Activities will consist of:
    - (a) the distribution of the Warrant Prospectus and the issuance of Warrants to the holders of Units (as at the record date specified in the Warrant Prospectus), after the Warrant Prospectus has been filed, and receipts obtained, under the securities legislation of the Province of Ontario and each Passport Jurisdiction; and
    - (b) the distribution of Units to holders of the Warrants, upon the exercise of Warrants by their holders, through registered dealers that are registered in categories that permit them to make such distribution.
  14. The Fund is in the business of trading securities by virtue of its portfolio investing activities. As a result, its capital raising activities, including the Warrant Offering Activities would require the Fund and the Manager, acting on the Fund's behalf, to register as a dealer in the absence of the Requested Relief (or another available exemption from the dealer registration requirements).
  15. Section 8.5 of National Instrument 45-106 – *Prospectus and Registration Exemptions (NI 45-106)* provides that, after March 26, 2010, the exemptions from the dealer registration requirements set out in sections 3.1 [*Rights offering*] and section 3.42 [*Conversion, exchange or exercise*] of NI 45-106 no longer apply.

#### 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 Fund and the Manager, acting on behalf of the Fund, are not subject to the dealer registration requirement in respect of the Warrant Offering Activities.

“Christopher Portner”  
Commissioner  
Ontario Securities Commission

“Edward P. Kerwin”  
Commissioner  
Ontario Securities Commission

April 26/2011

## 2.1.4 Algonquin Power Co. – 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).

April 28, 2011

Algonquin Power Co.  
2845 Bristol Circle  
Oakville, Ontario  
L6H 7H7

Dear Sirs/Mesdames:

**Re: Algonquin Power Co. (the Applicant) – application for a decision under the securities legislation of Ontario, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the Jurisdictions) that the Applicant is not a reporting issuer**

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

As the Applicant has represented to the Decision Makers that:

- (a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;
- (b) no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 – *Marketplace Operation*;
- (c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and
- (d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

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

## 2.1.5 Exclamation Investments Corporation

### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Reporting issuer seeking relief so that it can continue to file financial statements in accordance with old Canadian GAAP (rather than IFRS) for periods relating to the issuer's financial year beginning on April 1, 2011 and ending on March 31, 2012 and the issuer's financial year beginning on April 1, 2012 and ending on March 31, 2013 (collectively, the issuer's deferred financial years) – In particular, the issuer is seeking relief from the requirements in Part 3 of National Instrument 52-107 that would apply to financial statements for periods relating to the issuer's deferred financial years – The issuer is also seeking relief from the IFRS-related amendments to the continuous disclosure, prospectus, certification and audit committee rules (collectively, the rules) that came into force on January 1, 2011 and that would apply to periods relating to the issuer's deferred financial years – The issuer is an "investment company" as defined in Accounting Guideline 18 Investment Companies (AcG-18) in the Handbook of the Canadian Institute of Chartered Accountants – At its meeting on January 12, 2011, the Canadian Accounting Standards Board decided that investment companies, as defined in and applying AcG-18, will only be required to adopt IFRS for annual periods beginning on or after January 1, 2013 – Since Part 3 of National Instrument 52-107 and the IFRS-related amendments to the rules do not have a provision providing for a two-year deferral of the transition to IFRS for investment companies subject to NI 52-107 and the rules, the issuer has applied for the relief – Relief granted, subject to a number of conditions.

### Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards, Parts 3 and 4.  
National Instrument 51-102 Continuous Disclosure Obligations.  
National Instrument 41-101 General Prospectus Requirements.  
National Instrument 44-101 Short Form Prospectus Distributions.  
National Instrument 44-102 Shelf Distributions.  
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings.  
National Instrument 52-110 Audit Committees.

April 28, 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  
EXCLAMATION INVESTMENTS CORPORATION  
(the "Filer")

DECISION

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for an exemption (the "**Exemption Sought**") from:

- (a) the requirements in Part 3 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* ("**NI 52-107**") that apply to financial statements, financial information, operating statements and pro forma financial statements for periods relating to the Filer's financial year beginning on January 1, 2011 and ending on December 31, 2011 and the Filer's financial year beginning on January 1, 2012 and ending on December 31, 2012 (the "**Filer's deferred financial years**");
- (b) the amendments to National Instrument 51-102 *Continuous Disclosure Obligations* ("**NI 51-102**") related to International Financial Reporting Standards ("**IFRS**") that came into force on January 1, 2011 and that apply to documents required to be prepared, filed, delivered, or sent under NI 51-102 for periods relating to the Filer's deferred financial years;
- (c) the IFRS-related amendments to National Instrument 41-101 *General Prospectus Requirements* ("**NI 41-101**") that came into force on January 1, 2011 and that apply to a preliminary prospectus, an amendment to a preliminary prospectus, a final prospectus or an amendment to a final prospectus of the Filer which includes or incorporates by reference financial statements of the Filer in respect of periods relating to the Filer's deferred financial years;
- (d) the IFRS-related amendments to National Instrument 44-101 *Short Form Prospectus Distributions* ("**NI 44-101**") that came into force on January 1, 2011 and that apply to a preliminary short form prospectus, an amendment to a preliminary short form prospectus, a final short form prospectus or an amendment to a final short form prospectus of the Filer which includes or incorporates by reference financial statements of the Filer in respect of periods relating to the Filer's deferred financial years;
- (e) the IFRS-related amendments to National Instrument 44-102 *Shelf Distributions* ("**NI 44-102**") that came into force on January 1, 2011 and

that apply to a preliminary base shelf prospectus, an amendment to a preliminary base shelf prospectus, a base shelf prospectus, an amendment to a base shelf prospectus or a shelf prospectus supplement of the Filer which includes or incorporates by reference financial statements of the Filer in respect of periods relating to the Filer's deferred financial years;

- (f) the IFRS-related amendments to National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* ("**NI 52-109**") that came into force on January 1, 2011 and that apply to annual filings and interim filings for periods relating to the Filer's deferred financial years;
- (g) the IFRS-related amendments to National Instrument 52-110 *Audit Committees* ("**NI 52-110**") that came into force on January 1, 2011 and that apply to periods relating to the Filer's deferred financial years; and
- (h) the requirement to pay an activity fee of \$3,250 pursuant to item E(1) of Appendix C to Ontario Securities Commission Rule 13-502 *Fees* (the "**Fees Rule**") for an application for 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 the application, and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia and Alberta.

**Interpretation**

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

**Representations**

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

1. The Filer is a corporation governed by the *Canada Business Corporations Act*, with its registered and head office address located at 2221 Yonge Street, Suite 308, Toronto, Ontario, M4S 2B4.
2. The Filer is a reporting issuer in Ontario, British Columbia and Alberta and is not in default of securities legislation in any jurisdiction. Although the Filer is not currently qualified to file a short form prospectus under NI 44-101 or a shelf prospectus under NI 44-102, it may wish to become qualified in the future.

3. The Filer's common shares trade on the TSX Venture Exchange under the symbol "XI".
4. The Filer's fiscal year end is December 31.
5. The Filer is an "investment company" as defined in Accounting Guideline 18 *Investment Companies* ("AcG-18") in the Handbook of the Canadian Institute of Chartered Accountants (the "**Handbook**"). As such, the Filer applies AcG-18 in the preparation of its financial statements in accordance with Canadian generally accepted accounting principles ("**Canadian GAAP**") for public enterprises.
6. The Filer is not an investment fund as that term is defined in the *Securities Act* (Ontario).
7. As part of the changeover to IFRS in Canada, the Canadian Accounting Standards Board ("**AcSB**") has incorporated IFRS into the Handbook as Canadian GAAP for most publicly accountable enterprises. As a result, the Handbook contains two sets of standards for public companies:
  - (a) Part 1 of the Handbook – Canadian GAAP for publicly accountable enterprises that applies for financial years beginning on or after January 1, 2011, and
  - (b) Part V of the Handbook – Canadian GAAP for public enterprises that is the pre-changeover accounting standards ("**old Canadian GAAP**").
8. However, on October 1, 2010, the AcSB published amendments to Part 1 of the Handbook that provide a one-year deferral of the transition to IFRS for investment companies. The amendments require investment companies, as defined in and applying AcG-18, to adopt IFRS for annual periods beginning on or after January 1, 2012. Subsequently, at its meeting on January 12, 2011, the AcSB decided to extend the deferral for an additional year. The AcSB expects to issue the required amendments to Part 1 of the Handbook in March 2011 so that investment companies, as defined in and applying AcG-18, will only be required to adopt IFRS for annual periods beginning on or after January 1, 2013.
9. As part of the changeover to IFRS, NI 52-107 was repealed and replaced effective January 1, 2011. In the new version of NI 52-107,
  - (a) Part 3 contains requirements based on IFRS and applies to financial statements, financial information, operating statements and *pro forma* financial statements for periods relating to financial years beginning on or after January 1, 2011, and
  - (b) Part 4 contains requirements based on old Canadian GAAP and applies to financial statements, financial information, operating statements and *pro forma* financial statements for periods relating to financial years beginning before January 1, 2011.
10. Also as part of the changeover to IFRS, IFRS-related amendments were made to NI 51-102, NI 41-101, NI 44-101, NI 44-102, NI 52-109 and NI 52-110 (collectively, the "**Rules**") and these amendments came into force on January 1, 2011. Among other things, the amendments replace old Canadian GAAP terms and phrases with IFRS terms and phrases and contain IFRS-specific requirements. The amendment instruments for the Rules contain transition provisions that provide that the IFRS-related amendments only apply to documents required to be filed under the Rules for periods relating to financial years beginning on or after January 1, 2011. Thus, during the IFRS transition period,
  - (a) issuers filing financial statements prepared in accordance with old Canadian GAAP will be required to comply with the versions of the Rules that contain old Canadian GAAP terms and phrases, and
  - (b) issuers filing financial statements that comply with IFRS will be required to comply with the versions of the Rules that contain IFRS terms and phrases and IFRS-specific requirements.
11. On October 8, 2010, the Canadian Securities Administrators (CSA) published CSA Staff Notice 81-320 *Update on International Financial Reporting Standards for Investment Funds* which indicated that, given the October 1, 2010 amendments to the Handbook that provided for a deferral of the transition to IFRS for investment companies, the CSA would defer finalizing IFRS-related amendments to rules related to investment funds.
12. NI 52-107 and the Rules apply to the Filer. Since Part 3 of NI 52-107 and the IFRS-related amendments to the Rules do not have a provision providing for a two-year deferral of the transition to IFRS for investment companies subject to NI 52-107 and the Rules, the Filer has applied for the Exemption Sought.
13. During the Filer's deferred financial years, the Filer will comply with section 1.13 of Form 51-102F1 *Management's Discussion and Analysis* ("**MD&A**") by providing an updated discussion of the Filer's preparations for changeover to IFRS in its annual and interim MD&A. In particular, the Filer will discuss the expected effect on the financial

statements, or state that the effect cannot be reasonably estimated.

14. The Filer acknowledges that if the Exemption Sought is granted, the Filer:

- (a) will be subject to Part 3 of NI 52-107 and the IFRS-related amendments to the Rules for periods relating to financial years beginning on or after January 1, 2013, and
- (b) will not have the benefit of the 30 day extension to the deadline of filing the first interim financial report in the year of adopting IFRS in respect of an interim period beginning on or after January 1, 2011, as set out in the IFRS-related amendments to NI 51-102, since that extension does not apply if the first interim financial report is in respect of an interim period ending after March 30, 2012.

### Decision

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

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

- 1. the Filer continues to be an investment company, as defined in and applying AcG- 18;
- 2. the Filer provides the communication as described and in the manner set out in paragraph 13 above;
- 3. the Filer complies with the requirements in Part 4 of NI 52-107 for all financial statements (including interim financial statements), financial information, operating statements and *pro forma* financial statements for periods relating to the Filer's deferred financial years, as if the expression "January 1, 2011" in subsection 4.1(2) were read as "January 1, 2013";
- 4. the Filer complies with the version of NI 51-102 that was in effect on December 31, 2010 (together with any amendments to NI 51-102 that are not related to IFRS and that come into force after January 1, 2011) for all documents required to be prepared, filed, delivered, or sent under NI 51-102 for periods relating to the Filer's deferred financial years;
- 5. the Filer complies with the version of NI 41-101 that was in effect on December 31, 2010 (together with any amendments to NI 41-101 that are not related to IFRS and that come into effect after January 1, 2011) for any preliminary prospectus, amendment to a preliminary prospectus, final

prospectus or amendment to a final prospectus of the Filer which includes or incorporates by reference financial statements of the Filer in respect of periods relating to the Filer's deferred financial years;

- 6. the Filer complies with the version of NI 44-101 that was in effect on December 31, 2010 (together with any amendments to NI 44-101 that are not related to IFRS and that come into effect after January 1, 2011) for any preliminary short form prospectus, amendment to a preliminary short form prospectus, final short form prospectus or amendment to a final short form prospectus of the Filer which includes or incorporates by reference financial statements of the Filer in respect of periods relating to the Filer's deferred financial years;
- 7. the Filer complies with the version of NI 44-102 that was in effect on December 31, 2010 (together with any amendments to NI 44-102 that are not related to IFRS and that come into effect after January 1, 2011) for any preliminary base shelf prospectus, amendment to a preliminary base shelf prospectus, base shelf prospectus, amendment to a base shelf prospectus or shelf prospectus supplement of the Filer which includes or incorporates by reference financial statements of the Filer in respect of periods relating to the Filer's deferred financial years;
- 8. the Filer complies with the version of NI 52-109 that was in effect on December 31, 2010 (together with any amendments to NI 52-109 that are not related to IFRS and that come into effect after January 1, 2011) for all annual filings and interim filings for periods relating to the Filer's deferred financial years;
- 9. the Filer complies with the version of NI 52-110 that was in effect on December 31, 2010 (together with any amendments to NI 52-110 that are not related to IFRS and that come into effect after January 1, 2011) for periods relating to the Filer's deferred financial years;
- 10. if, notwithstanding this decision, the Filer decides not to rely on the Exemption Sought and files an interim financial report prepared in accordance with IFRS for an interim period in a deferred financial year, the Filer must, at the same time:
  - (a) restate, in accordance with IFRS, any interim financial statements for any previous interim period in the same deferred financial year (each, a "**Previous Interim Period**") that were originally prepared in accordance with old Canadian GAAP and filed pursuant to this decision, and

- (b) file a restated interim financial report prepared in accordance with IFRS for each Previous Interim Period, together with corresponding restated interim MD&A and certificates required by NI 52-109. For greater certainty, any restated interim financial report for a Previous Interim Period must comply with applicable securities legislation (including Part 3 of NI 52-107 and the amendments to Part 4 of NI 51-102 that came into force on January 1, 2011) and any restated interim financial report for the first interim period in the deferred financial year must include the opening IFRS statement of financial position at the date of transition to IFRS; and
11. if, notwithstanding this decision, the Filer decides not to rely on the Exemption Sought and files annual financial statements prepared in accordance with IFRS for a deferred financial year, the Filer must, at the same time (unless previously done pursuant to paragraph 10 immediately above):
- (a) restate, in accordance with IFRS, any interim financial statements for any Previous Interim Period that were originally prepared in accordance with old Canadian GAAP and filed pursuant to this decision, and
- (b) file a restated interim financial report prepared in accordance with IFRS for each Previous Interim Period, together with corresponding restated interim MD&A and certificates required by NI 52-109. For greater certainty, any restated interim financial report for a Previous Period must comply with applicable securities legislation (including Part 3 of NI 52-107 and the amendments to Part 4 of NI 51-102 that came into force on January 1, 2011) and any restated interim financial report for the first interim period in the deferred financial year must include the opening IFRS statement of financial position at the date of transition to IFRS.

“Cameron McInnis”  
Chief Accountant  
Ontario Securities Commission

## 2.1.6 Nesscap Energy Inc.

### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application for relief from the requirement in subsection 4.2(1) of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards that financial statements be prepared in accordance with Canadian GAAP – issuer wants to prepare its financial statements in accordance with International Financial Reporting Standards – issuer has implemented a comprehensive changeover plan, has assessed readiness of key persons, and has considered implications of adopting International Financial Reporting Standards – exemption granted, subject to conditions.

### Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards, s. 4.2(1).

April 29, 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 NESSCAP ENERGY INC. (THE FILER)

### DECISION

### Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Filer from the requirements of Part 4 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (the **Instrument**)(the **Exemption Sought**) including the requirement that financial statements be prepared in accordance with generally accepted accounting principles determined with reference to Part V of the Handbook of the Canadian Institute of Chartered Accountants (the Handbook) applicable to public enterprises (**Old Canadian GAAP**), in order that the Filer may prepare financial statements for periods relating to the fiscal year ended December 31, 2010 in accordance with generally accepted accounting principles determined with reference to Part I of the Handbook applicable to publicly accountable enterprises, that is International Financial Reporting

Standards (**IFRS**) as issued by the International Accounting Standards Board (**IFRS-IASB**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a 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 and Alberta (the **Passport 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

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

1. The Filer is a corporation incorporated under the laws of Ontario. The registered office of the Filer is located at 200 Bay Street, Suite 3800, Toronto, ON M5J 2Z4.
2. The Filer is a reporting issuer in the Jurisdiction and the Passport Jurisdictions. The Filer is not in default of its reporting issuer obligations under the Legislation or the legislation of the Passport Jurisdictions.
3. The Filer's securities are listed on the TSX Venture Exchange (**TSXV**).
4. The Filer was a capital pool company listed on the TSXV under the name Asian Resource Global Strategies Inc. (**Asian Resource**). On January 21, 2011, the Filer completed its qualifying transaction under TSXV Policy 2.4 - *Capital Pool Companies* (the Qualifying Transaction) with Nesscap Inc. (the **RTO Acquiror**).
5. Upon completion of the Qualifying Transaction, the RTO Acquiror became a subsidiary of the Filer and the Filer continued to carry on its business through the RTO Acquiror and changed its name to "Nesscap Energy Inc.".
6. The RTO Acquiror has been preparing its financial statements in accordance with IFRS since its incorporation. The financial statements of the RTO Acquiror for its 2009 financial year were prepared in accordance with IFRS and were audited in such form. All interim financial reports prepared by the RTO Acquiror have been prepared in accordance with the international accounting standard on

interim financial reporting as issued under IFRS-IASB.

7. The Qualifying Transaction is a reverse takeover transaction. Although for legal purposes Asian Resource is the acquiror, for accounting purposes the RTO Acquiror is the acquiror. Accordingly, the financial statements of the Filer are those the RTO Acquiror.
8. Asian Resource has not previously prepared financial statements that contain an explicit and unreserved statement of compliance with IFRS.
9. The Canadian Accounting Standards Board has confirmed that publicly accountable enterprises will be required to prepare their financial statements in accordance with IFRS-IASB for fiscal years beginning on or after January 1, 2011.
10. The Instrument sets out acceptable accounting principles for financial reporting under the Legislation by domestic issuers, foreign issuers, registrants and other market participants. Absent granting of the Exemption Sought, subsection 4.2(1) of the Instrument would require that the Filer's financial statements relating to financial years beginning before (or prior to) January 1, 2011, other than acquisition statements, be prepared in accordance with Old Canadian GAAP.
11. In CSA Staff Notice 52-321 – *Early Adoption of International Financial Reporting Standards, Use of US GAAP and Reference to IFRS-IASB*, staff of the Canadian Securities Administrators recognized that some issuers may wish to prepare their financial statements in accordance with IFRS-ASB for periods beginning prior to January 1, 2011 and indicated that staff were prepared to recommend exemptive relief on a case by case basis to permit a domestic issuer to do so, despite section 3.1 of the Instrument.
12. Subject to obtaining the Exemption Sought, the Filer intends to use IFRS-IASB for its financial statements for the fiscal year ended December 31, 2010.
13. The Filer believes that the use of IFRS-IASB would eliminate complexity and cost from the Filer's financial statement preparation process and will avoid potential confusion for the users of its financial statements.
14. The RTO Acquiror has historically prepared its financial statements in accordance with IFRS and as a result, there is no conversion plan necessary.
15. The Filer has carefully assessed the readiness of its staff, board of directors, audit committee, auditors, investors and other market participants for the adoption by the Filer of IFRS-IASB concurrent with the completion of the Qualifying

Transaction and has concluded that they are adequately prepared for the Filer's adoption of IFRS-IASB concurrent with the completion of the Qualifying Transaction.

16. The Filer has considered the implications of adopting IFRS-IASB for periods relating to the fiscal year ended December 31, 2010 on its obligations under securities legislation including, but not limited to, those relating to CEO and CFO certifications, business acquisition reports, offering documents, and previously released material forward-looking information.

17. The Filer will state in its management's discussion and analysis for the fiscal year ended December 31, 2010, all relevant information about its transition to IFRS-IASB, including:

- (a) the key elements and timing of the Filer's changeover plan;
- (b) an explanation that the Qualifying Transaction is a reverse acquisition;
- (c) the Filer's accounting will be a continuation of the RTO Acquiror's accounting which has been IFRS since inception; and
- (d) the RTO Acquiror will account for the Filer as a reverse asset acquisition and present consolidated financial statements.

*Annual and Interim Filings* that came into force on January 1, 2011 and that apply to annual filings and interim filings for periods relating to financial years beginning on or after January 1, 2010;

(d) complies with the IFRS-related amendments to National Instrument 52-110 *Audit Committees* that came into force on January 1, 2011 and that apply to periods relating to financial years beginning on or after January 1, 2010; and

(e) the Filer provides the communication set out in paragraph 17.

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

## 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 the Filer:

- (a) prepares its financial statements to be filed for periods relating to the fiscal year ended December 31, 2010 in accordance with IFRS-IASB;
- (b) complies with the IFRS-related amendments to National Instrument 51-102 *Continuous Disclosure Obligations (NI 51-102)* that came into force on January 1, 2011 and that apply to documents required to be prepared, filed, delivered, or sent under NI 51-102 for periods relating to financial years beginning on or after January 1, 2010;
- (c) complies with the IFRS-related amendments to National Instrument 52-109 *Certification of Disclosure in Issuers'*

### 2.1.7 Cirrus Energy Corporation

#### Headnote

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

#### Applicable Legislative Provisions

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

**Citation:** Cirrus Energy Corporation, Re, 2011 ABASC 248

April 28, 2011

Blake, Cassels & Graydon LLP  
3500 Bankers Hall East  
855 - 2 Street SW  
Calgary, AB T2P 4J8

Attention: Anjail S. Coyle

Dear Madam:

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

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

As the Applicant has represented to the Decision Makers that:

- (a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;
- (b) no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
- (c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and
- (d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

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

“Blaine Young”  
Associate Director, Corporate Finance

**2.1.8 Castlerock Investments Inc. et. al.**

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to mutual funds for extension of lapse date of prospectus for 77 days – Lapse date extended to permit updating of the disclosure across the fund family to reflect the purchase and amalgamation of another fund family – Extension of lapse date will not affect the currency or accuracy of the information contained in the prospectus – Securities Act (Ontario).

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., s. 62(5).

April 26, 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  
CASTLEROCK INVESTMENTS INC.  
(the Manager)**

**AND**

**IN THE MATTER OF  
CI INVESTMENTS INC.  
(the CI Manager)**

**AND**

**IN THE MATTER OF  
THE FUNDS LISTED IN SCHEDULE A  
(the Funds, and together with the Manager and the CI Manager, the Filers)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption that the time limits pertaining to filing the renewal prospectuses of the Filers be extended as if the lapse date of the simplified prospectuses and annual information forms dated May 14, 2010, July 14, 2010 and July 23, 2010, respectively, of the Funds, as amended from time to time, (collectively, the **Prospectus**) is July 30, 2011 (the **Requested Relief**).

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

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



## Interpretation

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

## Representations

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

1. Each Fund is a reporting issuer (or the equivalent) as defined in the Legislation of each of the Jurisdictions and is not in default of securities legislation in any jurisdiction.
2. Each Fund currently distributes its securities in all the Jurisdictions pursuant to the Prospectus.
3. The earliest lapse date of the Prospectus under the Legislation is May 14, 2011.
4. The Manager is a corporation controlled by CI Investments Inc. (the **CI Manager**). The Manager is not in default of securities legislation in any jurisdiction.
5. The CI Manager manages, in aggregate, over 170 mutual funds (the **Affiliated Funds**). The CI Manager is not in default of securities legislation in any jurisdiction.
6. The Affiliated Funds currently distribute their securities to the public under three simplified prospectuses and annual information forms (collectively, the **CI Prospectuses**), each of which have July 14, 2011, July 23, 2011 and July 30, 2011 as their earliest lapse dates, respectively, under the Legislation.
7. There was a change of control of the Manager on December 15, 2010, when the CI Manager purchased all of the outstanding shares of Hartford Investments Canada Corp. (now Castlerock Investments Inc.).
8. There is a special unitholder meeting for the Castlerock Funds (listed in Schedule A) scheduled for April 28, 2011 pursuant to a management information Circular dated March 22, 2011. At the meeting the unitholders will vote on a proposed amalgamation of the Manager and CI Manager. The target date for the amalgamation is June 30, 2011. Depending on the outcome of the meeting, significant changes may need to be made to the prospectus between the *pro forma* and final filings.
9. It is the intention of the Manager to adopt operational and administrative features for the Castlerock Funds which are consistent with the Affiliated Funds in order that investors in the Castlerock Funds and the Affiliated Funds can more easily compare the features of these mutual funds. However, these changes are extensive and require changes to the back office facilities, information disseminated to financial advisors and prospectus disclosure of the Castlerock Funds. The Manager currently anticipates that it will require until mid-July 2011 to implement some of these changes.
10. As well, it is possible that the CI Manager will make minor changes to various features of the Affiliated Funds as part of the process of renewing the CI Prospectuses. The Manager would like the flexibility to file the renewal prospectus of the Castlerock Funds on the same timeline as the renewal prospectuses for the Affiliated Funds in order to ensure that the operational and administrative features of the Castlerock Funds can be made consistent with those of the Affiliated Funds.
11. If the Requested Relief is not granted, the Castlerock Funds will be required to renew the prospectus in May, 2011 and then subsequently amend and restate the prospectus and annual information form in July, 2011 so that it reflects the changes made to the Castlerock Funds in order for them to be consistent with the operational and administrative features of the Affiliated Funds and also so that it reflects the proposed amalgamation of the Manager and CI Manager targeted for June 30, 2011. The two filings in such close proximity will result in unnecessary costs to the Funds and their investors.
12. Taking these timelines into account, the Filer submits that a July 30, 2011 lapse date extension is required to meet all security law requirements.
13. There have been no material changes in the affairs of any Fund since the filing of the Prospectus, other than those for which amendments have been filed. Accordingly, the Prospectus represents current information regarding each Fund.
14. The Requested Relief will not affect the accuracy of the information in the Prospectus and therefore will not be prejudicial to the public interest.

**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.

“Darren McKall”  
Manager, Investment Funds  
Ontario Securities Commission

**SCHEDULE A**

**LIST OF FUNDS**

**CASTLEROCK FUNDS**

CASTLEROCK GROWTH PORTFOLIO  
CASTLEROCK BALANCED GROWTH PORTFOLIO  
CASTLEROCK BALANCED PORTFOLIO  
CASTLEROCK CONSERVATIVE PORTFOLIO  
CASTLEROCK CAPITAL APPRECIATION FUND  
CASTLEROCK GLOBAL LEADERS FUND  
CASTLEROCK INTERNATIONAL EQUITY FUND  
CASTLEROCK U.S. DIVIDEND GROWTH FUND  
CASTLEROCK CANADIAN DIVIDEND FUND  
CASTLEROCK CANADIAN DIVIDEND GROWTH FUND  
CASTLEROCK CANADIAN STOCK FUND  
CASTLEROCK CANADIAN VALUE FUND  
CASTLEROCK CANADIAN BALANCED FUND  
CASTLEROCK GLOBAL BALANCED FUND  
CASTLEROCK CANADIAN BOND FUND  
CASTLEROCK GLOBAL HIGH INCOME FUND  
CASTLEROCK CANADIAN MONEY MARKET FUND

**CI FUNDS**

CI ALPINE GROWTH EQUITY FUND  
CI AMERICAN EQUITY FUND  
CI AMERICAN EQUITY CORPORATE CLASS  
CI AMERICAN MANAGERS CORPORATE CLASS  
CI AMERICAN SMALL COMPANIES FUND  
CI AMERICAN SMALL COMPANIES CORPORATE CLASS  
CI AMERICAN VALUE FUND  
CI AMERICAN VALUE CORPORATE CLASS  
CI CANADIAN INVESTMENT FUND  
CI CANADIAN INVESTMENT CORPORATE CLASS  
CI CANADIAN SMALL/MID CAP FUND  
CI EMERGING MARKETS FUND  
CI EMERGING MARKETS CORPORATE CLASS  
CI EUROPEAN FUND  
CI EUROPEAN CORPORATE CLASS  
CI GLOBAL FUND  
CI GLOBAL CORPORATE CLASS  
CI GLOBAL HEALTH SCIENCES CORPORATE CLASS  
CI GLOBAL MANAGERS CORPORATE CLASS  
CI GLOBAL SMALL COMPANIES FUND  
CI GLOBAL SMALL COMPANIES CORPORATE CLASS  
CI GLOBAL SCIENCE & TECHNOLOGY CORPORATE CLASS  
CI GLOBAL VALUE FUND  
CI GLOBAL VALUE CORPORATE CLASS  
CI INTERNATIONAL FUND  
CI INTERNATIONAL CORPORATE CLASS  
CI INTERNATIONAL VALUE FUND  
CI INTERNATIONAL VALUE CORPORATE CLASS  
CI JAPANESE CORPORATE CLASS  
CI PACIFIC FUND  
CI PACIFIC CORPORATE CLASS  
CI VALUE TRUST CORPORATE CLASS  
CI INTERNATIONAL BALANCED FUND  
CI INTERNATIONAL BALANCED CORPORATE CLASS  
CI MONEY MARKET FUND  
CI US MONEY MARKET FUND  
CI SHORT-TERM CORPORATE CLASS

CI SHORT-TERM US\$ CORPORATE CLASS  
CI GLOBAL BOND FUND  
CI GLOBAL BOND CORPORATE CLASS  
CI CAN-AM SMALL CAP CORPORATE CLASS  
CI GLOBAL HIGH DIVIDEND ADVANTAGE FUND  
CI GLOBAL HIGH DIVIDEND ADVANTAGE CORPORATE CLASS  
CI SHORT-TERM ADVANTAGE CORPORATE CLASS  
CI INCOME ADVANTAGE FUND (FORMERLY SELECT INCOME ADVANTAGE MANAGED FUND)

**HARBOUR FUNDS**

HARBOUR FUND  
HARBOUR CORPORATE CLASS  
HARBOUR FOREIGN EQUITY CORPORATE CLASS  
HARBOUR FOREIGN GROWTH & INCOME CORPORATE CLASS  
HARBOUR GROWTH & INCOME FUND  
HARBOUR GROWTH & INCOME CORPORATE CLASS

**SIGNATURE FUNDS**

SIGNATURE CANADIAN RESOURCE FUND  
SIGNATURE CANADIAN RESOURCE CORPORATE CLASS  
SIGNATURE SELECT CANADIAN FUND  
SIGNATURE SELECT CANADIAN CORPORATE CLASS  
SIGNATURE CANADIAN BALANCED FUND  
SIGNATURE DIVIDEND FUND  
SIGNATURE DIVIDEND CORPORATE CLASS  
SIGNATURE HIGH INCOME FUND  
SIGNATURE HIGH INCOME CORPORATE CLASS  
SIGNATURE CORPORATE BOND FUND  
SIGNATURE CORPORATE BOND CORPORATE CLASS  
SIGNATURE INCOME & GROWTH FUND  
SIGNATURE INCOME & GROWTH CORPORATE CLASS  
SIGNATURE GLOBAL INCOME & GROWTH FUND  
SIGNATURE GLOBAL INCOME & GROWTH CORPORATE CLASS  
SIGNATURE GLOBAL ENERGY CORPORATE CLASS  
SIGNATURE CANADIAN BOND FUND  
SIGNATURE CANADIAN BOND CORPORATE CLASS  
SIGNATURE SHORT-TERM BOND FUND  
SIGNATURE MORTGAGE FUND  
SIGNATURE DIVERSIFIED YIELD FUND  
SIGNATURE DIVERSIFIED YIELD CORPORATE CLASS  
SIGNATURE SELECT GLOBAL FUND  
SIGNATURE SELECT GLOBAL CORPORATE CLASS  
SIGNATURE GOLD CORPORATE CLASS

**PORTFOLIO SERIES**

PORTFOLIO SERIES CONSERVATIVE BALANCED FUND  
PORTFOLIO SERIES BALANCED GROWTH FUND  
PORTFOLIO SERIES GROWTH FUND  
PORTFOLIO SERIES MAXIMUM GROWTH FUND  
PORTFOLIO SERIES INCOME FUND  
PORTFOLIO SERIES CONSERVATIVE FUND  
PORTFOLIO SERIES BALANCED FUND

**SYNERGY FUNDS**

SYNERGY CANADIAN CORPORATE CLASS  
SYNERGY GLOBAL CORPORATE CLASS  
SYNERGY AMERICAN FUND  
SYNERGY AMERICAN CORPORATE CLASS  
SYNERGY TACTICAL ASSET ALLOCATION FUND

**PORTFOLIO SELECT SERIES**

SELECT CANADIAN EQUITY MANAGED CORPORATE CLASS  
SELECT U.S. EQUITY MANAGED CORPORATE CLASS  
SELECT INTERNATIONAL EQUITY MANAGED CORPORATE CLASS  
SELECT INCOME ADVANTAGE MANAGED CORPORATE CLASS  
SELECT 80I20E MANAGED PORTFOLIO CORPORATE CLASS  
SELECT 70I30E MANAGED PORTFOLIO CORPORATE CLASS  
SELECT 60I40E MANAGED PORTFOLIO CORPORATE CLASS  
SELECT 50I50E MANAGED PORTFOLIO CORPORATE CLASS  
SELECT 40I60E MANAGED PORTFOLIO CORPORATE CLASS  
SELECT 30I70E MANAGED PORTFOLIO CORPORATE CLASS  
SELECT 20I80E MANAGED PORTFOLIO CORPORATE CLASS  
SELECT 100E MANAGED PORTFOLIO CORPORATE CLASS  
SELECT STAGING FUND

**CAMBRIDGE FUNDS**

CAMBRIDGE CANADIAN EQUITY CORPORATE CLASS  
CAMBRIDGE GLOBAL EQUITY CORPORATE CLASS  
CAMBRIDGE CANADIAN ASSET ALLOCATION CORPORATE CLASS

**LAKEVIEW FUNDS**

LAKEVIEW DISCIPLINED LEADERSHIP CANADIAN EQUITY FUND  
LAKEVIEW DISCIPLINED LEADERSHIP U.S. EQUITY FUND  
LAKEVIEW DISCIPLINED LEADERSHIP HIGH INCOME FUND

**2.1.9 Petro Uno Resources Ltd. – s. 1(10)**

“Blaine Young”  
Associate Director, Corporate Finance  
Alberta Securities Commission

**Headnote**

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

**Ontario Statutes**

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

April 30, 2011

Burnet, Duckworth & Palmer LLP  
1400, 350 - 7 Avenue SW  
Calgary, AB T2P 3N9

**Attention: Peter N. Doelman**

Dear Sir:

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

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

As the Applicant has represented to the Decision Makers that:

- (a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;
- (b) no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
- (c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and
- (d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

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

## 2.1.10 Sprott Asset Management LP et al.

### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption granted to a precious metals fund to permit the fund to invest up to 100% of its net assets in silver bullion and silver certificates and to permit the Fund to store silver bullion in and outside Canada with Brinks or Via Mat as sub-sub-custodians.

### Applicable Legislative Provisions

National Instrument NI 81-102 Mutual Funds, ss. 2.3(f), 6.1(2)(b), 6.1(3)(b), 6.2, 6.3, 19.1.

April 29, 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  
SPROTT ASSET MANAGEMENT LP  
(the Filer or the Manager)

AND

IN THE MATTER OF  
SPROTT SILVER BULLION FUND  
(the Fund)

AND

IN THE MATTER OF  
RBC DEXIA INVESTOR SERVICES TRUST  
(the Custodian)

AND

IN THE MATTER OF  
THE BANK OF NOVA SCOTIA  
(the Bullion Custodian)

### DECISION

### Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption, pursuant to section 19.1 of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) from the following provisions of NI 81-102:

- (a) section 2.3(f) of NI 81-102 to permit the Fund to invest up to 100% of its net asset, taken at market value at the time of investment, in silver and/or silver certificates;
- (b) clause 6.1(2)(b) of NI 81-102, to permit the physical silver bullion of the Fund to be held outside of Canada by the Bullion Custodian or Brinks or Via Mat (each of Brinks and ViaMat, as defined below) for purposes other than facilitating portfolio transactions of the Fund;
- (c) clause 6.1(3)(b) of NI 81-102, to permit the Custodian or Bullion Custodian to appoint the Brinks Company, or its subsidiaries or affiliates (**Brinks**) or Via Mat International Ltd., or its subsidiaries or affiliates (**Via Mat**), which are persons or companies that are not described in section 6.2 or 6.3 of NI 81-102, to act as sub-custodians to hold the Fund's physical silver bullion;
- (d) section 6.2 of NI 81-102 to permit Brinks or Via Mat to be appointed as sub-custodians of the Fund to hold the Fund's physical silver bullion in Canada; and
- (e) section 6.3 of NI 81-102 to permit Brinks and Via Mat to be appointed as sub-custodians of the Fund to hold the Fund's physical silver bullion outside Canada.

(collectively, the **Exemption Sought**).

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

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

### Interpretation

Terms defined in NI 81-102, 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.

## The Filer and the Fund

2. The Filer is a limited partnership established under the laws of the Province of Ontario with its head office in Toronto and is registered as an adviser in the category of portfolio manager in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador and as an exempt market dealer in Ontario. The Filer has submitted an application for registration as an investment fund manager in Ontario.
3. The Filer is not in default of securities legislation in any province or territory of Canada.
4. The Fund will be an open-end mutual fund trust established pursuant to a trust agreement governed under the laws of Ontario.
5. The Filer will be the manager and portfolio adviser for the Fund.
6. A preliminary simplified prospectus in respect of the Fund was filed on SEDAR under project No. 1693456 on February 2, 2011. Once a final prospectus for the Fund is filed and a receipt therefor is obtained, the Fund will be a "reporting issuer" or equivalent in each province and territory of Canada.
7. The investment objective of the Fund will be to seek to provide a secure, convenient alternative for investors seeking to hold silver. The Fund will invest primarily in unencumbered, fully allocated silver bullion and silver certificates. The Fund may also invest a portion of its assets in cash, money market instruments and/or treasury bills.
8. The Fund will not invest in securities of issuers that produce silver.
9. The Filer will consider that other funds managed by it or its affiliates hold the underlying assets of the Fund directly for the purposes of such other funds' compliance with sections 2.3(f) of NI 81-102 or conditions contained in a decision granting such other funds an exemption from section 2.3(f).

## Investment in Silver

10. The Manager requests exemptive relief that would permit the Fund to invest up to 100% of its net asset value, taken at the market value at the time of investment, in silver bullion and/or silver certificates.
11. All silver bullion purchased by the Fund will be in London Good Delivery bar form.
12. Similar to the market for gold bullion and gold certificates, the Filer submits that the markets for silver bullion and silver certificates are also highly

liquid, and there are no liquidity concerns with permitting the Fund to invest in this precious metal.

## Custody of Bullion Held by the Fund

13. Pursuant to a Master Trust Agreement dated September 9, 1997, as amended and restated on October 16, 2001 and February 13, 2004, as amended (the **Custodian Agreement**) the Custodian acts as the custodian for all mutual funds managed by the Manager. The Custodian will hold the property of the Fund other than the Fund's physical silver bullion. The terms of the Custodian Agreement comply with all requirements in Part 6 of NI 81-102.
14. The Custodian has appointed the Bullion Custodian to be a sub-custodian of the Fund and to hold the Fund's physical silver bullion. The custody arrangements with respect to the Fund's physical silver bullion are governed by the terms of a sub-custodian agreement between the Custodian and the Bullion Custodian (the **Bullion Custodian Agreement**). Except as represented below, the terms of the Bullion Custodian Agreement will comply with all requirements in Part 6 of NI 81-102.
15. The Fund's physical silver bullion will be stored and held either on an allocated and segregated basis in the vault facilities of the Bullion Custodian, in Canada, London, England or New York, U.S.A., or will be stored in the vault of a sub-custodian on an allocated and segregated basis in Canada, London, England or New York, U.S.A., where in the latter case it shall be identified as the property of the Bullion Custodian. The Bullion Custodian shall at all times record and identify in the books and records maintained by the Bullion Custodian that such bullion is being held on behalf of the Custodian. The Bullion Custodian is one of the largest providers of physical precious metals trading and custodial services in the world. The Manager has determined that the Bullion Custodian will be the appropriate choice to provide custodial services to the Fund because the Bullion Custodian is experienced in providing silver storage and custodial services, and is familiar with the requirements relating to the physical handling and storage of silver bullion.
16. The Fund will not insure its physical silver bullion. The Bullion Custodian Agreement requires that the Bullion Custodian or any sub-custodian maintain insurance on such terms and conditions as it considers appropriate against all risk of physical loss of, or damage to, bullion stored in the Bullion Custodian's or such sub-custodian's vaults except the risk of war, nuclear incident, terrorism events or government confiscation. Neither the Manager, the Fund nor the Custodian are beneficiaries of any such insurance and none



- of them have the ability to dictate the existence, nature or amount of coverage.
17. The Manager has discussed such insurance coverage with the Bullion Custodian, and believes that the insurance that the Bullion Custodian or any sub-custodian has obtained will be appropriate for the Fund. The Bullion Custodian Agreement provides that the Bullion Custodian shall not cancel its insurance or permit its sub-custodian to cancel such insurance except upon 30 days prior written notice to the Manager. The Fund will disclose the material details of that insurance arrangement in its final annual information form.
  18. The Bullion Custodian has advised the Manager and the Custodian that due to physical storage capacity constraints, having regard to the amount of silver bullion which the Fund may acquire, there may not be sufficient space in the vault facilities of the Bullion Custodian to store all of the Fund's physical silver bullion.
  19. As a result, the Bullion Custodian may be required to use the services of sub-custodians to store some of the Fund's physical silver bullion.
  20. The Bullion Custodian has advised the Custodian and the Manager that it proposes to use Brinks and Via Mat, as sub-custodians, if necessary, to hold the physical silver bullion of the Fund. Brinks and Via Mat are not entities that are currently approved to act as a custodian or sub-custodian for assets held in Canada, or to act as a sub-custodian for assets held outside of Canada as Brinks and Via Mat are not, among other things, a bank listed in Schedule I, II or III of the *Bank Act* (Canada) or a trust company incorporated under the laws of Canada.
  21. Brinks and Via Mat are leading providers of secure logistics for valuables, including diamonds, jewellery, precious metals, securities, currency and secure data, serving banks, retailers, governments, mines, refiners and metal traders. Brinks and Via Mat are both authorized depositories for the London Bullion Market Association and have vault facilities that are accepted as warehouses for the London Bullion Market Association. Brinks is also an authorized depository for NYMEX/COMEX.
  22. The number of entities in Canada which are eligible to act as sub-custodians for the physical storage of silver bullion is limited. Of these eligible entities, some already have exclusive relationships with other investment funds for storage purposes whereas others simply may not have the excess capacity that the Fund may need to store physical silver bullion. These capacity constraints have been intensified due to the increased demand for physical commodities and the corresponding need to arrange for safe-keeping.
  23. The Manager and the Bullion Custodian believe that both Brinks and Via Mat are appropriate sub-custodians for the Fund's physical silver bullion. The Bullion Custodian has engaged in a review of the facilities, procedures, records and the level of insurance coverage of Brinks and Via Mat, and will engage in a similar review annually, to satisfy itself as to the continuing appropriateness of using Brinks and Via Mat as sub-custodians of the Fund's physical bullion.
  24. The custody arrangements with respect to the holding of the Fund's physical silver bullion by Brinks or Via Mat will be governed by the terms of an agreement between the Bullion Custodian and Brinks or Via Mat, as the case may be, (the **Bullion Sub-Custodian Agreements**), the terms of which will comply with Part 6 of NI 81-102, except as represented herein.
  25. To the best of the Manager's, the Fund's, the Custodian's and the Bullion Custodian's knowledge, the Custodian Agreement, the Bullion Custodian Agreement and the Bullion Sub-Custodian Agreements are consistent with industry practice.
  26. In relation to the Fund, the sub-custodial activities of Brinks and Via Mat will be limited to holding the Fund's physical silver bullion. All physical silver bullion of the Fund held by Brinks and Via Mat will be held in vault facilities in Canada, London, England or New York, U.S.A, on an allocated and segregated basis. The Bullion Custodian will exercise its audit rights under each Bullion Sub-Custodian Agreement on an on-going basis in order to satisfy itself that Brinks and Via Mat are in substantial compliance with the terms of the relevant Bullion Sub-Custodian Agreement and, in particular, that the bullion of the Fund which the Bullion Custodian has transferred to Brinks and Via Mat on behalf of the Fund (i) is held by Brinks and Via Mat at vault facilities that are accepted as warehouses for the London Bullion Market Association, (ii) is physically segregated and specifically identified, both in the vault facilities in which such bullion is held by Brinks and Via Mat and on the books and records of Brinks and Via Mat, as constituting the property of the Bullion Custodian or the Fund, (iii) has not sustained loss, damage or destruction (but with no obligation on the part of the Bullion Custodian to verify the weight, quality, fineness, assay characteristics, authenticity or composition of such bullion or that such bullion conforms to any good delivery standards for the London Bullion Market Association, NYMEX/COMEX or any other bullion trading body or that such bullion is otherwise fit for any purpose), and (iv) remains the subject of a subsisting policy of insurance that covers Brinks'

and Via Mats' liability for the loss, damage or destruction of such bullion.

27. The Bullion Custodian has advised the Fund and the Manager that each of Brinks and Via Mat have arranged for sufficient insurance coverage in respect of any of the Fund's physical silver bullion held by the Bullion Custodian through the vault facilities of Brinks or Via Mat. The Manager has discussed the insurance coverage obtained by Brinks and Via Mat with the Bullion Custodian and believes that the insurance coverage obtained by Brinks and Via Mat is appropriate for the Fund.
28. Pursuant to the Custodian Agreement, in safekeeping the property of the Fund, the Custodian is required to exercise (i) the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances; or (ii) at least the same degree of care as it exercises with respect to its own property of a similar kind, if this is a higher degree of care than the degree of care referred to in (i). In addition, pursuant to the Custodian Agreement, the Custodian is not entitled to an indemnity from the Fund in the event the Custodian breaches its standard of care. The Bullion Custodian Agreement includes a similar standard of care in respect of the obligations of the Bullion Custodian and a similar provision in respect of the Bullion Custodian's indemnity. The Bullion Custodian has satisfied itself that the degree of care to which Brinks and Via Mat are subject in respect of the Bullion Sub-Custodian Agreement is no less than the degree of care referred to in (i).
29. The Bullion Custodian Agreement provides that the Bullion Custodian shall, at all times, indemnify and save harmless the Custodian from and against any and all losses, charges, damages, actions, demands, costs, expenses, claims and liabilities (except for indirect, incidental, exemplary, punitive, consequential or special damages) arising from the Bullion Custodian's own negligence or willful misconduct in the performance or non-performance of its duties under the Bullion Custodian Agreement.
30. The Custodian Agreement provides that if the Fund suffers a loss as a result of any act or omission of the Custodian or of any other agent appointed by the Custodian (rather than appointed by the Manager), including the Bullion Custodian, and if such loss is directly attributable to the failure of such agent to comply with its standard of care in the provision of any service to be provided by it under the Custodian Agreement, then the Custodian shall assume liability for such loss directly, and shall reimburse the Fund accordingly.
31. The Bullion Custodian Agreement provides that if the Custodian suffers a loss as a result of any act or omission of a sub-custodian (including Brinks or

Via Mat) or of any other agent appointed by the Bullion Custodian (rather than appointed by the Custodian) and if such loss is directly attributable to the failure of such agent to comply with its standard of care in the provision of any service to be provided by it under the Bullion Custodian Agreement or the applicable Bullion Sub-Custodian Agreement, then the Bullion Custodian shall assume liability for such loss directly (except for indirect, incidental, exemplary, punitive, consequential or special damages) and shall reimburse the Custodian accordingly.

32. The Fund's auditors will be present during, and will verify, a physical count of all of the Fund's physical silver bullion, whether held by the Bullion Custodian, Brinks, or Via Mat, at least once every year. The Fund and its auditors will have the ability, with sufficient advance notice to the Bullion Custodian, who shall make arrangements with Brinks or Via Mat, where required, to attend at the vaults of the Bullion Custodian, Brinks and/or Via Mat as required to verify the silver bullion held by the Bullion Custodian, Brinks or Via Mat on behalf of the Fund.
33. The Bullion Custodian shall, to the best of its ability, monitor the most recent audited financial statements of Brinks and Via Mat or their respective affiliates or subsidiaries, in order to ensure that the shareholders' equity of such entities is sufficient with what the Bullion Custodian believes to be appropriate for an entity acting as custodian of physical bullion and, in any event at sufficient levels in order to meet the Bullion Custodian's own internal requirements as though the Bullion Custodian were seeking to deposit its own physical bullion with such sub-custodians.
34. All bullion purchased by the Fund will be certified by the relevant vendor as bullion conforming to the good delivery standards of the London Bullion Market Association or another internationally recognized bullion trading body.

## Decision

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

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

- (a) the investment by the Fund in silver (including silver certificates) is in accordance with the fundamental investment objectives of the Fund;
- (b) the Manager, on behalf of the Fund, ensures that any silver certificates pur-

chased by the Fund, represent silver which is:

- (i) available for delivery in Canada, free of charge, to or to the order of the holder of the certificate;
  - (ii) of minimum fineness of 999 parts per 1,000;
  - (iii) held in Canada;
  - (iv) in the form of either bars or wafers; and
  - (v) if not purchased from a bank listed in Schedule I, II or III of the Bank Act (Canada), fully insured against loss and bankruptcy by an insurance company licensed under the laws of Canada or a jurisdiction;
- (c) the simplified prospectus of the Fund contains disclosure regarding the unique risks associated with an investment in the Fund including the risk that direct purchases of silver by the Fund may generate higher transaction and custody costs than other types of investments, which may impact the performance of the Fund;
- (d) the simplified prospectus of the Fund, including each renewal, will not be combined with the simplified prospectus and annual information form of any other mutual fund that the Filer manages, unless the investment objective of such other mutual fund is to invest a substantial portion of such fund's assets in one or more types of precious metals;
- (e) in respect of the relief granted from the requirements of sections 6.1(2)(b), 6.1(3)(b), 6.2 and 6.3, the Fund, the Manager, the Custodian and the Bullion Custodian are limited to using Brinks and Via Mat as sub-custodians for the silver bullion of the Fund which will be held only in Canada, London or New York; and
- (f) in respect of the compliance reports to be prepared by the Custodian pursuant to section 6.7 of NI 81-102, in lieu of including the information required by paragraphs 6.7(1)(a), 6.7(1)(b), 6.7(1)(c) and 6.7(2)(b) and (c) in respect of the Custodian's review of the sub-custodian arrangements involving Brinks and Via Mat, the Custodian shall instead be entitled to rely on a certificate of the Bullion Custodian prepared in respect of

the Bullion Custodian's annual review process for Brinks and Via Mat referred to in paragraph 22 above, and whether the Bullion Custodian remains of the view that Brinks and Via Mat continue to be appropriate sub-sub-custodians to hold the Fund's physical silver bullion.

"Darren McKall"  
Manager, Investment Funds  
Ontario Securities Commission

**2.1.11 frontierAlt Funds Management Limited et al.**

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval granted for change of manager of a mutual fund – unitholders have received timely and adequate disclosure regarding the change of manager – change of manager is not detrimental to unitholders or the public interest.

**Applicable Legislative Provisions**

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(a), 5.7, 19.1.

**April 29, 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  
FRONTIERALT FUNDS MANAGEMENT LIMITED  
(the Filer)**

**AND**

**FRONTIERALT OPPORTUNISTIC BOND FUND  
(the Bond Fund)**

**AND**

**FRONTIERALT RESOURCE CAPITAL CLASS FUND  
(the Resource Fund and,  
together with the Bond Fund, the Funds)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for approval of the proposed change of manager of the Funds from the Filer to BlackBridge Capital Management Corp. (**BlackBridge**) under Section 5.5(1)(a) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) (the **Approval 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 all of the provinces of Canada.

**Interpretation**

Terms defined in National Instrument 41-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

**Representations**

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

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act* with its head office in Toronto, Ontario.
2. The Filer is the manager and trustee of the Bond Fund and the manager of the Resource Fund.
3. The Filer is not in default of securities legislation in any jurisdiction of Canada.
4. The Bond Fund is an open-end investment trust governed by an amended and restated declaration of trust dated as of April 20, 2006, as amended by amendment no. 1 thereto dated February 11, 2008 and amendment no. 2 thereto dated June 10, 2010, under the laws of the province of Ontario.
5. The Resource Fund is a class of shares of frontierAlt Capital Class Fund Limited, a corporation formed under the *Business Corporations Act* (Ontario) by articles of incorporation dated April 27, 2007, as amended by articles of amendment dated June 6, 2007 (the **Corporation**).
6. Each Fund is a reporting issuer in all of the provinces of Canada and is not in default of securities legislation in any jurisdiction of Canada.
7. Securities of the Funds are currently offered under a combined simplified prospectus and annual information form each dated June 10, 2010, as it may be amended, and prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure*. The Funds are subject to NI 81-102.
8. The Filer and BlackBridge entered into an agreement dated December 27, 2010, pursuant to which BlackBridge will become the trustee and manager of the Bond Fund and the manager of the Resource Fund, effective on or about April 30, 2011 (the **Effective Date**), subject to receipt of all

- necessary regulatory and securityholder approvals and the satisfaction of all other conditions precedent to the proposed transaction (the **Transaction**).
9. If the necessary approvals are obtained, the Filer will have no further responsibilities in respect of the Funds after the Effective Date.
  10. A press release dated March 4, 2011 has been issued and filed on SEDAR and amendments to the simplified prospectus and annual information form of the Funds and a material change report were filed on March 11, 2011 in connection with the Transaction.
  11. BlackBridge is a corporation incorporated under the *Canada Business Corporations Act* with its head office in Toronto, Ontario.
  12. BlackBridge is registered in Ontario as an investment fund manager and as an exempt market dealer. It currently does not act as manager of any investment fund.
  13. BlackBridge is not in default of securities legislation in any jurisdiction of Canada.
  14. Mr. Daniel Shapiro of Toronto, Ontario is the sole shareholder, as well as a director and officer, of BlackBridge. Mr. Shapiro's principal occupation is acting as the Chief Executive Officer of BlackBridge.
  15. Mr. Darren Latoski of Vancouver, British Columbia and Mr. Michael Drake of Schomberg, Ontario are also directors of BlackBridge.
  16. The directors and officer of BlackBridge have the requisite integrity and experience required under subsection 5.7(1)(a)(v) of NI 81-102.
  17. BlackBridge intends to manage and administer the Funds in substantially the same manner as the Filer. There is no intention to change the investment objectives, fees and expenses, portfolio managers, auditor or custodian of the Funds. All material agreements regarding the administration of the Funds will either be assigned to BlackBridge by the Filer or BlackBridge will enter into new agreements as required. In either case, the material terms of the material agreements of the Funds will remain the same.
  18. The Filer has referred the proposed Transaction to the Independent Review Committee (**IRC**) of the Funds for its review, and the IRC has provided its positive recommendation that, after reasonable inquiry, it is its opinion that the proposed Transaction achieves a fair and reasonable result for the Funds.
  19. Upon the completion of the proposed Transaction, all current members of the IRC for the Funds will cease to be members of the IRC pursuant to subsection 3.10(1)(c) of National Instrument 81-107 *Independent Review Committee for Investment Funds (NI 81-107)*. In accordance with subsection 3.3(5) of NI 81-107, BlackBridge proposes to fill these vacancies by re-appointing the same individuals to be the new members of the IRC.
  20. At special meetings of securityholders of the Funds held on April 27, 2011 (the **Special Meetings**), securityholders of the Funds approved the change of manager to BlackBridge, as well as certain other related changes.
  21. Subject to receipt of regulatory approval, the resignation of the Filer as trustee and manager of the Bond Fund and as manager of the Resource Fund will be effective on the Effective Date. On that date, BlackBridge will assume the roles of trustee and manager of the Bond Fund under the existing declaration of trust and management agreement, respectively, of the Bond Fund, and will assume the role of manager of the Resource Fund under the existing management agreement in respect of the Resource Fund.

#### Decision

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

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

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

**2.1.12 Kria Resources Ltd. – s. 1(10)**

“Michael Brown”  
Assistant Manager, Corporate Finance  
Ontario Securities Commission

**Headnote**

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

**Ontario Statutes**

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

May 3, 2011

Kria Resources Ltd.  
c/o Aird & Berlis LLP  
181 Bay Street, Suite 1800,  
Toronto, Ontario, M5J 2T9

Attn: Sherri Altshuler

Dear Sirs/Mesdames:

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

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

As the Applicant has represented to the Decision Makers that:

- (a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;
- (b) no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 Marketplace Operation;
- (c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and
- (d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

## 2.1.13 First Asset Investment Management Inc.

### Headnote

NP 11-203 – Exemptive relief granted to exchange-traded funds for initial and continuous distribution of units, including: relief from dealer registration requirement to permit promoter to disseminate sales communications promoting the funds subject to compliance with Part 15 of NI 81-102, relief to permit the funds' prospectus to not contain an underwriter's certificate, and relief from take-over bid requirements in connection with normal course purchases of units on the Toronto Stock Exchange subject to undertaking by unitholders not to exercise any votes attached to units which represent more than 20% of the votes attached to all outstanding units of the funds – Securities Act (Ontario).

### Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 59(1), 74(1), 95-100, 104(2)(c), 147.

April 29, 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 or the Manager)

### DECISION

### Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the *Legislation*) for exemptive relief from the Legislation (the *Exemption Sought*) so that:

1. The dealer registration requirement of the Legislation: does not apply to the Filer, or an affiliate of the Filer, in connection with its dissemination of sales communications relating to the distribution of units (*Units*) of Can-60 Income ETF, Can-Financials Income ETF, Can-Energy Income ETF and Can-Materials Income ETF (the *Existing ETFs*) and such other exchange traded funds as the Filer, or an affiliate of the Filer, may establish in the future (each a *Future ETF* and

together with the Existing ETFs, the *ETFs* or individually, an *ETF*) (the *Registration Relief*);

2. In connection with the distribution of securities of the ETFs pursuant to a prospectus, the ETFs be exempt from the requirement that the prospectus contain a certificate of the underwriter or underwriters who are in a contractual relationship with the issuer whose securities are being offered (the *Underwriter Certificate Relief*); and
3. Purchasers of Units of the ETFs be exempted from the requirements of the Legislation related to take-over bids, including the requirement to file a report of a take-over bid and the accompanying fee with each applicable Jurisdiction, (the *Take-over Bid Relief*) in connection with purchases of Units of the ETFs in the normal course through the facilities of the Toronto Stock Exchange (the *TSX*).

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

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

- *Basket of Securities* means a group of securities determined by Manager from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.
- *Designated Broker* means a registered broker or dealer that enters into an agreement with an ETF to perform certain duties in relation to the ETF.
- *ETF Index* means, the S&P/TSX 60 Index in respect of the Can-60 Income ETF; the S&P/TSX Capped Financials Sector Index in respect of Can-Financials Income ETF; the S&P TSX Capped Energy Index in respect of the Can-Energy Income ETF; and the S&P TSX Capped Materials Index in respect of the Can-Materials Income ETF.

- *Prescribed Number of Units* means, in relation to an ETF, the number of Units of the ETF determined by the Filer from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.
- *Underwriter* means a registered broker or dealer that has entered into an underwriting agreement with an ETF and that subscribes for and purchases Units of the ETF from the ETF.
- *Unitholder* means a beneficial and registered holder of Units of an ETF.

## Representations

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

1. The Existing ETFs are, and each of the Future ETFs will be, a mutual fund trust governed by the laws of Ontario and a reporting issuer under the laws of all of the Jurisdictions.
2. On March 21, 2011, the Manager filed a preliminary long form prospectus in respect of the Existing ETFs for the purpose of qualifying Units for distribution in all of the Jurisdictions.
3. The Filer will also apply to list the Units of the ETFs on the TSX. The Filer will not file a final prospectus for any ETF until the TSX has conditionally approved the listing of Units of such ETF.
4. Each Existing ETF's investment objectives are to provide Unitholders with (i) quarterly cash distributions, (ii) the opportunity for capital appreciation by investing on an equal weight basis in a portfolio of securities of issuers comprising the applicable ETF Index, and (iii) lower overall volatility of returns on the portfolio than would be experienced by owning a portfolio of securities of the issuers that comprise such ETF Index directly.
5. The Filer is a corporation incorporated under the laws of Ontario and it, or an affiliate, will act as the trustee and manager of each ETF. The Manager is the investment manager of the Existing ETFs and is registered in the categories of "commodity trading manager" under the *Commodity Futures Act* (Ontario) and as "exempt market dealer", "investment fund manager" and "portfolio manager" under the *Securities Act* (Ontario).
6. Units of an ETF may only be subscribed for or purchased directly from the ETF by Underwriters or Designated Brokers and orders may only be placed for a Prescribed Number of Units (or a multiple thereof) of the ETF on any day when there is a trading session on the TSX. Under Designated Broker and Underwriter agreements, the Designated Brokers and Underwriters agree to offer Units for sale to the public only as permitted by applicable Canadian securities legislation. Designated Brokers and Underwriters will deliver a copy of the prospectus of the ETFs to the first purchasers of Units of the ETFs in the secondary market.
7. Each Underwriter or Designated Broker that subscribes for Units must deliver, in respect of each Prescribed Number of Units to be issued, a Basket of Securities and cash in an amount sufficient so that the value of the Basket of Securities and cash delivered is equal to the net asset value of the Units subscribed for next determined following the receipt of the subscription order. The ETFs may also accept subscriptions for Units in cash only in an amount equal to the net asset value of the Units next determined following the receipt of the subscription order.
8. All subscriptions and redemptions for Units of an ETF may be submitted on any day on which there is a trading session on the TSX and will settle by the third day after that date.
9. Each ETF will appoint a Designated Broker(s) to perform certain functions which include standing in the market with a bid and ask price for Units of that ETF for the purpose of maintaining liquidity for Units of that ETF.
10. The net asset value per Unit of each ETF will be calculated and published on each day on which there is a trading session on the TSX and will be made available on the website of the Filer or the ETF.
11. Neither the Underwriters nor the Designated Brokers will receive any fees or commissions in connection with the issuance of Units of an ETF to them. The Filer may, at its discretion, charge an administration fee on the issuance of Units of an ETF to Underwriters or Designated Brokers.
12. Investors are generally expected to purchase Units of an ETF through the facilities of the TSX.
13. Because the Underwriters will not receive any remuneration for distribution Units of the ETFs, and because the Underwriters will change from time to time, it is not practical to require an underwriter's certificate in the prospectus of the ETFs.
14. Units of an ETF may be issued directly to Unitholders of the ETF upon the reinvestment of distributions of income or capital gains.
15. Unitholders of an ETF that wish to dispose of their Units of the ETF may generally do so by selling



their Units of the ETF on the TSX, through a registered broker or dealer, subject only to customary brokerage commissions. A Unitholder that holds a Prescribed Number of Units or an integral multiple thereof may exchange such Units for Baskets of Securities and cash. Unitholders of an ETF may also redeem their Units of the ETF for cash at a redemption price equal to 95% of the closing price of the Units of the ETF on the TSX on the effective date of redemption.

16. As trustee and manager, the Filer will be entitled to receive a fixed annual fee from each ETF. Such annual fee will be calculated as a fixed percentage of the net asset value of the ETF. The Filer will be responsible for the payment of all expenses of the ETFs, except for the management fee, any expenses related to the implementation and ongoing operation of an independent review committee under National Instrument 81-107 Independent Review Committee for Investment Funds, brokerage expenses and commissions, income taxes and withholding taxes and extraordinary expenses.
17. No investment dealer will act as principal distributor of an ETF in connection with the distribution of Units of the ETF. The Underwriters will not receive any commission or other payment from the ETFs. As a result, the Filer will be the only entity desiring to foster market awareness and promote trading in Units of the ETFs through the dissemination of sales communications.
18. Unitholders of an ETF will have the right to vote at a meeting of Unitholders of the ETF prior to: any change in the fundamental investment objective of the ETF; any change to their voting rights; the introduction of a fee or expenses to be charged to the ETF or to Unitholders; or a change in the basis of the calculation of a fee or expenses charged to the ETF or Unitholders where such change could result in an increase in the amount of fees or expenses payable by the ETF or Unitholders.
19. Although Units of an ETF will trade on the TSX and the acquisition of Units of the ETF can therefore be subject to the Take-Over Bid Requirements:
  - a. it will not be possible for one or more Unitholders of the ETF to exercise control or direction over the ETF as the master declaration of trust governing the ETF will ensure that there can be no changes made to the ETF which do not have the support of the Filer;
  - b. it will be difficult for purchasers of Units of the ETF to monitor compliance with Take-Over Bid Requirements because the number of outstanding Units of the ETF will always be in flux as a result of

the ongoing issuance and redemption of Units by the ETF; and

- c. the way in which Units of the ETF will be priced deters anyone from either seeking to acquire control, or offering to pay a control premium, for outstanding Units of the ETF because pricing of a Unit of the ETF will depend on the performance of the portfolio of the ETF as a whole.

20. The application of the Take-Over Bid Requirements to an ETF would have an adverse impact upon liquidity of a Unit of the ETF because they could cause Underwriters, Designated Brokers and other large Unitholders of the ETF to cease trading Units of the ETF once prescribed take-over bid thresholds are reached.

### 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 so long as:

1. The Filer or its affiliate comply with Part 15 of National Instrument 81-102 Mutual Funds in connection with an ETF's sales communications; and
2. In respect of the Take-over Bid Relief, prior to making any take-over bid for Units that is not otherwise exempt from the Take-over Bid Requirements, the purchaser of the Units (the Unit Purchaser), and any person or company acting jointly or in concert with the Unit Purchaser (a Concert Party), provides the Filer or its affiliate with an undertaking not to exercise any votes attached to the Units held by the Unit Purchaser and any Concert Party which represent more than 20% of the votes attached to all outstanding Units.

"Edward P. Kerwin"  
Commissioner  
Ontario Securities Commission

"James Turner"  
Vice-Chair  
Ontario Securities Commission

## 2.1.14 First Asset Investment Management Inc.

### Headnote

NP 11-203 – Exemptive relief granted to ETFs offered in continuous distribution from certain mutual fund requirements and restrictions on: transmission of purchase or redemption orders, issuing units for cash or securities, calculation and payment of redemptions, and date of record for payment of distributions – National Instrument 81-102 – Mutual Funds.

### Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 9.1, 9.4(2), 10.2, 10.3, 14.1, 19.1.

April 28, 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 or the Manager)**

**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 exemptive relief from the following provisions of National Instrument 81-102 *Mutual Funds* (NI 81-102) (the *Exemption Sought*):

1. Sections 9.1 and 10.2 to permit purchases and sales of units (the *Units*) of Can-60 Income ETF, Can-Financials Income ETF, Can-Energy Income ETF and Can-Materials Income ETF (the *Existing ETFs*) and such other exchange traded funds as the Filer, or an affiliate of the Filer, may establish in the future (each a *Future ETF* and together with the Existing ETFs, the *ETFs* or individually, an *ETF*) on the Toronto Stock Exchange (the *TSX*), instead of through order receipt offices;
2. Section 9.4(2) to permit an ETF to accept a combination of cash and securities as subscription proceeds for Units;
3. Section 10.3 to permit an ETF to redeem less than the Prescribed Number of Units (as defined below)

of the ETF at a discount to their market price, instead of at their net asset value; and

4. Section 14.1 to permit an ETF to establish a record date for distributions in accordance with the rules of the TSX.

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

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

- *Basket of Securities* means a group of securities determined by Manager from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.
- *Designated Broker* means a registered broker or dealer that enters into an agreement with an ETF to perform certain duties in relation to the ETF.
- *ETF Index* means, the S&P/TSX 60 Index in respect of the Can-60 Income ETF; the S&P/TSX Capped Financials Sector Index™ in respect of Can-Financials Income ETF; the S&P TSX Capped Energy Index in respect of the Can-Energy Income ETF; and the S&P TSX Capped Materials Index in respect of the Can-Materials Income ETF.
- *Prescribed Number of Units* means, in relation to an ETF, the number of Units of the ETF determined by the Filer from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.
- *Underwriter* means a registered broker or dealer that has entered into an underwriting agreement with an ETF and that subscribes for and purchases Units of the ETF from the ETF.

- *Unitholder* means a beneficial and registered holder of Units of an ETF.

Section references set out in this decision are references to NI 81-102, unless otherwise indicated.

## Representations

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

1. The Existing ETFs are, and each of the Future ETFs will be, a mutual fund trust governed by the laws of Ontario and a reporting issuer under the laws of all of the Jurisdictions.
2. On March 21, 2011, the Manager filed a preliminary long form prospectus in respect of the Existing ETFs for the purpose of qualifying Units for distribution in all of the Jurisdictions.
3. The Filer will also apply to list the Units of the ETFs on the TSX. The Filer will not file a final prospectus for any ETF until the TSX has conditionally approved the listing of Units of such ETF.
4. Each Existing ETF's investment objectives are to provide Unitholders with (i) quarterly cash distributions, (ii) the opportunity for capital appreciation by investing on an equal weight basis in a portfolio of securities of issuers comprising the applicable ETF Index, and (iii) lower overall volatility of returns on the portfolio than would be experienced by owning a portfolio of securities of the issuers that comprise such ETF Index directly.
5. The Filer is a corporation incorporated under the laws of Ontario and it, or an affiliate, will act as the trustee and manager of each ETF. The Manager is the investment manager of the Existing ETFs and is registered in the categories of "commodity trading manager" under the *Commodity Futures Act* (Ontario) and as "exempt market dealer", "investment fund manager" and "portfolio manager" under the *Securities Act* (Ontario).
6. Units of an ETF may only be subscribed for or purchased directly from the ETF by Underwriters or Designated Brokers and orders may only be placed for a Prescribed Number of Units (or a multiple thereof) of the ETF on any day when there is a trading session on the TSX.
7. Each Underwriter or Designated Broker that subscribes for Units must deliver, in respect of each Prescribed Number of Units to be issued, a Basket of Securities and cash in an amount sufficient so that the value of the Basket of Securities and cash delivered is equal to the net asset value of the Units subscribed for next determined following the receipt of the subscription order. The ETFs may also accept subscriptions for Units in cash only in an amount equal to the net asset value of the Units next determined following the receipt of the subscription order.
8. All subscriptions and redemptions for Units of an ETF may be submitted on any day on which there is a trading session on the TSX and will settle by the third day after that date.
9. Each ETF will appoint a Designated Broker(s) to perform certain functions which include standing in the market with a bid and ask price for Units of that ETF for the purpose of maintaining liquidity for Units of that ETF.
10. The net asset value per Unit of each ETF will be calculated and published on each day on which there is a trading session on the TSX and will be made available on the website of the Filer or the ETF.
11. Neither the Underwriters nor the Designated Brokers will receive any fees or commissions in connection with the issuance of Units of an ETF to them. The Filer may, at its discretion, charge an administration fee on the issuance of Units of an ETF to Underwriters or Designated Brokers.
12. Except as described above, Units of an ETF may not be purchased directly from the ETF. Investors are generally expected to purchase Units of an ETF through the facilities of the TSX. However, Units of an ETF may be issued directly to Unitholders of the ETF upon the reinvestment of distributions of income or capital gains.
13. Unitholders of an ETF that wish to dispose of their Units of the ETF may generally do so by selling their Units of the ETF on the TSX, through a registered broker or dealer, subject only to customary brokerage commissions. A Unitholder that holds a Prescribed Number of Units or an integral multiple thereof may exchange such Units for Baskets of Securities and cash. Unitholders of an ETF may also redeem their Units of the ETF for cash at a redemption price equal to 95% of the closing price of the Units of the ETF on the TSX on the effective date of redemption.
14. As trustee and manager, the Filer will be entitled to receive a fixed annual fee from each ETF. Such annual fee will be calculated as a fixed percentage of the net asset value of the ETF. The Filer will be responsible for the payment of all expenses of the ETFs, except for the management fee, any expenses related to the implementation and on-going operation of an independent review committee under National Instrument 81-107 Independent Review Committee for Investment Funds, brokerage expenses and commissions, income taxes and withholding taxes and extraordinary expenses.

15. Unitholders of an ETF will have the right to vote at a meeting of Unitholders of the ETF prior to: any change in the fundamental investment objective of the ETF; any change to their voting rights; the introduction of a fee or expenses to be charged to the ETF or to Unitholders; or a change in the basis of the calculation of a fee or expenses charged to the ETF or Unitholders where such change could result in an increase in the amount of fees or expenses payable by the ETF or Unitholders.

**Decision**

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision. The decision of the principal regulator under the Legislation is that the Exemption Sought is granted as follows:

1. Sections 9.1 and 10.2 – to enable the purchase and sale of Units of an ETF on the TSX, which precludes the transmission of purchase or redemption orders to the order receipt offices of the ETF.
2. Section 9.4(2) – to permit payment for the issuance of Units of the ETFs to be made partially in cash and partially in securities, provided that the acceptance of securities as payment is made in accordance with Section 9.4(2)(b) of NI 81-102.
3. Section 10.3 – to permit the redemption of less than the Prescribed Number of Units of an ETF at a price equal to 95% of the closing price of the Units of the ETF on the TSX.
4. Section 14.1 – to relieve an ETF from the requirement relating to the record date for the payment of distributions, provided that the ETF complies with applicable TSX requirements.

The Exemption Sought shall terminate upon the coming into force of any legislation or rule of the principal regulator dealing with the matters referred to in subsections 9.1, 9.4(2), 10.2, 10.3, and 14.1 of NI 81-102.

“Vera Nunes”  
Manager, Investment Funds  
Ontario Securities Commission

## 2.1.15 Mackenzie Financial Corporation

### 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), (c), 6.1(1), 19.1(2).

April 27, 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  
MACKENZIE FINANCIAL CORPORATION  
(“MACKENZIE” or the “FILER”)**  
  
**DECISION**

### Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the “**Legislation**”) granting an exemption relieving the mutual funds of which Mackenzie is, or in the future becomes, the manager (the “**Funds**”) from:

- (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;

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

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

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) Mackenzie 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, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon.

### Interpretation

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

## Representations

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

1. The Filer is a corporation governed by the laws of Ontario and is registered as a Portfolio Manager and Exempt Market Dealer in each Canadian jurisdiction and has applied for registration in Ontario as an investment fund manager. The Filer is also registered in Ontario under the *Commodity Futures Act* (Ontario) in the category of Commodity Trading Manager.
2. Each Fund is, or will be, an open-end mutual fund trust or a class of shares of a mutual fund corporation established under the laws of Ontario, managed by The Filer. Each Fund currently is, or will be subject to NI 81-102 and a reporting issuer in all of the provinces and territories of Canada.
3. Neither the Filer nor any of the Funds of which the Filer is currently the manager is in default of securities legislation in Ontario or any of the other jurisdictions.
4. The investment practices of each 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 authority to deviate therefrom.
5. The Filer proposes that each Fund be authorized to engage in a limited, prudent and disciplined amount of short selling. The Filer is of the view that the Funds could benefit from the implementation and execution of a controlled and limited short selling strategy. This strategy would complement the Funds' primary discipline of buying securities with the expectation that they will appreciate in market value.
6. Short sales will be made consistent with each Fund's investment objectives and investment strategies.
7. In order to effect a short sale, a Fund will borrow securities from its custodian, sub-custodian or a dealer (in each 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 of a Fund will disclose the proposed use of short selling by a Fund, the specific risks related to short selling and details of this exemptive relief prior to the implementation of the short selling strategy by the Fund.
9. Each 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 shall not be any of the following:
    - (i) a security that the Fund is not otherwise permitted to purchase at the time of the short sale transaction;
    - (ii) a security of an investment fund unless the security is an index participation unit;
  - e. The securities sold short will not be "illiquid assets" as such term is defined in NI-81-102, and will be securities that are either:
    - (a) listed and posted for trading on a stock exchange; and
      - (i) 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
      - (ii) the Fund's portfolio advisor has pre-arranged to borrow the securities for the purpose of such sale; or

- (b) bonds, debentures or other evidences of indebtedness of, or guaranteed by, any issuer;
- f. at the time the securities of a particular issuer are sold short:
  - (i) the Fund will have borrowed or arranged to borrow from a Borrowing Agent the securities that are to be sold under the short sale transaction;
  - (ii) the aggregate market value of all securities of that issuer sold short by the Fund will not exceed 5% of the total net assets of the Fund; and
  - (iii) the aggregate market value of all securities sold short by the Fund will not exceed 20% of the net asset value of the Fund;
- g. the Fund will deposit Fund assets with the Borrowing Agent as security in connection with the short sale transaction ("**Collateral**");
- h. the Fund will hold cash cover, including Collateral, in an amount 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;
- i. a Fund will not use the cash from a short sale transaction to enter into a long position in a security other than a security that is cash cover;
- j. where the Borrowing Agent is a dealer,
  - (i) if a Fund deposits Collateral, the aggregate amount of Collateral held by the Borrowing Agent may not exceed 10% of the net asset value of the Fund at the time of deposit;
  - (ii) a Fund may not deposit Collateral with a dealer in Canada unless the dealer is registered in a jurisdiction of Canada and is a member of IIROC; and
  - (iii) a Fund may not deposit Collateral with a dealer outside Canada unless that dealer (a) is a member of a stock exchange that requires the dealer to be subjected to a regulatory audit; and (b) has a net worth determined from its most recent audited financial statements that have been made public, in excess of the equivalent of CDN \$50 million;
- k. the Fund will maintain appropriate internal controls regarding short sales prior to conducting any short sales, including written policies and procedures and risk management controls; and
- l. the Fund will keep proper books and records of all short sales and Fund assets deposited with Borrowing Agents as security.

## Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that in respect of each Fund:

- (a) Short sales are made consistent with each Fund's investment objectives and investment strategies.
- (b) The Requested Relief does not apply to a Fund that is classified as a money market fund.
- (c) The Fund maintains appropriate internal controls regarding its short sales including written policies and procedures, risk management controls and proper books and records.
- (d) Securities are sold short for cash, with the Fund assuming the obligation to return to the Borrowing Agent the securities borrowed to effect the short sale.
- (e) The short sales are effected through market facilities through which the securities sold short are normally bought and sold.

- (f) The Fund receives cash for the securities sold short within normal trading settlement periods for the market in which the short sale is effected.
- (g) The securities sold short are not any of the following:
  - i. a security that the Fund is not otherwise permitted to purchase at the time of the short sale transaction;
  - ii. an illiquid asset; or
  - iii. a security of an investment fund unless the security is an index participation unit.
- (h) At the time the securities of a particular issuer are sold short:
  - i. the Fund has borrowed or arranged to borrow from a Borrowing Agent the securities that are to be sold under the short sale transaction;
  - ii. the aggregate market value of all securities of that issuer sold short by the Fund does not exceed 5% of the total net assets of the Fund on a daily marked to market basis; and
  - iii. 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.
- (i) The Fund deposits Fund assets with the Borrowing Agent as security in connection with the short sale transaction ("**Collateral**").
- (j) The Fund holds cash cover, including Collateral, in an amount 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.
- (k) A Fund does not use the cash from a short sale transaction to enter into a long position in a security other than a security that is cash cover.
- (l) Where the Borrowing Agent is a dealer,
  - i. if a Fund deposits Collateral, the aggregate amount of Collateral held by the Borrowing Agent does not exceed 10% of the total net assets of the Fund, taken at market value as at the time of deposit;
  - ii. a Fund does not deposit Collateral with a dealer in Canada unless the dealer is registered in a jurisdiction of Canada and is a member of IIROC; and
  - iii. a Fund does not deposit Collateral with a dealer outside Canada unless that dealer (a) is a member of a stock exchange that requires the dealer to be subjected to a regulatory audit; and (b) has a net worth determined from its most recent audited financial statements that have been made public, in excess of the equivalent of CDN \$50 million.
- (m) The Fund keeps proper books and records of all short sales and Fund assets deposited with Borrowing Agents as security.
- (n) The security interest provided by the Fund over any Collateral is made in accordance with industry practice for that type of transaction and relates only to obligations arising under such short sale transactions.
- (o) Prior to conducting any short sales, the Fund discloses in its simplified prospectus a description of (i) short selling, (ii) how the Fund intends to engage in short selling, (iii) the risks associated with short selling, and (iv) in the Investment Strategy section of the simplified prospectus, the Fund's strategy and this exemptive relief.
- (p) Prior to conducting any short sales, the Fund discloses in its annual information form the following information:
  - i. that there are written policies and procedures in place that set out the objectives and goals for short selling and the risk management procedures applicable to short selling;
  - ii. who is responsible for setting and reviewing the policies and procedures referred to in the preceding paragraph, how often the policies and procedures are reviewed, and the extent and nature of the involvement of the board of directors of The Filer in the risk management process;



- iii. whether there are 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;
  - iv. whether there are individuals or groups that monitor the risks independent of those who trade; and
  - v. whether risk measurement procedures or simulations are used to test the portfolio under stress conditions.
- (q) Prior to conducting any short sales, the Fund provides to its securityholders not less than 60 days' written notice that discloses the Fund's intent to begin short selling transactions and the disclosure required in the Fund's simplified prospectus and annual information form as outlined in paragraphs (f) and (g) above, or the Fund's initial simplified prospectus and each renewal thereof has included such disclosure.
- (r) The Requested Relief terminates upon the coming into force of any legislation or rule of the Decision Makers dealing with matters referred to in subsections 2.6(a), 2.6(c) and 6.1(1) of NI 81-102.

"Darren McKall"  
Manager,  
Investment Funds Branch

## 2.2 Orders

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

**ORDER  
(Section 127 and 127.1)**

**WHEREAS** on October 16, 2008, the Ontario Securities Commission (the "Commission") commenced the within proceeding by issuing a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act");

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

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

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

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

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

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

**AND WHEREAS** counsel for Boock advised the Commission at an attendance on February 24, 2010 that

the Divisional Court had advised that it was expected that the JR Application could be heard in advance of the dates scheduled for the commencement of a hearing into the merits of this matter;

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

- a) the Disclosure Decision be stayed on an interim basis until the earlier of the date of a decision on the merits in the JR Application or September 13, 2010, or until such further date as ordered by the Commission;
- b) the parties shall attend at the offices of the Commission on September 13, 2010 at 9:00 a.m. to advise the Commission of the status of the determination of the JR Application (the "Status Hearing"); and
- c) the Merits Hearing shall commence on October 18, 2010 and, excluding October 26, 2010, shall continue for three weeks until November 5, 2010 and thereafter on such dates as may be determined by the parties and the Office of the Secretary;

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

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

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

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

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

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

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

- a) the dates for the Merits Hearing, previously set to commence on October 18, 2010, shall be vacated;
- b) the Status Hearing currently scheduled for September 13, 2010 shall be vacated;
- c) the Status Hearing shall be adjourned until November 29, 2010 at 9:30 a.m. at the offices of the Commission; and
- d) the Disclosure Decision shall be stayed on an interim basis until the earlier of the date of a decision on the merits in the JR Application or November 29, 2010, or until such further date as ordered by the Commission;

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

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

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

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

**AND WHEREAS** Staff submitted that the appeal period in respect of the JR Decision had expired;

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

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

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

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

**AND WHEREAS** on November 29, 2010, the Commission ordered that:

- a) the Stay shall lapse as of that date;
- b) the Status Hearing shall be adjourned until January 27, 2011 at 2 p.m. at the offices of the Commission, or such other

date as may be agreed upon by the parties and fixed by the Office of the Secretary; and

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

**AND WHEREAS** on January 27, 2011, the Commission held a Status Hearing in this matter attended by Staff, counsel for Wong and counsel for DeFreitas;

**AND WHEREAS** Boock advised Staff in advance of the Status Hearing that he would not be attending but that he intends to retain counsel in this matter in the next 30 days;

**AND WHEREAS** counsel to Pharm Control Inc. advised Staff in advance of the Status Hearing that Pharm Control would not be in attendance at the Status Hearing;

**AND WHEREAS** no other Respondents attended or otherwise responded to notice of the Status Hearing;

**AND WHEREAS** Staff confirmed to the Commission that it took steps to serve all of the Respondents with notice of the Status Hearing at the last known address(es) for each;

**AND WHEREAS** Staff recently obtained and disclosed new evidence in this matter;

**AND WHEREAS** Staff requested that the Commission convene a pre-hearing conference for the parties to give consideration to the evidentiary and other hearing related issues in this matter;

**AND WHEREAS** on January 27, 2011, the Commission ordered that a pre-hearing conference be held on Thursday, March 3, 2011 at 10:00 a.m. or such other date or time as agreed upon by the parties and fixed by the Secretary's office;

**AND WHEREAS** on February 25, 2011, Staff informed counsel for Wong, counsel for DeFreitas, Boock and the Secretary's office that Staff wished to adjourn the pre-hearing conference currently scheduled for March 3, 2011 until April 19, 2011;

**AND WHEREAS** counsel for Wong, counsel for DeFreitas and Boock did not object to the adjournment request of Staff;

**AND WHEREAS** on March 1, 2011, the Commission ordered that a pre-hearing conference be adjourned to Tuesday, April 19, 2011 at 10:00 a.m. or such other date or time as agreed upon by the parties and fixed by the Secretary's office;

**AND WHEREAS** on April 19, 2011, counsel for DeFreitas, counsel for Wong and Staff attended for the purpose of having a pre-hearing conference but Boock was unable to attend;

**AND WHEREAS** on April 19, 2011, counsel for DeFreitas, counsel for Wong and Staff requested that the pre-hearing conference be adjourned to Tuesday, May 24, 2011 at 3:30 p.m.;

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

**IT IS HEREBY ORDERED THAT** a pre-hearing conference will be held on Tuesday, May 24, 2011 at 3:30 p.m. or such other date or time as agreed upon by the parties and fixed by the Secretary's office.

Dated at Toronto this 19th day of April, 2011.

"Mary G. Condon"

**2.2.2 American Heritage Stock Transfer Inc. et al. – s. 127(7)**

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

**AND**

**IN THE MATTER OF  
AMERICAN HERITAGE STOCK TRANSFER INC.,  
AMERICAN HERITAGE STOCK TRANSFER, INC.,  
BFM INDUSTRIES INC., DENVER GARDNER INC.,  
SANDY WINICK, ANDREA LEE MCCARTHY,  
KOLT CURRY AND LAURA MATEYAK**

**TEMPORARY ORDER  
Section 127(7)**

**WHEREAS** on April 1, 2011, the Ontario Securities Commission (the "Commission") issued an order pursuant to sections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") (the "Temporary Order") that immediately and for a period of 15 days from the date thereof:

- (a) trading in the securities of BFM Industries Inc. ("BFM") shall cease;
- (b) all trading by and in the securities of American Heritage Stock Transfer, Inc. ("AHST Nevada") shall cease;
- (c) all trading by and in the securities of American Heritage Stock Transfer Inc. ("AHST Ontario") shall cease;
- (d) all trading by and in the securities of Denver Gardner Inc. ("Denver Gardner") shall cease;
- (e) all trading by Sandy Winick ("Winick") shall cease;
- (f) all trading by Andrea Lee McCarthy ("McCarthy") shall cease;
- (g) all trading by Kolt Curry ("Curry") shall cease; and
- (h) all trading by Laura Mateyak ("Mateyak") shall cease;

**AND WHEREAS** the Temporary Order also provided that any exemptions contained in Ontario securities law do not apply to any of the respondents;

**AND WHEREAS** on April 4, 2011, the Commission issued a Notice of Hearing (the "Notice of Hearing") to consider the extension of the Temporary Order, to be held on April 14, 2011 at 10:00 a.m.;

**AND WHEREAS** on April 14, 2011, the Temporary Order was extended until April 28, 2011;

**AND WHEREAS** on April 27, 2011, a hearing was held before the Commission and Staff of the Commission ("Staff"), and counsel for the respondents Curry, Mateyak, AHST Nevada and AHST Ontario, appeared before the Commission and made submissions;

**AND WHEREAS** Denver Gardner did not appear and the Commission was satisfied that reasonable efforts were made by Staff to serve Denver Gardner with the Notice of Hearing;

**AND WHEREAS** BFM and Winick did not appear, although properly served with the Notice of Hearing;

**AND WHEREAS** Staff advised the Commission that counsel for the respondent Andrea McCarthy consented on behalf of her client to the continuation of the Temporary Order;

**AND WHEREAS** counsel for the respondents Curry, Mateyak, AHST Nevada and AHST Ontario advised the Commission that his clients did not oppose but do not consent to the continuation of the Temporary Order;

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

**IT IS HEREBY ORDERED** that:

- (1) The Temporary Order shall be extended until September 9, 2011, or until further order of the Commission; and
- (2) This matter shall return before the Commission on September 8, 2011, at 10:00 a.m. or on such other date and at such other time as specified by the Secretary's Office and agreed to by the parties.

**DATED** at Toronto this 27th day of April, 2011.

"James E.A. Turner"

### **2.2.3 Bernard Boily – s. 127**

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

**AND**

#### **IN THE MATTER OF BERNARD BOILY**

#### **ORDER (Section 127)**

**WHEREAS** the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and Staff of the Commission ("Staff") filed a Statement of Allegations in this matter on March 29, 2011 against Bernard Boily (the "Respondent");

**AND WHEREAS** on April 28, 2011, the Commission heard submissions from counsel for Staff and counsel for the Respondent;

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

**IT IS ORDERED** that this matter is adjourned to June 29, 2011 at 3:00 p.m. or such other date as agreed by the parties and fixed by the Office of the Secretary.

**DATED** at Toronto this 28th day of April, 2011.

"Vern Krishna"

**2.2.4 Peter Sbaraglia – s. 127**

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

**AND**

**IN THE MATTER OF  
PETER SBARAGLIA**

**ORDER**

**WHEREAS** on February 24, 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 a Statement of Allegations filed by Staff of the Commission (“Staff”) with respect to Peter Sbaraglia (“Sbaraglia”);

**AND WHEREAS** on March 31, 2011, the Commission heard submissions from counsel for Staff and counsel for Sbaraglia;

**AND WHEREAS** on March 31, 2011, the hearing was adjourned to April 28, 2011;

**AND WHEREAS** on April 28, 2011, the Commission heard submissions from counsel for Staff and counsel for Sbaraglia;

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

**IT IS ORDERED THAT** the hearing is adjourned to June 7, 2011 at 2:30 p.m., or such other date as the Secretary’s Office may advise and the parties agree to.

**DATED** at Toronto this 28th day of April 2011.

“James D. Carnwath”

**2.2.5 North American Financial Group Inc., et al. –  
ss. 127 (7),127(8)**

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

**AND**

**NORTH AMERICAN FINANCIAL GROUP INC.,  
NORTH AMERICAN CAPITAL INC.,  
ALEXANDER FLAVIO ARCONTI,  
AND LUIGINO ARCONTI**

**ORDER**

**Sections 127(7) and 127(8)**

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

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

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

1. pursuant to clause 2 of subsection 127(1) of the Act, that all trading in the securities of NAFG and NAC shall cease;
2. pursuant to clause 2 of subsection 127(1) of the Act, that NAFG, NAC, Flavio and Gino cease trading in all securities; and
3. that pursuant to clause 3 of subsection 127(1) of the Act, that the exemptions contained in Ontario securities law do not apply to NAFG, NAC, Flavio or Gino.

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

**AND WHEREAS** the Temporary Order as amended has been extended from time to time;

**AND WHEREAS** by Order dated March 25, 2011, the Temporary Order was further amended to permit NAFG and its officers and directors to issue Convertible Debentures in accordance with a Proposal made under the *Bankruptcy Insolvency Act* in the matter of NAFG (the "Temporary Order as further amended");

**AND WHEREAS** by Order dated March 25, 2011, the Temporary Order as further amended was extended to May 2, 2011;

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

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

**IT IS ORDERED** that the Temporary Order as further amended is extended to August 2, 2011;

**IT IS FURTHER ORDERED** that the hearing in this matter be adjourned to Friday July 29, 2011 at 10:00 a.m.

**DATED** at Toronto this 29th day of April, 2011.

"Edward P. Kerwin"

**2.2.6 Marlon Gary Hibbert 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  
MARLON GARY HIBBERT,  
ASHANTI CORPORATE SERVICES INC.,  
DOMINION INTERNATIONAL RESOURCE  
MANAGEMENT INC.,**

**KABASH RESOURCE MANAGEMENT,  
POWER TO CREATE WEALTH INC.  
AND POWER TO CREATE WEALTH INC. (PANAMA)**

**ORDER  
(Section 127)**

**WHEREAS** on January 28, 2011, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order (the "Temporary Order") pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990 c. S.5, as amended (the "Act") ordering the following:

1. that all trading by Ashanti Corporate Services Inc. ("Ashanti"), Power to Create Wealth Inc. ("PCW"), Dominion International Resource Management Inc. ("Dominion"), Kabash Resource Management ("Kabash"), Power to Create Wealth Inc. (Panama) ("PCWP") and Marlon Gary Hibbert ("Hibbert") shall cease;
2. that all trading in any securities of Ashanti, PCW, Dominion, Kabash, and PCWP shall cease; and
3. that the exemptions contained in Ontario securities law do not apply to Ashanti, PCW, Dominion, Kabash, PCWP and Hibbert.

**AND WHEREAS** on January 28, 2011, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by the Commission;

**AND WHEREAS** on January 28, 2011, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on February 11, 2011;

**AND WHEREAS** on February 11, 2011, the Commission ordered that the Temporary Order was extended until July 28, 2011 and that the hearing was adjourned to July 26, 2011;

**AND WHEREAS** on March 29, 2011, the Commission issued a Notice of Hearing pursuant to

sections 127 and 127.1 of the Act in connection with a Statement of Allegations dated March 29, 2011, issued by Staff of the Commission ("Staff");

**AND WHEREAS** on April 27, 2011, the Commission heard submissions from counsel for Staff and submissions from Hibbert;

**AND WHEREAS** all parties consent to setting the matter down for a hearing on the merits commencing December 1, 2011 for a consecutive period of two weeks except for the day of December 6, 2011;

**AND WHEREAS** all parties consent to the delivery of documents for disclosure occurring on August 12, 2011;

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

**IT IS ORDERED** that the hearing on the merits shall commence December 1, 2011 at 10:00 a.m.;

**IT IS FURTHER ORDERED** that a pre-hearing conference will be held on October 11, 2011 at 2:30 p.m.;

**IT IS FURTHER ORDERED** the exchange of documents for disclosure shall occur on August 12, 2011.

**DATED** at Toronto this 27th day of April, 2011.

"Edward P. Kerwin"



2.2.7 Borealis International Inc. et al. –ss. 127(1), 127.1

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

ORDER  
(Sections 127(1) and 127.1)

**WHEREAS** the proceeding in this matter was commenced by an Amended Statement of Allegations and Amended Notice of Hearing dated May 22, 2008;

**AND WHEREAS** following a hearing on the merits, the Ontario Securities Commission (the "Commission") issued its Reasons for Decision on January 13, 2011;

**AND WHEREAS** no findings were made against Canavista Corporate Services Inc., Canavista Financial Center Inc., Paul Lloyd, Jean Breau, Derek Grigor or Bartosz Ekiert;

**AND WHEREAS** we are of the opinion that it is in the public interest to make the following orders against Borealis International Inc. ("Borealis"), Synergy Group (2000) Inc. ("Synergy"), Integrated Business Concepts Inc. ("IBC"), Shane Smith ("Smith"), Andrew Lloyd ("Lloyd"), Vince Villanti ("Villanti"), Larry Haliday ("Haliday"), Joy Statham ("Statham"), David Prentice ("Prentice"), Len Zielke ("Zielke"), John Stephan ("Stephan"), Ray Murphy ("Murphy"), Alexander Poole ("Poole"), Michelle Dickerson ("Dickerson"), Derek Dupont ("Dupont"), Ross Macfarlane ("Macfarlane"), Brian Nerdahl ("Nerdahl"), Hugo Pittoors ("Pittoors") and Larry Travis ("Travis") pursuant to sections 127(1) and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act");

**IT IS ORDERED THAT:**

1. With respect to Smith, Prentice and Synergy:
  - (a) Smith, Prentice and Synergy are prohibited from trading in securities permanently, pursuant to clause 2 of subsection 127(1) of the Act;
  - (b) Smith, Prentice and Synergy are prohibited from acquiring securities permanently, pursuant to clause 2.1 of subsection 127(1) of the Act;
  - (c) exemptions in Ontario securities law (as defined in the Act) do not apply to Smith, Prentice and Synergy permanently, pursuant to clause 3 of subsection 127(1) of the Act;
  - (d) Smith, Prentice and Synergy are reprimanded pursuant to clause 6 of subsection 127(1) of the Act;
  - (e) Smith and Prentice are ordered to resign any positions they hold as directors or officers of any issuer, pursuant to clause 7 of subsection 127(1) of the Act;
  - (f) Smith and Prentice are prohibited permanently from becoming or acting as a director or officer of any issuer, pursuant to clause 8 of subsection 127(1) of the Act;
  - (g) each of Smith, Prentice and Synergy shall pay an administrative penalty of \$550,000 to be allocated to or for the benefit of third parties, pursuant to subsection 3.4(2)(b) of the Act for his or its non-compliance with Ontario securities law, pursuant to clause 9 of subsection 127(1) of the Act;

- (h) Smith, Prentice and Synergy shall pay costs of \$115,000, on a joint and several basis, pursuant to section 127.1 of the Act; and
- (i) as a term and condition of the sanctions referred to at paragraphs 1. (a) and (b) of this Order, upon payment of their respective administrative penalties and costs amounts as set out in paragraphs 1. (g) and (h) of this Order, Smith and Prentice shall be entitled to trade in and acquire securities for the account of their respective registered retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which they and/or their respective spouses have 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) or are issued by a mutual fund that is a reporting issuer;
  - (ii) they do not own legally or beneficially (in the aggregate, together with their respective spouses) more than one percent of the outstanding securities of the class or series of the class in question; and
  - (iii) they carry out any permitted trading through a registered dealer and through trading accounts opened in their respective names only.

2. With respect to Villanti, Haliday, IBC and Borealis:

- (a) Villanti is prohibited from trading in securities for a period of 5 years, pursuant to clause 2 of subsection 127(1) of the Act, with the exception that he is permitted to trade securities for the account of his registered retirement savings plan (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have 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) or are issued by a mutual fund that is a reporting issuer;
  - (ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and
  - (iii) he carries out any permitted trading through a registered dealer and through trading accounts opened in his name only;
- (b) Villanti is prohibited from acquiring securities for a period of 5 years, pursuant to clause 2.1 of subsection 127(1) of the Act, except to allow the trading in securities permitted by and in accordance with paragraph 2. (a) of this Order;
- (c) exemptions in Ontario securities law (as defined in the Act) do not apply to Villanti for a period of 5 years, pursuant to clause 3 of subsection 127(1) of the Act;
- (d) Haliday is prohibited from trading in securities for a period of 4 years, pursuant to clause 2 of subsection 127(1) of the Act, with the exception that he is permitted to trade securities for the account of his registered retirement savings plan (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have 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) or are issued by a mutual fund that is a reporting issuer;
  - (ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and
  - (iii) he carries out any permitted trading through a registered dealer and through trading accounts opened in his name only;
- (e) Haliday is prohibited from acquiring securities for a period of 4 years, pursuant to clause 2.1 of subsection 127(1) of the Act, except to allow the trading in securities permitted by and in accordance with paragraph 2. (d) of this Order;

- (f) exemptions in Ontario securities law (as defined in the Act) do not apply to Haliday for a period of 4 years, pursuant to clause 3 of subsection 127(1) of the Act;
- (g) IBC and Borealis are prohibited from trading in securities for a period of 5 years, pursuant to clause 2 of subsection 127(1) of the Act;
- (h) IBC and Borealis are prohibited from acquiring securities for a period of 5 years, pursuant to clause 2.1 of subsection 127(1) of the Act;
- (i) exemptions in Ontario securities law (as defined in the Act) do not apply to IBC and Borealis for a period of 5 years, pursuant to clause 3 of subsection 127(1) of the Act;
- (j) Villanti, Haliday, IBC and Borealis are reprimanded, pursuant to clause 6 of subsection 127(1) of the Act;
- (k) Villanti and Haliday are ordered to resign any positions they hold as directors or officers of any issuer, pursuant to clause 7 of subsection 127(1) of the Act;
- (l) Villanti is prohibited for a period of 5 years from becoming or acting as a director or officer of any issuer, pursuant to clause 8 of subsection 127(1) of the Act;
- (m) Haliday is prohibited for a period of 4 years from becoming or acting as a director or officer of any issuer, pursuant to clause 8 of subsection 127(1) of the Act; and
- (n) Villanti, Haliday, IBC and Borealis shall pay costs of \$60,000, on a joint and several basis, pursuant to section 127.1 of the Act;

3. With respect to Lloyd:

- (a) Lloyd is prohibited from trading in securities permanently, pursuant to clause 2 of subsection 127(1) of the Act;
- (b) Lloyd is prohibited from acquiring securities permanently, pursuant to clause 2.1 of subsection 127(1) of the Act;
- (c) exemptions in Ontario securities law (as defined in the Act) do not apply to Lloyd permanently, pursuant to clause 3 of subsection 127(1) of the Act;
- (d) Lloyd reprimanded pursuant to clause 6 of subsection 127(1) of the Act;
- (e) Lloyd is ordered to resign any positions he holds as a director or officer of any issuer, pursuant to clause 7 of subsection 127(1) of the Act;
- (f) Lloyd is prohibited permanently from becoming or acting as a director or officer of any issuer, pursuant to clause 8 of subsection 127(1) of the Act;
- (g) Lloyd shall pay an administrative penalty of \$300,000 to be allocated to or for the benefit of third parties, pursuant to subsection 3.4(2)(b) of the Act for his non-compliance with Ontario securities law, pursuant to clause 9 of subsection 127(1) of the Act;
- (h) Lloyd shall pay costs of \$5,000 pursuant to section 127.1 of the Act; and
- (i) as a term and condition of the sanctions referred to at paragraphs 3. (a) and (b) of this Order, upon payment of the administrative penalties and costs amount set out in paragraphs 3. (g) and (h) of this Order, Lloyd shall be entitled to trade in and acquire securities for the account his registered retirement savings plan (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have 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) or are issued by a mutual fund that is a reporting issuer;
  - (ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and

- (iii) he carries out any permitted trading through a registered dealer and through trading accounts opened in his name only.

4. With respect to Stephan and Murphy:

- (a) Stephan and Murphy are prohibited from trading in securities for a period of 4 years, pursuant to clause 2 of subsection 127(1) of the Act, with the exception that they are permitted to trade securities for the account of their respective registered retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which they and/or their respective spouses have 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) or are issued by a mutual fund that is a reporting issuer;
  - (ii) they do not own legally or beneficially (in the aggregate, together with their respective spouses) more than one percent of the outstanding securities of the class or series of the class in question; and
  - (iii) they carry out any permitted trading through a registered dealer and through trading accounts opened in their respective names only;
- (b) Stephan and Murphy are prohibited from acquiring securities for a period of 4 years, pursuant to clause 2.1 of subsection 127(1) of the Act, except to allow the trading in securities permitted by and in accordance with paragraph 4. (a) of this Order;
- (c) exemptions in Ontario securities law (as defined in the Act) do not apply to Stephan and Murphy for a period of 4 years, pursuant to clause 3 of subsection 127(1) of the Act;
- (d) Stephan and Murphy are reprimanded, pursuant to clause 6 of subsection 127(1) of the Act;
- (e) Stephan and Murphy are ordered to resign any positions they hold as directors or officers of any issuer, pursuant to clause 7 of subsection 127(1) of the Act;
- (f) Stephan and Murphy are prohibited for a period of 4 years from becoming or acting as a director or officer of any issuer, pursuant to clause 8 of subsection 127(1) of the Act;
- (g) Stephan shall pay an administrative penalty of \$25,000 to be allocated to or for the benefit of third parties, pursuant to subsection 3.4(2)(b) of the Act for his non-compliance with Ontario securities law, pursuant to clause 9 of subsection 127(1) of the Act; and
- (h) Murphy shall pay an administrative penalty of \$15,000 to be allocated to or for the benefit of third parties, pursuant to subsection 3.4(2)(b) of the Act for his non-compliance with Ontario securities law, pursuant to clause 9 of subsection 127(1) of the Act;

5. With respect to Statham, Zielke, Dickerson, Dupont, Poole, Macfarlane, Nerdahl, Pittoors and Travis:

- (a) Statham, Zielke, Dickerson, Dupont, Poole, Macfarlane, Nerdahl, Pittoors and Travis are prohibited from trading in securities for a period of 2 years, pursuant to clause 2 of subsection 127(1) of the Act, with the exception that they are permitted to trade securities for the account of their respective registered retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which they and/or their respective spouses have 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) or are issued by a mutual fund that is a reporting issuer;
  - (ii) they do not own legally or beneficially (in the aggregate, together with their respective spouses) more than one percent of the outstanding securities of the class or series of the class in question; and
  - (iii) they carry out any permitted trading through a registered dealer and through trading accounts opened in their respective names only;

- (b) Statham, Zielke, Dickerson, Dupont, Poole, Macfarlane, Nerdahl, Pittoors and Travis are prohibited from acquiring securities for a period of 2 years, pursuant to clause 2.1 of subsection 127(1) of the Act, except to allow the trading in securities permitted by and in accordance with paragraph 5. (a) of this Order;
- (c) exemptions in Ontario securities law (as defined in the Act) do not apply to Statham, Zielke, Dickerson, Dupont, Poole, Macfarlane, Nerdahl, Pittoors and Travis for a period of 2 years, pursuant to clause 3 of subsection 127(1) of the Act;
- (d) Statham, Zielke, Dickerson, Dupont, Poole, Macfarlane, Nerdahl, Pittoors and Travis are reprimanded, pursuant to clause 6 of subsection 127(1) of the Act;
- (e) Statham, Zielke, Dickerson, Dupont, Poole, Macfarlane, Nerdahl, Pittoors and Travis are ordered to resign any positions they hold as directors or officers of any issuer, pursuant to clause 7 of subsection 127(1) of the Act;
- (f) Statham, Zielke, Dickerson, Dupont, Poole, Macfarlane, Nerdahl, Pittoors and Travis are prohibited for a period of 2 years from becoming or acting as a director or officer of any issuer, pursuant to clause 8 of subsection 127(1) of the Act; and
- (g) each of Statham, Zielke, Dickerson, Dupont, Poole, Macfarlane, Nerdahl, Pittoors and Travis shall pay an administrative penalty of \$2,500 to be allocated to or for the benefit of third parties, pursuant to subsection 3.4(2)(b) of the Act for his or her non-compliance with Ontario securities law, pursuant to clause 9 of subsection 127(1) of the Act.

Dated at Toronto this 29th day of April, 2011.

“Patrick J. LeSage”

“Paulette L. Kennedy”

**2.2.8 Innovative Gifting Inc. et al. – s. 127**

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

**AND**

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

**ORDER**

**(Section 127)**

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

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

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

**AND WHEREAS** on March 5, 2010, the Commission ordered that the hearing with respect to the matter be adjourned to April 12, 2010;

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

**AND WHEREAS** on April 13, 2010, the Commission issued an order that, *inter alia*, the hearing with respect to the Notice of Hearing dated March 2, 2010 be adjourned to July 21, 2010 at 10:00 a.m., at which time a pre-hearing conference will be held;

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

**AND WHEREAS** on July 21, 2010, the Commission issued an order that, *inter alia*, the hearing with respect to the Notice of Hearing dated March 2, 2010 be adjourned to September 9, 2010 at 10:00 a.m., at which time the pre-hearing conference will be continued;

**AND WHEREAS** on September 9, 2010, the pre-hearing conference was continued and counsel for Staff and counsel for IGI and Lushington appeared before the Commission and made submissions. Counsel for Z2A and

Hewitt did not attend but counsel for Staff advised the Commission of counsel's submissions;

**AND WHEREAS** on September 9, 2010, all counsel submitted that the hearing be adjourned;

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

**AND WHEREAS** on November 3, 2010, all parties requested, in writing, that the pre-hearing conference scheduled for November 4, 2010 be adjourned to 10:00 a.m. on December 6th, 2010 and at that time dates will be fixed for the hearing on the merits in this matter;

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

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

**AND WHEREAS** on December 6, 2010 the Commission ordered the hearing on the merits in this matter to commence on May 2, 2011 and continue until May 16, 2011, with the exception that the hearing on the merits would not be heard on May 3, 2011;

**AND WHEREAS** on December 6, 2010, the Commission also scheduled Z2A and Hewitt to make a motion to the Commission on March 30, 2011 at 2:00 p.m. for severance of the hearing as to the allegations relating to them;

**AND WHEREAS** on March 29, 2011, the Commission approved a Settlement Agreement dated March 24, 2011 between Staff and Lushington and IGI;

**AND WHEREAS** on April 26, 2011 counsel for Z2A and Hewitt (the "Remaining Respondents") and Staff attended a pre-hearing conference at which time a motion was scheduled for April 28, 2011 at 11 a.m. before the panel scheduled to hear this matter on the merits, to hear the Remaining Respondents' request to adjourn the hearing of this matter;

**AND WHEREAS** on April 28, 2011 the Remaining Respondents brought a motion before the panel scheduled to hear this matter on the merits to adjourn the hearing of this matter to a date after June 1, 2011, which motion was opposed by Staff;

**AND UPON READING** the Notice of Motion of the Remaining Respondents, the affidavit of Christine Hewitt sworn April 27, 2011 in support thereof and the affidavit of Lori Toledano sworn April 28, 2011 on behalf of Staff and upon hearing the submissions of counsel for the Remaining Respondents and counsel for Staff;

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

**IT IS ORDERED** that the hearing on the merits of this matter is adjourned to June 6, 2011 and shall continue until June 10, 2011 and, if necessary, shall continue on June 15 and 16, 2011, commencing each day at 10:00 a.m., with the exception of June 7, 2011, which hearing day will commence at 2:00 p.m. and continue until 5 p.m.

**DATED** at Toronto this 28th day of April, 2011.

"James D. Carnwath"

"Margot C. Howard"

**2.2.9 Firestar Capital Management Corp. et al. – s. 127(8)**

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

**AND**

**IN THE MATTER OF  
FIRESTAR CAPITAL MANAGEMENT CORP.,  
KAMPOSSE FINANCIAL CORP.,  
FIRESTAR INVESTMENT MANAGEMENT GROUP,  
MICHAEL CIAVARELLA AND MICHAEL MITTON**

**TEMPORARY ORDER  
(Subsection 127(8))**

**WHEREAS** on December 10, 2004, 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, to consider whether it is in the public interest to extend the Temporary Orders made on December 10, 2004 ordering that trading in shares of Pender International Inc. by Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Mitton, and Michael Ciavarella cease until further order by the Commission;

**AND WHEREAS** on December 17, 2004, the Commission ordered that the hearing to consider whether to extend the Temporary Orders should be adjourned until February 4, 2005 and the Temporary Orders continued until that date;

**AND WHEREAS** on December 17, 2004, the Commission ordered that the Temporary Order against Michael Mitton should also be expanded such that Michael Mitton shall not trade in any securities in Ontario until the hearing on February 4, 2005;

**AND WHEREAS** a Notice of Hearing and Statement of Allegations were issued on December 21, 2004;

**AND WHEREAS** on February 2, 2005, the hearing to consider whether to continue the Temporary Orders was adjourned until May 26, 2005 and the Temporary Orders were continued until May 26, 2005;

**AND WHEREAS** on March 9, 2005, the hearing to consider whether to continue the Temporary Orders was adjourned until June 29 and 30, 2005 and the Temporary Orders were continued until June 30, 2005;

**AND WHEREAS** on June 29, 2005, the hearing to consider whether to continue the Temporary Orders was adjourned until November 23 and 24, 2005 and the Temporary Orders were continued until November 24, 2005;

**AND WHEREAS** on November 21, 2005, the hearing to consider whether to continue the Temporary

Orders was adjourned until January 30 and 31, 2006 and the Temporary Orders were continued until January 31, 2006;

**AND WHEREAS** on January 30, 2006, the hearing to consider whether to continue the Temporary Orders was adjourned until July 31, 2006 and the Temporary Orders were continued until July 31, 2006;

**AND WHEREAS** on July 31, 2006, the hearing to consider whether to continue the Temporary Orders was adjourned until October 12, 2006 and the Temporary Orders were continued until October 12, 2006;

**AND WHEREAS** on October 12, 2006, the hearing to consider whether to continue the Temporary Orders was adjourned until October 12, 2007 and the Temporary Orders were continued until October 12, 2007;

**AND WHEREAS** on October 12, 2007, the hearing to consider whether to continue the Temporary Orders was adjourned until March 31, 2008 and the Temporary Orders were continued until March 31, 2008;

**AND WHEREAS** on March 31, 2008, the hearing to consider whether to continue the Temporary Orders was adjourned until June 2, 2008 and the Temporary Orders were continued until June 2, 2008;

**AND WHEREAS** on June 2, 2008, the hearing to consider whether to continue the Temporary Orders was adjourned until December 1, 2008 and the Temporary Orders were continued until December 1, 2008;

**AND WHEREAS** on December 1, 2008, the hearing to consider whether to continue the Temporary Orders was adjourned until January 11, 2010 and the Temporary Orders were continued until January 11, 2010;

**AND WHEREAS** on January 11, 2010, the hearing to consider whether to continue the Temporary Orders was adjourned until March 7, 2011 and the Temporary Orders were continued until March 8, 2011;

**AND WHEREAS** on March 7, 2011, the hearing to consider whether to continue the Temporary Orders was adjourned until April 26, 2011 and the Temporary Orders were continued until April 27, 2011;

**AND WHEREAS** Staff of the Commission ("Staff") has not been notified that Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton oppose the making of this order;

**AND WHEREAS** Michael Ciavarella and Michael Mitton were charged on September 26, 2006 under the Criminal Code with offences of fraud, conspiracy to commit fraud, laundering the proceeds of crime, possession of proceeds of crime and extortion for acts related to this matter;

**AND WHEREAS** on March 22, 2007, Michael Mitton was convicted of numerous charges under the Criminal Code and sentenced to a term of imprisonment of seven years;

**AND WHEREAS** Michael Ciavarella is currently before the Superior Court of Justice (Ontario) with regard to the Criminal Code charges, and Staff has been informed that this trial is now currently scheduled to continue later in May of 2011;

**AND WHEREAS** no counsel appeared for any of the Respondents on April 26, 2011;

Firestar Capital Management Corp. et al.that the hearing to consider whether to continue the Temporary Orders is adjourned to May 31, 2011 at 11:00 a.m.;

Firestar Capital Management Corp. et al.that the Temporary Orders currently in place as against Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton are further continued until June 1, 2011, or until further order of this Commission.

**DATED** at Toronto this 26th day of April, 2011.

"Christopher Portner"



## 2.2.10 Touchstone Exploration Inc. – s. 1(11)(b)

### Headnote

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

### Statutes Cited

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

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

**AND**

**IN THE MATTER OF  
TOUCHSTONE EXPLORATION INC.**

**ORDER  
(Clause 1(11)(b))**

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

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

**AND UPON** the Applicant having represented to the Commission as follows:

1. The Applicant was incorporated on October 5, 1982 under the name "Murjoh Resources Inc." by registration of its Memorandum and Articles under the *Company Act* (British Columbia). On August 25th, 1987, the Applicant filed a notice of alteration to change its name to "Touchstone Resources Ltd.". The Applicant was transitioned under the *Business Corporations Act* (British Columbia) and on July 4, 2010 the Applicant filed a Notice of Change of Articles to change its name to "Touchstone Exploration Inc."
2. The head office of the Applicant is Suite 200, 209 – 8th Avenue SW, Calgary, Alberta, T2P 1B8 and the registered office address is Suite 1810, 1111 West Georgia Street, Vancouver, British Columbia, V6E 4M3.
3. The authorized share capital of the Applicant consists of an unlimited number of Common Shares.
4. As at the date hereof, a total of 60,359,911 Common Shares of the Applicant were issued and outstanding.
5. The Applicant became a reporting issuer or reporting issuer equivalent on January 29, 1996 pursuant to the *Securities Act* (British Columbia) (the "BC Act") and subsequently under the *Securities Act* (Alberta) (the "Alberta Act") as a result of the amalgamation of the VSE and ASE to form the CDNX. The Applicant is not currently a reporting issuer or the equivalent in any jurisdiction in Canada other than Alberta and British Columbia.
6. The Applicant is not on the list of defaulting reporting issuers maintained pursuant to the BC Act or the Alberta Act and is not in default of any of its obligations under the BC Act or the Alberta Act.
7. The continuous disclosure materials filed by the Applicant under the BC Act and the Alberta Act are available on the System for Electronic Document Analysis and Retrieval (SEDAR).
8. The continuous disclosure requirements of the BC Act and Alberta Act are substantially the same as the continuous disclosure requirements under the Act.
9. The common shares of the Applicant have been listed and posted for trading on the TSX Venture Exchange (the "TSX-V") under the symbol "TAB".

10. The Applicant is not in default of any of the rules, regulations or policies of the TSX-V.
11. The TSX-V requires all of its listed issuers, which are not otherwise reporting issuers in Ontario, to assess whether they have a significant connection with Ontario, as defined in Policy 1.1 of the TSX-V Corporate Finance Manual, and, upon first becoming aware that it has a significant connection to Ontario, to promptly make a *bona fide* application to the Commission to be deemed a reporting issuer in Ontario.
12. The Applicant has a significant connection to Ontario since more than 22.22% of the issued and outstanding share capital of the Applicant is owned by registered and beneficial holders who reside in Ontario.
13. The Applicant does not have a shareholder which holds sufficient securities of the Applicant to affect materially the control of the Applicant.
14. Neither the Applicant nor any of its officers, directors or, to the knowledge of the Applicant or its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, has:
  - (a) been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority;
  - (b) entered into a settlement agreement with a Canadian securities regulatory authority; or
  - (c) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.
15. Neither the Applicant, nor any of its officers, directors nor, to the knowledge of the Applicant and its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been subject to:
  - (a) any known ongoing or concluded investigations by:
    - (i) a Canadian securities regulatory authority; or
    - (ii) a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or
  - (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.
16. Neither any of the officers or directors of the Applicant nor, to the knowledge of the Applicant and its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been at the time of such event an officer or director of any other issuer which is or has been subject to:
  - (a) any cease trade or similar order, or order that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or
  - (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

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

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

**DATED** this 1st day of April, 2011.

“Jo-Anne Matear”  
Assistant Manager, Corporate Finance Branch  
Ontario Securities Commission

**2.2.11 David M O'Brien**

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

**AND**

**IN THE MATTER OF  
DAVID M. O'BRIEN**

**ORDER**

**WHEREAS** on December 8, 2010, the Secretary of the Commission issued a Notice of Hearing, pursuant to sections 37, 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), for a hearing to commence at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on Monday, December 20, 2010 at 10:30 a.m., or as soon thereafter as the hearing can be held;

**AND WHEREAS** on December 9, 2010, the Respondent was served with the Notice of Hearing and Statement of Allegations dated December 7, 2010;

**AND WHEREAS** the Notice of Hearing provided for the Commission to consider, among other things, whether, in the opinion of the Commission, it is in the public interest, pursuant to s. 127 of the Act, to issue temporary orders against David M. O'Brien ("O'Brien"), as follows:

- (a) O'Brien shall cease trading in any securities for a prescribed period or until the conclusion of the hearing on the merits in this matter;
- (b) O'Brien is prohibited from acquiring securities for a prescribed period or until the conclusion of the hearing on the merits in this matter; and
- (c) Any exemptions contained in Ontario securities law do not apply to O'Brien for a prescribed period or until the conclusion of the hearing on the merits in this matter;

**AND WHEREAS** on December 20, 2010 Staff of the Commission and O'Brien appeared before the Commission and made submissions and O'Brien advised the Commission that he was opposed to Staff's request that temporary orders be issued against him and that he wished to cross-examine Lori Toledano, a member of Staff, on her affidavit;

**AND WHEREAS** on December 20, 2010, the hearing with respect to the issuance of the temporary orders was adjourned until December 23, 2010 at 12:30 p.m.;

**AND WHEREAS** on December 23, 2010, a hearing with respect to the issuance of the temporary

orders was held and the panel of the Commission considered the affidavit of Toledano, the cross-examination of Toledano and the submissions made by Staff and O'Brien;

**AND WHEREAS** on December 23, 2010, the Commission issued a temporary cease trade order pursuant to s. 127 of the Act ordering that:

- (a) O'Brien shall cease trading in any securities;
- (b) O'Brien is prohibited from acquiring any securities; and
- (c) Any exemptions contained in Ontario securities law do not apply to O'Brien;

(the "Temporary Cease Trade Order");

**AND WHEREAS** on December 23, 2010, the Commission ordered that the Temporary Cease Trade Order shall expire on April 1, 2011;

**AND WHEREAS** on December 23, 2010, the Commission ordered that Staff and O'Brien shall consult with the Secretary's Office and schedule a confidential pre-hearing conference for this matter;

**AND WHEREAS** a confidential pre-hearing conference was scheduled for February 24, 2011;

**AND WHEREAS** at the confidential pre-hearing conference on February 24, 2011, Staff of the Commission and O'Brien appeared and made submissions regarding the disclosure made by Staff, and Staff requested an extension of the Temporary Cease Trade Order;

**AND WHEREAS** on February 24, 2011, the Commission ordered that:

- a) a hearing to extend the Temporary Cease Trade Order shall take place on March 30, 2011 at 11:30 a.m.;
- b) a motion regarding disclosure shall take place on April 21, 2011 at 10:00 a.m., and in accordance with Rule 3.2 of the *Rules of Procedure* of the Ontario Securities Commission, O'Brien shall serve and file a motion record, including any affidavits to be relied upon, by April 11, 2011 at 4:30 p.m.; and
- c) a further confidential pre-hearing conference shall take place on May 30, 2011 at 10:00 a.m.;

**AND WHEREAS** on March 30, 2011, a hearing with respect to the extension of the Temporary Cease Trade Order was held, and the panel of the Commission considered the evidence filed and the submissions made by Staff and O'Brien;

**AND WHEREAS** on March 30, 2011, the Commission ordered that:

- a) the Temporary Cease Trade Order shall be extended to April 26, 2011; and
- b) a further hearing to extend the Temporary Cease Trade Order shall take place on April 21, 2011 at 10:00 a.m.;

**AND WHEREAS** on April 21, 2011, a hearing with respect to the extension of the Temporary Cease Trade Order was held, and the panel of the Commission considered the evidence filed and the submissions made by Staff and O'Brien;

**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** pursuant to s. 127 of the Act that:

- a) the Temporary Cease Trade Order shall be extended until the conclusion of the hearing of the merits of this matter; and
- b) O'Brien may, if he wishes to do so, apply to the Commission for an order revoking or varying this Order pursuant to s. 144 of the Act.

**DATED** at Toronto this 21st day of April, 2011.

"James E. A. Turner"

## 2.2.12 CME Clearing Europe Limited – s. 147

### Headnote

Application under section 147 of the Securities Act (Ontario) (OSA) to exempt on an interim basis CME Clearing Europe Limited from recognition as a clearing agency under subsection 21.2(0.1) of the OSA.

### Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21.2(0.1), 147.

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

**AND**

**IN THE MATTER OF  
CME CLEARING EUROPE LIMITED**

**ORDER  
(Section 147 of the Act)**

**WHEREAS** CME Clearing Europe Limited (CMECE) has filed an application dated April 15, 2011 (Application) with the Ontario Securities Commission (Commission) pursuant to section 147 of the Act requesting an interim order exempting CMECE from the requirement to be recognized as a clearing agency under section 21.2(0.1) of the Act (Order).

**AND WHEREAS** CMECE has represented to the Commission that:

1. CME Clearing Europe (CMECE) is a private limited company incorporated under the laws of England and Wales.
2. CMECE is a Recognised Clearing House (**RCH**) in the United Kingdom (**UK**) under the Financial Services and Markets Act 2000 (**FSMA**). CMECE's initial authorisation is for the clearing of OTC commodity derivatives.
3. CMECE's ultimate parent is CME Group Inc. CMECE's immediate parent (100% ownership) is Chicago Mercantile Exchange Luxembourg S.à r.l ; it is in turn a wholly-owned subsidiary of Chicago Mercantile Exchange Luxembourg Holdings S.à r.l, which is wholly-owned subsidiary of CME Group Inc.
4. CME Group Inc. is the holding company for four futures exchanges: the Chicago Mercantile Exchange Inc ("CME"), the Board of Trade of the City of Chicago Inc ("CBOT"), the New York Mercantile Exchange Inc ("NYMEX") and the Commodity Exchange Inc ("COMEX"). CME Group Inc. is a listed corporation whose shares are traded on the NASDAQ stock exchange. CME Clearing is a division of CME and offers central counterparty clearing and settlement services for all CME Group exchanges and over-the-counter derivatives transactions.
5. CMECE has been established as part of a globalization strategy by CME Group. The associated business goal is to offer clearing services from the UK for a broad range of OTC derivatives. The first and as yet only definite provision of clearing services by CMECE centres on the clearing of OTC commodity derivatives, and in the first phase just over 150 derivative contract types. The announced date for the commencement of clearing is May 6, 2011.
6. Initial Clearing Members of CMECE will be banks and brokers. A maximum of 14 Clearing Members will be active from May 6, 2011.
7. An applicant must enter into a Clearing Membership Agreement with CMECE before it can become a member of CMECE. The membership requirements of CMECE for OTC commodity derivative clearing are objective, publicly disclosed and permit fair and open access.
8. CMECE does not have any office or maintain other physical installations in Ontario or any other Canadian province or territory. Nor does it have any plans to open such an office or to establish any such physical installations in Ontario or elsewhere in Canada. CMECE has, however, received an application for clearing membership from the London branch of an Ontario-headquartered bank. CMECE has completed the necessary processes and due diligence and is ready to accept the bank as a Clearing Member.

9. Section 21.2 of the Act prohibits clearing agencies from carrying on business in Ontario unless they are recognized by the Commission as a clearing agency.
10. CMECE will file a full application to the Commission for a subsequent order recognizing CMECE as a clearing agency under subsection 21.2(0.1) of the Act or exempting it from the requirement to be recognized as clearing agency under section 147 of the Act (**Subsequent Order**).

**AND WHEREAS** based on the Application and the representations CMECE has made to the Commission, the Commission has determined that the granting of the Order would not be prejudicial to the public interest;

**IT IS HEREBY ORDERED** by the Commission that, pursuant to section 147 of the Act, CMECE is exempt on an interim basis from recognition as a clearing agency under section 21.2(0.1);

**PROVIDED THAT:**

1. This Order shall terminate on the earlier of (i) November 3, 2011 and (ii) the effective date of the Subsequent Order;
2. CMECE shall:
  - (a) continue to be a RCH under the FSMA; and
  - (b) promptly notify staff of the Commission of:
    - i. any material change or proposed material change in the regulatory oversight by the FSA;
    - ii. any material problems with the clearance and settlement of transactions in its system that could materially affect the financial viability of CMECE;
    - iii. any new service or product cleared by CMECE that would be offered to Ontario based Clearing Members; and
    - iv. the admission of any new Ontario based entity as a clearing member of CMECE.

**DATED** May 3, 2011

"James E. A. Turner"

"Kevin J. Kelly"

## Chapter 3

# Reasons: Decisions, Orders and Rulings

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### 3.1 OSC Decisions, Orders and Rulings

#### 3.1.1 Borealis International Inc. et al. – ss. 127, 127.1

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 ON SANCTIONS AND COSTS (Sections 127 and 127.1 of the Act)

Hearing:	February 11, 2011		
Decision:	April 29, 2011		
Panel:	Patrick J. LeSage	–	Chair of the Panel
	Paulette L. Kennedy	–	Commissioner
Appearances:	Yvonne B. Chisholm	–	For Staff of the Commission
	Usman M. Sheikh		
	Hugh M. DesBrisay	–	For Vince Villanti, Larry Haliday, Borealis International Inc. and Integrated Business Concepts Inc.
	Bruce O'Toole	–	For Synergy Group (2000) Inc., Shane Smith, David Prentice and Andrew Lloyd
	Aengus Fogarty (via teleconference)	–	For Ross Macfarlane
	Self-represented (via teleconference):	–	Brian Nerdahl Joy Statham John Stephan Ray Murphy Alexander Poole Derek Dupont Hugo Pittoors
	No one attended on behalf of these respondents:	–	Len Zielke Michelle Dickerson Larry Travis

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## REASONS FOR DECISION ON SANCTIONS AND COSTS

### I. BACKGROUND

[1] On or about January 13, 2011, we issued our Reasons and Decision on the merits of this matter, *Re Borealis International Inc.* (2011), 34 O.S.C.B. 777 (the "Merits Decision"). On February 11, 2011 a sanctions hearing was held. We are satisfied that all of the respondents against whom adverse findings have been made were notified of the hearing.

[2] At the February 11, 2011 hearing, Mr. DesBrisay appeared as counsel for Borealis International Inc. ("Borealis"), Integrated Business Concepts Inc. ("IBC"), Vince Villanti ("Villanti") and Larry Haliday ("Haliday"). Mr. O'Toole appeared as counsel for Synergy Group (2000) Inc. ("Synergy"), Shane Smith ("Smith"), Andrew Lloyd ("Lloyd") and David Prentice ("Prentice").

[3] Submissions were heard from Staff of the Commission ("Staff"), Mr. DesBrisay and Mr. O'Toole. Submissions and comments were received from Joy Statham ("Statham"), John Stephan ("Stephan"), Ray Murphy ("Murphy"), Alexander Poole ("Poole"), Derek Dupont ("Dupont"), Ross Macfarlane ("Macfarlane"), Brian Nerdahl ("Nerdahl") and Hugo Pittoors ("Pittoors"), who attended by conference call. In addition, Mr. Macfarlane had counsel, Aengus Fogarty, with him on the conference call. Mr. Fogarty made submissions primarily as to the application of the law and reasonable conclusions that should be drawn there from regarding the sanctions that might be imposed against Mr. Macfarlane. Each of the self-represented, including Mr. Macfarlane, commented on the nature of their involvement, and in a very broad, general and unsupported fashion, commented on their ability (or inability) to pay a monetary penalty and in some cases, the consequences of any trading ban that might be imposed.

[4] No one appeared for the remaining respondents, Len Zielke ("Zielke"), Michelle Dickerson ("Dickerson") and Larry Travis ("Travis").

[5] Staff filed submissions along with two books of authorities. Written sanctions submissions were received from Mr. DesBrisay on behalf of Villanti, Haliday and IBC, along with affidavits from Villanti and Haliday. A brief of authorities was filed by Mr. O'Toole on behalf of Synergy, Smith, Prentice and Lloyd. A letter was received from Mr. Pittoors.

[6] None of the many investors lost any money. In fact, investors received the promised and generous 18% return on their investments (Merits Decision, *supra* at para. 19). That fact makes this case different from so many of the other enforcement cases before the Commission. However, we have determined that the respondents violated Ontario securities laws and consequently, we now consider the appropriate sanctions.

### II. THE MERITS DECISION

[7] The Panel concluded in the Merits Decision that:

- (a) all of the respondents except Poole traded in securities in breach of subsection 25(1)(a) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act").
- (b) all of the respondents engaged in the distribution of securities in breach of subsection 53(1) of the Act.
- (c) Smith, Villanti and Prentice breached section 129.2 of the Act.
- (d) there were no registration or prospectus exemptions available to the respondents.
- (e) Smith, Villanti, Haliday, Prentice, Stephan, Murphy, Borealis and Synergy participated in a fraud and thereby breached subsection 126.1(b) of the Act.
- (f) Smith and Andrew Lloyd breached cease trade orders by their conduct relating to the distribution and sales of the Borealis product.

The allegations against the other respondents in the merits hearing, Paul Lloyd, Jean Breau, Derek Grigor, Earl Switenky, Bartosz Ekiert, Canavista Corporate Services Inc. and Canavista Financial Center Inc., were dismissed (Merits Decision, *supra* at para. 182).

[8] The Panel found that the Borealis Guaranteed Return Investment Certificate (the "Borealis GRIC") was an 'investment contract', and therefore a 'security', as defined in subsection 1(1) of the Act (Merits Decision, *supra* at paras. 59-64). Investors were led to believe that the Borealis GRIC:

... 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.

...

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 [Villanti] and/or [IBC].

(Merits Decision, *supra* at paras. 1, 3)

Further, as noted at paragraphs 13 and 14 of the Merits Decision:

... 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. ...

Investors consistently testified that they were each promised their investment was guaranteed, with multiple levels of protection that included CDIC protection and reinsurance coverage.

(Merits Decision, *supra* at paras. 13, 14)

[9] The Panel concluded that the actual terms of the Borealis GRIC were not as represented to investors. The total amount invested (\$16 million plus) had insurance coverage of only \$100,000. This was the \$100,000 provided for the total deposits in the Borealis bank account by the Canadian Deposit Insurance Corporation. The beneficiary was Borealis, not the investors (Merits Decision, *supra* at para. 16). In addition:

... 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.

(Merits Decision, *supra* at para. 18)

[10] In the end, no Borealis GRIC investors lost any money. Notwithstanding the false representations about insurance protection, investors were repaid their capital and received 18% interest on their investment. This result was made possible only because of gratuitous payments in excess of \$2 million (or, with sales commission payments, in excess of \$4 million), made by Villanti and his company IBC to honour the Borealis GRIC payment terms (Merits Decision, *supra* at para. 19).

### III. SANCTIONS

#### A. Sanctions Requested by Staff

##### ***Sanctions requested against Smith, Villanti, Prentice, Haliday, Stephan and Murphy***

[11] Staff seek the following sanctions against each of Smith, Villanti, Prentice, Haliday, Stephan and Murphy for their breaches of Ontario securities law and conduct contrary to the public interest:

- an order that they cease trading in securities permanently;
- an order that they be prohibited permanently from acquiring any securities;
- an order that exemptions contained in Ontario securities law do not apply to each of them permanently;
- an order reprimanding each of them;
- an order that they resign all positions they may hold as director or officer of an issuer;
- an order that they be prohibited permanently from becoming or acting as a director or officer of an issuer;
- an order that Smith, Villanti, Prentice and Haliday each pay an administrative penalty of \$750,000 and that Stephan and Murphy each pay an administrative penalty of \$500,000; and

- an order that Smith, Prentice, Stephan and Murphy disgorge the following amounts which they obtained as a result of their non-compliance with Ontario securities law:
  - o Smith \$1,026,949.78
  - o Prentice \$261,806.01
  - o Stephan \$127,887.99
  - o Murphy \$71,382.45

***Sanctions requested against Lloyd***

[12] Staff seek the following sanctions orders against Lloyd for his breaches of subsections 25(1), and 53(1) of the Act, his breach of a cease trade order issued against him in another matter and his conduct contrary to the public interest:

- an order that he cease trading in securities permanently;
- an order that he be prohibited permanently from acquiring any securities;
- an order that exemptions contained in Ontario securities law do not apply to him permanently;
- an order reprimanding him;
- an order that he resign all positions he may hold as director or officer of an issuer;
- an order that he be prohibited permanently from becoming or acting as a director or officer of an issuer;
- an order that he pay an administrative penalty of \$500,000; and
- an order that he disgorge all amounts that he obtained as a result of his non-compliance with Ontario securities law, \$42,049.85.

***Sanctions requested against Poole***

[13] Staff seek the following sanctions orders against Poole for breaching subsection 53(1) of the Act and acting contrary to the public interest:

- an order that he cease trading in securities permanently;
- an order that he be prohibited permanently from acquiring any securities;
- an order that exemptions contained in Ontario securities law do not apply to him permanently;
- an order reprimanding him;
- an order that he resign all positions he may hold as director or officer of an issuer;
- an order that he be prohibited permanently from becoming or acting as a director or officer of an issuer;
- an order that he pay an administrative penalty of \$250,000; and
- an order that he disgorge all amounts that he obtained as a result of his non-compliance with Ontario securities law, \$83,720.97.

***Sanctions requested against Statham, Zielke, Dickerson, Dupont, Macfarlane, Nerdahl, Pittoors and Travis***

[14] Staff seek the following orders against each of Statham, Zielke, Dickerson, Dupont, Macfarlane, Nerdahl, Pittoors and Travis for their breaches of subsections 25(1) and 53(1) of the Act and the conduct contrary to the public interest:

- an order that they cease trading in securities for a period of 15 years;

- an order that they be prohibited from acquiring any securities for a period of 15 years;
- an order that exemptions contained in Ontario securities law do not apply to each of them for a period of 15 years;
- an order reprimanding each of them;
- an order that they resign all positions they may hold as director or officer of an issuer;
- an order that they be prohibited from becoming or acting as a director or officer of an issuer for a period of 15 years;
- an order that they each pay an administrative penalty of \$100,000; and
- an order that they disgorge the following amounts they obtained as a result of their non-compliance with Ontario securities law:
  - o Statham \$36,548.39
  - o Zielke \$133,381.37
  - o Dickerson \$39,982.14
  - o Dupont \$55,241.36
  - o Macfarlane \$204,355.92
  - o Nerdahl \$136,912.69
  - o Pittoors \$135,941.53
  - o Travis \$11,903.23

***Sanctions requested against the Corporate Respondents***

[15] Staff seek the following orders against Borealis, Synergy and IBC for their breaches of Ontario securities law and conduct contrary to the public interest:

- an order that Borealis and Synergy cease trading in securities permanently and that IBC cease trading in securities for a period of 15 years;
- an order that Borealis and Synergy be prohibited from acquiring any securities permanently and that IBC be prohibited from acquiring any securities for a period of 15 years;
- an order that exemptions contained in Ontario securities law do not apply to Borealis and Synergy permanently and that they do not apply to IBC for a period of 15 years;
- an order reprimanding Borealis, Synergy and IBC; and
- an order that Borealis and Synergy each pay an administrative penalty of \$500,000 and IBC pay an administrative penalty of \$100,000.

**B. The Law on Sanctions**

[16] The Commission does not impose sanctions to punish past conduct, but must act in accordance with its dual mandate of (i) investor protection, and (ii) fostering fair and efficient capital markets and confidence in capital markets (section 1.1 of the Act). Sanctions must therefore be for the purpose of preventing and restraining future conduct that may be harmful to investors or the capital markets. The Commission's role in ordering sanctions is outlined in *Re Mithras Management Ltd.*:

... the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the

courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.

(*Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at 1610-1611)

[17] If it is in the public interest, we may order sanctions restricting or banning respondents from participating in the Ontario capital markets. The Supreme Court of Canada has stated that:

... the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.

(*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43)

[18] When determining what sanctions are appropriate in this matter, we should consider any relevant factors, including:

- (a) the seriousness of the conduct and the breaches of the Act;
- (b) the respondent's experience in the marketplace;
- (c) the level of the respondent's activity in the marketplace;
- (d) whether or not there has been any recognition of the seriousness of the improprieties;
- (e) whether or not the sanctions imposed may serve to deter not only those involved in the matter being considered, but any like-minded people, from engaging in similar abuses of the capital markets;
- (f) the size of any profit or loss avoided from the illegal conduct;
- (g) the size of any financial sanction or voluntary payment;
- (h) the effect any sanction may have on the livelihood of a respondent;
- (i) the restraint any sanction may have on the ability of a respondent to participate without check in the capital markets;
- (j) the reputation and prestige of the respondent;
- (k) the remorse of the respondent;
- (l) the shame, or financial pain, that any sanction would reasonably cause to the respondent; and
- (m) any mitigating factors.

(*Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 at para. 26 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at paras. 25-26.)

[19] The Commission may consider general deterrence when determining the appropriate sanctions. As the Supreme Court of Canada noted in *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60: "... it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative".

[20] Ultimately, any sanctions imposed must be proportionate to the circumstances and conduct of each respondent (*Re M.C.J.C. Holdings Inc.*, *supra* at para. 10).

### C. Analysis of the Sanctioning Factors Applicable in this Case

#### ***Voluntary Payments by the Respondents***

[21] As we stated in the Merits Decision, *supra* at paragraph 19:

Notwithstanding the misrepresentations in the sales pitch ... 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 ... 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.

[22] We are now satisfied that the total out-of-pocket cost to Villanti, Borealis and IBC was probably in excess of \$4 million, having regard to the interest paid to the investors, the cost of the Receiver to distribute the funds and the commissions and expenses paid for the sale of these securities (all of which exclude the legal costs of Villanti, Haliday, Borealis and IBC).

#### ***Amounts Received by the Respondents***

[23] We agree with Mr. O'Toole's submission that we should not consider any commissions or overrides that respondents received for transactions with the Croatian Credit Union in our assessment of the appropriate sanctions. In the Merits Decision, we did not find it necessary to make findings as to whether these transactions constituted trading or distributions of securities. Therefore, we do not include any monies received by respondents as commissions on the Croatian Credit Union transactions in our consideration of any financial benefits to respondents resulting from their activities in breach of Ontario securities law.

[24] Smith, Prentice, Lloyd, Statham, Zielke, Stephan, Murphy, Dickerson, Dupont, Poole, Macfarlane, Nerdahl, Pittoors and Travis received commissions for their sales of the Borealis GRIC product or sales made by sales agents under their management. We note that many, but not all, of the commissions paid do not appear to be excessive and that these included the sales persons' overhead and costs, and in some cases, the sharing of the commission with others.

[25] Not including any commissions for transactions with the Croatian Credit Union, Smith received \$955,190.68 and Prentice received \$243,866.23. The sales agents and regional managers received commissions ranging from \$11,903.23 (received by Travis) to \$203,872.12 (received by Macfarlane).

[26] We accept Haliday's statements in his affidavit sworn on February 9, 2011 that:

... I received no commissions or overrides or other compensation for my involvement in the Borealis GRIC.

... I am a salaried employee of IBC and my role is administrative. ...

[27] As we noted previously, Villanti, Borealis and IBC received no financial benefit from their breaches of Ontario securities law. On the contrary, they paid what is likely in excess of \$4 million to provide investors with an 18% return and compensate Synergy sales persons and managers for sales of the Borealis GRIC.

#### ***The Seriousness of the Respondents' Conduct***

[28] A large number of the respondents were found to have violated subsections 25(1) and 53(1) of the Act, based on the panel's conclusion that the Borealis GRIC was a 'security'. Although the respondents ought to have known this product was a security, we are satisfied from the submissions made both at the merits hearing, and more particularly at the sanctions hearing, that most of the respondents (those with a lesser role in the Borealis GRIC program) did not know that the product they were selling was a security.

[29] Smith and Prentice, on the other hand, were engaged in conduct that was more serious and indicates weightier sanctions. In addition to breaching subsections 25(1) and 53(1), Smith and Prentice engaged in conduct relating to securities that was fraudulent and authorized, permitted and acquiesced in Synergy's and Borealis's breaches of the Act, contrary to subsections 126.1(b) and 129.2 of the Act, respectively. As noted in the Merits Decision:

Smith 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 Prentice, both directly and through Synergy and its representatives across the country, became the principal, if not sole, marketers of the Borealis product. As indicated earlier, Smith and Prentice began the sales pitch by way of website 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. ...

(Merits Decision at paras. 73-74)

[30] In addition, Smith, along with Lloyd, breached the terms of a temporary cease trade order issued against them in another proceeding by trading in the Borealis GRIC product. Breaches of a cease trade order of the Commission are serious and should not be treated lightly.

[31] Villanti, Haliday, Murphy, Stephan, Borealis and Synergy breached subsections 25(1) and 53(1) of the Act, and, like Smith and Prentice, also engaged in conduct relating to securities that was fraudulent, contrary to subsection 126.1(b) of the Act.

[32] Notwithstanding Villanti's original honourable intentions with respect to the Borealis GRIC program, he still engaged in conduct that was fraudulent:

... 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. ...

(Merits Decision, *supra* at para. 108)

[33] We found the following regarding Haliday's fraudulent conduct in the Merits Decision:

Haliday may have been a passive 'trader' but he was an important participant in the sale of the security. ...

...

This partial information, this misinformation, and the failure to correctly and accurately inform clearly constitutes deceit and material misrepresentation.

(Merits Decision, *supra* at paras. 116, 118)

[34] In the Merits Decision, the panel found that Stephan provided investors with information that he knew, or reasonably ought to have known was false and that Murphy continued to receive override payments for sales conducted after he was notified that the security promised investors was not in place (Merits Decision, *supra* at paras. 132, 138 and 140).

[35] Smith and Synergy were sent a Warning Notice from the Office of the Superintendent of Financial Institutions of Canada. SwissRe sent a 'cease and desist' letter to Borealis, Synergy, Smith, Villanti, IBC and Murphy (Merits Decision, *supra* at paras. 78, 80, 125). Despite these warnings about the fraudulent nature of the program, sales of the Borealis GRIC continued.

### ***The Deterrent Effect of Sanctions***

[36] We agree with Mr. DesBrisay's submission that the more than \$4 million out-of-pocket payments made by Villanti, Borealis and IBC should deter these respondents and others from engaging in similar conduct. We see no deterrent purpose in requiring these respondents to pay any administrative penalty in addition to payments already made.

[37] Similarly, this proceeding and the Merits Decision appear to have had an impact on the lives of those respondents who engaged in unregistered trades and distributions of the Borealis GRIC, but who were not involved in the fraudulent scheme to same extent as Smith and Prentice. We find that, for these respondents, additional sanctions that include restrictions on participation in the capital markets and an administrative penalty, as noted below in our Conclusion, should sufficiently deter future similar behaviour.

### ***The Repeated Conduct of Smith and Lloyd***

[38] Both Smith and Lloyd previously breached Ontario securities law and acted contrary to the public interest, as concluded by the Commission panel in *Re Sabourin* (2009), 32 O.S.C.B. 2707. Although the hearing in *Re Sabourin* had not

been conducted by the time of the Borealis GRIC sales, Smith and Lloyd were subject to a temporary cease trade order when they engaged in the breaches of Ontario securities law relating to trades in the Borealis GRIC.

### ***The Respondents' Current Circumstances and the Effect of Sanctions***

[39] We take note of the comments and submissions from some of the respondents, although totally unsupported by any documentary evidence, as to their current financial situation. Many of the respondents, including Nerdahl, Statham, Dupont and Murphy, indicated in their submissions that they are in financial difficulty and do not have the means to pay the administrative penalties requested by Staff.

[40] We note that one of the respondents, Pittoors, is 78 years of age, in poor health and appears not to be a person of significant means. Similarly, in the case of Macfarlane, we note that he is a young man who hopes to be able to earn a living in sales to support his family, which includes two young children. A number of the respondents, including Poole and Dupont, stated that the allegations and findings in this case have already significantly impaired their ability to obtain employment and earn an income.

### **D. Overview of the Issues Involved in this Matter Relative to the Sanctions to be Imposed**

#### ***Disgorgement***

[41] As we noted above, the total out-of-pocket cost to Villanti, Borealis and IBC, including payments to investors and commissions payments, was probably more than \$4 million.

[42] Dealing first with the issue of disgorgement: We do not dispute Staff's position that disgorgement is an appropriate sanction in many cases. However, having regard to the circumstances in this matter, including the fact that no investor is 'out of pocket', we are satisfied that disgorgement is neither appropriate nor necessary. We note that any order requiring that respondents disgorge the commissions they received would essentially be an order to disgorge to the Commission money paid to them by Villanti or IBC.

[43] We note in the very recent decision from this Commission in *Re Al-tar Energy Corp.* (2011), 34 O.S.C.B. 447 that the Commissioners on the sanctions hearing made the following comments at paragraph 71:

Accordingly, we will order that the Individual Respondents involved in the fraudulent scheme with a particular Corporate Respondent, disgorge on a joint and several basis ... That appears to us to be the appropriate approach in the circumstances before us ...

Then later at paragraph 74, they state:

Any amounts paid to the Commission in compliance with our administrative penalty and disgorgement orders shall be allocated to or for the benefit of third parties, including investors who lost money as a result of investing in the investment scheme ... These amounts are to be distributed to investors who lost money as a result of investing in the investment scheme ...

[emphasis ours]

[44] That of course is not the circumstance in this case. No disgorgement order will be made.

#### ***Administrative Penalties***

[45] As we have noted throughout this decision, this case is distinguishable from most other cases before the Commission because investors were returned the principal amount they invested plus interest of 18%. However, the conduct of the respondents did violate Ontario securities law, and as such we find that some administrative penalty is appropriate. We therefore find that administrative penalties in the range of \$2,500 are appropriate for the respondents who were involved in sales of the Borealis GRIC, but did not engage in fraudulent conduct.

[46] With regards to those respondents who perpetrated a fraud, their conduct was far more serious than the respondents who solely made illegal trades and distributions of the Borealis GRIC. We refer to a recent Commission decision, which discusses administrative penalties where there has been fraudulent conduct:

The Individual Respondents engaged in fraudulent conduct that warrants the imposition of substantial administrative penalties. ... In our view, to be a deterrent, the amount of an administrative penalty must bear some reference to the amount raised from investors through the investment scheme. In addition, in cases where fraud and repetitive conduct over an extended



period is involved, higher administrative penalties are necessary. In order to deter, an administrative penalty must be more than a fee for or a cost of carrying out a fraudulent scheme.

(*Re Al-Tar Energy Corp.*, *supra* at para. 49)

[47] In *Re Al-Tar Energy Corp.*, *supra*, investors lost the majority of the over \$650,000 invested in the fraudulent scheme. The Borealis GRIC investors were paid back the amount raised from them, plus the interest they were promised. However, given the seriousness of the fraudulent conduct, higher administrative penalties are warranted for those respondents who breached subsection 126.1(b) of the Act, so as to deter similar fraudulent behaviour in the future.

[48] Smith and Prentice, who were principally involved in the fraudulent scheme, as noted at paragraphs [29] and [30], engaged in conduct that should result in higher administrative penalties. Although not so involved in the development and marketing of the fraudulent scheme as Smith and Prentice, Murphy and Stephan also engaged in conduct that perpetrated a fraud, and as such, should pay an administrative penalty that will sufficiently deter this type of serious misconduct in the future. We impose administrative penalties of \$550,000 each against Smith and Prentice. We impose an administrative penalty of \$15,000 against Murphy and \$25,000 against Stephan.

[49] Lloyd, although significantly involved in the Borealis GRIC project, was not found to have violated the fraud provision of the Act. Lloyd, like Smith, did violate a previous Commission cease trade order. His administrative penalty should be \$300,000.

[50] As noted at paragraph [36], the payment of what is likely over \$4 million should be sufficient to deter future fraudulent behaviour of the nature in which Villanti, Haliday, IBC and Borealis were engaged. We therefore do not find that administrative penalties should be ordered against these respondents.

#### **Prohibitions on Participation in the Capital Markets**

[51] Participation in the capital markets is a privilege, not a right (*Erikson v. Ontario (Securities Commission)* (2003), 26 O.S.C.B. 1622 (Div. Ct.) at para. 47). Staff requests that we prohibit trading by Smith, Villanti, Prentice, Haliday, Stephan, Murphy, Lloyd and Poole permanently and that the remaining individual respondents be prohibited from trading for 15 years.

[52] Most of the respondents in this case can be distinguished from the respondent in *Re St. John*, about whom the commission noted:

In our view [the respondent] is not a person whom we can safely trust to participate in the capital markets in any way. We have no confidence whatsoever that if she is permitted to participate as an investor for her own account, [she] will not once again push the envelope by engaging in conduct which is detrimental to others and abusive to the capital markets. Accordingly we order that trading in any securities by [the respondent] cease permanently.

(*Re St. John* (1998), 21 O.S.C.B. 3851 at 3867)

[53] Although we think it appropriate to issue an order restricting the respondents' trading and ability to act as directors or officers of issuers, we find that bans of 2 to 4 years, as noted in our Conclusion below, are sufficient for most respondents given their involvement in the Borealis GRIC sales and our level of concern regarding their future conduct in the capital markets.

[54] The conduct of Smith, Prentice and Lloyd, however, causes reason for greater concern. Smith and Prentice were the marketing and sales organizers of the Borealis GRIC product, as noted at paragraphs 73 and 74 of the Merits Decision, *supra*. The Borealis GRIC sales conducted and/or overseen by Smith and Lloyd were made while they were both subject to a cease trade order of this Commission (Merits Decision, *supra* at paras. 89 and 91). For these reasons, we find it appropriate to order permanent bans on Smith's, Prentice's and Lloyd's participation in the capital markets.

[55] We believe it is appropriate to permit limited carve-outs from these trading restrictions to permit the Respondents to trade in securities for their RRSPs. In the case of Smith, Prentice and Lloyd, in light of the seriousness of their conduct and to ensure the objective of individual and general deterrence is met, we believe it is appropriate to add a condition to the availability of carve-outs from their trading restrictions. We consider it to be in the public interest to add a term and condition to their permanent restrictions on trading to permit them to trade in securities for their RRSPs only upon payment of their respective administrative penalties and costs orders. Until such time, Smith, Prentice and Lloyd shall remain subject to a permanent order prohibiting them from trading in or acquiring securities.

#### IV. COSTS

[56] Staff seek an order representing a portion of the costs of the hearing requiring Smith, Villanti, Haliday, Prentice, Stephan, Murphy, Borealis and Synergy be assessed \$125,000 costs on a joint and several basis. Staff requests an order that Lloyd, Statham, Zielke, Dickerson, Dupont, Macfarlane, Nerdahl, Pittoors, Travis, Poole and IBC each pay \$5,000 in costs.

[57] We consider Staff's request of reimbursement for \$180,000, which is but a small portion of the total cost of the investigation and prosecution of this matter, to be extremely reasonable.

[58] However, we find it appropriate to order costs only against those respondents who played a more significant role in the Borealis GRIC program and/or who breached the terms of a previous cease trade order of the Commission. We therefore find that as terms and conditions of the order regarding costs, Borealis, IBC, Villanti and Haliday shall pay costs of \$60,000 on a joint and several basis. Synergy, Smith and Prentice shall pay costs of \$115,000 on a joint and several basis. Lloyd shall pay costs of \$5,000.

#### V. CONCLUSION ON SANCTIONS AND COSTS

[59] We find that it is in the public interest to make the following orders against the Respondents:

1. With respect to Smith, Prentice and Synergy:
  - (a) Smith, Prentice and Synergy are prohibited from trading in securities permanently, pursuant to clause 2 of subsection 127(1) of the Act;
  - (b) Smith, Prentice and Synergy are prohibited from acquiring securities permanently, pursuant to clause 2.1 of subsection 127(1) of the Act;
  - (c) exemptions in Ontario securities law (as defined in the Act) do not apply to Smith, Prentice and Synergy permanently, pursuant to clause 3 of subsection 127(1) of the Act;
  - (d) Smith, Prentice and Synergy are reprimanded, pursuant to clause 6 of subsection 127(1) of the Act;
  - (e) Smith and Prentice are ordered to resign any positions they hold as directors or officers of any issuer, pursuant to clause 7 of subsection 127(1) of the Act;
  - (f) Smith and Prentice are prohibited permanently from becoming or acting as a director or officer of any issuer, pursuant to clause 8 of subsection 127(1) of the Act;
  - (g) each of Smith, Prentice and Synergy shall pay an administrative penalty of \$550,000 to be allocated to or for the benefit of third parties, pursuant to subsection 3.4(2)(b) of the Act for his or its non-compliance with Ontario securities law, pursuant to clause 9 of subsection 127(1) of the Act;
  - (h) Smith, Prentice and Synergy shall pay costs of \$115,000, on a joint and several basis, pursuant to section 127.1 of the Act; and
  - (i) as a term and condition of the sanctions referred to at paragraphs 1. (a) and (b) of this Order, upon payment of their respective administrative penalties and costs amounts as set out in paragraphs 1. (g) and (h) of this Order, Smith and Prentice shall be entitled to trade in and acquire securities for the account of their respective registered retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which they and/or their respective spouses have 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) or are issued by a mutual fund that is a reporting issuer;
    - (ii) they do not own legally or beneficially (in the aggregate, together with their respective spouses) more than one percent of the outstanding securities of the class or series of the class in question; and
    - (iii) they carry out any permitted trading through a registered dealer and through trading accounts opened in their respective names only.

2. With respect to Villanti, Haliday, IBC and Borealis:
- (a) Villanti is prohibited from trading in securities for a period of 5 years, pursuant to clause 2 of subsection 127(1) of the Act, with the exception that he is permitted to trade securities for the account of his registered retirement savings plan (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have 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) or are issued by a mutual fund that is a reporting issuer;
    - (ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and
    - (iii) he carries out any permitted trading through a registered dealer and through trading accounts opened in his name only;
  - (b) Villanti is prohibited from acquiring securities for a period of 5 years, pursuant to clause 2.1 of subsection 127(1) of the Act, except to allow the trading in securities permitted by and in accordance with paragraph 2. (a) of this Order;
  - (c) exemptions in Ontario securities law (as defined in the Act) do not apply to Villanti for a period of 5 years, pursuant to clause 3 of subsection 127(1) of the Act;
  - (d) Haliday is prohibited from trading in securities for a period of 4 years, pursuant to clause 2 of subsection 127(1) of the Act, with the exception that he is permitted to trade securities for the account of his registered retirement savings plan (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have 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) or are issued by a mutual fund that is a reporting issuer;
    - (ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and
    - (iii) he carries out any permitted trading through a registered dealer and through trading accounts opened in his name only;
  - (e) Haliday is prohibited from acquiring securities for a period of 4 years, pursuant to clause 2.1 of subsection 127(1) of the Act, except to allow the trading in securities permitted by and in accordance with paragraph 2. (d) of this Order;
  - (f) exemptions in Ontario securities law (as defined in the Act) do not apply to Haliday for a period of 4 years, pursuant to clause 3 of subsection 127(1) of the Act;
  - (g) IBC and Borealis are prohibited from trading in securities for a period of 5 years, pursuant to clause 2 of subsection 127(1) of the Act;
  - (h) IBC and Borealis are prohibited from acquiring securities for a period of 5 years, pursuant to clause 2.1 of subsection 127(1) of the Act;
  - (i) exemptions in Ontario securities law (as defined in the Act) do not apply to IBC and Borealis for a period of 5 years, pursuant to clause 3 of subsection 127(1) of the Act;
  - (j) Villanti, Haliday, IBC and Borealis are reprimanded, pursuant to clause 6 of subsection 127(1) of the Act;
  - (k) Villanti and Haliday are ordered to resign any positions they hold as directors or officers of any issuer, pursuant to clause 7 of subsection 127(1) of the Act;

- (l) Villanti is prohibited for a period of 5 years from becoming or acting as a director or officer of any issuer, pursuant to clause 8 of subsection 127(1) of the Act;
  - (m) Haliday is prohibited for a period of 4 years from becoming or acting as a director or officer of any issuer, pursuant to clause 8 of subsection 127(1) of the Act; and
  - (n) Villanti, Haliday, IBC and Borealis shall pay costs of \$60,000, on a joint and several basis, pursuant to section 127.1 of the Act;
3. With respect to Lloyd:
- (a) Lloyd is prohibited from trading in securities permanently, pursuant to clause 2 of subsection 127(1) of the Act;
  - (b) Lloyd is prohibited from acquiring securities permanently, pursuant to clause 2.1 of subsection 127(1) of the Act;
  - (c) exemptions in Ontario securities law (as defined in the Act) do not apply to Lloyd permanently, pursuant to clause 3 of subsection 127(1) of the Act;
  - (d) Lloyd reprimanded pursuant to clause 6 of subsection 127(1) of the Act;
  - (e) Lloyd is ordered to resign any positions he holds as a director or officer of any issuer, pursuant to clause 7 of subsection 127(1) of the Act;
  - (f) Lloyd is prohibited permanently from becoming or acting as a director or officer of any issuer, pursuant to clause 8 of subsection 127(1) of the Act;
  - (g) Lloyd shall pay an administrative penalty of \$300,000 to be allocated to or for the benefit of third parties, pursuant to subsection 3.4(2)(b) of the Act for his non-compliance with Ontario securities law, pursuant to clause 9 of subsection 127(1) of the Act;
  - (h) Lloyd shall pay costs of \$5,000 pursuant to section 127.1 of the Act; and
  - (i) as a term and condition of the sanctions referred to at paragraphs 3. (a) and (b) of this Order, upon payment of the administrative penalties and costs amount set out in paragraphs 3. (g) and (h) of this Order, Lloyd shall be entitled to trade in and acquire securities for the account his registered retirement savings plan (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have 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) or are issued by a mutual fund that is a reporting issuer;
    - (ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and
    - (iii) he carries out any permitted trading through a registered dealer and through trading accounts opened in his name only.
4. With respect to Stephan and Murphy:
- (a) Stephan and Murphy are prohibited from trading in securities for a period of 4 years, pursuant to clause 2 of subsection 127(1) of the Act, with the exception that they are permitted to trade securities for the account of their respective registered retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which they and/or their respective spouses have 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) or are issued by a mutual fund that is a reporting issuer;

- (ii) they do not own legally or beneficially (in the aggregate, together with their respective spouses) more than one percent of the outstanding securities of the class or series of the class in question; and
    - (iii) they carry out any permitted trading through a registered dealer and through trading accounts opened in their respective names only;
  - (b) Stephan and Murphy are prohibited from acquiring securities for a period of 4 years, pursuant to clause 2.1 of subsection 127(1) of the Act, except to allow the trading in securities permitted by and in accordance with paragraph 4. (a) of this Order;
  - (c) exemptions in Ontario securities law (as defined in the Act) do not apply to Stephan and Murphy for a period of 4 years, pursuant to clause 3 of subsection 127(1) of the Act;
  - (d) Stephan and Murphy are reprimanded, pursuant to clause 6 of subsection 127(1) of the Act;
  - (e) Stephan and Murphy are ordered to resign any positions they hold as directors or officers of any issuer, pursuant to clause 7 of subsection 127(1) of the Act;
  - (f) Stephan and Murphy are prohibited for a period of 4 years from becoming or acting as a director or officer of any issuer, pursuant to clause 8 of subsection 127(1) of the Act;
  - (g) Stephan shall pay an administrative penalty of \$25,000 to be allocated to or for the benefit of third parties, pursuant to subsection 3.4(2)(b) of the Act for his non-compliance with Ontario securities law, pursuant to clause 9 of subsection 127(1) of the Act; and
  - (h) Murphy shall pay an administrative penalty of \$15,000 to be allocated to or for the benefit of third parties, pursuant to subsection 3.4(2)(b) of the Act for his non-compliance with Ontario securities law, pursuant to clause 9 of subsection 127(1) of the Act;
5. With respect to Statham, Zielke, Dickerson, Dupont, Poole, Macfarlane, Nerdahl, Pittoors and Travis:
- (a) Statham, Zielke, Dickerson, Dupont, Poole, Macfarlane, Nerdahl, Pittoors and Travis are prohibited from trading in securities for a period of 2 years, pursuant to clause 2 of subsection 127(1) of the Act, with the exception that they are permitted to trade securities for the account of their respective registered retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which they and/or their respective spouses have 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) or are issued by a mutual fund that is a reporting issuer;
    - (ii) they do not own legally or beneficially (in the aggregate, together with their respective spouses) more than one percent of the outstanding securities of the class or series of the class in question; and
    - (iii) they carry out any permitted trading through a registered dealer and through trading accounts opened in their respective names only;
  - (b) Statham, Zielke, Dickerson, Dupont, Poole, Macfarlane, Nerdahl, Pittoors and Travis are prohibited from acquiring securities for a period of 2 years, pursuant to clause 2.1 of subsection 127(1) of the Act, except to allow the trading in securities permitted by and in accordance with paragraph 5. (a) of this Order;
  - (c) exemptions in Ontario securities law (as defined in the Act) do not apply to Statham, Zielke, Dickerson, Dupont, Poole, Macfarlane, Nerdahl, Pittoors and Travis for a period of 2 years, pursuant to clause 3 of subsection 127(1) of the Act;
  - (d) Statham, Zielke, Dickerson, Dupont, Poole, Macfarlane, Nerdahl, Pittoors and Travis are reprimanded, pursuant to clause 6 of subsection 127(1) of the Act;

- (e) Statham, Zielke, Dickerson, Dupont, Poole, Macfarlane, Nerdahl, Pittoors and Travis are ordered to resign any positions they hold as directors or officers of any issuer, pursuant to clause 7 of subsection 127(1) of the Act;
- (f) Statham, Zielke, Dickerson, Dupont, Poole, Macfarlane, Nerdahl, Pittoors and Travis are prohibited for a period of 2 years from becoming or acting as a director or officer of any issuer, pursuant to clause 8 of subsection 127(1) of the Act; and
- (g) each of Statham, Zielke, Dickerson, Dupont, Poole, Macfarlane, Nerdahl, Pittoors and Travis shall pay an administrative penalty of \$2,500 to be allocated to or for the benefit of third parties, pursuant to subsection 3.4(2)(b) of the Act for his or her non-compliance with Ontario securities law, pursuant to clause 9 of subsection 127(1) of the Act.

[60] We believe these sanctions are appropriate relative to each respondent's involvement in the creation and sales of the Borealis GRIC product. We will issue a separate order giving effect to this decision on sanctions and costs.

Dated at Toronto this 29th day of April, 2011.

"Patrick J. LeSage"  
Patrick J. LeSage

"Paulette L. Kennedy"  
Paulette L. Kennedy

3.1.2 David M. O'Brien

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

AND

IN THE MATTER OF  
DAVID M. O'BRIEN

DECISION  
(Motion on Disclosure)

**BACKGROUND**

On February 24, 2011, the Ontario Securities Commission (the "Commission") ordered that a motion hearing regarding disclosure take place on April 21, 2011 at 10:00 a.m at the offices of the Commission. On December 17, 2010, the respondent David Michael O'Brien ("Mr. O'Brien") attended at the offices of the Commission to obtain from Staff of the Commission ("Staff") initial disclosure materials. Prior to receiving the disclosure materials, Mr. O'Brien signed an undertaking as to confidentiality (the "Previous Undertaking") and a disclosure receipt, as requested by Staff. On March 18, 2011, Mr. O'Brien attended at the offices of the Commission to obtain additional disclosure materials. Mr. O'Brien advised Staff at that time that he would not sign a further undertaking. As a result, Mr. O'Brien did not obtain those disclosure materials.

Mr. O'Brien has brought this motion seeking an order from the Commission requiring Staff to provide Mr. O'Brien with all additional disclosure materials without requiring him to execute a further undertaking.

A hearing of that motion took place on April 21, 2011 and Staff and Mr. O'Brien appeared before the Commission and made submissions. Mr. O'Brien acknowledged at the hearing that he understands that he is subject to both the confidentiality provisions contained in section 16 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") and the implied undertaking rule, which restricts the use of materials produced in a proceeding solely to that proceeding, a recognized principle of law in Ontario which applies to Commission proceedings.

**DECISION**

I decided that Staff shall provide further disclosure materials to Mr. O'Brien without requiring the signing by him of an undertaking as to the confidentiality of that disclosure. In making that decision, I determined that:

1. All disclosure materials provided to Mr. O'Brien are confidential and may be used by him only for the purpose of making full answer and defence in this proceeding. The use of disclosure materials for any other purpose is strictly prohibited. All disclosure materials provided to Mr. O'Brien are subject to the strict confidentiality restrictions imposed by section 16 of the Act.
2. Mr. O'Brien is also subject to the implied undertaking that all disclosure materials provided to him are subject to the restrictions on use referred to in paragraph (1).
3. The Previous Undertaking signed by Mr. O'Brien is binding upon him and applies by its terms to all of the disclosure materials provided by Staff to Mr. O'Brien, including all disclosure materials provided by Staff to Mr. O'Brien in the future; if Mr. O'Brien wishes to challenge the validity of the Previous Undertaking he is entitled to bring a motion before the Commission to do so.
4. If Mr. O'Brien wishes to use the disclosure materials provided by Staff to him for any purpose other than as provided in paragraph (1), he must make an application to the Commission under section 17 of the Act for an order of the Commission consenting to that use.

I also decided that the temporary cease trade order issued in this matter be extended to the conclusion of the hearing on the merits, subject to the right of Mr. O'Brien to bring an application for variation of that order if he wishes at any time to do so. A formal order confirming the extension of the temporary cease trade order will be issued by the Commission.

**DATED** at Toronto this 21st day of April, 2011.

"James E.A. Turner"

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## Chapter 4

# Cease Trading Orders

### 4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
BW Park Place Limited Partnership	18 Apr 11	29 Apr 11	29 Apr 11	
Interactive Capital Partners Corporation	04 May 11	16 May 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

THERE ARE NO ITEMS FOR THIS WEEK.

### 4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Genesis Worldwide Inc.	04 Apr 11	15 Apr 11	15 Apr 11		

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## **Chapter 7**

# **Insider Reporting**

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This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see [www.carswell.com](http://www.carswell.com)).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website ([www.sedi.ca](http://www.sedi.ca)).



## Chapter 8

# Notice of Exempt Financings

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### 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
04/11/2011	1	Aviva Investors - Global High Yield Bond Fund - Common Shares	1,300,000.00	115,210.10
02/28/2011 to 03/31/2011	3	Bristol Gate US Dividend Growth Fund LP - Limited Partnership Units	1,350,000.00	N.A
02/17/2011	118	Candente Copper Corp. - Common Shares	26,969,800.00	13,156,000.00
04/19/2011	1	CHY Fund - Trust Units	2,842,500.00	302,104.37
01/14/2011	4	Clairvest Equity Partners IV Limited Partnership - Limited Partnership Units	58,000,000.00	58,000.00
01/06/2011	33	Clearview Resources Ltd. (Formerly KDC Energy Ltd. - Common Shares	2,070,000.00	685,430,474.00
01/31/2011	61	Comstock Metals Ltd. - Units	395,735.00	6,427,000.00
12/30/2010	88	Eaglecrest Explorations Ltd. - Units	3,443,531.40	11,478,258.00
01/26/2011	14	Energent Incorporated - Common Shares	1,135,476.50	661,709.00
02/15/2011	39	Gee-Ten Ventures Inc. - Units	1,142,000.00	2,855,000.00
01/01/2010 to 12/31/2010	35	Greystone Canadian Fixed Income Fund - Units	57,169,574.08	5,391,278.41
02/03/2011	73	Harvest Gold Corporation - Common Shares	1,004,500.00	10,045,000.00
01/31/2011	16	HRG Healthcare Resource Group Inc. - Common Shares	576,250.00	788,333.00
04/15/2011	4	Kingwest Avenue Portfolio - Units	109,000.00	3,557.56
04/15/2011	1	Kingwest Canadian Equity Portfolio - Units	13,775.63	1,112.88
04/15/2011	2	Kingwest High Income Fund - Units	2,502,659.79	431,255.13
04/15/2011	5	Kingwest US Equity Portfolio - Units	966,225.16	65,152.54
02/18/2011	32	Liquid Nutrition Group Inc. - Debentures	2,500,000.00	35.00
02/03/2011	91	Lucky Strike Resources Ltd. - Units	2,400,000.00	3,000,000.00
04/11/2011	14	Magor Communications Corp. - Debentures	430,824.38	N.A
02/14/2011	41	Maple Leaf Reforestation Inc. - Units	2,690,750.00	7,645,588.00
01/01/2010 to 12/31/2010	12	Mawer Balanced Institutional Pooled Fund - Units	99,632,858.27	11,279,987.85
01/01/2010 to 12/31/2010	7	Mawer Canadian Equity Institutional Pooled Fund - Units	27,130,305.49	1,819,380.68

**Notice of Exempt Financings**

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<b>Transaction Date</b>	<b>No. of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b>No. of Securities Distributed</b>
04/01/2010 to 03/03/2011	29	MGI Canadian Equity Fund - Units	98,295,598.06	9,170,398.04
04/20/2010 to 03/15/2011	11	MGI Money Market Fund - Units	7,685,717.00	97,614,392.61
02/16/2011	122	Mira Resources Corp. - Units	20,000,002.10	66,666,667.00
04/15/2011	23	Multivision Communications Corp. - Units	450,000.00	3,000,000.00
04/12/2011	14	Pacific ARC Resources Ltd. - Flow-Through Shares	1,250,000.00	3,000,000.00
02/15/2011 to 02/22/2011	46	Prize Mining Corporation - Units	2,038,600.00	8,154,400.00
04/06/2011	46	Prosperity Goldfields Corp. - Units	4,641,181.00	15,470,604.00
02/22/2011 to 02/24/2011	78	Ressources Robex Inc. - Units	3,000,000.00	23,076,923.00
04/12/2011	31	Ring of Fire Resources Inc. - Units	1,500,000.00	17,647,058.00
03/18/2011	3	Royal Bank of Canada - Notes	3,455,244.00	3,510.00
02/22/2011	16	SmartCool Systems Inc. - Units	3,999,999.40	13,333,333.00
04/05/2011	48	Valor Ventures Inc. - Common Shares	561,250.00	11,225,000.00
12/21/2010	145	Walton Big Lake Development L.P. - Units	4,644,060.00	464,406.00
12/15/2010	42	Wescorp Energy Inc. - Units	1,102,873.72	13,212,110.00
01/19/2011 to 01/20/2011	52	Wind River Energy Corp. - Common Shares	2,530,966.00	10,123,864.00
02/08/2011	68	Wind River Energy Corp. - Common Shares	1,219,034.00	4,876,136.00

## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

2274851 Ontario Inc.

Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated April 29, 2011

NP 11-202 Receipt dated May 2, 2011

**Offering Price and Description:**

Minimum Offering: C\$5,000,000.00 or \* Units ; Maximum

Offering: C\$15,000,000.00 or \* Units Price: \$ \* per Unit

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

Kingsdale Capital Markets Inc.

**Promoter(s):**

Ultra Green Package, Inc.

**Project #1737489**

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**Issuer Name:**

Barranco Resources Corp.

Principal Regulator - British Columbia

**Type and Date:**

Preliminary CPC Prospectus dated April 26, 2011

NP 11-202 Receipt dated April 27, 2011

**Offering Price and Description:**

\$200,000.00 - 2,000,000 Common Shares Price: \$0.10 per Common Share

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

Northern Securities Inc.

**Promoter(s):**

Geoff Balderson

**Project #1734084**

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**Issuer Name:**

Alexander Nubia International Inc.

Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated April 27, 2011

NP 11-202 Receipt dated April 27, 2011

**Offering Price and Description:**

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

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

WELLINGTON WEST CAPITAL MARKETS INC.

CORMARK SECURITIES INC.

INDUSTRIAL ALLIANCE SECURITIES INC.

**Promoter(s):**

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**Project #1734361**

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**Issuer Name:**

Bellatrix Exploration Ltd.

Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated April 27, 2011

NP 11-202 Receipt dated April 27, 2011

**Offering Price and Description:**

\$55,003,200.00 - 9,822,000 Common Shares Price: \$5.60 per Common Share

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

NATIONAL BANK FINANCIAL INC.

CANACCORD GENUITY CORP.

WELLINGTON WEST CAPITAL MARKETS INC.

**Promoter(s):**

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**Project #1734525**

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**Issuer Name:**

AlphaNorth Growth Fund

AlphaNorth Rollover Fund

Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectuses dated May 2, 2011

NP 11-202 Receipt dated May 3, 2011

**Offering Price and Description:**

Series A and F shares

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

-

**Promoter(s):**

AlphaNorth Asset Management

**Project #1738746**

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**Issuer Name:**

Blind Creek Resources Ltd.

Principal Regulator - British Columbia

**Type and Date:**

Third Amended and Restated Preliminary Long Form

Prospectus dated April 29, 2011

NP 11-202 Receipt dated May 2, 2011

**Offering Price and Description:**

\$7,012,000 - 2,658,000 COMMON SHARES AND 1,329,000 SHARE PURCHASE WARRANTS ISSUABLE UPON THE EXERCISE OR DEEMED EXERCISE OF 2,658,000 PREVIOUSLY ISSUED SPECIAL WARRANTS

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

D & D Securities Company

**Promoter(s):**

J. Frank Callaghan

**Project #1651637**

**Issuer Name:**

Brookfield Asset Management Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Base Shelf Prospectus dated April 29, 2011  
NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

US\$1,000,000,000.00

Debt Securities

Class A Preference Shares

Class A Limited Voting Shares

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

-

**Promoter(s):**

-

**Project #1736327**

**Issuer Name:**

Canadian Convertible Liquid Universe ETF  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated April 29, 2011  
NP 11-202 Receipt dated May 2, 2011

**Offering Price and Description:**

Common and Advisor Class Units

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

-

**Promoter(s):**

XTF Capital Corp.

**Project #1738416**

**Issuer Name:**

Canadian High Yield Focus Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated April 27, 2011  
NP 11-202 Receipt dated April 28, 2011

**Offering Price and Description:**

Maximum \$75,000,000.00 (6,250,000 Units) Price: \$12.00  
per Unit Minimum Purchase: 200 Units

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

BMO Nesbitt Burns Inc.

CIBC World Markets Inc.

RBC Dominion Securities Inc.

GMP Securities L.P.

National Bank Financial Inc.

Scotia Capital Inc.

TD Securities Inc.

HSBC Securities (Canada) Inc.

Desjardins Securities Inc.

Canaccord Genuity Corp.

Dundee Securities Ltd.

Macquarie Private Wealth Inc.

Raymond James Ltd.

Wellington West Capital Markets Inc.

Manulife Securities Incorporated

**Promoter(s):**

Propel Capital Corporation

**Project #1734904**

**Issuer Name:**

CHYF Trust

Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Non-Offering Prospectus dated  
April 27, 2011

NP 11-202 Receipt dated April 28, 2011

**Offering Price and Description:**

-

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

-

**Promoter(s):**

Propel Capital Corporation

**Project #1734907**

**Issuer Name:**

Discovery Air Inc.

Principal Regulator - Saskatchewan

**Type and Date:**

Preliminary Short Form Prospectus dated April 28, 2011  
NP 11-202 Receipt dated April 28, 2011

**Offering Price and Description:**

\$30,000,000.00 - 8.375% Convertible Unsecured  
Subordinated Debentures Price: \$1,000 per Debenture

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

GMP SECURITIES L.P.

CANACCORD GENUITY CORP.

NATIONAL BANK FINANCIAL INC.

CORMARK SECURITIES INC.

PI FINANCIAL CORP.

**Promoter(s):**

-

**Project #1735142**

**Issuer Name:**

Equal Energy Ltd.

Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated May 2, 2011  
NP 11-202 Receipt dated May 2, 2011

**Offering Price and Description:**

\$50,347,500.00 -6,850,000 Common Shares Price: \$7.35  
per Offered Share

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

SCOTIA CAPITAL INC.

CIBC WORLD MARKETS INC.

WELLINGTON WEST CAPITAL MARKETS INC.

DESJARDINS SECURITIES INC.

JENNINGS CAPITAL INC.

PI FINANCIAL CORP.

**Promoter(s):**

-

**Project #1738728**



**Issuer Name:**

Folkstone Capital Corp.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary CPC Prospectus dated April 29, 2011  
NP 11-202 Receipt dated May 2, 2011

**Offering Price and Description:**

\$200,000.00 - 2,000,000 Common Shares Price: \$0.10 per Common Share

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

Haywood Securities Inc.

**Promoter(s):**

Kirk Shaw

**Project #1739206**

**Issuer Name:**

Gibson Energy Inc.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Long Form Prospectus dated April 27, 2011  
NP 11-202 Receipt dated April 27, 2011

**Offering Price and Description:**

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

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

BMO NESBITT BURNS INC.  
SCOTIA CAPITAL INC.  
J.P. MORGAN SECURITIES CANADA INC.  
TD SECURITIES INC.  
RBC DOMINION SECURITIES INC.  
CITIGROUP GLOBAL MARKETS CANADA INC.  
FIRSTENERGY CAPITAL CORP.  
UBS SECURITIES CANADA INC.

**Promoter(s):**

-

**Project #1734582**

**Issuer Name:**

Gryphon Gold Corporation  
Principal Regulator - British Columbia

**Type and Date:**

Second Amended and Restated Preliminary Short Form Prospectus dated April 27, 2011  
NP 11-202 Receipt dated April 28, 2011

**Offering Price and Description:**

US\$ \* (C\$ \*) - \* Common Share Price: US\$ \* (C\$ \*) per Offered Share

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

Acumen Capital Finance Partners Limited

**Promoter(s):**

-

**Project #1694454**

**Issuer Name:**

Horizons Enhanced U.S. Equity Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated April 29, 2011  
NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

Class A Units - Maximum \$\* (Maximum \* Class A Units)  
Price: \$10.00 per Class A Unit

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

CIBC World Markets Inc.  
BMO Nesbitt Burns Inc.  
National Bank Financial Inc.  
TD Securities Inc.  
GMP Securities L.P.  
HSBC Securities (Canada) Inc.  
Canaccord Genuity Corp.  
Desjardins Securities Inc.  
Macquarie Private Wealth Inc.  
Raymond James Ltd.  
Dundee Securities Ltd.  
Industrial Alliance Securities Inc.  
Mackie Research Capital Corporation  
MGI Securities Inc.  
Rothenberg Capital Management Inc.  
Wellington West Capital Markets Inc.

**Promoter(s):**

AlphaPro Management Inc.

**Project #1736643**

**Issuer Name:**

ING Floating Rate Senior Loan Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated April 27, 2011  
NP 11-202 Receipt dated April 28, 2011

**Offering Price and Description:**

Maximum \$\* - \* Class A Units and/or Class U Units - Price: \$10.00 per Class A Unit and U.S. \$10.00 per Class U Unit  
Minimum purchase: 100 Class A Units or Class U Units

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

BMO Nesbitt Burns Inc.  
HSBC Securities (Canada) Inc.  
CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
National Bank Financial Inc.  
Scotia Capital Inc.  
TD Securities Inc.  
GMP Securities L.P.  
Macquarie Private Wealth Inc.  
Raymond James Ltd.  
Canaccord Genuity Corp.  
Dundee Securities Ltd.  
Mackie Research Capital Corporation  
Wellington West Capital Markets Inc.

**Promoter(s):**

Connor, Clark & Lunn Capital Markets Inc.

**Project #1735203**

**Issuer Name:**

JINHUA CAPITAL CORPORATION

Principal Regulator - Alberta

**Type and Date:**

Preliminary Long Form Prospectus dated April 29, 2011

NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

Minimum Offering: \$2,000,000.00 (5,000,000 Common Shares); Maximum Offering: \$4,000,000.00 (10,000,000 Common Shares) PRICE: \$0.40 per Common Share

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

PI Financial Corp.

**Promoter(s):**

Francis N. S. Leong

Dai Jiankang

**Project #1737335**

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**Issuer Name:**

Lone Pine Resources Inc.

Principal Regulator - Alberta

**Type and Date:**

Third Amended and Restated Preliminary Long Form

PREP Prospectus dated April 27, 2011

NP 11-202 Receipt dated April 28, 2011

**Offering Price and Description:**

\$ \* - 15,000,000 Shares of Common Stock Price: \$ \* per Share of Common Stock

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

J. P. Morgan Securities Canada Inc.

Credit Suisse Securities (Canada), Inc.

TD Securities Inc.

BMO Nesbitt Burns Inc.

Scotia Capital Inc.

CIBC World Markets Inc.

RBC Dominion Securities Inc.

FirstEnergy Capital Corp.

Peters & Co. Limited

Raymond James Ltd.

**Promoter(s):**

Forest Oil Corporation

**Project #1700328**

**Issuer Name:**

Manulife Strategic Income Opportunities Fund

Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated April 27, 2011

NP 11-202 Receipt dated April 28, 2011

**Offering Price and Description:**

\$\* (\*) Maximum Price: \$10.00 per Unit Minimum Purchase: 100 Units

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

RBC Dominion Securities Inc.

CIBC World Markets Inc.

BMO Nesbitt Burns Inc.

Manulife Securities Incorporated

Scotia Capital Inc.

TD Securities Inc.

GMP Securities L.P.

HSBC Securities (Canada) Inc.

National Bank Financial Inc.

Canaccord Genuity Corp.

Mackie Research Capital Corporation

Raymond James Ltd.

Wellington West Capital Markets Inc.

**Promoter(s):**

Manulife Asset Management Limited

**Project #1735180**

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**Issuer Name:**

New Zealand Energy Corp.

Principal Regulator - British Columbia

**Type and Date:**

Preliminary Long Form Prospectus dated May 2, 2011

NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

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

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

GMP Securities L.P.

Canaccord Genuity Corp.

Macquarie Capital Markets Canada Ltd.

Haywood Securities Inc.

NCP Northland Capital Partners Inc.

**Promoter(s):**

John G. Proust

**Project #1737317**

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**Issuer Name:**

PACIFIC & WESTERN CREDIT CORP.

Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated April 28, 2011

NP 11-202 Receipt dated April 28, 2011

**Offering Price and Description:**

\$ \* - \* Units Price: \$ \*per Unit

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

Canaccord Genuity Corp.

**Promoter(s):**

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**Project #1735487**

**Issuer Name:**

Parex Resources Inc.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated April 27, 2011  
NP 11-202 Receipt dated April 27, 2011

**Offering Price and Description:**

\$189,000,000.00 - 27,000,000 Subscription Receipts each representing the right to receive one Common Share and \$85,000,000.00 - 5.25% Extendible Convertible Unsecured Subordinated Debentures Price: \$7.00 per Subscription Receipt and \$1,000 per Debenture

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

FIRSTENERGY CAPITAL CORP.  
SCOTIA CAPITAL INC.  
HAYWOOD SECURITIES INC.  
CIBC WORLD MARKETS INC.  
PETERS & CO. LIMITED  
RAYMOND JAMES LTD.  
RBC DOMINION SECURITIES INC.  
TD SECURITIES INC.

**Promoter(s):**

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**Project #1734723**

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**Issuer Name:**

POCML 1 INC.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary CPC Prospectus dated April 28, 2011  
NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

\$410,000.00 - 2,050,000 Common Shares PRICE: \$0.20 per Common Share

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

MACQUARIE PRIVATE WEALTH INC.

**Promoter(s):**

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**Project #1735876**

**Issuer Name:**

PowerShares 1-5 Year Laddered Investment Grade Corporate Bond Index ETF  
PowerShares Canadian Dividend Index ETF  
PowerShares Canadian Preferred Share Index ETF  
PowerShares Fundamental High Yield Corporate Bond (CAD Hedged) Index ETF  
PowerShares QQQ (CAD Hedged) Index ETF  
PowerShares Ultra DLUX Long Term Government Bond Index ETF  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated April 29, 2011  
NP 11-202 Receipt dated May 2, 2011

**Offering Price and Description:**

Units

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

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**Promoter(s):**

Invesco Trimark Ltd.

**Project #1737055**

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**Issuer Name:**

Poynt Corporation  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated May 2, 2011  
NP 11-202 Receipt dated May 3, 2011

**Offering Price and Description:**

81,578,946 Common Shares and 40,789,473 Purchase Warrants Issuable upon Conversion of 81,578,946 Outstanding Special Warrants For gross proceeds of \$15,499,999.74 - and - 2,628,947 Agent's Options Issuable upon exercise of 2,628,947 Agent's Warrants - and - 4,476,315 Advisor Options Issuable upon exercise of 4,476,315 Advisor Warrants  
Price: \$0.19 per Special Warrant

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

Versant Partners Inc.

**Promoter(s):**

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**Project #1740167**

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**Issuer Name:**

Qwest Energy Canadian Resource Class  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Simplified Prospectus dated April 29, 2011  
NP 11-202 Receipt dated May 3, 2011

**Offering Price and Description:**

Series F Shares

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

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**Promoter(s):**

Qwest Investment Fund Management Ltd.

**Project #1739999**

**Issuer Name:**

Red Eagle Mining Corporation  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Long Form Prospectus dated April 28, 2011  
NP 11-202 Receipt dated May 2, 2011

**Offering Price and Description:**

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

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

Raymond James Ltd.  
BMO Nesbitt Burns Inc.  
Canaccord Genuity Corp.  
Salman Partners Inc.

**Promoter(s):**

Ian Slater

**Project #1737938**

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**Issuer Name:**

Red Star Capital Ventures Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary CPC Prospectus dated April 26, 2011  
NP 11-202 Receipt dated April 27, 2011

**Offering Price and Description:**

\$250,000.00 - 2,500,000 Common Shares PRICE: \$0.10  
per Common Share

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

Raymond James Ltd

**Promoter(s):**

Asha Reeves

**Project #1733747**

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**Issuer Name:**

Secure Energy Services Inc.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated April 29, 2011  
NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

\$75,000,030.00 - 11,278,200 Subscription Receipts each  
representing the right to receive one Common Share Price:  
\$6.65 per Subscription Receipt

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

FirstEnergy Capital Corp.  
Raymond James Ltd.  
CIBC World Markets Inc.  
Peters & Co. Limited  
Macquarie Capital Markets Canada Ltd.  
Paradigm Capital Inc.

**Promoter(s):**

-

**Project #1737229**

**Issuer Name:**

Sentry Diversified Total Return Class  
Sentry U.S. Growth and Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Simplified Prospectuses dated April 27, 2011  
NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

Series A, F and I securities

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

Sentry Select Capital Inc.

**Promoter(s):**

Sentry Select Capital Inc.

**Project #1735515**

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**Issuer Name:**

SilverCrest Mines Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated May 3, 2011  
NP 11-202 Receipt dated May 3, 2011

**Offering Price and Description:**

\$30,000,000.00 - 18,750,000 Common Shares Price:  
\$1.60 per Offered Share

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

CANACCORD GENUITY CORP.  
JENNINGS CAPITAL INC.

**Promoter(s):**

-

**Project #1739969**

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**Issuer Name:**

Strategic Income Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated April 27, 2011  
NP 11-202 Receipt dated May 2, 2011

**Offering Price and Description:**

\$10.00 (One Unit) Price: \$10.00 per Unit Offering: One Unit

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

-

**Promoter(s):**

Manulife Asset Management Limited

**Project #1737708**

**Issuer Name:**

Tourmaline Oil Corp.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated April 29, 2011  
NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

\$140,250,000.00 - 5,500,000 Common Shares

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

Peters & Co. Limited  
FirstEnergy Capital Corp.  
Scotia Capital Inc.

**Promoter(s):**

-

**Project #1736574**

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**Issuer Name:**

Wild Stream Exploration Inc.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated April 29, 2011  
NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

\$11.55 per Subscription Receipts -7,700,000 Subscription  
Receipts Price: \$11.55 per Subscription Receipt

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

National Bank Financial Inc.  
Peters & Co. Limited  
FirstEnergy Capital Corp.  
Paradigm Capital Inc.  
CIBC World Markets Inc.  
GMP Securities L.P.  
Scotia Capital Inc.  
Desjardins Securities Inc.

**Promoter(s):**

-

**Project #1737210**

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**Issuer Name:**

Black Diamond Group Limited  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated May 2, 2011  
NP 11-202 Receipt dated May 2, 2011

**Offering Price and Description:**

\$46,980,000.00 -1,800,000 Common Shares Price: \$26.10  
per Common Share

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

Raymond James Ltd.  
BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
GMP Securities L.P.  
Acumen Capital Finance Partners Limited  
Cormark Securities Inc.  
FirstEnergy Capital Corp.

**Promoter(s):**

-

**Project #1732731**

**Issuer Name:**

Bravura Ventures Corp.  
Principal Regulator - British Columbia

**Type and Date:**

Final Long Form Prospectus dated April 28, 2011  
NP 11-202 Receipt dated April 28, 2011

**Offering Price and Description:**

\$825,000.00 Offering of Common Shares (5,500,000  
Common Shares at a price of \$0.15 per Common Share)

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

Haywood Securities Inc.

**Promoter(s):**

Brook Bellian  
Vicente Herrera  
Quinn Field-Dyte  
**Project #1720552**

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**Issuer Name:**

Brookfield Properties Corporation  
Brookfield Residential Properties Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated May 3, 2011  
NP 11-202 Receipt dated May 3, 2011

**Offering Price and Description:**

U.S.\$515,000,000.00 - Rights to Purchase up to  
51,500,000 Common Shares of Brookfield Residential  
Properties Inc. at a Price of U.S.\$10.00 per Common Share

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

-

**Promoter(s):**

-

**Project #1726202/1725842**

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**Issuer Name:**

Calvista Gold Corporation  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated April 25, 2011  
NP 11-202 Receipt dated April 27, 2011

**Offering Price and Description:**

A MINIMUM OF 15,000,000 UNITS AND A MAXIMUM OF  
20,000,000 UNITS \$1.00 PER UNIT

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

Haywood Securities Inc.

**Promoter(s):**

Norvista Resources Corpation  
**Project #1691325**

**Issuer Name:**

Colt Resources Inc.  
Principal Regulator - Quebec

**Type and Date:**

Final Short Form Prospectus dated April 27, 2011  
NP 11-202 Receipt dated April 27, 2011

**Offering Price and Description:**

Minimum Offering: \$9,119,880.00 or 12,666,500 Common Shares; Maximum Offering: \$15,120,000.00 or 21,000,000 Common Shares

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

CANACCORD GENUITY CORP.  
DESJARDINS SECURITIES INC.  
LAURENTIAN BANK SECURITIES INC.  
D&D SECURITIES INC.

**Promoter(s):**

-

**Project #1728827**

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**Issuer Name:**

Compass Petroleum Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated April 29, 2011  
NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

\$10,290,000.00 - 4,900,000 Common Shares  
\$2,000,000.00 - 800,000 Flow-Through Shares Price:  
\$2.10 per Common Share \$2.50 per Flow-Through Share

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

Raymond James Ltd.  
Wellington West Capital Markets Inc.  
Canaccord Genuity Corp.

**Promoter(s):**

-

**Project #1732832**

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**Issuer Name:**

Exemplar Canadian Focus Portfolio  
Exemplar Diversified Portfolio  
Exemplar Global Opportunities Portfolio  
Exemplar Market Neutral Portfolio  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated April 27, 2011  
NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

-

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

-

**Promoter(s):**

Blumont Capital Corporation  
**Project #1714165**

**Issuer Name:**

First Trust Advantaged Short Duration High Yield Bond Fund

(Class A Units and/or Class F Units)

Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated April 26, 2011  
NP 11-202 Receipt dated April 28, 2011

**Offering Price and Description:**

Maximum - \$150,000,000 (12,500,000 Class A Units and/or Class F Units) @ \$12.00 per Class A Unit or Class F Unit  
Minimum - \$20,000,004 (1,666,667 Class A Units) @ \$12.00 per Class A Unit

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

TD Securities Inc.  
CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
BMO Nesbitt Burns Inc.  
National Bank Financial Inc.  
Scotia Capital Inc.  
GMP Securities L.P.  
HSBC Securities (Canada) Inc.  
Raymond James Ltd.  
Canaccord Genuity Corp.  
Desjardins Securities Inc.  
Wellington West Capital Markets Inc.  
Macquarie Private Wealth Inc.  
Mackie Research Capital Corporation  
Union Securities Ltd.  
Manulife Securities Inc.

**Promoter(s):**

First Defined Portfolio Management Co.  
**Project #1717170**

**Issuer Name:**

Front Street MLP Income Fund II Ltd.  
(Equity Shares)  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated April 28, 2011  
NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

Maximum - \$150,000,000.00 (15,000,000 Equity Shares)  
@ \$10/sh.; Minimum - \$20,000,000.00 (2,000,000 Equity  
Shares) @ \$10/sh.

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

CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
National Bank Financial Inc.  
BMO Nesbitt Burns Inc.  
Scotia Capital Inc.  
TD Securities Inc.  
Canaccord Genuity Corp.  
Dundee Securities Ltd.  
GMP Securities L.P.  
HSBC Securities (Canada) Inc.  
Macquarie Capital Markets Canada Ltd.  
Raymond James Ltd.  
Wellington West Capital Markets Inc.  
Sherbrooke Street Capital (SSC) Inc.  
Tuscarora Capital Inc.

**Promoter(s):**

Front Street Capital 2004  
**Project #1715324**

**Issuer Name:**

Horizons AlphaPro Managed S&P/TSX 60 ETF  
(Class E Units)  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated April 7, 2011 to Final Long Form  
Prospectus dated January 19, 2011  
NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

-

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

-

**Promoter(s):**

ALPHAPRO MANAGEMENT INC.  
**Project #1674846**

**Issuer Name:**

Industrial Alliance Insurance and Financial Services inc.  
Principal Regulator - Quebec

**Type and Date:**

Final Base Shelf Prospectus dated April 29, 2011  
NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

\$1,000,000,000.00:  
Debt Securities  
Class A Preferred Shares  
Common Shares  
Subscription Receipts  
Warrants  
Share Purchase Contracts  
Units

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

-

**Promoter(s):**

-

**Project #1727293**

**Issuer Name:**

Malbex Resources Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated May 2, 2011  
NP 11-202 Receipt dated May 2, 2011

**Offering Price and Description:**

\$15,000,000.00 - 30,000,000 Units Price: \$0.50 per Unit

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

BMO Nesbitt Burns Inc.

**Promoter(s):**

-

**Project #1733249**

**Issuer Name:**

Manas Petroleum Corporation  
Principal Regulator - British Columbia

**Type and Date:**

Final Long Form Prospectus dated May 2, 2011  
NP 11-202 Receipt dated May 2, 2011

**Offering Price and Description:**

Minimum Offering: US\$20,000,000.00 (40,000,000 Units);  
Maximum Offering: US\$30,000,000.00 (60,000,000 Units) -  
Units (each unit consisting of one share of common stock  
and one common stock purchase warrant)

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

Raymond James Ltd.

**Promoter(s):**

-

**Project #1693248**

**Issuer Name:**

Marquest Canadian Equity Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated April 28, 2011  
NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

\$100,000,000.00 (10,000,000 Units) Maximum \$10.00 per Unit

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

SCOTIA CAPITAL INC.  
CIBC WORLD MARKETS INC.  
RBC DOMINION SECURITIES INC.  
BMO NESBITT BURNS INC.  
NATIONAL BANK FINANCIAL INC.  
CANACCORD GENUITY CORP.  
GMP SECURITIES L.P.  
HSBC SECURITIES (CANADA) INC.  
RAYMOND JAMES LTD.  
WELLINGTON WEST CAPITAL MARKETS INC.  
MACQUARIE CAPITAL MARKETS CANADA LTD.  
MACKIE RESEARCH CAPITAL CORPORATION  
DUNDEE SECURITIES LTD.  
UNION SECURITIES LTD.  
Marquest Asset Management Inc.

**Promoter(s):**

MARQUEST ASSET MANAGEMENT INC.

**Project #1703268**

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**Issuer Name:**

Monster Mining Corp.  
Principal Regulator - British Columbia

**Type and Date:**

Final Long Form Prospectus dated April 26, 2011  
NP 11-202 Receipt dated April 27, 2011

**Offering Price and Description:**

Offering of \$2,000,000 .00 - 5,000,000 Units @ \$0.40 per Unit

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

Macquarie Private Wealth Inc.

**Promoter(s):**

Robert Eadie

**Project #1676746**

**Issuer Name:**

O'Leary U.S. Strategic Yield Advantaged Fund  
Principal Regulator - Quebec

**Type and Date:**

Final Long Form Prospectus dated April 28, 2011  
NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

Maximum - \$150,000,000.00 (12,500,000 Class A Units) @ \$12/Unit; Maximum - U.S. \$150,000,000.00 (12,500,000 Class U Units) @ U.S. \$12/Unit Minimum - \$20,000,004 (1,666,667 Class A Units) @ \$12/Unit Minimum - \$20,000,004 (1,666,667 Class U Units) @ U.S. \$12/Unit

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

CIBC World Markets Inc.  
RBC Dominion Securities Inc.  
BMO Nesbitt Burns Inc.  
National Bank Financial Inc.  
Scotia Capital Inc.  
TD Securities Inc.  
Macquarie Private Wealth Inc.  
Wellington West Capital Markets Inc.  
Canaccord Genuity Corp.  
GMP Securities L.P.  
HSBC Securities (Canada) Inc.  
Raymond James Ltd.  
Dundee Securities Ltd.  
Mackie Research Capital Corporation  
Manulife Securities Incorporated  
MGI Securities Inc.

**Promoter(s):**

O'Leary Funds Management LP

**Project #1721434**

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**Issuer Name:**

Petroamerica Oil Corp.  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated April 29, 2011  
NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

\$30,500,000.00 - 152,500,000 Units Price: \$0.20 per Unit

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

Raymond James Ltd.  
GMP Securities L.P.  
Haywood Securities Inc.  
Canaccord Genuity Corp.  
Jennings Capital Inc.

**Promoter(s):**

-

**Project #1732028**



**Issuer Name:**

Premium Income Corporation  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated April 26, 2011  
NP 11-202 Receipt dated April 28, 2011

**Offering Price and Description:**

Warrants to Subscribe for up to 4,761,746 Units (each Unit consisting of one Class A Share and one Preferred Share) at a Subscription Price of \$23.65

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

-

**Promoter(s):**

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**Project #1712021**

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**Issuer Name:**

Provident Energy Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated April 29, 2011  
NP 11-202 Receipt dated April 29, 2011

**Offering Price and Description:**

\$150,000,000.00 - 5.75% Convertible Unsecured Subordinated Debentures

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

TD Securities Inc.  
National Bank Financial Inc.  
BMO Nesbitt Burns Inc.  
RBC Dominion Securities Inc.  
Scotia Capital Inc.  
CIBC World Markets Inc.  
Canaccord Genuity Corp.  
HSBC Securities (Canada) Inc.  
FirstEnergy Capital Corp.

**Promoter(s):**

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**Project #1732718**

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**Issuer Name:**

Short Duration High Yield Portfolio Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Non-Offering Prospectus dated April 26, 2011  
NP 11-202 Receipt dated April 28, 2011

**Offering Price and Description:**

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

-

**Promoter(s):**

First Defined Portfolio Management Co.  
**Project #1724868**

**Issuer Name:**

Sprott Silver Bullion Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectus dated May 3, 2011  
NP 11-202 Receipt dated May 3, 2011

**Offering Price and Description:**

Series A, Series F and Series I Units

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

-

**Promoter(s):**

Sprott Asset Management LP  
**Project #1693456**

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**Issuer Name:**

Sunstone U.S. Opportunity (No. 4) Realty Trust  
Sunstone (No. 4) Limited Partnership  
Principal Regulator - British Columbia

**Type and Date:**

Final Long Form Prospectus dated April 27, 2011  
NP 11-202 Receipt dated April 27, 2011

**Offering Price and Description:**

Minimum: \$5,000,000 (4,000 Trust Units)  
Maximum: \$50,000,000 (40,000 Trust Units)  
\$1,250 per Trust Unit

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

Dundee Securities Ltd.  
GMP Securities L.P.  
Raymond James Ltd.  
Canaccord Genuity Corp.  
Macquarie Private Wealth Inc.  
Burgeonvest Bick Securities Limited  
HSBC Securities (Canada) Inc.  
Sora Group Wealth Advisors Inc.  
Union Securities Ltd.

**Promoter(s):**

Sunstone Realty Advisors Inc.  
**Project #1711465/1711463**

**Issuer Name:**

Tech Leaders Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated April 27, 2011  
NP 11-202 Receipt dated April 28, 2011

**Offering Price and Description:**

Maximum - \$200,000,000.00 - 20,000,000 Units @ \$10.00  
per Unit - Minimum - \$35,000,000.00 - 3,500,000 Units @  
\$10.00 per Unit

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

RBC Dominion Securities Inc.  
CIBC World Markets Inc.  
TD Securities Inc.  
BMO Nesbitt Burns Inc.  
National Bank Financial Inc.  
Scotia Capital Inc.  
HSBC Securities (Canada) Inc.  
Mackie Research Capital Corporation  
Raymond James Ltd.  
Canaccord Genuity Corp.  
Dundee Securities Ltd.  
Macquarie Private Wealth Inc.  
Wellington West Capital Markets Inc.  
Desjardins Securities Inc.  
Manulife Securities Incorporated

**Promoter(s):**

Brompton Funds Management Limited

**Project #1718612**

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**Issuer Name:**

UBS (Canada) High Yield Debt Fund

**Type and Date:**

Final Simplified Prospectus dated April 17, 2011  
Receipted on April 27, 2011

**Offering Price and Description:**

Mutual Fund Units @ Net Asset Value

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

-

**Promoter(s):**

UBS Global Asset Management (Canada) Inc.

**Project #1711349**

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## Chapter 12

# Registrations

### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Joel Raby Asset Management Inc.	Exempt Market Dealer	April 29, 2011
Change in Registration Category	Legg Mason Canada Inc.	From: Portfolio Manager, Commodity Trading Manager and Exempt Market Dealer  To: Portfolio Manager, Commodity Trading Manager, Exempt Market Dealer and Investment Fund Manager	May 4, 2011

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## Chapter 13

# SROs, Marketplaces and Clearing Agencies

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### 13.3 Clearing Agencies

#### 13.3.1 Material Amendments to CDS Rules – Real Time Continuous Net Settlement Process – Request for Comments

##### CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

##### MATERIAL AMENDMENTS TO CDS RULES

##### REAL TIME CONTINUOUS NET SETTLEMENT PROCESS

##### REQUEST FOR COMMENTS

#### A. DESCRIPTION OF THE PROPOSED CDS RULE AMENDMENTS

The proposed CDS Participant Rule amendments replace the intraday continuous net settlement process with a real time continuous net settlement process.

The intraday continuous net settlement process currently runs four times a day with cycles scheduled at 10:00, 12:00, 14:00 and 15:30.<sup>1</sup> The new real time continuous net settlement process will eliminate the four intra-day cycles and run throughout the day from the commencement of CDSX® daily processing to the start of payment exchange.

#### B. NATURE AND PURPOSE OF THE PROPOSED CDS RULE AMENDMENTS

The proposed CDS Participant Rule amendments create a new real time continuous net settlement process that will eliminate the 30 minute gap differential in completion times as well as creating a settlement process to match the real time running of the TFT settlement process.

Currently, the end of day intraday continuous net settlement process cycle runs at 15:30. The real time TFT<sup>2</sup> settlement process ends at 16:00. The 30 minute gap between the completion of each settlement process results in securities received through one settlement process being unavailable for use in the other settlement process. For instance, securities received through the real time TFT settlement process after 15:30 cannot be subsequently input into the intraday continuous net settlement process since the intraday continuous net settlement process would already be completed. Similarly, with intraday continuous net settlement process being completed at 15:30, no securities would be received that could be input into real time TFT settlement process between 15:30 and 16:00.

The amendment to CDS Participant Rule 7.4.1 corrects a typographical error.

#### C. IMPACT OF THE PROPOSED CDS RULE AMENDMENTS

As noted, the real time continuous net settlement process will be synchronized with the TFT settlement process allowing for settled positions to be used in the other settlement process right up to 16:00. For example, when a purchase trade in the TFT settlement process trade settles between 15:30 and 16:00, the received position may be used to settle an outstanding deliver position in the real time continuous net settlement process. Similarly, when a receive position settles in the real time continuous net settlement process between 15:30 and 16:00, that position may be used to settle a sell trade in the TFT trade settlement process. Participant's exposure to settlement and financial risk will hence be reduced as positions settled under one settlement process can subsequently be used in the other settlement process.

Due to the new real time continuous net settlement process running continually throughout the day, buy-in liabilities associated with outstanding CNS Obligations may be reduced.<sup>3</sup> Currently, the final buy-in execution list is generated at 14:30 while the intraday continuous net settlement process cycle runs at 14:00, creating a 30 minute gap where settlements are not effected and hence unavailable to reduce buy-in liabilities. Under the real time continuous net settlement process, settlements will continue to be effected up to 14:30, eliminating the 30 minute gap.

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<sup>1</sup> All time references in this Notice are Eastern Time.

<sup>2</sup> Trade for trade.

<sup>3</sup> See CDS Participant Rule 7.4.8(b) for a description of the buy-in procedure.

It is expected that the real time continuous net settlement process may result in additional settlement costs (compared to intraday continuous net settlement process) as trades are settled on a partial fill basis (as securities become available) as opposed to the four discrete cycles in the intraday continuous net settlement process (where securities are aggregated up to the running of each cycle). Generally, it is believed that the partial fills will not be significant in number and the benefits from reduced risk exceed any additional costs.

### **C.1 Competition**

There is no expected impact on competition. The proposed amendments create a new settlement process that will be available to all CDS Participants.

### **C.2 Risks and Compliance Costs**

Under the current intraday continuous net settlement process, CDS Participants may be exposed to settlement and financial risk through unnecessary collateral and capital charges, and unexpected cash outlays. Furthermore, CDS Participants incur added costs to mitigate against these risks.

The real time continuous net settlement process can reduce risk for CDS and its Participants by decreasing outstanding positions (due to the processing window being extended to 16:00).

### **C.3 Comparison to International Standards – (a) Committee on Payment and Settlement Systems of the Bank for International Settlements, (b) Technical Committee of the International Organization of Securities Commissions, and (c) the Group of Thirty**

The Committee on Payment and Settlement Systems of the Bank for International Settlements and the Technical Committee of the International Organization of Securities Commissions have issued a joint consultative report (March 2011) for financial market infrastructures.<sup>4</sup> Principle 8 of this report addresses settlement finality and advocates final settlement intraday or in real time. To this end, the proposed amendments are consistent with Principle 8.

Recommendation 4 of the Group of Thirty's Report "Global Clearance and Settlement – A Plan of Action" provides that the timing between different clearing and settlement systems and associated payment and foreign exchange systems should be synchronized.<sup>5</sup> Moving to real time settlement processes increases the likelihood of synchronization between different clearing and settlement systems. Settlements under a real time settlement process become available to other clearing and settlement systems earlier than settlements obtained through cyclically run settlement processes (i.e. must wait for cycles to be run).

## **D. DESCRIPTION OF THE RULE DRAFTING PROCESS**

### **D.1 Development Context**

The Debt & Equity Subcommittee of CDS's Strategic Development Review Committee ("SDRC") requested that CDS find a solution to the end of day 30 minute time differential between the two settlement processes.

### **D.2 Rule Drafting Process**

Each amendment to the CDS Participant Rules is reviewed by CDS's Legal Drafting Group ("LDG"). The LDG is a committee that includes members of Participants' legal and business groups. The LDG's mandate is to advise CDS management and its Board of Directors on CDS Participant Rule amendments and other legal matters relating to centralized securities depository and clearing services in order to ensure that they meet the needs of CDS, its Participants and the securities industry.

These amendments were reviewed and approved by the Board of Directors of CDS Ltd. on April 20, 2011.

### **D.3 Issues Considered**

The primary concern was to eliminate the risk associated with unsynchronized settlement processes.

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<sup>4</sup> <http://www.bis.org/publ/cpss94.pdf>

<sup>5</sup> [http://www.group30.org/rpt\\_12.shtml](http://www.group30.org/rpt_12.shtml)

#### D.4 Consultation

The Debt & Equity Subcommittee of the SDRC has been kept apprised of the status of the initiative. The SDRC will vet the CDS Procedure amendments associated the initiative (a separate Notice addressing Procedure amendments regarding, *inter alia*, the real time continuous net settlement process is expected to be concurrently released for comment with this CDS Participant Rule amendments Notice).

#### D.5 Alternatives Considered

One alternative explored was to add a 16:00 cycle for the intraday continuous net settlement process to correspond with the end of the real time TFT settlement process. While this alternative would address the end of day timing differential, moving to a real time continuous net settlement process would also achieve the synchronization goal and add other benefits (such as reducing buy-in liabilities as discussed in section C above).

Another alternative that was explored was to schedule an additional combined batch net settlement/ continuous net settlement process cycle (normally run at 04:00) prior to payment exchange (which occurs at 16:00). The intended effect would be to synchronize as closely as possible the completion times of the intraday continuous net settlement process and real time TFT settlement process. However, the combined batch net settlement/ continuous net settlement process cycle requires significant technological processing capacity. If the combined batch net settlement/ continuous net settlement process was run at 16:00 (exactly synchronized), payment exchange would be significantly delayed. If combined batch net settlement/ continuous net settlement process was run at any other time after 15:30 but before 16:00, synchronization would not be achieved; additionally the real time TFT settlement process would need to be suspended during such cycle. In light of these limitations, this alternative was discarded.

It was also considered that a new CDS CUID<sup>6</sup> could be set up for the purposes of receiving securities from CDS Participants for input into the intraday continuous net settlement process after the last cycle at 15:30 (currently, no deliveries into intraday continuous net settlement process are permitted after 15:30). This alternative was rejected primarily on the basis of being more costly to develop than the other options. Furthermore, this alternative would require non-automated intervention by CDS Participants to input securities after 15:30 and thus be unappealing from an efficiency perspective.

While these options would address the timing issue faced by CDS Participants in part, the members of the Debt & Equity Subcommittee of the SDRC preferred moving to a real-time continuous net settlement process as this solution would more effectively address the timing issue.

#### D.6 Implementation Plan

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the Ontario *Securities Act*. The Autorité des marchés financiers has authorized CDS to carry on clearing activities in Québec pursuant to sections 169 and 170 of the Québec *Securities Act*. In addition CDS is deemed to be the clearing house for CDSX, a clearing and settlement system designated by the Bank of Canada pursuant to section 4 of the *Payment Clearing and Settlement Act*. The Ontario Securities Commission, the Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the "Recognizing Regulators".

The amendments to CDS Participant Rules may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment.

### E. TECHNOLOGICAL SYSTEMS CHANGES

#### E.1 CDS

CDS will need to undertake minor technological system changes to implement the real time continuous net settlement process. The changes will follow CDS's system development life-cycle protocol.

#### E.2 CDS Participants

No technological system changes will be required by CDS Participants.

#### E.3 Other Market Participants

No technological system changes will be required by other market participants.

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<sup>6</sup> CUID is customer unit identifier.

## **F. COMPARISON TO OTHER CLEARING AGENCIES**

Implementing a real time continuous net settlement process will align CDS's settlement process with NSCC's comparable CNS settlement process that operates on a daily ongoing-basis (analogous to real time settlement).<sup>7</sup>

## **G. PUBLIC INTEREST ASSESSMENT**

CDS has determined that the proposed amendments are not contrary to the public interest.

## **H. COMMENTS**

Comments on the proposed amendments must be in writing and submitted within 30 calendar days following the date of publication of this notice in the Ontario Securities Commission Bulletin to:

Legal Department  
CDS Clearing and Depository Services Inc.  
85 Richmond Street West  
Toronto, Ontario M5H 2C9

Fax: 416-365-1984  
e-mail: [attention@cds.ca](mailto:attention@cds.ca)

Copies should also be provided to the Autorité des marchés financiers and the Ontario Securities Commission by forwarding a copy to each of the following individuals:

M<sup>e</sup> Anne-Marie Beaudoin  
Secrétaire de l'Autorité  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, tour de la Bourse  
Montréal (Québec) H4Z 1G3

Manager, Market Regulation  
Capital Markets Branch  
Ontario Securities Commission  
Suite 1903, Box 55,  
20 Queen Street West  
Toronto, Ontario, M5H 3S8

Télécopieur: (514) 864-6381  
Courrier électronique: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

Fax: 416-595-8940  
e-mail: [marketregulation@osc.gov.on.ca](mailto:marketregulation@osc.gov.on.ca)

CDS will make available to the public, upon request, all comments received during the comment period.

## **I. PROPOSED CDS RULE AMENDMENTS**

Attached at Appendix A are the clean and blacklined versions of the proposed procedural amendments.

Appendix "A" contains text of current CDS Participant Rules marked to reflect proposed amendments as well as text of the CDS Participant Rules reflecting the adoption of the proposed amendments.

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<sup>7</sup> See Procedure VII. CNS Accounting Operation, C. Receipt and Delivery of Securities, 4. Day Cycle at p. 210 of the NSCC Rules and Procedures [http://www.dtcc.com/legal/rules\\_proc/nscc\\_rules.pdf](http://www.dtcc.com/legal/rules_proc/nscc_rules.pdf).



**APPENDIX "A"**  
**PROPOSED CDS PARTICIPANT RULE AMENDMENTS**

Text of CDS Participant Rules marked to reflect proposed amendments	Text of CDS Participant Rules reflecting the adoption of proposed amendments
<p><b>1.2.1 Definitions</b></p> <p>...</p> <p>"<del>Intraday Real Time</del> Continuous Net Settlement Process or "<del>Intraday CNS Process</del>" means one of the Settlement processes described in Rule 7.5.</p> <p><b>7.1.1 Overview of Settlement Service</b></p> <p>...</p> <p>(g) There are four Settlement processes: the <del>Intraday Real Time</del> Continuous Net Settlement Process, the Real Time TFT Settlement Process the Combined Batch Net Settlement/Continuous Net Settlement Process and the FINet Real Time Settlement Process.</p> <p><b>7.4.1 Overview of CNS Function</b></p> <p>The Continuous Net <del>Settlement</del> Function or CNS is a Function to net eligible Trades. CNS calculates CNS Obligations owing from time to time between a Participant and CDS by novating, on Value Date, the obligations between the Participants arising from an eligible Trade to obligations with CDS and by netting all of a Participant's like obligations with CDS. Each resulting CNS Obligation is a Central Counterparty Obligation that is Settled on its Value Date through the Settlement Service.</p> <p><b>7.5.1 Settlement Processes</b></p> <p>A pending Trade or outstanding Central Counterparty Obligation is considered for Settlement on its Value Date. There are four Settlement processes: the Real Time TFT Settlement Process (the Real Time TFT Process), the <del>Intraday Real Time</del> Continuous Net Settlement Process (the <del>Intraday CNS Process</del>), the Combined Batch Net Settlement/Continuous Net Settlement Process (the Combined Batch/CNS Process) and the FINet Real Time Settlement Process.</p> <p><b>7.5.3 <u>Intraday Real Time</u> <del>CNS</del><u>Continuous Net Settlement</u> Process</b></p> <p>The <del>Intraday Real Time</del> Continuous Net Settlement Process:</p> <p>(a) is run <del>several times</del> <u>continuously</u> each day as a discrete process <u>in accordance with the Procedures</u>;</p> <p>(b) processes Settlement of outstanding Central Counterparty Obligations for CNS-;</p> <p>(c) does not usually novate or net newly reported Trades to create new Central Counterparty Obligations, but may be used by CDS in its discretion to novate and net newly reported Trades that have a CNS mode of settlement indicator in order to calculate new Central Counterparty Obligations, in which event it will also calculate and process</p>	<p><b>1.2.1 Definitions</b></p> <p>...</p> <p>"Real Time Continuous Net Settlement Process means one of the Settlement processes described in Rule 7.5.</p> <p><b>7.1.1 Overview of Settlement Service</b></p> <p>...</p> <p>(g) There are four Settlement processes: the Real Time Continuous Net Settlement Process, the Real Time TFT Settlement Process the Combined Batch Net Settlement/Continuous Net Settlement Process and the FINet Real Time Settlement Process.</p> <p><b>7.4.1 Overview of CNS Function</b></p> <p>The Continuous Net Settlement Function or CNS is a Function to net eligible Trades. CNS calculates CNS Obligations owing from time to time between a Participant and CDS by novating, on Value Date, the obligations between the Participants arising from an eligible Trade to obligations with CDS and by netting all of a Participant's like obligations with CDS. Each resulting CNS Obligation is a Central Counterparty Obligation that is Settled on its Value Date through the Settlement Service.</p> <p><b>7.5.1 Settlement Processes</b></p> <p>A pending Trade or outstanding Central Counterparty Obligation is considered for Settlement on its Value Date. There are four Settlement processes: the Real Time TFT Settlement Process (the Real Time TFT Process), the Real Time Continuous Net Settlement Process, the Combined Batch Net Settlement/Continuous Net Settlement Process (the Combined Batch/CNS Process) and the FINet Real Time Settlement Process.</p> <p><b>7.5.3 Real Time Continuous Net Settlement Process</b></p> <p>The Real Time Continuous Net Settlement Process:</p> <p>(a) is run continuously each day as a discrete process in accordance with the Procedures;</p> <p>(b) processes Settlement of outstanding Central Counterparty Obligations for CNS-;</p> <p>(c) does not usually novate or net newly reported Trades to create new Central Counterparty Obligations, but may be used by CDS in its discretion to novate and net newly reported Trades that have a CNS mode of settlement indicator in order to calculate new Central Counterparty Obligations, in which event it will also calculate and process the related Marks;</p>

Text of CDS Participant Rules marked to reflect proposed amendments	Text of CDS Participant Rules reflecting the adoption of proposed amendments
<p>the related Marks;</p> <p>(d) Settles an outstanding Central Counterparty Obligation either in its entirety or partially;</p> <p>(e) applies the pre-settlement system edits described in Rule 5.13 to the Securities and Funds Account balances resulting from the Settlement of each individual outstanding Central Counterparty Obligation.</p> <p>When the Settlement of a Central Counterparty Obligation is effected by the <u>Intraday Real Time CNSContinuous Net Settlement</u> Process, amounts are used under the System-Operating Cap and Lines of Credit at the same time that Securities are delivered pursuant to Rule 7.6.2 or Rule 7.6.4 and payment is made pursuant to Rule 7.6.5. All of the entries required for each Settlement processed are processed on a committed basis, with the result that either all of the entries (including all entries to Funds Accounts and Securities Accounts and all entries using amounts under System-Operating Caps and Lines of Credit in respect of negative Funds Account balances) required to complete that Settlement are made, or, if for any reason any of the entries cannot be made, then none of the entries are made and the Central Counterparty Obligation is not Settled.</p> <p><b>7.5.4 Combined Batch/CNS Process</b></p> <p>...</p> <p>(a) is run once each day as a discrete process before the Real Time TFT Process or the <u>Intraday Real Time CNSContinuous Net Settlement</u> Process is run, and may be run at additional times if CDS considers such action desirable to optimize Service functionality;</p>	<p>(d) Settles an outstanding Central Counterparty Obligation either in its entirety or partially;</p> <p>(e) applies the pre-settlement system edits described in Rule 5.13 to the Securities and Funds Account balances resulting from the Settlement of each individual outstanding Central Counterparty Obligation.</p> <p>When the Settlement of a Central Counterparty Obligation is effected by the Real Time Continuous Net Settlement Process, amounts are used under the System-Operating Cap and Lines of Credit at the same time that Securities are delivered pursuant to Rule 7.6.2 or Rule 7.6.4 and payment is made pursuant to Rule 7.6.5. All of the entries required for each Settlement processed are processed on a committed basis, with the result that either all of the entries (including all entries to Funds Accounts and Securities Accounts and all entries using amounts under System-Operating Caps and Lines of Credit in respect of negative Funds Account balances) required to complete that Settlement are made, or, if for any reason any of the entries cannot be made, then none of the entries are made and the Central Counterparty Obligation is not Settled.</p> <p><b>7.5.4 Combined Batch/CNS Process</b></p> <p>...</p> <p>(a) is run once each day as a discrete process before the Real Time TFT Process or the Real Time Continuous Net Settlement Process is run, and may be run at additional times if CDS considers such action desirable to optimize Service functionality;</p>

**13.3.2 Material Amendments to CDS Procedures – Real Time CNS Settlement and CNS Settlement Hold – Request for Comments**

**CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)**

**MATERIAL AMENDMENTS TO CDS PROCEDURES**

**REAL-TIME CNS SETTLEMENT AND CNS SETTLEMENT HOLD**

**REQUEST FOR COMMENTS**

**A. DESCRIPTION OF THE PROPOSED CDS PROCEDURE AMENDMENTS**

The proposed CDS procedure amendments are intended to address the replacement of the intraday continuous net settlement (CNS) settlement cycles with a real-time CNS settlement process and the implementation of CNS settlement hold functionality.

Currently, CDS's procedures contain information related to the intraday CNS settlement cycles that run at approximately 10:00, 12:00, 14:00 and 15:30 ET. This information will be replaced with information related to the real-time CNS settlement process that will run from system start-up through to the start of payment exchange and information related to CNS settlement hold functionality will be added to CDS's procedures.

**B. NATURE AND PURPOSE OF THE PROPOSED CDS PROCEDURE AMENDMENTS**

Current intraday CNS settlement cycles are scheduled to run four times each day, with the last cycle running at 15:30 ET. This leaves half an hour between the last intraday CNS settlement cycle and the time that real-time trade-for-trade (TFT) settlement versus payment ends (i.e. 16:00 ET).

This limitation relative to the opportunity to use positions received through the last CNS settlement cycle to facilitate real-time TFT settlement (or vice-versa) may expose participants to settlement and financial risk, such as collateral and capital charges and unexpected cash outlays, as well as added costs to mitigate such risks.

The Debt & Equity Subcommittee of CDS's Strategic Development Review Committee requested a solution to this timing issue between the CNS and TFT modes of settlement.

CDS's proposed solution entails replacing the intraday CNS settlement cycles with a real-time CNS settlement process, and introducing CNS settlement Hold functionality.

The purpose of the proposed CDS procedure amendments is to provide participants with information related to the systemic changes that are required to replace the intraday CNS settlement cycles with the real-time CNS settlement process and CNS settlement Hold functionalities.

**C. IMPACT OF THE PROPOSED CDS PROCEDURE AMENDMENTS**

The following is a list of identified impacts to participants and/or their service bureaus:

- The limitations posed by the four current intraday CNS settlement cycles will be eliminated as the real-time CNS settlement process will run continuously from system start-up through to the start of payment exchange:
  - When a TFT trade (buy) settles between 15:30 and 16:00 ET that position may be used to settle an outstanding-to-deliver CNS position
  - When an outstanding-to-receive CNS position settles between 15:30 and 16:00 ET that position may be used to settle a TFT trade (sell)
  - An additional half-hour will be available to deliver positions to CNS in order to reduce or eliminate CNS buy-in liabilities before the final buy-in execution list is generated at 14:30 ET (currently the last intraday CNS settlement cycle prior to the generation of the final buy-in execution list runs at approximately 14:00 ET)

- CNS buy-in update notification messages will be received throughout the day as outstanding CNS buy-ins are affected by the real-time CNS settlement process rather than at the conclusion of each of the intraday CNS settlement cycles, as is the case today
- CNS settlement activity may increase (e.g. increase in CNS settlement and CNS buy-in notification messages), resulting in increased CNS settlement costs
- The new Hold CNS functionality (i.e. the ability to change the settlement control indicator from 'Y' to 'N' or vice-versa on outstanding-to-deliver CNS positions) will allow for prioritization according to settlement and/or funding needs (currently participants are only able to place holds on TFT trades)
- Participant or Service Bureau development will be required in order to generate/send CNS position - Settlement Control Indicator Interlink messages to CDS and process CNS position - Settlement Control Indicator messages received from CDS

**Note:** There will be no impact to the BNS/CNS process or to the CNS extraction, netting and mark-to-market processes. However, CNS settlement will not occur when the intraday CNS netting process runs at approximately 13:00 ET.

### **C.1 Competition**

N/A – CDS is the only provider of securities settlement services in Canada.

### **C.2 Risks and Compliance Costs**

N/A – No new risks or compliance costs were identified.

### **C.3 Comparison to International Standards – (a) Committee on Payment and Settlement Systems of the Bank for International Settlements, (b) Technical Committee of the International Organization of Securities Commissions, and (c) the Group of Thirty**

The Group of Thirty's Recommendation 4 states "Synchronize timing between different clearing and settlement systems and associated payment and foreign exchange systems".

Moving to a real-time CNS settlement process will be in keeping with this recommendation as CDS's CNS settlement process will be more closely synchronized with NSCC's CNS settlement process.

No other comparisons to international standards were identified.

## **D. DESCRIPTION OF THE PROCEDURE DRAFTING PROCESS**

### **D.1 Development Context**

CDS's participant procedures were reviewed by CDS staff and references to CNS settlement were identified. Proposed amendments to the procedures related to the replacement of the intraday CNS settlement cycles with a real-time CNS settlement process and the introduction of CNS settlement hold functionality were then incorporated within the existing CDS's participant procedures. The proposed amendments to CDS's participant procedures were then approved by CDS management.

### **D.2 Procedure Drafting Process**

CDS Procedure Amendments are reviewed and approved by CDS's Strategic Development Review Committee ("SDRC"). The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by participants and CDS. The SDRC's membership includes representatives from the CDS Participant community and it meets on a monthly basis.

These amendments were reviewed and approved by the SDRC on March 24, 2011.

### **D.3 Issues Considered**

N/A - No issues were identified.

#### **D.4 Consultation**

The Debt & Equity Subcommittee of the SDRC has been kept apprised of the status of the Real-time CNS Settlement and CNS Settlement Hold project and CDS bulletins related to the project will be released.

#### **D.5 Alternatives Considered**

The following alternatives were considered:

- Scheduling an additional BNS/CNS cycle prior to payment exchange
- Allowing participants to deliver securities into CNS to cover outstanding CNS positions

While these options would address the timing issue faced by participants in part, the members of the Debt & Equity Subcommittee of the SDRC preferred moving to a real-time CNS settlement process and implementing CNS settlement hold functionality as this solution would more effectively address the timing issue.

#### **D.6 Implementation Plan**

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the Ontario *Securities Act*. The Autorité des marchés financiers has authorized CDS to carry on clearing activities in Québec pursuant to sections 169 and 170 of the Québec *Securities Act*. In addition CDS is deemed to be the clearing house for CDSX®, a clearing and settlement system designated by the Bank of Canada pursuant to section 4 of the *Payment Clearing and Settlement Act*. The Ontario Securities Commission, the Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the “Recognizing Regulators”.

The amendments to Participant Procedures may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment.

### **E. TECHNOLOGICAL SYSTEMS CHANGES**

#### **E.1 CDS**

Technological system changes are required by CDS in order to replace the intraday CNS settlement cycles with a real-time CNS settlement process and introduce CNS settlement hold functionality.

The required technological system changes will follow CDS’s system development life-cycle (SDLC) protocol.

#### **E.2 CDS Participants**

Technological system changes would be required by CDS Participants in order to accommodate the new inbound/outbound CNS position settlement control indicator Interlink messages.

#### **E.3 Other Market Participants**

Technological system changes would be required by CDS Participant service bureaus in order to accommodate the new inbound/outbound CNS position settlement control indicator Interlink messages (i.e. Hold messages).

### **F. COMPARISON TO OTHER CLEARING AGENCIES**

CNS settlement at NSCC occurs in the evening (batch process) and throughout the day in real-time (i.e. from 07:00 - 15:10 ET).

Moving to a real-time CNS settlement process that will run from system start-up to payment exchange will align CDS’s CNS settlement process with NSCC’s CNS settlement process.

### **G. PUBLIC INTEREST ASSESSMENT**

CDS has determined that the proposed amendments are not contrary to the public interest.

## H. COMMENTS

Comments on the proposed amendments should be in writing and submitted within 30 calendar days following the date of publication of this notice in the Ontario Securities Commission Bulletin to:

Rob Argue  
Senior Product Manager, Business Systems Development and Support  
CDS Clearing and Depository Services Inc.  
85 Richmond Street West  
Toronto, Ontario M5H 2C9

Phone: 416-365-3887  
Fax: 416-365-0842  
Email: [rargue@cds.ca](mailto:rargue@cds.ca)

Copies should also be provided to the Autorité des marchés financiers and the Ontario Securities Commission by forwarding a copy to each of the following individuals:

M<sup>e</sup> Anne-Marie Beaudoin  
Secrétaire del'Autorité  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, tour de la Bourse  
Montréal (Québec) H4Z 1G3

Manager, Market Regulation  
Capital Markets Branch  
Ontario Securities Commission  
Suite 1903, Box 55,  
20 Queen Street West  
Toronto, Ontario, M5H 3S8

Télécopieur: (514) 864-6381  
Courrier électronique: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

Fax: 416-595-8940  
e-mail: [marketregulation@osc.gov.on.ca](mailto:marketregulation@osc.gov.on.ca)

CDS will make available to the public, upon request, all comments received during the comment period.

## I. PROPOSED CDS PROCEDURE AMENDMENTS

Attached at Appendix A are the clean and blacklined versions of the proposed procedural amendments.

Access the proposed amendments to the CDS Procedures on the User documentation revisions web page (<http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-blacklined?Open>) and to the CDS Forms (if applicable) on Forms online (Click View by Form Category and in the Select a Form Category list, click External review) on the CDS Services web page ([www.cdsservices.ca](http://www.cdsservices.ca)).

## “APPENDIX A”

CHAPTER 1 INTRODUCTION TO TRADE AND SETTLEMENT  
*Settling trades in CDSX*

## 1.4.1 Trade and settlement cutoff times

The start and cutoff times for trade and settlement activities are indicated in the table below.

Trade and settlement activities in CDSX	ET	MT	PT
Trade reporting and management <sup>1</sup> Settle trades targeted to settle by TFT settlement through real-time settlement processes FINet real-time trade settlement No settlement of FINet netted trades or FINet eligible trades during FINet intraday netting Settle outstanding CNS positions through real-time settlement processes No CNS real-time settlement during CNS intraday netting	7:00 a.m. - 4:00 p.m. <sup>2</sup>	5:00 a.m. - 2:00 p.m.	4:00 a.m. - 1:00 p.m.
During payment exchange, security settlement and the restricted (ACV) TFT settlement occur No FINet real-time trade settlement No CNS real-time settlement	4:00 p.m. - 5:00 p.m.	2:00 p.m. - 3:00 p.m.	1:00 p.m. - 2:00 p.m.
After payment exchange, only security TFT settlement occurs and the ACV edit is no longer applied <sup>1</sup> No FINet real-time trade settlement No CNS real-time settlement	5:00 p.m. - 7:30 p.m.	3:00 p.m. - 5:30 p.m.	2:00 p.m. - 4:30 p.m.
System shutdown	7:30 p.m.	5:30 p.m.	4:30 p.m.
Overnight online activity processing of TFT transactions <sup>1</sup> FINet real-time trade settlement No CNS real-time settlement	12:30 a.m. - 4:00 a.m.	10:30 p.m. - 2:00 a.m.	9:30 p.m. - 1:00 a.m.
CNS/BNS process	Starts at 4:00 a.m.	Starts at 2:00 a.m.	Starts at 1:00 a.m.

<sup>1</sup> These times may vary depending on the progress of the batch schedule.

<sup>2</sup> Start of payment exchange

CDSX runs separate payment exchanges for Canadian and U.S. dollar activities. Both payment exchanges are expected to start at 4:00 p.m. ET (2:00 p.m. MT, 1:00 p.m. PT). However, for various reasons, the start and end of the payment exchanges may be altered for one or both currencies.

**CHAPTER 8****Settlement of trades**

Trades are settled in CDSX in one of the modes of settlement indicated in the table below.

For information on the settlement of FINet trades, see [FINet real-time settlement](#) on page 50.

Mode of settlement	Description
Trade-for-trade (TFT) settlement	Trades targeted to settle by TFT are settled on an individual basis
Continuous net settlement (CNS)	<p>Trades targeted to settle by CNS that have reached value date are netted daily with outstanding unsettled or partially settled quantities. The positions involved in these trades must be held in the participant's general account, in order to be considered for settlement</p> <p>Unsettled quantities (i.e., "fails") are maintained by CDSX as outstanding positions. The seller has the to-deliver position and the buyer has the to-receive position for the quantities that have not settled. CDSX maintains CNS outstanding positions by ledger, security, currency and clearing organization</p>

Trades reported to CDSX with certificate-based settlement (CBS) as the mode of settlement are not considered for settlement.

It is the participant's responsibility to manage their positions in their general account (GA000) If participants do not want shares in a certain security to settle in CNS, they must do one of the following:

- Remove the position from their general account prior to the start of the CNS/BNS Process
- Remove the position from their general account during the day when the real-time CNS settlement process is running
- Place outstanding to deliver positions on hold.

**ACV edit on settlement**

CDSX supports both Canadian dollar and U.S. dollar settlement.

The aggregate collateral value (ACV) edit is applied up to the end of the Canadian dollar payment exchange period only. During the payment exchange period, a modified ACV edit is applied. Once payment exchange is complete, the ACV edit is not applied. For more information, refer to *Participating in CDS Services*.



## CHAPTER 8 SETTLEMENT OF TRADES

### Settlement cutoff times

#### 8.1 Settlement cutoff times

The cutoff times for settlement activities are indicated in the table below. If necessary, CDS sends a broadcast message to all participants to inform them of any changes in cutoff times.

Settlement activities	ET	MT	PT
Real-time TFT settlement <sup>1</sup>	7:00 a.m. - 7:30 p.m.	5:00 a.m. - 5:30 p.m.	4:00 a.m. - 4:30 p.m.
Real-time CNS settlement No CNS real-time settlement during CNS intraday netting	7:00 a.m. - 4:00 p.m.	5:00 a.m. - 2:00 p.m.	4:00 a.m. - 1:00 p.m.
Restricted TFT settlement period	4:00 p.m. - 7:30 p.m.	2:00 p.m. - 5:30 p.m.	1:00 p.m. - 4:30 p.m.
Real-time TFT settlement <sup>1</sup>	12:30 a.m. - 4:00 a.m.	10:30 p.m. - 2:00 a.m.	9:30 p.m. - 1:00 a.m.
CNS/BNS process	Starts at 4:00 a.m.	Starts at 2:00 a.m.	Starts at 1:00 a.m.

<sup>1</sup> These times may vary depending on the progress of the batch schedule.

#### 8.2 Restricted TFT settlement

At the start of payment exchange, CDSX no longer settles Canadian and U.S. dollar funds. The restriction is placed on Canadian dollar TFT settlements during the Canadian payment exchange period, and U.S. dollar settlements during the U.S. payment exchange period.

If a pending TFT trade affects a ledger that has holiday settlement restrictions, the status of the TFT trade is changed from pending to confirmed on the restriction date.

If a funds holiday settlement restriction exists for a ledger and the pending TFT trade does not involve funds, the status of the TFT trade remains pending until the transaction settles.

#### 8.3 Real-time TFT settlement

CDSX provides a real-time settlement facility for trades targeted to settle by TFT. Settlement occurs when the trade meets the settlement criteria. This settlement facility continually evaluates trades based on the changing circumstances of the participants in the trades.

When evaluating trades targeted to settle by TFT, CDSX does one of following:

- Settles the trade
- Leaves the trade in a confirmed status but does not settle it

## CHAPTER 8 SETTLEMENT OF TRADES

### CNS/BNS Process

- Assigns a pending settlement status (see [Pending trades](#) on page 74).

The table below indicates the settlement criteria for trades targeted to settle by TFT. All of the settlement criteria must be met for CDSX to process the trades.

Settlement criteria for trades targeted to settle by TFT	The trade will be considered for settlement if . . .	The trade will settle if . . .
The trade is confirmed	✓	✓
The trade has reached value date	✓	✓
Both participants' settlement control indicators are set to Y	✓	✓
Neither party is suspended	✓	✓
Neither party has a holiday settlement restriction placed on their ledger	✓	✓
The security is CDSX-eligible	✓	✓
The seller has sufficient ledger position in the security in the trade		✓
The buyer has sufficient available funds in the currency of the trade		✓
Both the buyer and the seller have sufficient ACV		✓

#### 8.3.1 Pending trades

When CDSX assigns a pending status to a TFT trade, a two-character pending reason code displays in the STATUS field. The first character identifies the party at fault (B for buyer, S for seller) and the second identifies the reason why the transaction is pending (S for insufficient securities, F for insufficient funds or C for insufficient ACV).

Pending transactions are reconsidered for settlement if the participant's circumstances change and settlement conditions are met.

#### 8.4 CNS/BNS process

The CNS/BNS process is a batch net settlement process that increases settlement efficiency by combining the settlement of trades targeted to settle by CNS and TFT. The goal of the combined process is to allow CNS and TFT activities to net against each other and to reduce a participant's requirements for security positions, funds, cap, credit and collateral.

The CNS/BNS process occurs once per day after the overnight online period and is currently scheduled to execute around 4:00 a.m. ET (2:00 a.m. MT, 1:00 a.m. PT).

**8.4.1 CNS trade extraction and netting for settlement**

CDSX extracts trades that are targeted to settle by CNS based on the following extraction criteria:

- Exchange and non-exchange trades are considered
- The mode of settlement is CNS
- The trade status is C
- The value date is less than or equal to the current business date
- There is no CDS holiday settlement restriction for the currency of the trade
- The security is eligible for CNS
- The participants' ledgers are not suspended.

If the extraction criteria is met, the trade is netted, marked and considered for settlement by CNS.

CDS may "allot" a trade to settle by TFT if the trade is not extracted due to the following:

- The security is not eligible to settle by CNS
- Either participant is not eligible for the CNS service
- Either participant's ledger is suspended.

Once extracted, CNS trades are marked and netted with current CNS outstanding positions. Once netted, the new outstanding positions are also marked. Marks are applied directly against the deliverer's and receiver's funds accounts.

**Note:** Lines of credit and/or caps are not drawn upon for negative marks being applied.

**8.4.2 Settlement during the CNS/BNS process**

If the conditions for settlement are met, the CNS/BNS process attempts settlement based on defined settlement priority. The conditions for settlement are the same as those for real-time TFT and CNS settlement.

To review the conditions for settlement, see [Settlement criteria for trades targeted to settle by TFT](#) on page 74 and [Settlement criteria for real-time continuous net settlement](#) on page 76.

The settlement priority for the CNS/BNS process is as follows:

- Domestic U.S. dollar TFT trades flagged as mandatory cash from TSX
- Domestic Canadian dollar TFT trades flagged as mandatory cash from TSX

- DTCC Canadian dollar TFT settlement
- Domestic Canadian dollar TFT settlement
- Domestic U.S. dollar CNS to-receive positions with buy-ins
- Domestic Canadian dollar CNS to-receive positions with buy-ins
- Domestic U.S. dollar CNS outstanding positions
- Domestic Canadian dollar CNS outstanding positions.

During the CNS/BNS process, CNS positions settle entirely or partially, and trades targeted to settle by TFT settle entirely or are made pending.

### 8.5 Real-time CNS settlement process

Unlike the CNS/BNS process, which processes trades targeted to settle by TFT and CNS together, the real-time CNS settlement process only processes outstanding CNS positions. This process runs throughout the business day and executes independently of the real-time TFT settlement process.

Once CDSX determines that the criteria for CNS settlement have been met (see [Settlement criteria for real-time continuous net settlement](#) on page 76), the real-time CNS settlement facility attempts to settle outstanding CNS positions based on the following settlement priority:

- Domestic U.S. dollar CNS to-receive positions with buy-ins
- Domestic Canadian dollar CNS to-receive positions with buy-ins
- Domestic U.S. dollar CNS outstanding positions
- Domestic Canadian dollar CNS outstanding positions.

Since real-time CNS settlement executes while other online settlement functions are also processing, the settlement priority noted above cannot be guaranteed.

CDSX maintains the buy-in priority, which ensures that participants who have been bought in can only deliver to receivers with a buy-in position. The buy-in priority is maintained throughout the day.

#### 8.5.1 Settlement criteria for real-time continuous net settlement

The following criteria must be met for CNS to consider settlement of outstanding positions:

- Both the deliverer and receiver are eligible for the CNS service
- The security is CNS-eligible
- Both participants are not suspended
- Both participants do not have holiday settlement restrictions placed on their ledger
- The outstanding to deliver position is not on hold.

Settlement or partial settlement occurs if:

- Sellers have all or some ledger positions in the security for which they are in a to-deliver position
- Buyers have sufficient available funds to accept all or some of the delivery for which they are in a to-receive position
- Both the deliverer and receiver have sufficient ACV to deliver or receive all or some of the delivery.

#### 8.5.2 Intraday marking of CNS outstanding positions

CDSX provides a facility to re-mark CNS outstanding positions intraday in the following circumstances:

- Current value trades are extracted intraday
- Intraday market prices change sufficiently to warrant revaluation of outstanding positions.

#### 8.5.3 Intraday extraction, marking and netting of CNS trades

CDSX provides a facility to extract current value trades that are targeted to settle by CNS. Intraday extraction, netting and marking is executed if CNS-eligible trades are settled in a same-day environment. When trade extraction is executed intraday, the intraday marking of outstanding positions also occurs.

Intraday extraction may also be scheduled or executed on an ad hoc basis.

### 8.6 Calculating CNS marks

CDSX applies marking calculations to CNS trades and outstanding CNS positions.

#### Trades

The mark difference on a CNS trade is calculated as follows:

Quantity x	$\frac{(\text{Marking price} - \text{Trade price})}{\text{Units}}$
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The value of units varies depending on whether the trade is equity or debt based. For equity, units is equal to one. For debt, units is equal to 100.

If the mark difference exceeds two decimal places, the value is truncated to two decimal places.

### Outstanding CNS positions

The mark difference on an outstanding CNS position is calculated as follows:

Quantity x	(Marking price - Previous marking price)
	Units

The value of units varies depending on whether the security is equity or debt. For equity, units is equal to one. For debt, units is equal to 100.

If the mark difference is negative (i.e., debit to the participant), the value is rounded up to two decimal places.

If the mark difference is positive (i.e., credit to the participant), the value is truncated to two decimal places.

## 8.7 Monitoring settlements using CDSX

Participants can monitor their settlements on an intraday basis in CDSX by following the procedures for:

- [Inquiring on exchange trades](#) on page 22
- [Inquiring on non-exchange trades](#) on page 35.

For CNS, participants may also follow the procedures for [Inquiring on CNS outstanding positions](#) on page 78.

The next day, participants may review the CNS activities on the appropriate report. For more information on the trade, settlement and CNS-related reports, refer to CDS Reporting Procedures.

### 8.7.1 Inquiring on CNS outstanding positions

To inquire on CNS outstanding positions:

1. Log on to CDS systems. For more information, refer to *Participating in CDS Services*.
2. On the CDS Clearing and Depository Services Inc. Main Menu, type the number identifying CDSX – Customer Functions in the SELECTION field and press ENTER. The CDSX – Customer Functions Menu on page 10 displays.

## CHAPTER 8 SETTLEMENT OF TRADES

### Monitoring settlements using CDSX

3. Type the number identifying Ledger Menu in the SELECTION field and press ENTER.  
The Ledger Menu on page 79 displays.

#### Ledger Menu

```

MM10      CDS CLEARING AND DEPOSITORY SERVICES INC.      15:50:04
          LEDGER MENU                                     03-03-21

      1 ACCOUNT MAINTENANCE                               (MAM0)
      2 INTER-ACCOUNT MOVEMENT                           (MAP0)
      3 SECURITY/ACCOUNT POSITION INQUIRY                   (MAS0)
      4 FUNDS POSITION INQUIRY                             (MAF0)
      5 LEDGER ACU AND SECTOR LIMIT INQUIRY               (MAH0)
      6 FUNDS TRANSFER                                    (MAT0)
      7 HOLD CNS TO-DELIVER SETTLEMENTS                   (MAR0)
      8 INQUIRE OUTSTANDING CNS POSITIONS                 (MAI0)

          SELECTION: _

PF: 1/HELP  3/EXIT  4/MENU  9/BMSG
OPTION:      DATA:

```

4. Type the number identifying Inquire Outstanding CNS Positions in the SELECTION field and press ENTER. The Inquire Outstanding CNS Positions Selection screen on page 79 displays.

#### Inquire Outstanding CNS Positions Selection screen

```

MA10      CDS CLEARING AND DEPOSITORY SERVICES INC.      13:15:42  11-03-03
INQUIRE   INQUIRE OUTSTANDING CNS POSITION SELECTION
TEST

      SECURITY FROM:  TO:

      SECURITY TYPE:

      SECURITY SUB-TYPE:

      INSTRUMENT TYPE:

      CURRENCY:

      CLEARING ORGANISATION ID:

      RECEIVE/DELIVER:

      SETTLEMENT CONTROL INDICATOR:

PF: 1/HELP  3/EXIT  4/MENU  5/REFRESH  9/BMSG
OPTION:      DATA:

```

## CHAPTER 8 SETTLEMENT OF TRADES

### Monitoring settlements using CDSX

5. Complete the fields as indicated in the table below.

Field	Description
SECURITY FROM, TO	A range of security numbers (a partial or full security number may be entered)  If these fields are completed, the SECURITY TYPE, SECURITY SUB-TYPE and INSTRUMENT TYPE must be left blank
SECURITY TYPE	D – Debt E – Equity
SECURITY SUB-TYPE	AB – Asset-backed issue MB – Market bond MM – Money market issue PK – Package SI – Strip
INSTRUMENT TYPE	Code identifying the instrument type
CURRENCY	CAD – Canadian dollar USD – U.S. dollar
CLEARING ORGANIZATION ID	Code of the clearing organization: CDS – Domestic CNS positions
RECEIVE/DELIVER	Code identifying the type of CNS outstanding position: R – Outstanding to-receive positions D – Outstanding to-deliver positions
SCI	Settlement control indicator for the position: Y – Submit the position for settlement N – Do not settle the position

6. Press ENTER. The Outstanding CNS Positions Detail screen on page 81 displays.



## CHAPTER 8 SETTLEMENT OF TRADES

### Monitoring settlements using CDSX

#### Outstanding CNS Positions Detail screen

MAIL		CDS CLEARING AND DEPOSITORY SERVICES INC.			16:01:03	03-03-21
INQUIRE		OUTSTANDING CNS POSITION DETAIL				
LYDI						
LEDGER ID	SECURITY	CLG ORG	CURR	SCI	PRICE	PAR/QUANTITY
LYD09	CA101431AA21	DTC	USD	Y		15000.00-
LYD09	CA135087KP84	CDS	CAD	Y	100.000000000+	7000.00+
LYD09	CA319426S476	CDS	CAD	Y		4500.00-
LYD09	CA50186E1007	DTC	USD	Y	25.000000000+	4000.00+
LYD09	US00204M1210	CDS	USD	Y		4750.00-
PF: 1/HELP 3/EXIT 4/MENU 5/REFRESH 7/BACK 8/FWD 9/BMSG						
OPTION: _ DATA:						

7. Review the details on the screen.

Field	Description
SCI	Settlement control indicator for the position: Y – Submit the position for settlement N – Do not settle the position
PRICE	Price against which the outstanding position is expected to settle
PAR/QUANTITY	Total outstanding position

#### 8.7.2 Holding CNS to deliver settlements

To hold CNS to deliver positions:

1. Log on to CDS systems. For more information, refer to Participating in CDS Services.
2. On the CDS Clearing and Depository Services Inc. Main Menu, type the number identifying CDSX – Customer Functions in the SELECTION field and press ENTER. The CDSX – Customer Functions Menu displays.
3. Type the number identifying Ledger Menu in the SELECTION field and press ENTER. The Ledger Menu on page 79 displays.
4. Type the number identifying Hold CNS To-Deliver Settlements in the SELECTION field and press ENTER. The Hold CNS To-Deliver Settlement Selection screen displays.

## CHAPTER 8 SETTLEMENT OF TRADES

### Monitoring settlements using CDSX

Hold CNS To-Deliver Settlement Selection screen

```

MAR0      CDS CLEARING AND DEPOSITORY SERVICES INC.      13:16:58  11-03-03
MODIFY    HOLD CNS TO-DELIVER SETTLEMENT SELECTION
TEST

          SECURITY FROM:  TO:

          SECURITY TYPE:

          SECURITY SUB-TYPE:

          INSTRUMENT TYPE:

          CURRENCY:

          CLEARING ORGANISATION ID:

          RECEIVE/DELIVER: D

          SETTLEMENT CONTROL INDICATOR:

PF: 1/HELP  3/EXIT  4/MENU  5/REFRESH  9/BMSG
OPTION:      DATA:
Te          DUT0NZ3M
  
```

5. Complete the fields as indicated in the table below.

Field	Description
SECURITY FROM, TO	A range of security numbers (a partial or full security number may be entered) If these fields are completed, the SECURITY TYPE, SECURITY SUB- TYPE and INSTRUMENT TYPE must be left blank
SECURITY TYPE	D – Debt E – Equity
SECURITY SUB-TYPE	Code identifying the security sub-type: AB – Asset-backed issue MB – Market bond MM – Money market issue PK – Package SI – Strip
INSTRUMENT TYPE	Code identifying the instrument type
CLEARING ORGANISATION ID	Code identifying the clearing organization: CDS – Domestic CNS positions
RECEIVE/DELIVER	Code identifying the type of CNS outstanding position: R – Outstanding to-receive positions D – Outstanding to-deliver positions
SCI	Settlement control indicator for the position: Y – Submit the position for settlement N – Do not settle the position

6. Press ENTER. The Hold CNS To-deliver Settlement Detail displays.

## CHAPTER 8 SETTLEMENT OF TRADES

### Monitoring settlements using CDSX

**Note:** Outstanding to receive positions cannot be placed on hold. Holds are automatically removed at the end of the day.

Hold CNS To-Deliver Settlement Detail screen

```

MAR1      CDS CLEARING AND DEPOSITORY SERVICES INC.      13:18:05  11-03-03
MODIFY      HOLD CNS TO-DELIVER SETTLEMENT DETAIL
TEST

LEDGER      CLG      SCI      PRICE      PAR/QUANTITY
ID  SECURITY  ORG  CURR  SCI  PRICE      PAR/QUANTITY
TES01  CA135087UT96  CDS  CAD  Y      1.000000000+      50.00-

PF: 1/HELP  3/EXIT  4/MENU  5/REFRESH  7/BACK  8/FWD  9/BMSG  10/SAVE
OPTION:      DATA:
Te
DUT0N23M

```

7. Complete the fields as indicated in the table below.

Field	Description
SCI	Settlement control indicator for the position: Y – Submit the position for settlement N – Do not settle the position
PRICE	Price against which the outstanding position is expected to settle
PAR/QUANTITY	Total outstanding position

8. Press Enter to validate the information and press PF10 to save.

## CHAPTER 9 BUYING IN OUTSTANDING CNS POSITIONS

### Life cycle of a buy-in

#### 9.1.1 Buy-in statuses

During the buy-in process, the status of the buy-in may change to reflect its current state. The table below details all the possible statuses of a buy-in.

Status	Name	Description
I	Intent	Intent to buy-in is entered, saved and confirmed
IX	Partially processed intent	Intent not yet accepted by the system
E	Execute	Buy-in is in execute status
EX	Next day execute	Buy-in is scheduled for execution on next business day
C	Cancelled	Buy-in is cancelled
CX	Pending cancellation	Cancellation not yet accepted by the system
XP	Expired	Receiver failed to execute buy-in before the cutoff time
NP	Not processed	Buy-in cannot be processed (unavailability of outstanding CNS positions)

#### 9.1.2 Execution days

The table below indicates the execution days for buy-ins, depending on the entry time and the clearing organization.

Entry day	Entry time	Clearing organization	Execution day
Day 1	Between 4:00 p.m. and 4:45 p.m. ET (2:00 p.m. and 2:45 p.m. MT, 1:00 p.m. and 1:45 p.m. PT)	CDS	Day 3 (N+2)
Day 1	Between 4:45 p.m. and 7:30 p.m. ET (2:45 p.m. and 5:30 p.m. MT, 1:45 p.m. and 4:30 p.m. PT)	CDS	Day 4 (N+3)

**Note:** The Buy-In Intent Entry screen on page 88 is enabled at 4:00 p.m. ET (2:00 p.m. MT, 1:00 p.m. PT) daily. This process is separate from and unaffected by the payment exchange process.

For example, a buy-in that was entered on day 1 between 4:00 p.m. and 4:45 p.m. ET (2:00 p.m. and 2:45 p.m. MT, 1:00 p.m. and 1:45 p.m. PT) with CDS as the clearing organization, is scheduled to execute on day 3, provided that the receiver changes the status of the buy-in to execute (E). If the status is not changed to E by execution date, the buy-in is automatically cancelled.

**Note:** CDSX automatically manages Canadian holidays when determining the execution date. For example, if a receiver enters a Canadian dollar buy-in request on Monday and Wednesday is a Canadian holiday with Canadian dollar settlement restrictions, CDSX automatically establishes the execution date as Thursday. For more information, refer to CDSX Procedures and User Guide.

## CHAPTER 9 BUYING IN OUTSTANDING CNS POSITIONS

### Deliverer buy-in positions

#### 9.4 Deliverer buy-in activities

Deliverers can inquire on their buy-in liabilities, request an extension and produce a maximum execute liability (MEL) report.

**Note:** A deliverer may satisfy its buy-in maximum liability by the actual settlement of the failed-to-deliver CDS position. This liability may be covered during the period from the date on which the buy-in intent was received until 2:30 p.m. ET (12:30 p.m. MT, 11:30 a.m. PT) on the execution date.

A deliverer is not relieved of their buy-in liability during the above period, even if it has moved from a short position to a flat or long position due to netting.

A deliverer may be held liable if settlement of the fail-to-deliver CNS position occurs after 2:30 p.m. ET (12:30 p.m. MT, 11:30 a.m. PT).

##### 9.4.1 Inquiring on a buy-in

To inquire on the details of liability records:

1. Access the Buy-In Menu on page 87. For more information, see Accessing the Buy-In Menu on page 87.
2. Type the number identifying Deliverer Inquire Buy-In in the SELECTION field and press ENTER. The Deliverer – Buy-In Inquiry Selection screen on page 100 displays.

Deliverer – Buy-In Inquiry Selection screen

```
MBD0      CDS CLEARING AND DEPOSITORY SERVICES INC.    13:20:13  03-03-21
INQUIRE      DELIVERER - BUY-IN INQUIRY SELECTION
WGDB

CLEARING ORGANIZATION: _
CURRENCY: _
SECURITY NBR FROM:      TO:
BUY-IN ID:
EXECUTION DATE: 2003-03-21
STATUS:

PF: 1/HELP  3/EXIT  4/MENU  5/REFRESH  9/BMSG
OPTION:      DATA:
```

**CHAPTER 10****CCP fails-to-receive interest mark and fee**

CDS generates an interest mark to automatically compensate deliverers for losses incurred due to the inability of receivers to receive securities in CNS and FINet. Participants failing to receive are responsible for these interest marks. CDS applies a CCP fails-to-receive fee to discourage receivers from failing to settle in CNS and FINet.

The interest mark and fee are only applicable if the deliverer could not deliver its securities.

**10.1 Fails-to-receive interest mark**

To distribute the interest costs, CDS uses an fails-to-receive interest mark. This mark is applied in accordance with the following rules:

- The interest mark is applied to the ledgers in the same manner as other marks
- The interest mark does not draw down on caps or lines of credit
- ACV is not impacted by positive and negative marks
- After conversion of any negative USD interest marks to Canadian dollars, the negative interest marks are included in the mark-to-market component of the IRMS collateral requirements. For more information, refer to *Participating in CDS Services*.

**10.1.1 Calculation of the CNS fails-to-receive interest mark**

The total fails-to-receive interest mark is calculated based upon the value of shares that a deliverer could not deliver in CNS on the current day multiplied by a benchmark rate, multiplied by the number of days to the next business day. If there is more than one failed receiver for a specific delivery, the portion of the mark that a failed receiver is responsible for is prorated based on their failed quantity.

The calculation is run at 5:30 p.m. ET (3:30 p.m. MT, 2:30 p.m. PT) each business day using settlement information.

Fails-to-receive interest marks are credited to the deliverer's funds account and debited from the receiver's funds account. The currency of the fails-to-receive interest marks depends upon the currency associated with the outstanding CNS position. These funds movements are effective the following business day.

Canadian dollar and U.S. dollar benchmark rates are established as follows:

- Canadian dollars – Bank of Canada target for overnight rate + 50 basis points
- U.S. dollars – Federal Funds Rate + 50 basis points

## CHAPTER 1 INTRODUCTION TO TRADE AND SETTLEMENT

### *Settling trades in CDSX*

#### 1.4.1 Trade and settlement cutoff times

The start and cutoff times for trade and settlement activities are indicated in the table below.

Trade and settlement activities in CDSX	ET	MT	PT
Trade reporting and management <sup>1</sup> <del>Settle trades targeted to settle by TFT settlement through real-time settlement processes</del> <del>Settle trades targeted to settle by CNS through multiple intraday processes</del>	7:00 a.m. – 7:30 p.m.	5:00 a.m. – 5:30 p.m.	4:00 a.m. – 4:30 p.m.
<u>Trade reporting and management<sup>2</sup></u> <u>Settle trades targeted to settle by TFT settlement through real-time settlement processes</u> FINet real-time trade settlement No settlement of FINet netted trades or FINet eligible trades during FINet intraday netting <u>Settle outstanding CNS positions through real-time settlement processes</u> <u>No CNS real-time settlement during CNS intraday netting</u>	7:00 a.m. – 4:00 p.m. <sup>3</sup>	5:00 a.m. – 2:00 p.m.	4:00 a.m. – 1:00 p.m.
During payment exchange, security settlement and the restricted (ACV) <u>TFT</u> trade settlement occur No FINet real-time trade settlement <u>No CNS real-time settlement</u>	4:00 p.m. – 5:00 p.m.	2:00 p.m. – 3:00 p.m.	1:00 p.m. – 2:00 p.m.
After payment exchange, only security <u>TFT</u> settlement occurs and the ACV edit is no longer applied <sup>1</sup> No FINet real-time trade settlement <u>No CNS real-time settlement</u>	5:00 p.m. – 7:30 p.m.	3:00 p.m. – 5:30 p.m.	2:00 p.m. – 4:30 p.m.
System shutdown	7:30 p.m.	5:30 p.m.	4:30 p.m.
Overnight online activity processing of TFT transactions <sup>1</sup> <u>FINet real-time trade settlement</u> <del>No FINet real-time trade settlement</del> <u>No CNS real-time settlement</u>	12:30 a.m. – 4:00 a.m.	10:30 p.m. – 2:00 a.m.	9:30 p.m. – 1:00 a.m.
CNS/BNS process	Starts at 4:00 a.m.	Starts at 2:00 a.m.	Starts at 1:00 a.m.

<sup>1</sup> ~~These times may vary depending on the progress of the batch schedule.~~

<sup>2</sup> These times may vary depending on the progress of the batch schedule.

<sup>3</sup> Start of payment exchange

## CHAPTER 8 SETTLEMENT OF TRADES

### Settlement cut-off times

## CHAPTER 8

### Settlement of trades

Trades are settled in CDSX in one of the modes of settlement indicated in the table below.

For information on the settlement of FINet trades, see [FINet real-time settlement](#) on page 50.

Mode of settlement	Description
Trade-for-trade (TFT) settlement	<p><u>Trades targeted to settle by TFT are settled on an individual basis</u></p> <p>Book-based settlement where trades are settled on an individual basis. Partial settlement cannot occur</p>
Continuous net settlement (CNS)	<p><del>Book-based settlement where t</del>Trades targeted to settle by CNS that have reached value date are netted daily with outstanding unsettled or partially settled quantities. The positions involved in these trades must be held in the participant's general account <del>at the start of the CNS/BNS process or any scheduled intraday CNS process</del>, in order to be considered for <u>CNS settlement</u></p> <p>Unsettled quantities (i.e., "fails") are maintained by CDSX as outstanding positions. The seller has the to-deliver position and the buyer has the to-receive position for the quantities that have not settled. CDSX maintains CNS outstanding positions by ledger, security, currency and clearing organization. <del>Periodically, CDSX attempts to settle these outstanding positions</del></p> <p>For example, when a participant sells 100 shares of security A and buys 80 shares of security A, the participant has a net CNS to-deliver position of 20 shares of security A. <del>If the participant did not complete the net delivery to CDS, the CNS process creates an CNS outstanding to-deliver position, which is carried forward to the next CNS settlement or CNS netting process</del></p>

Trades reported to CDSX with certificate-based settlement (CBS) as the mode of settlement are not considered for settlement.

It is the participant's responsibility to manage their positions in their general account (GA000). ~~For example, if participants do not want shares in a certain security to settle in CNS, they must do one of the following:~~

- ~~Remove the security position from their general account prior to the start of the CNS/BNS process or any scheduled intraday CNS process~~
- Remove the position from their general account during the day when the real-time CNS settlement process is running
- Place outstanding to deliver positions on hold. -

#### ACV edit on settlement

CDSX supports both Canadian dollar and U.S. dollar settlement.

The aggregate collateral value (ACV) edit is applied up to the end of the Canadian dollar payment exchange period only. During the payment exchange period, a modified ACV edit is applied. Once payment exchange is complete, the ACV edit is not applied. For more information, refer to *Participating in CDS Services*.

### 8.1 Settlement cutoff times

The cutoff times for settlement activities are indicated in the table below. If necessary, CDS sends a broadcast



## CHAPTER 8 SETTLEMENT OF TRADES

### Settlement cut-off times

message to all participants to inform them of any changes in cutoff times.

Settlement activities	ET	MT	PT
Real-time <u>TFT</u> settlement <sup>1</sup>	7:00 a.m. - 7:30 p.m.	5:00 a.m. - 5:30 p.m.	4:00 a.m. - 4:30 p.m.
Intraday netting	1:00 p.m.	11:00 a.m.	10:00 a.m.
Real-time CNS settlement <sup>1</sup> Intraday CNS	7:00 a.m. -	5:00 a.m. -	4:00 a.m. -
No CNS real-time settlement during CNS	4:00 p.m.	2:00 p.m.	1:00 p.m.
<u>intraday netting</u>	10:00 a.m.	8:00 a.m.	7:00 a.m.
	12:00 p.m.	10:00 a.m.	9:00 a.m.
	2:00 p.m.	12:00 p.m.	11:00 a.m.
	3:30 p.m.	1:30 p.m.	12:30 p.m.
Restricted <u>TFT</u> settlement period	4:00 p.m. - 7:30 p.m.	2:00 p.m. - 5:30 p.m.	1:00 p.m. - 4:30 p.m.
Real-time <u>TFT</u> settlement <sup>1</sup>	12:30 a.m. - 4:00 a.m.	10:30 p.m. - 2:00 a.m.	9:30 p.m. - 1:00 a.m.
CNS/BNS process	Starts at 4:00 a.m.	Starts at 2:00 a.m.	Starts at 1:00 a.m.

<sup>1</sup> These times may vary depending on the progress of the batch schedule.

## 8.2 Restricted TFT settlement

At the start of payment exchange, CDSX no longer settles Canadian and U.S. dollar funds. The restriction is placed on Canadian dollar TFT settlements during the Canadian payment exchange period, and U.S. dollar settlements during the U.S. payment exchange period.

If a pending TFT trade affects a ledger that has holiday settlement restrictions, the status of the TFT trade is changed from pending to confirmed on the restriction date.

## CHAPTER 8 SETTLEMENT OF TRADES

### Real-time TFT settlement

If a funds holiday settlement restriction exists for a ledger and the pending TFT trade does not involve funds, the status of the TFT trade remains pending until the transaction settles.

### 8.3 Real-time TFT settlement

CDSX provides a real-time settlement facility for trades targeted to settle by TFT. Settlement occurs when the trade meets the settlement criteria. This settlement facility continually evaluates trades based on the changing circumstances of the participants in the trades.

When evaluating trades targeted to settle by TFT, CDSX does one of following:

- Settles the trade
- Leaves the trade in a confirmed status but does not settle it
- Assigns a pending settlement status (see Pending trades on page 75).

The table below indicates the settlement criteria for trades targeted to settle by TFT. All of the settlement criteria must be met for CDSX to process the trades.

Settlement criteria for trades targeted to settle by TFT	The trade will be considered for settlement if . . .	The trade will settle if . . .
The trade is confirmed	√	√
The trade has reached value date	√	√
Both participants' settlement control indicators are set to Y	√	√
Neither party is suspended	√	√
Neither party has a holiday settlement restriction placed on their ledger	√	√
For trades targeted to settle by TFT, the security is CDSX-eligible	√	√
The seller has sufficient ledger position in the security in the trade		√
The buyer has sufficient available funds in the currency of the trade		√
Both the buyer and the seller have sufficient ACV		√

**8.3.1 Pending trades**

When CDSX assigns a pending status to a TFT trade, a two-character pending reason code displays in the STATUS field. The first character identifies the party at fault (B for buyer, S for seller) and the second identifies the reason why the transaction is pending (S for insufficient securities, F for insufficient funds or C for insufficient ACV).

Pending transactions are reconsidered for settlement if the participant's circumstances change and settlement conditions are met.

**8.4 CNS/BNS process**

The CNS/BNS process is a batch net settlement process that increases settlement efficiency by combining the settlement of trades targeted to settle by CNS and TFT. ~~The CNS component processes the CNS trades and the BNS component processes the TFT trade.~~ The goal of the combined process is to allow CNS and TFT activities to net against each other and to reduce a participant's requirements for security positions, funds, cap, credit and collateral.

The CNS/BNS process occurs once per day after the overnight online period and is currently scheduled to execute around 4:00 a.m. ET (2:00 a.m. MT, 1:00 a.m. PT).

**8.4.1 CNS Trade extraction and netting for the CNS/BNS process settlement**

CDSX extracts trades that are targeted to settle by CNS based on the following extraction criteria:

- Exchange and non-exchange trades are considered
- The mode of settlement is CNS
- The trade status is C
- ~~Both participants' settlement indicators are set to Y~~
- The value date is less than or equal to the current business date
- There is no CDS holiday settlement restriction for the currency of the trade
- The security is eligible for CNS
- The participants' ledgers are not suspended.

If the extraction criteria is met, the trade is netted, marked and considered for settlement by CNS.

~~CDS is notified and, depending on the circumstances,~~ may "allot" a trade to settle by TFT if the trade is not extracted due to the following:

- The security is not eligible to settle by CNS

- Either participant is not eligible for the CNS service
- Either participant's ledger is suspended.

Once extracted, CNS trades are marked and netted with current CNS outstanding positions. Once netted, the new outstanding positions are also marked. Marks are applied directly against the deliverer's and receiver's funds accounts.

**Note:** Lines of credit and/or caps are not drawn upon for negative marks being applied.

~~The CNS/BNS process marks trades and CNS outstanding positions based on the latest market prices received from external sources.~~

~~Trades targeted to settle by TFT are also extracted for inclusion in the CNS/BNS process. The eligibility requirements are consistent with trades targeted to settle by CNS.~~

#### 8.4.2 Settlement during the CNS/BNS process

If the conditions for settlement are met, the CNS/BNS process attempts settlement based on defined settlement priority. The conditions for settlement are the same as those for real-time TFT settlement and CNS settlement. ~~intraday continuous net settlement (CNS).~~

To review the conditions for settlement, see Settlement criteria for trades targeted to settle by TFT on page 74 and Settlement criteria for real-time continuous net settlement on page 77.

The settlement priority for the CNS/BNS process is as follows:

- Domestic U.S. dollar TFT trades flagged as mandatory cash from TSX
- Domestic Canadian dollar TFT trades flagged as mandatory cash from TSX
- DTCC Canadian dollar TFT settlement
- Domestic Canadian dollar TFT settlement
- Domestic U.S. dollar CNS to-receive positions with buy-ins
- Domestic Canadian dollar CNS to-receive positions with buy-ins
- Domestic U.S. dollar CNS outstanding positions
- Domestic Canadian dollar CNS outstanding positions.

During the CNS/BNS process, CNS positions settle entirely or partially, and trades targeted to settle by TFT settle entirely or are made pending.

**CHAPTER 8 SETTLEMENT OF TRADES**  
**Intraday-Real-time CNS settlement process****8.5      IntradayReal-time CNS settlement process**

Unlike the CNS/BNS process, which processes trades targeted to settle by TFT and CNS together, the intradayreal-time CNS settlement process only processes outstanding CNS positionstrades targeted to settle by CNS. This process is ~~scheduled at various periods~~runs throughout the business day and executes at the ~~same time but independently of the real-time TFT settlement process~~. While the other intraday CNS processes only involve settlement, the 2:00 p.m. ET (12:00 p.m. MT, 11:00 a.m. PT) intraday CNS process also includes trades that are extracted and netted subsequent to the running of CNS/BNS.

Once CDSX determines that the CNScriteria conditions for CNS settlement have been met (see Settlement criteria for real-time continuous net settlement on page 77), the intradayreal-time CNS settlement facility attempts to settle outstanding CNS positions based on the following settlement priority: -

- Domestic U.S. dollar CNS to-receive positions with buy-ins
- Domestic Canadian dollar CNS to-receive positions with buy-ins
- Domestic U.S. dollar CNS outstanding positions
- Domestic Canadian dollar CNS outstanding positions.

Since intradayreal-time CNS settlement executes while other online settlement functions are also processing, the settlement priority noted above cannot be guaranteed.

CDSX maintains the buy-in priority, which ensures that participants who have been bought in can only deliver to receivers with a buy-in position. The buy-in priority is maintained throughout the day for all intraday CNS cycles with the exception of the ~~last scheduled execution~~. During the last scheduled execution, the settlement of a bought-in position can be delivered to a receiver who does not have a buy-in.

**8.5.1      Settlement criteria for real-time continuous net settlement**

The following criteria must be met for CNS to consider settlement of outstanding positions:

- Both the deliverer and receiver are eligible for the CNS service
- The security is CNS-eligible
- Both participants are not suspended
- Both participants do not have holiday settlement restrictions placed on their ledger.
- The outstanding to deliver position is not on hold.

Settlement or partial settlement occurs if:

**CHAPTER 8 SETTLEMENT OF TRADES**  
**Calculating CNS marks**

- Sellers have all or some ledger positions in the security for which they are in a to-deliver position
- Buyers have sufficient available funds to accept all or some of the delivery for which they are in a to-receive position
- Both the deliverer and receiver have sufficient ACV to deliver or receive all or some of the delivery.

**8.5.2 Intraday marking of CNS outstanding positions**

CDSX provides a facility to re-mark CNS outstanding positions intraday in the following circumstances:

- Current value trades are extracted intraday
- Intraday market prices change sufficiently to warrant revaluation of outstanding positions.

**8.5.3 Intraday extraction, marking and netting of CNS trades**

CDSX provides a facility to extract current value trades that are targeted to settle by CNS. Intraday extraction, netting and marking is executed if CNS-eligible trades are settled in a same-day environment. When trade extraction is executed intraday, the intraday marking of outstanding positions also occurs.

Intraday extraction may also be scheduled or executed on an ad hoc basis.

**8.6 Calculating CNS marks**

CDSX applies marking calculations to CNS trades and outstanding CNS positions.

**Trades**

The mark difference on a CNS trade is calculated as follows:

Quantity x $\frac{(\text{Marking price} - \text{Trade price})}{\text{Units}}$
---

The value of units varies depending on whether the trade is equity or debt based. For equity, units is equal to one. For debt, units is equal to 100.

If the mark difference exceeds two decimal places, the value is truncated to two decimal places.

**CHAPTER 8 SETTLEMENT OF TRADES**  
**Monitoring settlements using CDSX****Outstanding CNS positions**

The mark difference on an outstanding CNS position is calculated as follows:

Quantity x	$\frac{(\text{Marking price} - \text{Previous marking price})}{\text{Units}}$
------------	---

The value of units varies depending on whether the security is equity or debt. For equity, units is equal to one. For debt, units is equal to 100.

If the mark difference is negative (i.e., debit to the participant), the value is rounded up to two decimal places.

If the mark difference is positive (i.e., credit to the participant), the value is truncated to two decimal places.

**8.7 Monitoring settlements using CDSX**

Participants can monitor their settlements on an intraday basis in CDSX by following the procedures for:

- [Inquiring on exchange trades](#) on page 22
- [Inquiring on non-exchange trades](#) on page 35.

For CNS, participants may also follow the procedures for [Inquiring on CNS outstanding positions](#) on page 79.

The next day, participants may review the CNS activities on the appropriate report. For more information on the trade, settlement and CNS-related reports, refer to *CDS Reporting Procedures*.

**8.7.1 Inquiring on CNS outstanding positions**

To inquire on CNS outstanding positions:

1. Log on to CDS systems. For more information, refer to Participating in CDS Services.
2. On the CDS Clearing and Depository Services Inc. Main Menu, type the number identifying CDSX – Customer Functions in the SELECTION field and press ENTER. The CDSX – Customer Functions Menu on page 10 displays.
3. Type the number identifying Ledger Menu in the SELECTION field and press ENTER. The Ledger Menu on page 80 displays.

## CHAPTER 8 SETTLEMENT OF TRADES

### Monitoring settlements using CDSX

#### Ledger Menu

```

MN10          CDS CLEARING AND DEPOSITORY SERVICES INC.      15:50:04
                LEDGER MENU                                03-03-21

      1 ACCOUNT MAINTENANCE                                (MAM0)
      2 INTER-ACCOUNT MOVEMENT                            (MAP0)
      3 SECURITY/ACCOUNT POSITION INQUIRY                   (MAS0)
      4 FUNDS POSITION INQUIRY                             (MAF0)
      5 LEDGER ACU AND SECTOR LIMIT INQUIRY               (MAH0)
      6 FUNDS TRANSFER                                    (MAT0)
      7 HOLD CNS TO-DELIVER SETTLEMENTS                   (MAR0)
      8 INQUIRE OUTSTANDING CNS POSITIONS                 (MAI0)

                SELECTION: _

PF: 1/HELP  3/EXIT  4/MENU  9/BMSG
OPTION:      DATA:
Te

```

- Type the number identifying Inquire Outstanding CNS Positions in the SELECTION field and press ENTER. The Inquire Outstanding CNS Positions Selection screen on page 80 displays.

#### Inquire Outstanding CNS Positions Selection screen

```

MA10          CDS CLEARING AND DEPOSITORY SERVICES INC.      13:15:42  11-03-03
INQUIRE      INQUIRE OUTSTANDING CNS POSITION SELECTION
TEST

      SECURITY FROM:  TO:

      SECURITY TYPE:

      SECURITY SUB-TYPE:

      INSTRUMENT TYPE:

      CURRENCY:

      CLEARING ORGANISATION ID:

      RECEIVE/DELIVER:

      SETTLEMENT CONTROL INDICATOR:

PF: 1/HELP  3/EXIT  4/MENU  5/REFRESH  9/BMSG
OPTION:      DATA:
Te
                                DUT0NZ3M

```

- Complete the fields as indicated in the table below.

Field	Description
SECURITY FROM, TO	A range of security numbers (a partial or full security number may be entered)  If these fields are completed, the SECURITY TYPE, SECURITY SUB-TYPE and INSTRUMENT TYPE must be left blank
SECURITY TYPE	D – Debt E – Equity



## CHAPTER 8 SETTLEMENT OF TRADES

### Monitoring settlements using CDSX

Field	Description
SECURITY SUB-TYPE	AB – Asset-backed issue MB – Market bond MM – Money market issue PK – Package SI – Strip
INSTRUMENT TYPE	Code identifying the instrument type
CURRENCY	CAD – Canadian dollar USD – U.S. dollar
CLEARING ORGANIZATION ID	Code of the clearing organization: CDS – Domestic CNS positions
RECEIVE/DELIVER	Code identifying the type of CNS outstanding position: R – Outstanding to-receive positions D – Outstanding to-deliver positions
<u>SCI</u>	<u>Settlement control indicator for the position:</u> <u>Y – Submit the position for settlement</u> <u>N – Do not settle the position</u>

6. Press ENTER. The Outstanding CNS Positions Detail screen on page 81 displays. Outstanding CNS Positions Detail screen

MA11		CDS CLEARING AND DEPOSITORY SERVICES INC.		16:01:03 03-03-21	
INQUIRE		OUTSTANDING CNS POSITION DETAIL			
LYDI					
LEDGER ID	SECURITY	CLG ORG	CURR	SCI	PAR/QUANTITY
LYD09	CA101431AA21	DTC	USD	Y	15000.00-
LYD09	CA135087KP84	CDS	CAD	Y	7000.00+
LYD09	CA31942GS476	CDS	CAD	Y	4500.00-
LYD09	CA50186E1007	DTC	USD	Y	4000.00+
LYD09	US00204M1210	CDS	USD	Y	4750.00-
PF: 1/HELP 3/EXIT 4/MENU 5/REFRESH 7/BACK 8/FWD 9/BMSG					
OPTION: _ DATA:					

## CHAPTER 8 SETTLEMENT OF TRADES

### Monitoring settlements using CDSX

- Review the details on the screen.

Field	Description
SCI	Settlement control indicator for the position: Y – Submit the position for settlement N – Do not settle the position
PRICE	Price against which the outstanding position is expected to settle
PAR/QUANTITY	Total outstanding position

#### 8.7.2 Holding CNS to deliver settlements

To hold CNS to deliver positions:

- Log on to CDS systems. For more information, refer to Participating in CDS Services.
- On the CDS Clearing and Depository Services Inc. Main Menu, type the number identifying CDSX – Customer Functions in the SELECTION field and press ENTER. The CDSX – Customer Functions Menu displays.
- Type the number identifying Ledger Menu in the SELECTION field and press ENTER. The Ledger Menu on page 80 displays.
- Type the number identifying Hold CNS To-Deliver Settlements in the SELECTION field and press ENTER. The Hold CNS To-Deliver Settlement Selection screen displays.

Hold CNS To-Deliver Settlement Selection screen

```

MAR0      CDS CLEARING AND DEPOSITORY SERVICES INC.    13:16:58  11-03-03
MODIFY      HOLD CNS TO-DELIVER SETTLEMENT SELECTION
TEST

          SECURITY FROM:  TO:

          SECURITY TYPE:

          SECURITY SUB-TYPE:

          INSTRUMENT TYPE:

          CURRENCY:

          CLEARING ORGANISATION ID:

          RECEIVE/DELIVER: D

          SETTLEMENT CONTROL INDICATOR:

PF: 1/HELP  3/EXIT  4/MENU  5/REFRESH  9/BMSG
OPTION:      DATA:

Te          DUT0NZ3M

```

## CHAPTER 8 SETTLEMENT OF TRADES

### Monitoring settlements using CDSX

5. Complete the fields as indicated in the table below.

<b>Field</b>	<b>Description</b>
<u>SECURITY FROM, TO</u>	A range of security numbers (a partial or full security number may be entered) If these fields are completed, the SECURITY TYPE, SECURITY SUB- TYPE and INSTRUMENT TYPE must be left blank
<u>SECURITY TYPE</u>	D – Debt E – Equity
<u>SECURITY SUB-TYPE</u>	Code identifying the security sub-type: AB – Asset-backed issue MB – Market bond MM – Money market issue PK – Package SI – Strip
<u>INSTRUMENT TYPE</u>	Code identifying the instrument type
<u>CLEARING ORGANISATION ID</u>	Code identifying the clearing organization: CDS – Domestic CNS positions
<u>RECEIVE/DELIVER</u>	Code identifying the type of CNS outstanding position: R – Outstanding to-receive positions D – Outstanding to-deliver positions
<u>SCI</u>	Settlement control indicator for the position: Y – Submit the position for settlement N – Do not settle the position

6. Press ENTER. The Hold CNS To-deliver Settlement Detail displays.

**Note:** Outstanding to receive positions cannot be placed on hold. Holds are automatically removed at the end of the day.

CHAPTER 8 SETTLEMENT OF TRADES  
Monitoring settlements using CDSX

Hold CNS To-Deliver Settlement Detail screen

MAR1  
MODIFY  
TEST

CDS CLEARING AND DEPOSITORY SERVICES INC.  
HOLD CNS TO-DELIVER SETTLEMENT DETAIL

13:18:05 11-03-03

LEDGER ID	SECURITY	CLG ORG	CURR	SCI	PRICE	PAR/QUANTITY
GIS01	CA135087UT96	CDS	CAD	Y	1.000000000+	50.00-

PF: 1/HELP 3/EXIT 4/MENU 5/REFRESH 7/BACK 8/FWD 9/BMSG 10/SAVE  
OPTION: DATA:

Te DUT0N23M

7. Complete the fields as indicated in the table below.

Field	Description
SCI	Settlement control indicator for the position: Y – Submit the position for settlement N – Do not settle the position
PRICE	Price against which the outstanding position is expected to settle
PAR/QUANTITY	Total outstanding position

8. Press Enter to validate the information and press PF10 to save.

## CHAPTER 9 BUYING IN OUTSTANDING CNS POSITIONS

### Life cycle of a buy-in

#### 9.1.1 Buy-in statuses

During the buy-in process, the status of the buy-in may change to reflect its current state. The table below details all the possible statuses of a buy-in.

Status	Name	Description
I	Intent	Intent to buy-in is entered, saved and confirmed
IX	Partially processed intent	Intent not yet accepted by the system
E	Execute	Buy-in is in execute status
EX	Next day execute	Buy-in is scheduled for execution on next business day
C	Cancelled	Buy-in is cancelled
CX	Pending cancellation	Cancellation not yet accepted by the system
XP	Expired	Receiver failed to execute buy-in before the cutoff time
NP	Not processed	Buy-in cannot be processed (unavailability of outstanding CNS positions)

#### 9.1.2 Execution days

The table below indicates the execution days for buy-ins, depending on the entry time and the clearing organization.

Entry day	Entry time	Clearing organization	Execution day
Day 1	Between 4:00 p.m. and 4:45 p.m. ET (2:00 p.m. and 2:45 p.m. MT, 1:00 p.m. and 1:45 p.m. PT)	CDS	Day 3 (N+2)
Day 1	Between 4:45 p.m. and 7:30 p.m. ET (2:45 p.m. and 5:30 p.m. MT, 1:45 p.m. and 4:30 p.m. PT)	CDS	Day 4 (N+3)

**Note:** The Buy-In Intent Entry screen on page 88 is enabled at 4:00 p.m. ET (2:00 p.m. MT, 1:00 p.m. PT) daily. This process is separate from and unaffected by the ~~final intraday CNS settlement and payment exchange processes~~.

For example, a buy-in that was entered on day 1 between 4:00 p.m. and 4:45 p.m. ET (2:00 p.m. and 2:45 p.m. MT, 1:00 p.m. and 1:45 p.m. PT) with CDS as the clearing organization, is scheduled to execute on day 3, provided that the receiver changes the status of the buy-in to execute (E). If the status is not changed to E by execution date, the buy-in is automatically cancelled.

**Note:** CDSX automatically manages Canadian holidays when determining the execution date. For example, if a receiver enters a Canadian dollar buy-in request on Monday and Wednesday is a Canadian holiday with Canadian dollar settlement restrictions, CDSX automatically establishes the execution date as Thursday. For more information, refer to *CDSX Procedures and User Guide*.

## CHAPTER 9 BUYING IN OUTSTANDING CNS POSITIONS

### Deliverer buy-in activities

#### 9.4 Deliverer buy-in activities

Deliverers can inquire on their buy-in liabilities, request an extension and produce a maximum execute liability (MEL) report.

**Note:** A deliverer may satisfy its buy-in maximum liability by the actual settlement of the failed-to-deliver CDS position. This liability may be covered during the period from the date on which the buy-in intent was received until 2:030 p.m. ET (12:030 p.m. MT, 11:030 a.m. PT) on the execution date. ~~The actual settlement occurs in the 2:30 p.m. ET (12:30 p.m. MT, 11:30 a.m. PT) CNS intraday cycle.~~

A deliverer is not relieved of ~~its~~their buy-in liability during the above period, even if it has moved from a short position to a flat or long position due to ~~settling of trades during that time~~netting.

A deliverer may be held liable if settlement of the fail-to-deliver CNS position occurs after 2:30 p.m. ET (12:30 p.m. MT, 11:30 a.m. PT)

##### 9.4.1 Inquiring on a buy-in

To inquire on the details of liability records:

1. Access the Buy-In Menu on page 87. For more information, see [Accessing the Buy-In Menu](#) on page 87.
2. Type the number identifying Deliverer Inquire Buy-In in the SELECTION field and press ENTER. The Deliverer – Buy-In Inquiry Selection screen on page 100 displays.

Deliverer – Buy-In Inquiry Selection screen

```

MBD0      CDS CLEARING AND DEPOSITORY SERVICES INC.    13:20:13  03-03-21
INQUIRE      DELIVERER - BUY-IN INQUIRY SELECTION
WGDB

      CLEARING ORGANIZATION: _
      CURRENCY:
      SECURITY NBR FROM:      TO:
      BUY-IN ID:
      EXECUTION DATE: 2003-03-21
      STATUS:

PF: 1/HELP  3/EXIT  4/MENU  5/REFRESH  9/BMSG
OPTION:      DATA:
Tn

```

## CHAPTER 10

### CCP fails-to-receive interest mark and fee

CDS generates an interest mark to automatically compensate deliverers for losses incurred due to the inability of receivers to receive securities in CNS and FINet. Participants failing to receive are responsible for these interest marks. CDS applies a CCP fails-to-receive fee to discourage receivers from failing to settle in CNS and FINet.

The interest mark and fee are only applicable if the deliverer could not deliver its securities.

#### 10.1 Fails-to-receive interest mark

To distribute the interest costs, CDS uses an fails-to-receive interest mark. This mark is applied in accordance with the following rules:

- The interest mark is applied to the ledgers in the same manner as other marks
- The interest mark does not draw down on caps or lines of credit
- ACV is not impacted by positive and negative marks
- After conversion of any negative USD interest marks to Canadian dollars, the negative interest marks are included in the mark-to-market component of the IRMS collateral requirements. For more information, refer to *Participating in CDS Services*.

##### 10.1.1 Calculation of the CNS fails-to-receive interest mark

The total fails-to-receive interest mark is calculated based upon the value of shares that a deliverer could not deliver in CNS on the current day multiplied by a benchmark rate, multiplied by the number of days to the next business day. If there is more than one failed receiver for a specific delivery, the portion of the mark that a failed receiver is responsible for is prorated based on their failed quantity. ~~If shares being delivered through TFT settlement are received after the CNS delivery was attempted in the last CNS cycle, the fails-to-receive interest mark is not applied.~~

The calculation is run at 5:30 p.m. ET (3:30 p.m. MT, 2:30 p.m. PT) each business day using settlement information. ~~contained in the last CNS cycle of the day.~~

-  
Fails-to-receive interest marks are credited to the deliverer's funds account and debited from the receiver's funds account. The currency of the fails-to-receive interest marks depends upon the currency associated with the outstanding CNS position. These funds movements are effective the following business day.

## CHAPTER 10 CCP FAILS TO RECEIVE INTEREST MARK AND FEE

### Fails to receive interest mark

Canadian dollar and U.S. dollar benchmark rates are established as follows:

- Canadian dollars – Bank of Canada target for overnight rate + 50 basis points
- U.S. dollars – Federal Funds Rate + 50 basis points

The benchmark rate is adjusted in CDSX on the day the rate change is announced.

#### 10.1.2 Calculation of the FINet fails-to-receive interest mark

The FINet fails-to-receive interest mark is calculated based upon the par value that a deliverer could not deliver on a given day multiplied by a benchmark rate, multiplied by the number of days to the next business day. If there is more than one failed receiver for a specific delivery, the portion of the mark that a failed receiver is responsible for is prorated based on their failed quantity.

The calculation is run at 4:00 p.m. ET (2:00 p.m. MT, 1:00 p.m. PT) each business day. FINet trades are not allowed to settle once CAD payment exchange begins.

Fails-to-receive interest marks are credited to the deliverer's funds account and debited from the receiver's funds account. These funds movements are effective on the following business day.

The Canadian dollar benchmark rate is established as follows:

- Canadian dollars – Bank of Canada target for overnight rate + 50 basis points

The benchmark rate is adjusted in CDSX on the day when the rate change is announced.

#### 10.1.3 Fails-to-receive fee

In addition to the CNS and FINet fails-to-receive marks, a fails-to-receive fee is charged to receivers who fail to settle in the CNS and/or FINet services. A maximum of one CCP fails-to-receive fee is charged per day, per receiver, per CCP service.

For more information, refer to Fees on CDS's website ([www.cds.ca](http://www.cds.ca)).

#### 10.1.4 Monitoring interest marks

Participants can monitor interest marks through the following:

- The Daily Transaction report. For information, refer to *CDS Reporting Procedures*.
- The Fails-to-receive Mark Detail Report. For information, refer to *CDS Reporting Procedures*.
- The Settled Transactions report. For information, refer to *CDS Reporting Procedures*.



**CHAPTER 10 CCP FAILS TO RECEIVE INTEREST MARK AND FEE**  
**Fails to receive interest mark**

- The Ledger update – mark-to-market transaction file. For more information, refer to *CDS Batch and Interactive Services – Technical Information*.
- The Ledger position update notification to participants file. For more information, refer to *CDS Batch and Interactive Services – Technical Information*.

**13.3.3 CME Clearing Europe Limited – Notice of Commission Order – Application for Interim Exemptive Relief**

**CME CLEARING EUROPE LIMITED**

**APPLICATION FOR TEMPORARY EXEMPTIVE RELIEF**

**NOTICE OF COMMISSION ORDER**

On May 3, 2011, the Commission granted CME Clearing Europe Limited (CMECE) an interim exemption from the requirement in subsection 21.2(0.1) of the *Securities Act* (Ontario) (Act) to be recognized as a clearing agency. CMECE is exempted from the requirement until the earlier of (i) the date the Commission renders a subsequent order recognizing CMECE as a clearing agency under subsection 21.2(0.1) of the Act or exempting it from the requirement to be recognized as a clearing agency under section 147 of the Act, and (ii) November 3, 2011. The exemption order is subject to certain terms and conditions.

A copy of the temporary exemption order is published in Chapter 2 of this Bulletin.

## Chapter 25

### Other Information

#### 25.1 Consents

##### 25.1.1 EPM Mining Ventures Inc. – s. 4(b) of the Regulation

#### Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the Business Corporations Act (Yukon).

#### Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 181.

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

#### Regulations Cited

Regulation made under the Business Corporations Act, O. Reg. 289/00, as am., s. 4(b).

**IN THE MATTER OF  
R.R.O 1990, REGULATION 289/00, AS AMENDED  
(the “Regulation”)  
MADE UNDER THE  
BUSINESS CORPORATIONS ACT (ONTARIO),  
R.S.O. 1990 C.B.16, AS AMENDED  
(the “OBCA”)**

**AND**

**IN THE MATTER OF  
EPM MINING VENTURES INC.**

**CONSENT  
(Subsection 4(b) of the Regulation)**

**UPON** the application of EPM Mining Ventures Inc. (the “**Applicant**”) to the Ontario Securities Commission (the “**Commission**”) requesting a consent from the Commission to continue into another jurisdiction pursuant to subsection 4(b) of the Regulation;

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

**AND UPON** the Applicant having represented to the Commission that:

1. The Applicant was incorporated under the OBCA by articles of incorporation effective June 20, 1986 under the name Reed Lake Exploration Ltd. On November 27, 1996 it amalgamated and changed its name to Westhope Capital Corp. On March 12, 2010 it amended its articles to consolidate its

outstanding common shares and changed its name to EPM Mining Ventures Inc.

2. The Applicant’s registered and head office is located at 4 King St. West, Suite 1320, Toronto, ON M5H 1B6. Following the proposed Continuance, as defined below, it is expected that the Applicant’s registered office will be located at Suite 200, Financial Plaza, 204 Lambert Street, Whitehorse, Yukon Territory Y1A 3T2.
3. The Applicant has an authorized share capital consisting of an unlimited number of common shares (the “**Common Shares**”) and an unlimited number of non-voting common shares (the “**Non-Voting Shares**”), of which 7,384,600 Common Shares and no Non-Voting Shares were issued and outstanding as at April 27, 2011.
4. The Applicant’s outstanding common shares are not listed for trading on any marketplace as defined in National Instrument 21-101 *Marketplace Operation*.
5. The Applicant intends to apply (the “**Application for Continuance**”) to the Director under the OBCA for authorization to continue under the *Business Corporations Act* (Yukon), R.S.Y. 2002, c. 20, as amended (the “**YBCA**”), pursuant to section 181 of the OBCA (the “**Continuance**”).
6. Pursuant to subsection 4(b) of the Regulation, where a corporation is an offering corporation under the OBCA, an application for authorization to continue in another jurisdiction under section 181 of the OBCA must be accompanied by a consent from the Commission.
7. The Applicant is an offering corporation under the OBCA and is a reporting issuer under the *Securities Act* (Ontario) (the “**Act**”). The Applicant is also a reporting issuer under the securities legislation of Alberta.
8. Following the Continuance, the Applicant intends to remain a reporting issuer in the provinces of Ontario and Alberta.
9. The Applicant is not in default of any of the provisions of the OBCA and the Act or the regulations or rules made under the OBCA and the Act or under the securities legislation of any other jurisdiction where it is a reporting issuer.
10. The Applicant is not a party to any proceeding or, to the best of its knowledge, information and belief, pending proceedings under the OBCA and

the Act or under the securities legislation of any other jurisdiction where it is a reporting issuer.

11. Holders of Common Shares of the Applicant approved the Continuance by special resolution at the Applicant's annual and special meeting (the "**Meeting**") held on November 9, 2010. The special resolution authorizing the Continuance was approved at the Meeting by 99.98% of the votes cast. Shareholders holding 5,670,363 Common Shares representing 76.8% of the outstanding Common Shares of the Applicant were voted at the Meeting. 5,669,112 votes were cast in favour and 1,251 votes were cast against the Continuance at the Meeting either in person or by proxy. One shareholder holding 500 Common Shares who voted against the Continuance has exercised dissent rights under the OBCA.
12. The management information circular of the Applicant dated October 8, 2010 describing the Continuance, provided to all the shareholders of the Applicant in connection with the Meeting, included disclosure of the reasons for, and the implications of, the proposed Continuance, included a summary of the material differences between the OBCA and the YBCA and advised the shareholders of their dissent rights in connection with the Continuance, pursuant to section 185 of the OBCA.
13. The Continuance has been proposed as the Applicant believes it to be in its best interest to conduct its affairs in accordance with the YBCA and that it will provide greater flexibility in the composition of the board of directors of the Applicant.
14. The Applicant's material rights, duties and obligations under the YBCA will be substantially similar to those of a corporation governed by the OBCA with the exception that there is not a Canadian residency requirement for the members of the board of directors under the YBCA.

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

**THE COMMISSION HEREBY CONSENTS** to the continuance of the Applicant as a corporation under the YBCA.

**DATED** this 29th day of April, 2011.

"Edward P. Kerwin"

"James Turner"

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